

**TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL
NEW DELHI**

Dated 31 January, 2019

Broadcasting Petition No. 84 of 2015

Indiacast UTV Media Distribution Pvt. Ltd. & Ors. ... Petitioners

Versus

Star Media Services, Goa ...Respondent

BEFORE:

**HON'BLE MR. JUSTICE SHIVA KIRTI SINGH, CHAIRPERSON
HON'BLE MR. A.K. BHARGAVA, MEMBER**

For Petitioners : Mr. Kunal Tandon, Advocate
Mr. Shashank Shekhar, Advocate

For Respondent : None

ORDER

By S.K. Singh, Chairperson – This petition has been heard *ex parte* because even after notices were validly served on the respondent, it chose not to appear and has not filed any reply/written statement nor has led any evidence.

2. This petition was filed on 19.02.2015 to claim a decree of Rs.18,09,489.80p in favour of the petitioner and against the respondent along with interest @ 18% per annum.

3. The petitioner has pleaded and led evidence through PW-1, that petitioner is engaged in distribution of television channels as agent of various broadcasters and the respondent is a Multi-System Operator. Both are service providers and have entered into a subscription agreement for the period 01.04.2012 to 31.03.2013 for supply of signals of TV channels supplied by the petitioner to the areas covered by the agreement. A copy of the agreement is **Annexure P-1** and it has also been marked as an exhibit.

4. An invoice dated 25.03.2013 for the month of March 2013 along with a debit note dated 31.03.2013 showing dues of Rs.19,03,378.40p as subscription charges for 01.04.2012 to 28.02.2013, have been collectively made **Annexure P-2** and have also been proved as an exhibit(colly.). An account summary from 01.01.2009 to 12.01.2015 has also been brought on record as **Annexure P-5** and marked as an exhibit in support of the amount of Rs.18,09,489.80p claimed through this petition. The petitioner has furnished details of two cheques dated 12.12.2013 and 16.12.2013 with an averment that those two cheques, each for Rs.1,25,000/-, were given by the respondent and were deposited with the petitioner's bank but these were returned on 24.02.2014 for the reason that the funds were insufficient. Petitioner has pleaded that it had

sent demand notice dated 28.02.2014 as well as a legal notice dated 27.01.2015 to claim the outstanding amount along with interest from the respondent. The notices have been brought on record and also marked exhibits.

5. Learned counsel for the petitioner has pointed out that the stamped paper for the agreement was issued only on 19.11.2012 and hence, the agreement was executed formally at a later date but with clear indication that it was to cover the period of the entire claim i.e. 01.04.2012 to 31.03.2013. It was on account of subsequent formal execution that a debit note had to be issued after the invoice for the month of March was issued on 25.03.2013. The amounts mentioned as dues in petitioner's notice of 28.02.2014 shows that respondent was liable for subscription fees totaling to Rs.15,59,490. On adding the same to the subscription fee for March 2013 amounting to Rs.1,73,034.40p, the dues as per documents of the petitioner till 31.03.2013 would come to only Rs.17,32,524.40p. There is some confusion as to whether the dues indicated till February 2013 carried the correct amount of taxes or not, but in our considered view, the petitioner can not be granted an amount higher than the amount noticed above on the basis of invoice for the month of March 2013 and dues indicated in the letter of 28.02.2014. The confusion in the figures of outstanding dues appears to be also on account of bouncing of four cheques in or around March 2013 and two in December 2013. But the matter does not become fully clear even later because in the last legal notice of 27.01.2015, the

petitioner has demanded Rs.18,94,489.80p as the accumulated dues. Whether it is on account of additional interest has not been made clear and therefore, this amount is also not acceptable.

6. The difficulty in accepting the amount claimed by the petitioner, however, has been removed by the deposition of petitioner's witness. Mr.Kapil Suri as PW-1 has admitted some subsequent payments and has disclosed that now the dues payable by the respondent are admittedly only Rs.14,59,489.80p.

7. Since the respondent has not refuted the allegation of the petitioner on the basic facts such as the agreement disclosing the monthly liability, the invoice, the debit note and the statement of account, there is no good reason for not accepting the petitioner's case when in support of the same, petitioner has proved its documents and led oral evidence which has not been challenged through cross-examination. The difficulty in ascertaining the correct dues is resolved on account of admission of PW-1 noted above. The claim is covered by the term of an agreement between the parties which has not been denied or disputed. The petition was filed in February 2015, well within the period of limitation of three years. In view of above discussion and findings, the petitioner's claim is allowed in part. The petitioner is found entitled to a decree for only Rs.14,59,489.80p. This amount is rounded-off as Rs.14,59,490/- for all practical purposes. This amount is payable by the respondent. Although petitioner has claimed interest @ 18% per annum, following the judgment and

orders of this Tribunal in similar matters, we allow claim for interest only @ 9% per annum payable from the month of March 2015 till the date of realization. The respondent is directed to pay the decretal amount along with permitted interest within two months from today failing which the petitioner will be entitled to realize the entire decretal amount and interest through execution proceedings. The office is directed to prepare a decree in terms of this judgment and order without any delay. Since the respondent has not contested the petition, there shall be no order as to costs.

8. The petition is allowed to the aforesaid extent.

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(S.K. Singh, J)
Chairperson

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(A.K. Bhargava)
Member