

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL**NEW DELHI****Dated 13th October 2022****BROADCASTING PETITION/261/2014**

Den Network LtdPetitioner(s)
Versus
Sahara India Tv NetworkRespondent(s)

BEFORE:**HON'BLE MR. JUSTICE RAM KRISHNA GAUTAM, MEMBER**

For Petitioner : Mr. Vibhav Srivastava, Advocate
For Respondent : Mr. Gautam Awasthi, Advocate
Mr. Sameer Pandey, Advocate

JUDGMENT

1. This Broadcasting Petition by Den Networks Ltd. has been filed against Sahara India TV Network with a prayer for recovery of a sum of Rs. 8,98,88,000/- (Rupees Eight Crore Ninety Eight Lacs Eighty Eight Thousand Only) towards outstanding Placement charges with interest @ 18% p.a. from the date of its dues till actual payment.
2. In brief, the pleadings contend that petitioner is carrying on Multi Systems Operation [hereinafter referred to as "MSO"] business as a cable television service provider, duly registered under the provisions of Section 3 of the

Cable Television Networks (Regulation) Act, 1995 (hereinafter referred to as "Cable Television Act") and also registered under Rule 11C of the Cable Television Network Rules, 1994 (as amended upto date). The Respondent herein being a Broadcaster, has been distributing satellite channels- Sahara One & Sahara Filmy, under the name and title as Sahara India Tv Network. On oral understanding, with effect from 16th May 2013, for placement of the channels of Sahara One & Sahara Filmy on Digital and analogue networks on band, as was mentioned in the Memorandum of Understanding (MoU) dated 1st October 2013, was being carried by the petitioner. This MoU dated 1st October 2013 (herein after referred to as "the Agreement") was annexed with the petition and marked as Annexure P – 1.

3. Based upon the terms of written Agreement as above, the Petitioner raised the invoices on the Respondents for the placement charges and Respondent used to make on and off payments to the Petitioner. The Statement of Accounts and copy of relevant portion was marked as Annexure P – 2.
4. A request was made for making the payment of outstanding placement charges vide letter dated 28th February 2014 claiming outstanding dues including few dues of the year 2012. This letter dated 28th February 2014 is annexed as Annexure P – 3.
5. Thereafter the Petitioner had requested several times by demand notices, for outstanding amount, but of no avail. The total outstanding liability of the Respondent, under Agreement for services of placing Sahara One & Sahara Filmy, amounted to Rs. 8,98,88,000/- (Rupees Eight Crore Ninety Eight Lacs Eighty Eight Thousand Only). Whereas respondent has enjoyed

the services of the petitioner, but had withheld the payment of placement charges to the Petitioner.

6. Hence, first cause of action arose when the petitioner started placing the channels from 16.5.2013 as per oral understanding, then after it further arisen when petitioner signed agreement dated 1.10.2013, which continued till the time demand made by subsequent notices. Hence, this petition, under Section 14 read with Section 14A of the Telecom Regulatory Authority of India Act, 1997, was filed with above prayer by authorised person Mr. Rajiv Tiwari, General Manager of the petitioner company, duly authorised to file the petition vide Board Resolution dated 9.8.2012, a copy of which was annexed as Annexure P-4 with the petition.
7. Sahara India TV Network, in its written statement, denied the contention of petition. Though Shri Mahesh Prakash Bende was written to be authorised representative of the respondent and said to have verified and signed the reply as well as accompanying affidavit deposed by him. The letter of authority in favour of Shri Mahesh Prakash Bende alongwith Board Resolution was annexed as Annexure 1 to reply. But this written statement was with no verification by person who has filed it. The authorisation in favour of Shri Mahesh Prakash Bende was not made by Sahara India Tv Network, the respondent. Rather it was by Trilogic Digital Media Limited and in certified true copy of resolution passed at the meeting of the Board of Directors of Trilogic Digital Media Limited on Saturday 29.5.2014 at Corporate Office of the company is no recital with regard to Sahara India Tv Network. Hence, apparently, this written statement is neither verified nor signed by defendant / respondent - Sahara India Tv Network. More so, a bare denial of entire facts of petition was made in this written statement. The agreement, said to be entered in between, was denied with this

contention that petitioner and respondent never entered in any agreement, whatsoever as submitted by petitioner herein.

8. No authentic document was brought on record by the petitioner. No oral or written agreement or MoU was entered in between. No cause of action has ever arisen. This agreement, said to be executed in between, does not bear any signature and seal of the respondent at all and alleged communication said to be made by the petitioner and replied by respondent, were false. It was a false claim warranting no indulgence by this Tribunal. However, respondent admits to be a Broadcaster but Annexure P-1 and P-2 are vehemently denied. The respondent is a broadcaster as per TRAI Regulations. But no agreement, either written or oral, was entered in between, nor any outstanding dues were there.
9. A replication cum rejoinder affidavit was filed by petitioner reiterating the same contention of pleadings, that petitioner had entered into an oral understanding with respondent and thereafter on the basis of which a MOU dated 1.10.2013 was reduced between the petitioner and respondent. The said MOU dated 1.10.2013 is already on record and it contains the seal and signature of the respondent on the face of it, which duly proves validity of agreement, being claimed by petitioner. Moreover, there are several emails, exchanged in between, wherein the respondent had admitted its liability to pay the outstanding amount and also acknowledgment given by the petitioner to the respondent. Copy of email, exchanged in between the petitioner and the respondent, were annexed as Annexure A-2 of replication. The statement of accounts, annexed with the petition as well as rejoinder, clearly establishes the claim of the petitioner.
10. On the basis of pleadings, following issues were framed on 29.10.2014:

1. Whether the MOU/ Agreements in respective Petitions are binding on the parties?
 2. Whether the Respondent is liable to pay the respective carriage fees/ placement charges as prayed for in the respective Petitions?
 3. Any other issue/ relief as deemed fit by the Hon'ble Tribunal?
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11. Petitioner filed its evidence by way of affidavit of Shri Vivek Nanda and Shri Parneet Singh Bhalla, Senior Manager (Carriage and content of the petitioner company) under section 65B of the Indian Evidence Act, 1872. The respondent filed its evidence by way of affidavit of Mr. Shaikh Wajid Mohd. Ismail.
 12. Heard learned counsel for both the sides and gone through material placed on record.
 13. **Issue no. 1-** Though issue no. 1 had to be as to whether there is any oral agreement entered in between and subsequently MOU was reduced in writing which has been annexed as Annexure P-1 to the petition and if so, its effect? But this issue No.1 has been framed not in good words. Whereas entire contention as well as oral submission in form of arguments were made in the same tune. Hence, by way, not happily worded issue No.1, the real dispute in between as was there in pleadings and was contested, were with regard to above agreement-cum-MOU. It was said to be made, whereas denied to be never executed. The legal question was with regard to oral agreement, for which a Gazette of rules framed on 10th of December 2004 by TRAI vide notification No. File No. 8-26/2004-B & CS was placed before this Tribunal wherein in Rule No. 4.1, explanation was appended and Rule No. 4 with its explanation is as below:

“4. Disconnection of TV channel signals

- 4.1 No broadcaster or multi system operator shall disconnect the TV channel signals to a distributor of TV channels without giving one month notice indicating the brief reasons for the proposed action:

Provided that in case a distributor of TV channel is re-transmitting signals for which he/she is not authorized and thereby affecting the commercial interest of the concerned broadcaster or multi system operator, the notice period shall be two working days giving reasons to the concerned distributor of TV channel for such action.

Explanation

A distributor of TV channels is said to be authorised if there exists any agreement between the broadcaster, including his/her agents permitting the distribution of the broadcasting service by the said distributor of TV channels, either through a written agreement or through an oral agreement. Consequently no notice would be required if there is no agreement, written or oral, permitting the distribution of the broadcasting service."

Meaning thereby there was no condition precedent to be a written agreement, rather an oral agreement may be there and it was as good as written agreement. Though in present time, a written agreement is must and oral agreement is not permitted. But as the present litigation was related with above rules of above period wherein oral agreement was permitted, hence, the very argument with regard to oral agreement, raised by learned counsel for Respondent, is of no avail.

Affidavit of Mr. Vivek Nanda filed in support of Petition, for and on behalf of petitioner, is in fully consonance with the contention of pleadings. Petitioner, being MSO in Cable TV Service provider, duly registered under the provision of Section 3 of the Cable Television Networks (Regulation) Act, 1995 and Respondent, being a broadcaster were said to have entered in oral understanding and on the basis of it, a MOU, dated 01.10.2013 was got written between the Petitioner and the Respondent. Petitioner had placed the channel - Sahara One & Sahara Filmy since 16.05.2013 on its digital and analogue platform, well in accordance with oral agreement, subsequently reduced in MOU dated 01.10.2013. This witness has not been cross examined. Hence, his affidavit in form of examination- in-chief, having not been cross examined, is of no avail. The evidence of Mr. Parneet Singh Bhalla, is in full reiteration of contention of Petition as well as in consonance with examination in chief of Mr. Vivek Nanda and this witness has proved oral agreement entered in between and subsequently reduced in writing of MOU dated 01.10.2013. Placement of Channels of Respondent was in accordance with above agreement. This witness, in his cross examination, has categorically reiterated about his affidavit dated 18.11.2015 to be under his signatures and with its exhibits within his knowledge. This witness has categorically stated that he has joined in place of Shri Vivek Nanda, who has previously filed its affidavit in its evidence. So, far as MOU is concerned, the same was said to be annexed with affidavit of this witness and under his knowledge.

A question has been put to this witness about the document being MOU and not being agreement. Meaning thereby, this suggestive leading question, about this document and its being MOU is not disputed and it

was very well said by the petitioner that it was an oral agreement entered in between and subsequently reduced in writing as MOU. Hence, the cross examination is with no deviation or material contradiction from statement in chief. Rather both are in consonance with each other. Accordingly, oral agreement entered in between and subsequently reduced in writing as MOU dated 1.10.2013 is that validly executed document and it has been duly proved by the petitioner.

Mr. Shaikh Wajid Mohd. Ismail a witness of respondent in his examination in chief by way of affidavit has said in its verification clause that contents of this reply are true and correct to his personal knowledge as well as records and nothing relevant has been concealed therein and no agreement was signed by the respondent company with the petitioner company herein as alleged by petitioner. But in cross-examination, when asked about Board Resolution authorising him to depose for respondent, the answer was that the Board Resolution was on record. But it was not there on record. Even the written statement / reply was with no verification clause and it was not by way of authorisation for filing for and on behalf of respondent. Rather it was for 3rd company. This witness was not an employee of respondent company on the alleged date of entering into oral agreement or subsequently reducing in writing as MOU. Hence, nothing was in his personal knowledge. This witness was not a competent witness for disproving the existence of oral agreement. Because he was neither a party to that agreement nor was in job in those time period. A specific question (Q-5) has been asked to this witness in its cross examination that "is it correct that when MOU dated 1.10.2013 entered in between petitioner and respondent no. 1, you were not working with respondent

no. 1 and also have no knowledge of this MOU?” In the reply to this suggestive leading question, this witness has answered “it is correct. As I came to know about MOU dated 1.10.2013 only after going through the petition and same was not on the records of respondent no. 1.” Meaning thereby merely by not having the same on record of respondent no. 1, this witness is saying that no such MOU was there. The execution of same or non-execution of same was not in the personal knowledge of this witness. A relevant situation is that this witness has admitted that Mr. Ramit Kundu had worked with Sahara India and evasive reply has been made by the witness with regard to questions concerned with emails whereas copies of those emails have been made annexure to affidavit and duly proved by way of evidence of petitioner.

The other witness Mr. P C Tripathy produced by respondent no. 1 in connected B.P. No. 262/2014 in his cross – examination, made by counsel for petitioner, had clearly admitted the deductions towards TDS, made by respondent, towards the payment made for relevant period to petitioner for placement charges as was shown by the petitioner in its statement of account. Hence, the relationship in between; the broadcasting in between; payment made in between, and deductions of TDS made by respondent, reveals the statement of account and dues mentioned therein, duly annexed with the affidavit by the petitioner’s witness, filed on record, to be a cogent evidence. Hence, the oral agreement, reduced in writing, was acted upon and both sides are bound to obey it. This issue is being decided affirmatively.

14. **Issue No. 2** – As decided in issue no. 1 above, there was oral agreement and subsequently reduced in writing for placement of respondent’s channels and this was distributed upon its platform and acted upon. The

outstanding dues were there for which invoices were raised. It was served even by email. The statement of accounts, as Annexure P-2, reveals outstanding dues since 16.5.2013 to 22.4.2014 amounted to Rs. 8,98,88,000/- (Rupees Eight Crore Ninety Eight Lacs Eighty Eight Thousand Only). A letter, written by Den Networks Limited on 28th of February 2014 Annexure P-3, alongwith registered post at page 14, 16, 17 and 18. E-mail of Mr. Gautam Sarkar and Annexure A at page 41 from Mr. Vivek Nanda to respondent filed from pages 41 to 45 reveals communications in between, demanding outstanding dues and no payment of same by respondent. These facts have been duly proved by way of affidavit filed in examination-in-chief and its cross-examination. Hence, outstanding of Rs. 8,98,88,000/- (Rupees Eight Crore Ninety Eight Lacs Eighty Eight Thousand Only) and its liability to pay is fully established. Accordingly, issue no. 2 is decided affirmatively.

15. **Issue No. 3** – The rate of interest is not there in MOU and it has been claimed at the rate of 18% p.a. But in the prayer itself it has been left for the Tribunal and hence, Tribunal in above circumstances decided to award the principal amount of liability of Rs. 8,98,88,000/- (Rupees Eight Crore Ninety Eight Lacs Eighty Eight Thousand Only) with a Simple Interest @ 7% p.a, from the date of filing of this petition till actual payment. This issue No.3 is being decided accordingly.

ORDER

Petition is being allowed with cost. The respondent is being directed to make payment in favour of petitioner by way of depositing in Tribunal

amount of Rs. 8,98,88,000/- (Rupees Eight Crore Ninety Eight Lacs Eighty Eight Thousand Only) with a Simple Interest @ 7% p.a from the date of filing of this petition till actual payment, within two months from the date of judgment.

Formal order/decreed be got prepared by office accordingly.

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(Justice Ram Krishna Gautam)
Member