

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL

NEW DELHI

Dated 13th October 2022

BROADCASTING PETITION/262/2014

With

MISC APPLICATION/447/2018

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 Petition under Section 14 read with Section 14A of the Telecom Regulatory Authority of India Act, 1997 (As Amended Upto date) (hereinafter referred to as "TRAI Act") has been filed by Petitioner Company-Den Networks Ltd. against Respondents-Sahara India TV Network and ABS Media Services Pvt. Ltd., with

a prayer for a decree for recovery of Rs. 60,18,276/- (Rupees Sixty Lacs Eighteen Thousand Two Hundred Seventy Six Only) towards Placement charges on the outstanding amount alongwith interest at the rate of 18% p.a or at such rate as this Tribunal may deem fit.

2. In brief, the contention of the petitioner is that the Petitioner is carrying on Multi Systems Operation [hereinafter referred to as "MSO"] business in 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"). The Respondents are Broadcaster as per TRAI Regulations and were distributing satellite channels- Sahara One & Sahara Filmy, under the name and title of Sahara India Tv Network. The Petitioner had an oral understanding with effect from 1st April 2012 had already started placing the channels – Sahara One on Prime Band & Sahara Filmy on 'S' band as per conditions mentioned in the Agreement dated 20th July 2012 (herein after referred to as "Agreement"), which has been annexed as Annexure P – 1 to the petition. Invoices were raised by the petitioner on the Respondents for the placement charges and Respondent No.1 used to make on and off payments to the Petitioner. The correct copy of Statement of Account has been annexed as Annexure P – 2.

3. The outstanding dues as per statement of account was demanded by the petitioner vide letter dated 28.2.2014 written to respondent no. 1 wherein outstanding of year 2013 were also claimed. This letter dated 28.2.2014 is Annexure P-3. Thereafter, petitioner has several times demanded outstanding dues, but of no avail.
4. The total outstanding liability towards placement charges for the services and placing the Sahara one and Sahara Filmy channels as per agreement was Rs. 60,18,276/-. Interest of 18% p.a was also payable against outstanding amount. Hence, this petition with above prayer for recovery, severally and jointly from respondents, in the tune of Rs. 60,18,276/- (Rupees Sixty Lacs Eighteen Thousand Two Hundred Seventy Six Only) alongwith interest at the rate of 18% p.a.
5. Sahara India Tv Network in its written statement / reply denied entire contents of petition. Petitioner and respondent never entered in any agreement nor such agreement was ever executed. No cause of action had ever arisen. There is no liability against respondent. Petition was prayed to be dismissed.
6. Rejoinder / replication by petitioner was filed, reiterating the contents of the petition. The agreement dated 20.7.2012 and the statement of accounts mentioning the liability towards placement of charges was however, pressed. Broadcasting Petition No. 261 of 2014 (Den Networks Ltd. Vs. Sahara India Tv Network), was tried

together with present petition, wherein issues were framed on 29th October 2014, which are as under :

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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7. Petitioner filed evidence of Mr. Vivek Nanda as examination-in-Chief by way of affidavit but as he could not be cross-examined, hence, the other affidavit evidence of Mr. Parneet Singh Bhalla, Senior Manager (Carriage and content of the petitioner company) under section 65B of the Indian Evidence Act, 1872 was filed on behalf of the petitioner. He was cross-examined by counsel for the respondent. Respondent had filed its evidence by way of affidavit as examination –in-chief of Mr. P.C. Tripathy, who had been cross-examined by counsel for petitioner.
 8. Heard learned counsel for both the sides and gone through material placed on record.

9. **Issue No. 1** – Hon’ble Apex Court in Anil Rishi Vs. Gurbaksh Singh – AIR 2006 SC 1971 has propounded that onus to prove a fact is on the person who asserts it. Under Section 102 of The Indian Evidence Act, initial onus is always on the plaintiff to prove his case and if he discharges, the onus shifts to defendant. It has further been propounded in Premlata Vs. Arhant Kumar Jain- AIR 1976 SC 626 that where both parties have already produced whatever evidence they had, the question of burden of proof ceases to have any importance. But while appreciating the question of burden of proof and misplacing the burden of proof on a particular party and recording of findings in a particular way will definitely vitiate the judgment. The old principle propounded by Privy Council in Lakshman Vs. Venkateswarloo – AIR 1949 PC 278 still holds good that burden of proof on the pleadings never shifts, it always remains constant. Factually proving of a case in his favour is cost upon plaintiff when he fulfils, onus shifts over defendants to adduce rebutting evidence to meet the case made out by plaintiff. Onus may again shift to plaintiff. Hon’ble Apex Court in State of J& K Vs Hindustan Forest Co. (2006) 12 SCC 198 has propounded that the plaintiff cannot obviously take advantage of the weakness of defendant. The plaintiff must stand upon evidence adduced by him. Though unlike a criminal case, in civil cases there is no mandate for proving fact beyond reasonable

doubt, but even preponderance of probabilities may serve as a good basis of decision, as was propounded in M Krishnan Vs Vijay Singh- 2001 CrLJ 4705. Hon'ble Apex Court in Raghvamma Vs. A Cherry Chamma – AIR 1964 SC 136 has propounded that burden and onus of proof are two different things. Burden of proof lies upon a person who has to prove the facts and it never shifts. Onus of proof shifts. Such shifting of onus is a continuous process in evaluation of evidence. In present case, existence of agreement has been vehemently denied in written statement, Whereas the same has been pleaded in petition and this agreement has been annexed with affidavit, filed in evidence. The petitioner's witness in his cross- examination reiterated contents of examination in chief. There is no material contradiction amounting to vitiating the veracity of this witness. Whereas an evasive denial of entire fact is in their written statement. But when asked to respondent's witness Mr. P C Tripathy again by petitioner's counsel he could not make answer about his knowledge on this denial. Whatever was said by him is on the basis of the fact that agreement was not there in his record. Whereas the authority who had made their reply for respondent to email with regard to outstanding dues had been admitted to be a employee of respondent. Hence, annexures filed as communication through emails in between, demanding the liability has been proved by the petitioner and it is annexed

with the affidavit. A copy of statement of accounts, annexed with the petition, reveals the outstanding dues towards placement charges. It is very well there in affidavit filed in evidence. Hence, the deductions of TDS by the respondent towards the payment of placement charges made by respondent to petitioner shown in the statement of accounts, filed with petition, could not be disputed by learned counsel for the respondent at the time of arguments advanced before this Tribunal. Hence, agreement in between for the placement, the invoices raised and statement of accounts annexed with affidavit, filed in evidence, establishes the outstanding placement charges of Rs. 60,18,276/- due. Hence, petitioner is entitled for recovery of same. Accordingly, this issue is being decided in favour of the petitioner.

10. **Issue no. 2** – Interest in the tune of 18% p.a has been claimed by the petitioner but an option has been given to the Tribunal for fixing this rate of interest. Considering the entire facts and evidence mentioned as above and the interest rate prevailing during the period, an interest of 7% p.a. is a justified interest and can be awarded from the date of institution of petition to actual payment. This issue is decided accordingly, in affirmative
11. **Issue no. 3** – The petition merits its allowance for Rs. 60,18,276/- towards placement charges against respondents, severally or

jointly, with interest @ 7% p.a from the date of petition to the actual date of payment.

ORDER

Petition is being allowed. Pending M.As, if any, also stand disposed of.

Sahara India TV Network and ABS Media Services Pvt. Ltd., are jointly and severally, being directed to make deposit of Rs. 60,18,276/- towards placement charges against respondents, with interest @ 7% p.a from the date of petition to the actual date of payment in favour of petitioner within two months in Tribunal. Formal order / decree be got prepared by office accordingly.

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(Justice Ram Krishna Gautam)
Member

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