

**TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL**

**NEW DELHI**

**Dated 15<sup>th</sup> December 2023**

**Broadcasting Petition No. 25 of 2018**

Indian Cable Net Company Limited ...Petitioner

Vs.

Media Eleven Private Limited ...Respondent

**BEFORE:**

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

For Petitioner : Ms. Ritwika Nanda, Advocate  
Ms. Maitry Bhandari, Advocate

For Respondent : Mr. Joby P. Varghese

**JUDGMENT**

1. This Petition, under Section 14, read with Section 14 A, of the Telecom Regulatory Authority of India Act, 1997 (hereinafter referred to as "TRAI Act"), has been filed by Petitioner, Indian Cable Net Company Limited, through Mr. V Suresh Kumar, authorised signatory, against Respondent, Media Eleven Private Limited, with a prayer for a decree, in favour of petitioner, for an amount of Rs. 7,52,500/- (Rupees Seven Lakhs Fifty Two Thousand and Five Hundred Only), for

the outstanding Channel Placement charges/carriage fees for placement / carrying respondent's TV channel on the petitioner's cable TV network in various DAS areas, with a further prayer of award of interest, pendente lite and future, @ Rs. 18% p.a., till actual date of payment.

2. In brief, the Petition contends that Petitioner is a leading Multi System Operator(MSO) having its cable TV Operation in various areas across the State of Jharkhand. Mr. V Suresh Kumar is the authorized Signatory of the Petitioner Company, as per Board Resolution, **Annexure P-1**, to Petition. Petitioner, being Multi System Operator, has established its control rooms/ head –ends and network operations for retransmission of various Free to Air (FTA) channels as well as Pay channels signals of various broadcasters to the households/subscribers, through affiliated Local Cable Operators (hereinafter said to be LCOs), across the State of Jharkhand.

Respondent M/s Media Eleven Private Limited is a broadcaster, engaged in electronic media business with its dedicated satellite TV channels, including "News 11". Respondent is a broadcaster falling

within the definition of 'Service Provider' as per TRAI Regulations dated 10.12.2004.

3. Petitioner and Respondent entered into Placement/Carriage Agreement dated 31.12.2016, effective from 01.07.2016 till 30.06.2017, for the placement of Respondent's channel namely, 'News 11' in DAS areas of Jharkhand in the Digital mode. Copy of this agreement dated 31.12.2016 is **Annexure P-2**, to Petition. Petitioner acted upon agreement **Annexure P-2**. Thereby, channel 'News 11' was placed by Petitioner on agreed LCN for DAS notified areas of Jharkhand. As per agreement, Respondent was required to pay a consolidated placement fee of Rs. 18,00,000/- (exclusive of applicable taxes) for the complete tenure of agreement. As per agreement, Respondent was to pay the aforesaid amount in equal Monthly instalments of Rs. 1,50,000/- (Rupees One Lakh Fifty Thousand Only) (excluding the applicable taxes). In case of default, Respondent was liable for the payment of interest @ 18% per annum, for this delayed period. Petitioner complied with the terms of agreement, and its obligation arisen, therein.
4. Invoices were raised regularly on the Respondent towards payment of channel placement charges/ carriage fee. These invoices, raised by

Petitioner, are **Annexure P-3 (Colly)**. Despite receiving the aforesaid invoices, Respondent failed to make payment, in terms of the Placement/ Carriage Agreement, dated 31.12.2016. Letters, requesting payment of outstanding dues, were of no heed. Rs. 7,52,500/- became outstanding dues in Petitioner's Books of Account of the statement of Respondent Company, regarding above services, which is **Annexure P-4** to Petition. Reconciliation letter issued by Respondent itself, makes fact clear regarding outstanding dues, payable to Petitioner. A part payment was made by Respondent. Copy of reconciliation sheet, prepared by Respondent, admitting the outstanding dues, payable to the Petitioner, is **Annexure P-5** to Petition. A demand notice, dated 22.06.2017, for payment of outstanding carriage fee/ placement charge, to the tune of Rs. 7,52,500/-, was issued by Petitioner, to Respondent and the same is **Annexure P-6**, to Petition. But it was of no avail. Hence, a cause of action had arisen within the period of limitation and jurisdiction of this Tribunal. Hence, this Petition with above prayers.

5. A reply, by Respondent, with this contention, that Petition was wholly misconceived, was there. It was submitted that instant Petition had been filed in January 2018, seeking recovery of a sum of Rs.7,52,500/-,

being outstanding carriage fee, payable by Respondent, as on 31.03.2017. The same was filed without any reconciliation of accounts, carried out by the Petitioner. Payments towards the carriage fee, in terms of invoices issued, were duly paid by Respondent by cheque, NEFT/RTGS, as well as cash. However, the said payments were not accounted to by the Petitioner. In the terms of agreement dated 31.12.2016, effective from 01<sup>st</sup> July 2016 till 23.03.2018, a sum of Rs. 20,10,000/-, was paid by Respondent to Petitioner. As on date invoices till June 2017, issued by Petitioner to the Respondent, were for an amount of Rs. 20,70,000/-. The alleged outstanding amount of Rs. 7,52,500/- stood paid, resulting no dues at all, to be claimed as liability of Respondent. True Statement of account of Respondent qua account of Petitioner is **Annexure R-2**. There is no cause of action. Hence, the prayer was for dismissal of this Petition.

6. The replication cum rejoinder by Petitioner, negating the contention of reply, rather reiterating the contention of Petition, was filed. Reconciliation Sheet, prepared by the parties, under the letter head of Respondent, itself had been produced on record. Whereby, the outstanding dues of the Respondent had been captured. The purported statement of account, filed at **Annexure R-2**, is false, hence,

was denied. It is a fabricated one for the purpose of present litigation.

No such payment by cash was ever made.

7. On the basis of pleadings of both side, the Court of Registrar vide order dated 28.02.2019, framed following issues:

*(i) Whether the Respondent had paid the entire dues towards channel Placement charges/ Carriage Fee to the Petitioner even before filing of Petition and whether no cause of action has arisen to the petitioner for filing the present petition, as is claimed by the Respondent, if so, its effect?*

*(ii) Whether the Petitioner is entitled for recovery of Rs. 7,52,500/- alongwith pendente lite and future interest @18% p.m. from the Respondent, as is claimed in the Petition?*

*(iii) Whether the Respondent is entitled to any costs from the Petitioner?*

*(iv) To what relief, if any, Petitioner is entitled?*

8. Affidavit of Mr. V Suresh Kumar, **PW-1** was filed as evidence of Petitioner under Order XIX of CPC, whereas, Respondent filed its affidavit of Mr. Anup Chatterjee **RW-**, on record.

9. Heard arguments of learned Counsels of both side and gone through the written submissions filed by both side, on record.

10. The proceeding before this Tribunal is a civil proceeding, as has been given in the TRAI Act, itself. In a civil proceeding, the preponderance of probabilities is the touchstone for making a decision, as against strict burden of proof, required in criminal proceeding.

11. 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 bonus 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.

## **12. Issue Nos. 1 and 2**

- (i) Issue Nos. 1 and 2 are one and same, because if it is being held that Respondent had paid the entire dues towards channel Placement charges/ Carriage fee, to the Petitioner, even before filing of Petition, then certainly it will be held that no cause of action had ever arisen. And if it is so, then the plaintiff will not be

entitled for any decree what to say as the principal amount or interest towards pendentelite or future. Hence, both these issues are to be decided together.

- (ii) The admitted situation is that the petitioner, being a Company, working as MSO, is having Mr. V Suresh Kumar, as Authorized Signatory, as per Board Resolution at **Annexure P-1**, to Petition for taking recourse, for and on behalf of Petitioner Company.
- (iii) Respondent being a broadcaster, thereby, is a 'service provider' under the TRAI Regulations.
- (iv) The Petition, for recovery of Placement charges/ Carriage fee, between two service provider i.e., MSO and broadcaster, falls within the ambit of Section 14 of the TRAI Act. This Tribunal, is having jurisdiction to adjudicate and settle disputes, coming within the purview of Section 14 of TRAI Act, between two service providers.
- (v) The dispute with regard to alleged and being disputed, is not being opposed on point of limitation or jurisdiction. Hence, all these facts are admitted one.

- (vi) The entering of agreement with regard to Placement of channel, and broadcast of 'News 11' by Multi System Operator, for its retransmission for given period is also not disputed.
- (vii) Raising of invoices, the payment scheduled, the period of operation of agreement, is also not under dispute.
- (viii) Mr. Anup Chatterjee, being the authorize Signatory, for contesting this Petition, for and on behalf of Respondent Company, by way of Board Resolution, is also not under dispute.
- (ix) 'News 11' Channel, being transmitted, by MSO-Petitioner and Respondent being broadcaster of the same, the operation area of the State of Jharkhand, through Free to Air Channel under DAS notified area in the relevant period of time, is also not under dispute.
- (x) The consolidated Placement charge in the tune of Rs. 18,00,000/-, exclusive of applicable taxes, for the complete tenure of agreement, Annexure **P-1** is not in dispute. Monthly installment of being Rs. 1,50,000/-, exclusive of applicable taxes, each towards above agreement, is also not under dispute.
- (xi) Agreed rate of interest @ 18% per annum, is also not under dispute.

(xii) The only dispute, to be adjudged, is regarding the outstanding dues of Rs.7,52,500/-, being said to be not paid, vis-à-vis the same had been paid by Respondent, is to be adjudged. The statement of account of Respondent towards the payment made, prepared by Petitioner in ordinary course of business, and the same being filed on record, is not disputed one. The same had been proved, by way of affidavit of Mr. V Suresh Kumar, filed as examination-in-chief, on oath under Order 19 of CPC, by Petitioner. The same is with annexures of those statement of account, depicting the payment made against invoices raised regarding the present agreement. This witness had not been cross-examined by Respondent. Hence, this uncontroverted testimony, has proved the contention of Petitioner. Now, the statement of account, filed by Respondent, Annexed as **R-1**, and said on oath, by Respondent witness, is on record. Hence, this liability accrued for transmission of above news channel, in view of contract entered in between, is undisputed fact. The payment towards that liability has been said by Respondent. Hence, burden of proof of this fact coupled with onus to prove this fact, lied upon Respondent and Respondent had given one affidavit for proving this fact. The same is with the

receipts of deposits, by way of a cash, and these receipts were denied in total. They were said to be forged, fabricated, and manufactured for the purpose of this proceeding. Now, this burden was strictly upon the Respondent, to prove these receipts that the persons, who had executed these receipts are who had received these amounts and he was authorized personnel of Petitioner Company, and he had received these amounts i.e., those receipts have been validly executed, after receiving the amount. But for proving this fact, there is not a single iota of evidence, on record. Hence, Respondent had completely failed to prove its contention of pleading. This onus to prove and burden of proof could not be exhausted by Respondent. Whereas, Petitioner had fully proved its contentions of Petition. Accordingly, this issue is to be decided and is being decided in favour of Petitioner and against Respondent.

(xiii) With regard to interest, it is very oftenly held by this Tribunal that in the present fiscal scenario and circumstances, the interest payable towards pendente lite and future interest, is a reasonably and just @ 9% simple interest, per annum.

**13. Issue Nos. 3 & 4**

On the basis of discussions made above, as well as decision of issues, this Petition merits, to be allowed, and is being allowed with cost.

**Order**

Accordingly, this Petition is being decreed. Respondent is being directed to make deposit, in Tribunal, within two months of judgment amount of outstanding dues Rs. 7,52,500/- plus pendentelite and future interest, till actual date of payment, @ simple interest 9%, per annum, for making payment to Petitioner.

Office to prepare formal order/ decree, accordingly.

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(Justice Ram Krishna Gautam)  
Member

15.12.2023  
/NC/