

**TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL**

**NEW DELHI**

**Dated 17<sup>th</sup> May 2024**

**Broadcasting Petition No. 79 of 2019**

Den Networks Ltd.

...Petitioner

Vs.

Sobhagya Media Pvt. Ltd.

...Respondent

**BEFORE:**

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

For Petitioner

: Mr. Vibhav Srivastava, Advocate  
Ms. Aashi Arora, Advocate

For Respondent

: Mr. Shailendra Singh, Advocate  
Mr. Arnav Mittal, Advocate  
Mr. Aakash Goswami, Advocate

**JUDGEMENT**

1. This Petition, under Section 14, read with Section 14 A, of the TRAI Act, 1997, hereinafter referred to as "TRAI Act", has been filed by Den Networks Ltd., Petitioner, against Sobhagya Media Pvt. Limited, with a prayer for amount of a decree, in the tune Rs. 1,79,57,751/- (Rupees One Crore Seventy Nine Lacs Fifty Seven Thousand Seven Hundred and Fifty one only), due as on 30.09.2018, with interest pendentelite and future, @ 18% per annum.

2. In brief, the Petition contends, that the Petitioner is carrying on Multi Systems Operation business, as a cable television service provider, duly registered under the provisions of Section 3, of the Cable Television Networks (Regulation) Act, 1995. The Respondent, is a company, incorporated under the Companies Act, 1956 and it owns and operates various satellite television channels, as Broadcaster. The parties have had a long standing relationship with each other. A channel placement agreement, was executed on 15<sup>th</sup> December, 2015, for the period 1<sup>st</sup> August 2015 till 31<sup>st</sup> July 2016, for placing Respondent's channel "APN News", on Petitioner's network, across the areas as agreed and mentioned under Annexure - A of

the agreement. This deal was later renewed through another agreement dated 27<sup>th</sup> November, 2017, for the period between 01.08.2016 till 31.07.2017, with a further execution of another channel placement agreement, on 24.11.2017, for the period commencing from 01.08.2017 till 31.07.2018. These channel placement agreements are **ANNEXURE - P1 (Colly)** to the Petition. Based upon the terms of the Agreement, Petitioner placed Respondent's channel "APN News" on the agreed frequency, under the agreement executed, in between, and the copy of channel mapping report, as taken from the Petitioner's system, is **ANNEXURE - P2** to the Petition. Petitioner regularly raised invoices on the Respondent, towards placement charges, but despite raising timely invoices, the Respondent consistently made short payments, thereby, accumulating huge outstanding of Rs.1,79,57,751/- (Rupees One Crore Seventy Nine Lacs Fifty Seven Thousand Seven Hundred and Fifty One only), as on 30.09.2018. Copies of invoices raised by Petitioner to the Respondent are **ANNEXURE - P3 (Colly)**. A copy of the statement of Petitioner's Account, maintained by the Petitioner with regard to Respondent Company is **ANNEXURE - P4** to the Petition. Respondent has defaulted in meeting with its obligations, as laid down under the agreement, by constantly defaulting in making payments, towards Channel placement charges, and thereby, has illegally enriched

itself, at the cost of the Petitioner. The outstanding charges towards placement was Rs. 1,79,57,751/- (Rupees One Crore Seventy Nine Lakhs Fifty Seven Thousand Seven Hundred and Fifty one only) as on 30.09.2018. Hence, a demand notice was issued on 13.08.2018, which is **ANNEXURE - P5** to Petition. Beside this, repeated oral requests, for making payment of outstanding dues, was made, but of no heed. Repeated request for payment of outstanding dues and renewal of agreement through email was there. **ANNEXURE – P6** to Petition is the same. A cause of action, within the jurisdiction of this Tribunal, had arisen. Hence, this Petition, with above prayer, was filed.

3. A reply, by way of counter affidavit, by Respondent, was with this contention that agreement, dated 15.12.2015, for a period from 01.08.2015 to 31.07.2016, with the option to execute long term agreement, at the earliest, was executed by Respondent. Thereafter, the Respondent came to know that Petitioner is charging very high rate, in comparison to other channels like, ETV, Zee, Aajtak, etc., and had accumulated excess money from Respondent, unreasonable as well as irrational, which was reported by Respondent to Petitioner, who assured for adjustment of excess amount, in third year by giving free signal for one year to the Respondent, thereby, requested to pay the same amount for the period commencing from

01.08.2016 to 31.07.2017. The Respondent, on the basis of oral assurance of the Petitioner, again paid the same amount, as mentioned in the agreement dated 15.12.2015, with the hope, that the Petitioner will adjust the excess paid amount by giving free signal in third year and mutually agreed to extend the above terms, without executing further written agreement. But, when Petitioner failed to adjust the excess money, as was promised, to give free signal in third year, the Respondent stopped further payment, and requested the Petitioner to adjust the earlier excess amount or to refund the same to the Respondent. But, it was of no avail. Rather, abruptly discontinued the signals to Respondent channel "APN".

4. The Petitioner enclosed some forged agreement dated 24.11.2017 and 27.11.2017, with this Petition, which were never executed, between the parties. The terms of agreement dated 15.12.2015, was extended after expiry of one year period, only on oral understanding for second year. The service of Petitioner was poor and several complaints, which were made by Respondent on phone and email, during the tenure of the Petitioner's service. These complaints are **ANNEXURE R-1 (Colly)** to reply. Alleged agreement dated 24.11.2017, as well as 27.11.2017, are with forged signatures of Respondent's authorised representative. This amounted to perjury. Present Management of Petitioner was misled by the earlier

Management, who had executed agreement with APN, Respondent. This Petition is not maintainable, in view judgement of this Tribunal given in **M/s Noida Software Technology Private Limited Vs. M/s Media Pro Pvt. Ltd. & Ors.**, wherein, basic issues raised was held and resolved that the relations was to be based on the principles of 'must provide' and rationale in nature. A broadcaster must give its signals to every distributor, indeed on reasonable terms. Whereas, in the present case, Petitioner although, adopted irrational attitude, in pricing of channel placement charges with the Respondent. No such agreement dated 24.11.2017 or 27.11.2017, was ever executed by Respondent. No such outstanding amount, in the tune of Rs.1,79,57,751/-, was due as on 30.09.2018. Petitioner had raised false invoices without honouring the commitments, as made to the Respondent, and ultimately, discontinued the signals of Respondent Channel, without any notice. As no money was due, hence, no question of interest, ever arisen. Petition was requested to be dismissed.

5. Replication cum rejoinder, for and on behalf of Petitioner, with the reiteration of the contention of Petition and negating the contention of reply, was filed.

6. On the basis of pleadings of both side, the Court of Registrar, vide order dated 24.09.2019, has framed following issues:

- (I) Whether the Channel Placement Agreements dated 24.11.2017 and 27.11.2017 relied upon by the Petitioner are forged and fabricated as is alleged by the Respondent, if so, its effect?
- (II) Whether the petitioner had charged the respondent at a very high rate for its channel APN News in comparison to ETV, Zee and Aaj Tak etc and whether when objected by respondent, the petitioner had orally agreed to adjust the excess charges in 3rd year by giving free services to the respondent, as is alleged by the respondent?
- (III) Whether the petitioner is entitled to recover an amount of Rs. 1,79,57,751/- from the Respondent towards outstanding placement carriage fee?
- (IV) Whether the petitioner is as entitled for the interest @ 18% p.a. w.e.f. 1.10.2018 till the date of realisation?
- (V) To what relief, if any, petitioner is entitled?

7. Petitioner has filed evidence, as affidavit of Mr. Siddharth Priya Srivastava, but he could not be produced for cross examination, and upon request made for, vide a judicial order, witness, Aakash Singh Rawat, was

substituted and examined by Petitioner. Evidence of Shri Ankush Bhuranda, as an affidavit in examination chief was filed by Respondent. But a request was made and it was allowed by Tribunal, for substitution of this witness by evidence of Shri Rakesh Kumar Singh, for and on behalf Respondent, who had filed its examination in chief, by way of affidavit and cross examined, by other side. Hence, in all testimony of Petitioner's witness, Akash Singh Rawat and Respondent's witness Rakesh Kumar Singh, is on record.

8. The proceeding before this Tribunal is a civil proceeding, as has been given in 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.

9. 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 seizes 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.

10. Heard Learned Counsel for both side and gone through the material placed on record.

**11. Issue No. 1**

This was the contention of reply, of Respondent, that Channel Placement Agreement, dated 24.11.2017 and 27.11.2017, relied upon by the Petitioner, are forged and fabricated. Hence, the initial burden to prove was upon Petitioner, which has been duly discharged, by the testimony of Siddharth Priya Srivastava, as well as Aakash Singh Rawat, who by their testimony, has proved its execution by Respondent. Now, it was the contention and denial by Respondent, then the burden to prove it, as a forged one, was over Respondent. But no expert witness has been given or the signature has been got tallied and proved to be forged and fabricated. Now oath against oath is there on record, and the same is to be analysed. So as far as initial agreement, in between, dated 15.12.2015 is concerned, it is undisputedly executed by Respondent, because same has been admitted in its pleadings. This has specifically been admitted that relationship remained in continuation, till disconnection made by Petitioner. The same is being said to be on the basis of oral agreement, entered in between. Whereas,

Petitioner has said that it was in continuation, but the agreement was got executed for those intervening period, on 24.11.2017 and 27.11.2017. Those documents have been filed, as Annexure to the Petition, as well as Annexure to affidavit of examination in chief of **PW-1** and **PW-2**. The agreement is with the signature of both side over it, and same is the situation of agreement dated 27.11.2017, wherein signature of both side is there. Now, in the cross examination of Rakesh Kumar Singh, Respondent witness, a specific question was asked, regarding examination in chief, as to where it was got signed and this witness answered, that he has gone through his affidavit dated 15.07.2022, which bears its signature and it was tendered as affidavit, along with photocopy of documents, in evidence. It was got signed in witness office. A specific question was asked as to whether he ever visited Notary or Oath Commissioner for the purpose of this affidavit, and it was answered in negative i.e., he said that, he never visited Notary or Oath Commissioner, for the purpose of this affidavit. Whereas, this examination in chief, is a Notarised affidavit, purported to be executed before the Notary. Though, it is a technical point, and if it was not executed before Notary, then some evidence with regard to it, was to be placed by Petitioner, or Notary ought to have been examined on this point. But no such attempt was ever made. Hence, apparently, this affidavit, is with the seal and signature of Notary,

before whom this was sworn by this witness. The witness has said in his cross examination that he was working in this Respondent Company, since last 08 years and was fully aware of the facts and circumstances of this case. But apparently, his answer to question no. 4 is that, there was no agreement, ever executed for placement of channel. Rather, it was only one agreement executed on 15.12.2015, which was for carriage fee. Whereas, admitted document, agreement dated 15.12.2015, is with specific mention of understanding entered, in between.

12. In written submission made by Learned Counsel for Respondent, it has specifically been written in Para 2 that “it is submitted that the Respondent negotiated with the Petitioner for the Channel placement on its platform in the cities of Uttar Pradesh ..... from 01.09.2014” i.e., the negotiation was for Channel Placement Agreement. In Para 5, it has specifically been admitted that “it is submitted that thereafter the Respondent executed a formal Channel placement agreement dated 15.12.2015 with the Petitioner with a clear understanding on the terms that the Respondent will be charged on par with the rival channels. In the aforesaid agreement, the commencement period for placing the respondent’s channel ‘APN’ on the network across the Cities of Uttar Pradesh was mentioned on 01.08.2015 till

31.07.2016. The placement fee charged by the petitioner was of Rs. 2,20,00,000/- (Rupees Two Crores Twenty Lakh Only) excluding applicable service tax agreed to be paid as per agreement dated 15.12.2015". Meaning thereby, the agreement dated 15.12.2015, was a Channel placement agreement, not a carriage agreement, as has been pressed by Respondent. It was entered, in between, by two persons, having authority to enter for both side, but this witness Rakesh Kumar Singh, is not party to that agreement. Whatever, has been said by him regarding this agreement, is on the basis of his working in that Company, since last eight years. This witness is fully aware with regard to difference between carriage fee and placement fee, because he has replied in question No. 5 as "Yes, I am well aware about the difference between carriage fee and placement fee. Carriage fee charged to carry any channel on the platform of the MSO. Whereas, placement charge is regarding placement of a particular channel, on a particular LCN (Local Channel Number)."

13. When asked about the provisions of MOU, dated 15.12.2015, regarding the stipulations for playing at par, this witness replied that "he was not sure, whether it appears in the MOU dated 15.12.2015 or not". Then attention was given to this witness by showing him MOU, dated

15.12.2015 and then, again asked as to whether these stipulations are there?, he replied that “there is nothing written in this MOU, but Mr. Aakash Rawat, representative of Petitioner, along with Mr. Lalit had verbally assured, that same charges shall be levied as is being charged from the rival channels”. Again in further, he was asked about the emails, having mention of placement charges, he replied that this MOU was not signed by this witness, rather, it was got signed by some Mr. Ashish Kumar, representative of Respondent Company. Meaning thereby, this witness was not party to this agreement, not personally aware of this writings, written, in between. But this MOU, was admitted one and exhibited as **Exhibit P-2**. This was in effect from 01.08.2015 to 31.07.2016, for agreed value of Rs. 2,20,00,000/- (Rupees Two Crores Twenty Lakh Only). This witness had admitted to have never interacted with Mr. Aakash Singh Rawat and Mr. Lalit, who was said to the party to this deed.

14. With regard to compliance of provision of Section 65B of Evidence Act, regarding computerised documents, this witness could not say about the computer or printer, from which this print out was taken. This witness has categorically admitted the continuation of this understanding from its

beginning, in undisputed MOU, to its termination by Petitioner. But, the alleged extension for two years, was said to be on oral assurance.

15. But when asked, as to oral assurance was given by whom to whom, “in question No. 23, this witness showed his inability to reply. Question No. 22, Is there any written agreement for extension of MOU dated 15.12.2015? Ans. No, there is no written agreement for extension of MOU dated 15.12.2015. Voluntarily, it was done on the basis of oral assurances. Question 23, the alleged oral assurance was given by whom to whom? Ans. No, I cannot tell the exact names, as to who assured whom regarding extension of MOU.” Hence, the entire edifice of Respondent becomes unproved with regard to overall assurance and promises for continuation of this MOU, with an assurance to give a free signal in third year or the agreement, being the carriage agreement.

16. This witness could not be able to recall, the print out of email as marked Exhibit PW-2/1. This email dated 25.05.2018, sent from the email id of this witness to Mr. Aakash Singh Rawat, was asked in cross examination, but, it was not denied to have been sent. And when asked, which agreement was sent through above email?, this could not be replied. Meaning thereby, on basis of oral appreciation, it is apparently clear that this witness, shows

his inability to recall and reply, on the crucial question put to him. The emails having agreement, was proved by witness of Petitioner, wherein, the agreement dated 24.11.2017 and 27.11.2017, were proved by Petitioner, and both of the agreement, is with a specific heading of Channel Placement Agreement with the same placement fee, as was there in initial admitted agreement, dated 15.12.2015. Hence, Respondent failed to prove Channel Placement Agreement dated 24.11.2017 and 27.11.2017 to be forged and fictitious. This issue is being decided against the Respondent.

**17. Issue No. 2**

There is oath against oath and this was said by Respondent, that there was assurance for refund of excess money, by way of giving a free signal in the third year. Whereas, it was denied by Petitioner and the contention of pleading, was fully proved by Petitioner's witness. The very contention made by Respondent, was to be proved by Respondent's witness itself, but this witness in his cross examination, with regard to assurance in answer to question Nos. 22 and 23, has specifically replied, that there was no written agreement, except agreement dated 15.12.2015, and there is no such recital in this agreement, rather it was under voluntarily assurance. But when asked, that this assurance was given by whom to whom? This witness could

not make reply. Rather, had said that he cannot tell the exact name, as to who assured whom, regarding extension of MOU. Hence, Respondent failed to prove this contention of reply. Accordingly, this issue is being decided against Respondent.

### 18. Issue No. 3

MOU, dated 15.12.2015, which is a undisputed document, is with specific mention of stipulation with regard to payment of Rs. 2,20,00,000/- (Rupees Two Crores Twenty Lakh Only) for 12 months, and the way of raising invoices, and payment against same. PW Aakash Singh Rawat, in its testimony has proved **Exhibit - PW1 (Colly)**, **Exhibit - PW1/2**, invoices raised and copy of those invoices **Exhibit – PW1/3 (Colly)**, Statements of accounts, duly maintained by Petitioner, along with compliance of Section 65B of Evidence Act, **Exhibit – PW1/4**, showing the outstanding dues of Rs. 1,79,57,751/- (Rupees One Crore Seventy Nine Lakhs Fifty Seven Hundred and Fifty One Only), as on 30.9.2018, in it. The certified copy of Letter of Authority, in favour of this witness to give the evidence for Petitioner Company, has been duly proved by PW1/6. Demand notice, dated 13.08.2018, has been proved and exhibited as **Exhibit – PW1/5**. In his cross examination, there is no variation. Rather, affidavit filed in examination in

chief bearing its signature, has been proved by this witness. He has specifically said to be employee of this Company, since October, 2007 and working as Company Manager, since March, 2019. The document, dated 15.12.2015, was specifically answered to be the placement understanding. A question was asked to this witness, by Counsel for Respondent, that what kind of document this was?, and in reply a categorical assertion is of placement agreement.

19. The duration for 12 months was answered. Subsequent placement agreement for rest of two years, executed on 27.11.2017 and 24.11.2017, has been proved by this witness. Leading question was put to his witness, that both of these two documents are forged and fictitious. It was replied in negative with categorical assertion that “We have received the agreement through email communication and I have also record for that”. In answer to Question No. 20, it was specifically said that he has not forged, it was a placement agreement. The witness is fully intact in his examination in chief, as well as examination in cross. Hence, the statement of account, filed by Petitioner shows the payment, alleged to be made by Respondent, adjusted in it, and the total outstanding of placement charge was Rs. 1,79,57,751/-.

Hence, Petitioner is entitled to receive it as outstanding placement charge fee from Respondent.

20. The contest was on the ground of Regulations of TRAI and judgment of this Tribunal in **Noida Software Technology Pvt. Ltd. Vs. Media Pro Pvt. Ltd. And others.** Whereas, the above settled proposition of law, is of no effect for disposal of present matter in lis. The placement charge is under no Regulation of TRAI, and this was the TRAI Regulation dated 27.12.2018, which implemented due Regulatory framework, regarding services written in it with no mention of placement charges etc., in it.

21. **Issue No. 4**

This Tribunal in many Petitions has awarded simple interest at the rate of 9% p.a. considering the fiscal scenario and prevailing financial circumstances. Hence, a simple interest at the rate of 9% p.a. from the date of cause of action i.e. 1.10.2018 to actual date of payment over above amount of Rs. 1,79,57,751/- (Rupees One Crore Seventy Nine Lacs Fifty Seven Thousand Seven Hundred and Fifty one only), is to be awarded in favour of Petitioner.

**22. Issue No. 5**

Accordingly, on the basis of discussions made above, this Broadcasting Petition merits to be decreed with cost, for above awarded amount at above interest.

**ORDER**

Petition is being decreed, with cost. Respondent is being directed to make payment of Rs. 1,79,57,751/-, as outstanding placement charge, due as on 30.09.2018, along with pendentelite and future interest, a simple interest, at the rate of 9% per annum, from above date to actual realisation date i.e., within two months from the date of judgement, in the Tribunal, for making payment to Petitioner.

Formal Order / decree be got prepared by office, accordingly.

.....  
**(Justice Ram Krishna Gautam)**  
**Member**

**17.05.2024**  
**/NC/**