

sahuTELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL

NEW DELHI

Dated 27th August 2025

Broadcasting Petition No. 159 of 2017

Digi Cablecomm Services Pvt. Ltd.

...Petitioner

Vs.

Direct News Pvt. Ltd.

...Respondent

BEFORE:

HON'BLE MR. JUSTICE RAM KRISHNA GAUTAM, MEMBER

For Petitioner : Mr.Diggaj Pathak, Ms. Shweta Sharma, Ms.
Vaibhavi Pathak, Advocates

For Respondent : Mr. Gaurav Srivastava, Advocate

JUDGMENT

1. This Petition, under Section 14, read with Section 14A of the Telecom Regulatory Authority of India Act, 1997, (hereinafter referred to as "TRAI Act") has been filed by Petitioner – Digi

Cablecomm Services Private Limited, against the Respondent - INX News Pvt. Ltd. with a prayer to direct the Respondent to pay a sum of Rs. 8,39,519/- (Rupees Eight Lakhs Thirty Nine Thousand Five Hundred and Nineteen Only), towards the outstanding placement fees, with a further direction to the Respondent to make the payment of interest, at the rate of eighteen percent per annum (18% p.a.), or at such rate, as this Tribunal may deem fit, from the date the said payments were due, till the date of actual payment, with further prayer to order regarding award of costs of the Petition and other reliefs, which, this Tribunal may deem fit and appropriate, in the facts and circumstances, of the present case.

2. In brief, this petition contends that the Petitioner is a company, registered under the provisions of the Indian Companies Act, 1956, and is a Multi System Operator (MSO), engaged in the business of providing signals to various subscribers, after obtaining the same from various broadcasters, with its operating area, in the state of West Bengal. The Respondent is a Company incorporated and existing, under the Companies Act, 1956 having its Registered

office at 301/2. Nippon Society, Juhu Church Road, Juhu, Mumbai-400049, engaged in the business of collection / aggregation, production, programming and dissemination of English News through various platforms including, but not limited to broadcasting, online(web), mobile, IPTV, Mobile TV, web TV, DTH, Internet, website, you tube channel etc. Both the parties are 'service providers' under the TRAI Act. Parties entered into discussions with regard to the placement of the channels of the Respondent, on the Petitioner's network in the areas of operation of the Petitioner. As a result of this discussion and persuasions, the Petitioner and the Respondent entered into a Channel Placement Agreement, dated 17.09.2013, wherein the Petitioner agreed to place the channels of the Respondent, on its network in the area, where it operates in the city of Kolkata, for a period from 15.09.2013 to 14.09.2014, for a total consideration of Rs. 18,00,000/- (Rupees Eighteen Lakhs Only) per annum, payable on a monthly basis, within 30 days of receipt of invoice, or within 30 days from the end of each service month, whichever is later. The said agreement pertained to the channel namely 'NewsX' as

mentioned in Annexure A to the said agreement. A copy of the Channel Placement Agreement, dated 17.09.2013, entered, in between, the Petitioner and the Respondent, is annexed as **ANNEXURE P-1** to the petition.

3. The Petitioner was required to carry and distribute the channel of the Respondent on the Petitioner's cable network at the frequency allocated for that service in terms of Annexure A of the above-mentioned agreement. The Petitioner duly complied with its obligations of placing the channels of the Respondent at the desired LCN 256, in a fair and transparent manner. But the Respondent which was utilizing the benefits of the agreement, was not regular in making the payments of placement fee, as required under the agreement. Based upon the terms of the agreement executed, in between, the parties, the Petitioner raised invoices upon the Respondent, from time to time, for the Placement fees, and these invoices were duly received, and acknowledged by the Respondent. Copies of the Invoices raised by the Petitioner, under the agreement, for the period 15.09.2013 to 14.03.2014, were annexed as **ANNEXURE P-2**

(COLLY.) to the petition. The Respondent failed to honour its obligations under the agreement entered, in between, the parties and failed to make any payment to the Petitioner for three months, leaving Petitioner with no option, except to send a Demand Notice, dated 11.12.2013, demanding a payment of Rs. 5,05,620/-, as was due on the said date, against the Respondent. This Demand Notice, dated 11.12.2013, sent through Speed Post is **ANNEXURE P-3** to the petition.

4. Subsequently, the Respondent and Petitioner again entered into discussions, wherein the Respondent wanted to enter into an agreement at lower rates. But the Petitioner had asked the Respondent to clear the previous dues, before the subsequent agreement is signed, details of which were sent in February, 2014 to the Respondent. Copies of E-mails exchanged, in between, the Petitioner and the Respondent, reflecting the discussions and understanding between the parties regarding modalities and terms and conditions of new agreement, are **ANNEXURE P-4 (COLLY.)** to the petition.

5. After the terms of the new deal were finalized, the Respondent finally made certain payments, towards its liability under the earlier agreement. Though not cleared the whole outstanding, but only part payments were there. Copies of Cheques, received from the Respondent, towards payment under the earlier agreement, were **ANNEXURE P-5(COLLY.)** to petition. As per understanding, described in the e-mail, dated 18.03.2014, the channel placement of the Respondent, at the agreed frequency was made by petitioner. Though the Respondent delayed the signing of the agreement upto June, 2014, which was finally signed, and executed on 07.04.2014, for the term 01.04.2014 till 31.03.2015, for a consideration of Rs. 6,75,000/- p.a. (Rupees Six Lakhs Seventy Five Thousand Only), payable on a monthly basis within 30 days of receipt of invoice or within 30 days from the end of each service month, whichever is later. This agreement, dated 07.04.2014, entered, in between, the Petitioner and the Respondent is **ANNEXURE P-6** to the petition.

6. Based upon the terms of the new agreement executed, in between, the Petitioner raised invoices, from time to time, for the Placement fees, upon the Respondent, which were duly received and acknowledged by the Respondent, for the period 01.04.2014 to 31.03.2015 and these Invoices were annexed with petition as **ANNEXURE P-7 (COLLY.)** Again part payment of an amount of Rs. 1,15,156/-, vide Cheque dt. 01.08.2014, was made to petitioner. Respondent had enjoyed the benefit of placement of their channels, but had not paid the agreed placement charges, as a result, it became due. Whereas, the Petitioner had duly complied with its obligations under the agreement which is admittedly established by the mapping reports, maintained in the normal course of its business by petitioner, and copies of the same for the relevant period for the months of September, 2013 to March 2015, for the DAS areas of Kolkata, showing the placement of channels by the Petitioner in the agreed

frequencies were **ANNEXURE P - 10 (Colly.)** to the petition.

7. The total outstanding liability of the Respondent is Rs. 8,39,519/- (Rupees Eight Lakhs Thirty Nine Thousand Five Hundred and Nineteen Only), being the placement fees, due under the agreement, which is supported by the Statement of Account (SOA) of petitioner company, being maintained in usual course of business, reflecting the outstanding dues of the Respondent, payable to the Petitioner, which is **ANNEXURE P-11** to the petition, and an interest at the rate 18% p.a., on above outstanding amount is also payable, from the date of accrual, till actual payment.
8. A cause of action had arisen within territorial jurisdiction of this Tribunal. Hence, this petition with above prayers.
9. In reply, the respondent is with this contention that whatever the services were provided by petitioner to the respondent, were fully paid by the respondent from time

to time. There is nothing due as payable to the petitioner by the respondent. Basic premise of the commercial agreement between the parties, was holding of petitioner company over the market share. Petitioner company holding was based on the active subscriber base, at the time of signing the Agreement, and that as anybody would infer from similar commercial arrangement. It would be expected that the market share would at least be maintained, if not increased over the period. According to Respondent's information, the Petitioner company's market share, in terms of the active subscriber base, has definitely been falling/ decreased over the period and as such it is the very basis of agreement, between parties has diminished making the agreement commercially unviable.

10. Respondent's channels are not placed on the specified LCN/Band as per decided terms of the agreement. It was several times brought to the notice of petitioner's officials. The mapping report, filed by the petitioner, are forged and the petitioner is hereby put to strict proof to

prove the authenticity of the same. Due to inefficient services of the Petitioner, the Respondent Company has faced high revenue losses and the loss of reputation of the Respondent Company in the market. Respondent's channels had not been placed on the specified LCN as per the agreement. No invoices were ever received. The annexures are fabricated one. Fresh agreement was admitted one. No outstanding placement charges are due. The petition was prayed to be dismissed.

11. On the basis of pleadings of both sides, Court of Registrar has framed the following issues :

(1) Whether the petitioner is entitled to a decree in its favour and against the respondent for amount alongwith interest towards the outstanding Carriage Placement Fees as claimed in the petition?

(2) Whether the channel of the respondent was replaced by the petitioner at the frequency agreed as per the Carriage Agreement?

12. Affidavit evidence of Petitioner was of Mr. Ayan Das and second witness Mr. Deepak Kumar Sau, in whose favour Board Resolution was there. Respondent filed its evidence affidavit of one Mr. Amit Thakur.
13. Heard learned counsel for both side and gone through the material placed on record.
14. 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.

15. This Petition, before this Tribunal, is a civil proceeding and in civil proceeding, the preponderance of probabilities, is the touchstone for making a decision, as against strict burden of proof, required in criminal proceeding.

16. **Issue No. 2**

This issue framed on the basis of pleadings, i.e. reply of the respondent, wherein a specific contention was that the channel placement of respondent's channel was not made, at the agreed LCN by petitioner, resulting a grave loss of finance, as well as reputation of respondent. This was with specific burden of proof over the respondent, requiring him to prove this contention, with all preponderance of probabilities, and for it, there is the testimony of respondent's witness Mr. Amit Thakur, in which he has specifically admitted that agreement, which was with no dispute, pertained to channel and the petitioner was required to carry and distribute the channel of the respondent on the petitioner's network at Kolkata, at the frequency allocated in Annexure A of the agreement i.e. LCN 256. "I say that the request for placement of channel was done after extensive negotiations and formed the heart of the Agreement with

respect to the provisions of services. I say that again Channel Placement Agreement was entered into between the petitioner and respondent on 7th April 2014 at Annexure P-6 to the petition, wherein, petitioner agreed to place the channels of respondent on its network in the area operating in the city of Kolkata.“

Nowhere, it was complained at any point of time, nor proved by iota of evidence that this stipulation was not complied with by the petitioner i.e. the channel of respondent was not placed at given and agreed LCN. Whereas, the mapping report, prepared in the ordinary course of business, that too proved by affidavit, is on record, explaining the placing of channel, at agreed terms. A specific query was made to counsel appearing for respondent arguing for respondent as to whether any complaint, at point of time, either during the first agreement or during the second agreement was ever raised ? regarding this complaint, and it was fairly admitted that there is no evidence of this fact.

Hence, the respondent failed to discharge burden expected and legally owned by respondent, under evidence law, even too by any iota of evidence. Hence, mere saying that it was expectation that business will grow, but it could not grow and in view of that

non fulfilment of expectation, non making of payment is with no equity. Rather, the terms agreed, in between, by way of a valid written contract, are to be strictly adhered, unless agreed and proven otherwise. Hence, respondent failed to prove this issue in its favour. Hence, decided against it. Rather, decided in favour of petitioner.

17. **Issue No. 1**

The testimony of PW-1, which is in full reiteration and contention of petition, with no controversy, had proved the contention of pleadings, which is further corroborated by SOA, as well as mapping report, annexed with the petition. The reply is with this fact that dues have been paid, and nothing remained as unpaid, it was to be proved by respondent, by way of filing its Statement of Account (SOA) mentioning the payment, but no Statement of Account by respondent is there. Whereas, the part payment by respondent against liabilities, accrued against it, has been stated in the petition itself. Rather, also shown in the SOA. Hence, the very contention of the petitioner regarding outstanding placement charges have been proved by evidence of the

petitioner. Accordingly, accrual of above claimed placement charges and non payment of same is duly proved. Accordingly, this issue is being decided in favour of petitioner.

18. So far as interest is concerned, this Tribunal, in many precedents, looking to the fiscal scenario in the field of Telecommunications and Broadcasting, has awarded simple interest @ of 9% p.a. and the same appears to be just and reasonable, to be awarded in favour of petitioner against the respondent, the accrued amount for the period of this litigation, as well as prospective period till actual payment.
19. On the basis of above discussion, the petition is to be allowed with cost.

ORDER

Petition is decreed with cost. Respondent is being directed to make payment of Rs. 8,39,519/- (Rupees Eight Lakhs Thirty Nine Thousand Five Hundred and Nineteen Only) with simple interest @ 9% p.a over above principal accrued placement charges for

the period of pendency till actual payment, within two months of date of judgment, in the Tribunal for making payment to the petitioner. In case of failure, the same will be realised as per law. Formal decree/order be got prepared by office, accordingly.

27.8.2025
/NC/



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(Justice Ram Krishna Gautam)
Member