

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL

NEW DELHI

Dated 28th November 2025

Broadcasting Petition No. 488 of 2014

Konark IP Dossiers Pvt. Ltd.

... Petitioner

Vs.

Sahara India TV Network & Anr.

... Respondent(s)

BEFORE:

HON'BLE MR. JUSTICE RAM KRISHNA GAUTAM, MEMBER

Petitioner

:

Mr Vibhav Srivastava, Advocate

Ms Aashi Arora, Advocate

Ms Rhea Yadav, Advocate

Ms. Manika Priyadarshini, Advocate

Respondent

:

Mr Gautam Awasthi, Advocate

Mr Sahil Sharma, Advocate

Mr. Devanshu Yadav, 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 with a prayer of

decree with regard to placement fee to the Petitioner in the tune of Rs. 66,18,940/- (Rupees Sixty Six Lakhs Eighteen Thousand Nine Hundred and Forty Only), being the outstanding Placement fees, due and payable by Respondents, to the Petitioner, alongwith interest, pendente lite and future @18% per annum.

2. In brief, Petition contends that Petitioner is carrying on Multi System Operation (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.
3. Respondent No.1, is a Broadcaster, as per TRAI Regulation, and has been distributing satellite channels – Sahara One & Filmy, under the name and title, through Respondent No.2, who is distributor of Sahara. Petitioner was already placing the channel, under the previous agreement, for the year 2011-2012 and on the assurance of renewal, continued the placement of Channels – Sahara One & Filmy, on the frequency upgraded from S-band to Prime band respectively vide addendum dated 05.12.2011 and later on 20.03.2013, entered into an agreement with the Respondents. This Agreement, dated 20.03.2013, is **Annexure P-1** to Petition. The Petitioner raised the demand of

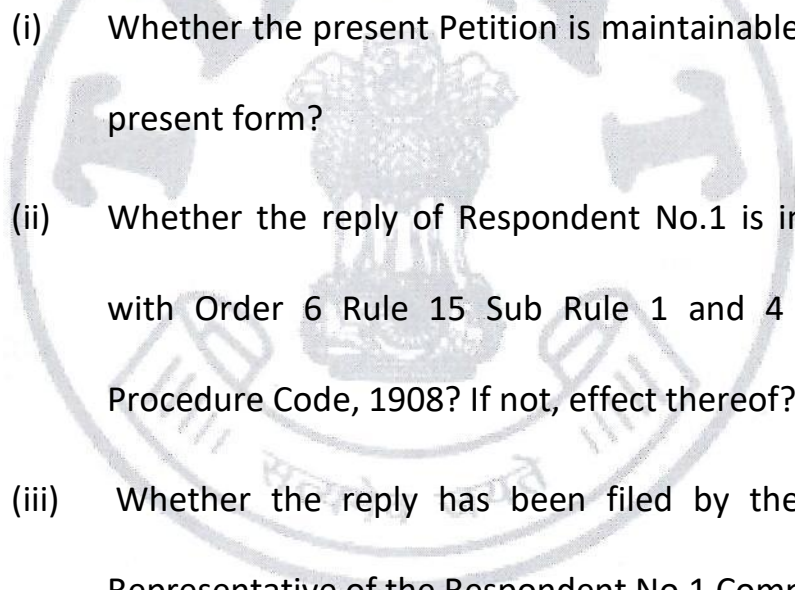
Placement Charges to Respondent in accordance with above agreement. The copy of this ledger is **Annexure P-2** to Petition. In spite of repeated demand and assurance, no clearance of outstanding amount, due and payable by Respondent, to Petitioner was made. A letter, dated 11.03.2014, was written by Petitioner to Respondent, demanding therein, the outstanding placement fee, payable by Respondent, to the Petitioner. But, Respondent neither replied, nor made the payment of outstanding amount. This letter, dated 11.03.2014, is **Annexure P-3** to Petition. Respondents had made defaults in making payments for the Placement Charges, for the services of placing Sahara One & Filmy Channels by Petitioner, resulting the outstanding liability of the Respondents in the tune of Rs. 66,18,940/- wherein, the outstanding amount for the month of December, 2011, under previous Agreement, is also included. Hence, above outstanding amount, alongwith interest @18% per annum, is to be paid to Petitioner by Respondents. The erstwhile agreement, dated 01.06.2011, with addendum entered in between, for previous period is **Annexure P-4** (colly) to Petition.

4. Respondents herein, are Broadcaster and its distributor respectively, and have been distributing satellite channels – Sahara one & Filmy,

which was being placed, under previous agreement for the year 2011-2012 by Petitioner, and was continued to be placed at above frequencies, with an assurance of renewal, continuation of Placement Channels, which was got executed on 20.03.2013, and the total outstanding consideration of Placement Charge of Sahara One & Filmly Channels, accrued in the tune of Rs. 66,18,940/-, for which, repeated request was made, but of no avail. Hence, a cause of action had arisen, within the territorial jurisdiction of this Tribunal, hence, this Petition, with above prayer.

5. Reply, by Respondent No.1, was got filed, with this contention, that the Petition is with no correct facts. Shri Mahesh Prakash Bhende is the authorized representative of Respondent Company No.1, vide Board of Directors Resolution, annexed as **Annexure-1** to reply. Respondent No.1 never entered into an agreement, whatsoever, as submitted by Petitioner herein. There was no oral assurance or outstanding or understanding, between the parties. No cause of action had ever arisen. Unilateral arbitrary calculation has been made by Petitioner, without bringing any such documents on record, which could prove the said amount of the claim of the Petition. It is specifically denied that any agreement was ever signed by Respondents herein. No letter,

dated 11.03.2014, **Annexure P-3**, was ever received by Respondent. The Petition merits its dismissal. In spite of sufficient service and appearance, no reply by Respondent No.2 got filed. Hence, an order to proceed ex-parte was there, though it was against both of the Respondents, but subsequently, on the application of Respondent No.1, this order was recalled and reply was accepted, wherein the reply by Respondent No.1 was got filed, issues were got framed on 26.05.2015, which are as follows:

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- (i) Whether the present Petition is maintainable or not in its present form?
 - (ii) Whether the reply of Respondent No.1 is in conformity with Order 6 Rule 15 Sub Rule 1 and 4 of the Civil Procedure Code, 1908? If not, effect thereof?
 - (iii) Whether the reply has been filed by the Authorized Representative of the Respondent No.1 Company?
 - (iv) Whether there was any agreement executed between the parties or not?
 - (v) Whether the Agreements dated 20.03.2013 and the previous agreement dated 1.6.2011 along with Addendum dated 5.12.2011 are binding on the parties?

(vi) Whether the Respondents are liable to pay a sum of Rs. 66,18,940/- along with interest to the Petitioner jointly and severally?

(vii) Any other issue/ relief as deemed fit by the Hon'ble Tribunal.

6. Petitioner filed its evidence, by way of affidavit of Mr Umakant Gupta, along with copy of authorization letter in favour of Mr Umakant Gupta, coupled with certificate, under Section 65 B of Indian Evidence Act. This witness got cross examined by Learned Counsel for Respondent. Respondent No.1 filed its evidence, by way of affidavit of Mr Shaikh Wajid Mohd. Ismail in examination in chief. But, inspite of a specific request, for substitution of witness and grant of same, no evidence of any witness got filed, nor Mr Shaikh Wajid Mohd. Ismail was got cross examined. Hence, literally, there was no evidence of Respondent No.1, except this examination in chief, which could not be put under cross examination, owing to failure, as well as request by Learned Counsel for Respondent No.1, for substitution of the witness. But no substitution was made by Respondent No.1. Hence, no evidence.

7. No appearance, no reply or evidence by Respondent No.2 is there. Rather, an ex-parte proceeding was ordered against it.
8. Heard Learned Counsel for Petitioner as well as Respondent No.1 and gone through the pleadings and written submission made by both side.
9. 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.
10. 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.

11. Issue No. 1

The present Petition, has been filed with a prayer, for a decree in the tune of Rs. 66,18,940/-, (Rupees Sixty Six Lakhs Eighteen Thousand Nine Hundred and Forty Only), due against Respondents, jointly or severally, towards Placement Charges, with regard to placing of Sahara One & Filmy Channels of Broadcaster, Respondent No.1, at given frequency by Petitioner, under agreements for two periods in accordance with ledger invoices, Annexed with Petition, shown to be outstanding, with an interest @ 18% per annum, over above principal outstanding placement charges. Hence, the facts, grounds, cause of action, agreements creating rights, in between, territorial jurisdiction, period of limitation, details of Respondents, i.e., proper arraying of party, with a specific relief claimed had been mentioned in this Petition. Hence, nothing is there to show against the maintainability of this Petition before this Tribunal. Hence, this Petition is very well maintainable before this Tribunal. Accordingly, this issue is being decided in favour of Petitioner.

12. Issue No. 2

From the very perusal of reply, filed by Respondent No.1, it is apparent that the same has been filed by Sahara India TV Network, by

Respondent No.1 through Counsel Mahavir Singh & Associates, 137A-Patiala House, Tilak Marg, New Delhi – 110001. This reply is with verification having mention of *“I Mahavir Singh S/o Lt. Maj. R.R. Chahar at 137A- Patiala House, New Delhi, Counsel for the answering Respondent do hereby solemnly affirm that the contents of this reply are true and correct on my personal knowledge as well as of record and nothing relevant has been concealed therein”*. But, no signature over this verification by above Shri Mahavir Singh is there. Rather, it was written to be through Counsel Mahavir Singh & Associates, 137A-Patiala House, Tilak Marg, New Delhi-01. But, it is not apparent as to whether this Counsel who has put his signature for Mahavir Singh & Associates, is for filing this reply or for making verification clause. Hence, apparently, this blank of signature is there on reply itself. So, far as verification is concerned, it is a specific provision in Civil Procedure Code 1908, in Order VI Rule 15(1) for verification of pleadings, which mandates, that every pleading shall be verified at the foot by the party or by one of the parties, pleading or by some other person proved to be satisfaction of Court to be acquainted with the facts of the case and as per Sub Rule 4, the person verifying the pleading shall also furnish an affidavit in support of his pleadings. But,

in the instant Petition, the reply by Respondent No.1, is not verified and is not even supported by an affidavit. Though an affidavit has been filed in support of this pleading/ reply, but the same is with many blanks and by one Mahesh Prakash Bende, S/o Prakash Dhondu Bende, claiming himself to be authorised representative of Respondent, as a Deponent of this Affidavit. But, the authority, Annexed at Page 48 of this petition, reveals that it is notarized attested photocopy of certified true copy of the resolution passed at the meeting of the Board of Directors of Trilogic Digital Media Limited on Saturday 29th May 2014, at the Corporate Office of the Company. Wherein, the mention is *“Resolved that Mr Mahesh Prakash Bende is hereby authorized to enter, sign, execute documents & other legal documents in channel distribution matter of Sahara India TV Network (Before the Hon’ble Telecom Settlement and Appellate Tribunal, New Delhi)”*. Hence, the Board of Resolution, is of Trilogic Digital Media Limited, i.e., not of Sahara TV India Network, and this has been specifically mentioned in rejoinder cum replication, filed by Petitioner, in response to this reply, with a specific mention that Trilogic Digital Media Limited is of no concern with present Respondent No.1. It was again mentioned in replication that the verification clause of the reply,

filed by Respondent No.1, is not in conformity with Order VI Rule 15 Sub-Rule 1 and 4 of the Civil Procedure Code, 1908. The verification clause of the reply, has not been verified by the Authorised Representative of Respondent Company. Therefore, the reply filed by Respondent No.1, should not be taken on record and the defence taken by Respondent No.1 should be struck down on this ground alone. In Para 2 of Replication, there is a mention that the reply filed by Respondent has been filed without proper authorization, as the Board Resolution, annexed with the Reply of Respondent No.1, was passed by Board of Directors of some other Company, i.e., Trilogic Digital Media Limited, which is not the party to present case, in any manner. Therefore, the Company, namely, Trilogic Digital Media Limited, has no locus to pass a Board Resolution for the Respondent No.1. It was further categorically written that the verification clause of the reply is verified by Mr Mahavir Singh and the affidavit filed in support of the reply is by Mr Mahesh Prakash Bende. But, no subsequent verification, or reply or affidavit by Respondent No. 1 was there. Hence, the reply is not in consonance, with the provisions of Civil Procedure Code, 1908(CPC). Though the strict adherence of Civil Procedure Code, 1908, is not mandatory in the procedure, to be

observed by this Tribunal, under TRAI Act, but, the TRAI Act itself, has given a specific provision that every proceeding before this Tribunal is a Civil Proceeding and in a Civil Proceeding, the basic procedure with regard to pleadings are to be obeyed. What is being pleaded and is being replied, wherein, what is being admitted and what is being disputed, what are the basic point of difference i.e., issues to be heard and decided is to be specific. The evidences are to be led on those specific pleadings only. Matter unless pleaded, may not be put under evidence. Anything pleaded is to be proved or disproved, on the principle of burden of proof of facts, given in Indian Evidence Act. Hence, proved, unproved, may be proved, by burden of proof, whether on plaintiff or on Respondent, are to be governed by these basic principles. Hence, a specific fact pleaded in Petition/ Plaint, being replied in by this defendant/ Respondent, is to strictly observe rule of pleadings. More so, the fact pleaded is to be replied by Respondent and a reply filed by Counsel, may never be a reply by party. And more so, if Counsel had transgressed to be a party and filed a reply as a party, then the affidavit required to substantiate this pleading ought to be by the same Counsel. But, it may never be by a third person, who is having no authority to represent a Company, by a

resolution of Board of the same Company. Wherein, in present Petition, the authority filed is by Trilogic Digital Media Limited, having no concern, nor array of party in the proceeding and being filed for Respondent No.1, Sahara India TV Network. Later, on this person, who had filed his affidavit, had not come in witness box for testing his veracity in examination in cross. Rather, no evidence is there. Hence, from the very perusal of the pleadings, it is apparent that the reply is not in the consonance with the settled principle of procedure regarding the filing of reply. This Issue No. 2 is being decided in favour of Petitioner.

13. Issue No. 3

On the basis of discussions made above, in disposal of Issue No.2, this Issue No. 3 is also being decided in favour of Petitioner.

14. Issue Nos. 4 & 5

The Burden of Proof for proving this fact that parties entered into the contract, was upon Petitioner and for this, the Contract dated 01st June 2011 is Annexure P-4 to Petition. This is, in between, Sahara India TV Network, a unit of Sahara India Commercial Corporation Limited, a Company incorporated and registered under The Companies Act, 1956 and ABS Media Services Private Limited, as a First Party to Contract,

with Konark IP Dossiers Private Limited, a Private Limited Company, incorporated in the Companies Act, 1956, referred to as MSO/Cable Operator, with regard to subject written therein, regarding placement by MSO/Cable Operator to carry the said Channels, being Sahara One, Sahara Filmy and Firangi on the agreed frequencies, with specific carriage and subscription fee and conditions written in it. This agreement is with no dispute. The same is by authorised signatory for Sahara India TV Network and for ABS Media Services Private Limited and for Konark IP Dossiers Pvt. Ltd. The dispute is with regard to agreement, dated 20.03.2013, which is with same words, sentences, terms and conditions, as the previous one was, with a little difference that signature is of ABS Media Services Private Limited and Konark IP Dossiers Pvt. Ltd., with a blank of signature for and on behalf of Sahara India TV Network, and this is the defence of Respondent No. 1. The witness Pulin Sanghvi is the same witness, who had been witness in previous contract. The previous contract specifically mentions in Para B that *“ABS has represented to Sahara that it has the necessary infrastructure, resources, experience and expertise in distributing the services of Sahara and Sahara, on the representation of ABS, has engaged the services of ABS on a non exclusive basis to supply the IRDs*

and VCs to various MSOs/ Cable Operators for analogue/ digital systems cable services only with the intention of maximising the revenue, reach and viewership for the said channels and ABS undertakes to provide such services in accordance with the terms and conditions mentioned hereunder.”

15. Means the tripartite agreement was got entered, in between, the Sahara India TV Network, ABS Media Services Private Ltd. and Konark IP Dossiers Pvt. Ltd., for placing above channels of Sahara broadcaster, and this was under proper representation and understanding. The same is situation with subsequent disputed agreement, dated 20.3.2013, wherein this has been specifically written and the contract had been entered, in between. The dispute with regard to execution of this agreement was to be either accepted or denied by respondent no. 2. But it was neither accepted nor denied, nor any reply got filed, nor any contest by respondent no. 2 is there. Whereas the relief claimed is for joint and several, against both of the respondents. Hence, in case of no authority or seizure of authority in favour of respondent no.2 by respondent no. 1, as was previously given, in erstwhile contract of 2011, is to be adjudged, in between, Respondent

no. 1 and respondent no. 2, in any other proceeding. But the presumption and the conduct establishing specific contract, in between, is established by these pleadings and circumstances. The email written and replied to concern of Sahara India Ltd., filed on record, as annexure(colly), establishes the conversation, in between and existence of relationship and placement of channels Sahara one and filmy, with an assurance of making clearance of outstanding dues by Mr Bakulish Bhaggde, for and on behalf of respondent no. 1. The very argument of respondent no. 1 that it never entered in agreement dated 20.3.2013, because it does not bear its signatures and acceptance of respondent Shara India TV Network does not bear any sign, seal or stamp of respondent no. 1 is of no merit. The contract has been entered by respondent no. 2, ABS Media Services Private Limited with petitioner having mention of respondent no. 1 as a party to it within the witness-ship of the same witness who was witness of previous agreement, wherein Sahara India TV Network has put its signatures. Hence, the evidence to prove the fact said in the plaint / petitioner was to be given by petitioner and by way of its affidavit in examination in chief the contention of petition has been reiterated in this affidavit. The cross examination too, is of no material

inconsistencies. Rather, the same is fully in corroboration to examination in chief. Hence, the very burden of proof ought to be on the petitioner has been fully made by petitioner and the contention of petition has been substantially proved by its evidence, documentary as well as oral one, vis-à-vis the respondent no. 1, which had not filed its reply, discussed as above, nor any evidence on record. An examination in chief, in form of affidavit of one witness, could not be put on the cross examination, nor witness could be got substituted even after grant of leave for it. Rather, a specific mention regarding non availability of witness is there in the order-sheet. Hence, on the basis of evidence on record, this issue is being decided in favour of petitioner.

16. On the basis of reasoning made in Issue No. 4, the agreement dated 20.3.2013, as well as 1.6.2011 with addendum dated 5.12.2011, are binding on the parties.

17. Issue No. 6

The proceeding against respondent no. 2 is running ex-parte. There is no reply by respondent no. 2. Hence, the petition against respondent no. 2, is to be decreed in ex-parte. So far as respondent no. 1 is concerned, ledger book, statements of accounts as well affidavit

required under Section 65 B of Evidence Act, alongwith the oral testimony of petitioner's witness, has proved the alleged outstanding placement charge of Rs. 66,18,940/- (Rupees Sixty Six Lakhs Eighteen Thousand Nine Hundred and Forty Only), to be awarded jointly and severally, against both of the respondents, for which the petition is to be allowed.

18. Issue No. 7

The Tribunal in many previously decided petitions had held award of 9% p.a. Simple interest to be just and proper, in fiscal scenario of the business atmosphere of the nation. Hence, on the basis of above precedents, award of simple interest @ 9% p.a. for above amount is just and fair.

19. On the basis of above discussions, the petition merits to be allowed.

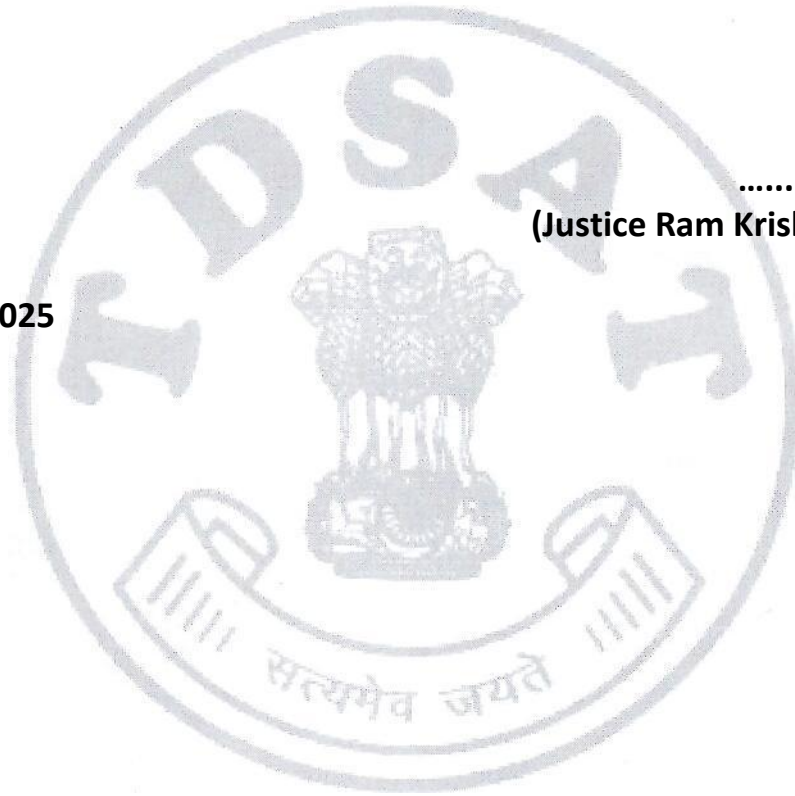
Order

Petition is being decreed. Respondent no. 1 – Sahara India TV Network and Respondent No. 2 – ABS Media Services Pvt. Ltd. are being, jointly and severally, mandated to make deposit of Rs. 66,18,940/- (Rupees Sixty Six Lakhs Eighteen Thousand Nine Hundred and Forty Only), alongwith

pendente lite and future interest, from the date of petition, till actual payment, simple interest @ 9% p.a. over above amount, within two months from the date of judgment, in the Tribunal, for making payment to the petitioner and in case of failure, the same may be realised by due proceedings.

Office to make formal decree/ order, accordingly.

28.11.2025
/NC/



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(Justice Ram Krishna Gautam)
Member