

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL
NEW DELHI

Dated 31st July, 2017

Broadcasting Petition No.18 of 2015

IndiaCast UTV Media Distribution
Pvt. Ltd., Mumbai

...Petitioner

Vs.

PHA Digital Broadcasting & Services,
Maharashtra & Anr.

...Respondents

BEFORE:

HON'BLE MR. JUSTICE SHIVA KIRTI SINGH, CHAIRPERSON
HON'BLE MR. B.B. SRIVASTAVA, MEMBER
HON'BLE MR. A.K. BHARGAVA, MEMBER

For Petitioner : Mr. Kunal Tandon, Advocate
Mr. Shashank Sekhar, Advocate

For Respondents : None

ORDER

By A. K. Bhargava, Member - The Petitioner is a broadcaster who entered into an agreement with the Respondent No. 1 who is a Multi System Operator (MSO). The respondent no. 1 re-transmitted signals of TV channels supplied by the petitioner but allegedly did not clear the dues. Aggrieved by this, the petitioner has filed this petition on 23-1-2015 against respondent no. 1 and respondent no. 2 praying for the following reliefs:

- (a) pass a decree to the tune of Rs. 1,99,697/- in favour of the petitioner and against the respondents.
- (b) interest @18% per annum on the sum due, till the realization of the amounts in favour of the petitioner and against the respondents, be awarded.
- (c) pass an order directing the respondents to pay costs to the petitioner.

At the outset, it is noted that the claim has been filed within the limitation period. Due to the non-appearance of the Respondent No. 1 (hereinafter referred to as respondent), the matter was allowed to proceed *ex-parte*. During the hearing, vide order dated 1-5-2017, the following was recorded:

“It is conspicuous that the petitioner has not pleaded the existence of any written agreement for the period prior to 1.2.2014 nor any such agreement has been brought on record. In such a situation the claim of the petitioner has to be disallowed for the period prior to 1.2.2014 on account of legal position settled by orders of this Tribunal that no claim can be entertained or allowed for a period which is not covered by a written agreement. Admittedly the petitioner has pleaded and proved existence of a written agreement for the period 1.2.2014 to 31.1.2015 and it is own case of the petitioner that due to change of law, the agreement became impermissible and unworkable after 15.7.2014.

It is thus clear that the period for which the petitioner can claim the relief is limited from 1-2-2014 to 15-7-2014. The petitioner has filed a Statement of Account (Annexure-P4 of the petition) for the period 1-4-2013 to 13-12-2014. The petitioner was therefore asked to furnish transparent calculation chart for the period 1.2.2014 to 15.7.2014, based upon materials already available on record.

Petitioner filed an additional affidavit on 22-5-2017 which provides the Statement of Account (Annexure F) for the period 1-2-2014 to 15-7-2014. According to this statement of account, the amount claimed is Rs. 1,94,304.88 for the period 1-2-2014 to 15-7-2014.

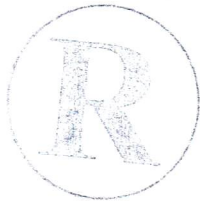
As per the subscription agreement dated 7-3-2014 valid for the period 1-2-2014 to 31-1-2015, the subscription fee for one year is Rs. 3,76,200/- exclusive of taxes and the invoices were raised on the basis of this subscription agreement. The invoices have been attached along with the additional affidavit for the period under consideration. From the perusal of the statement of account, we find that various credit and debit entries have been made for the period under consideration. For the month of July 14, an invoice has been raised for an amount of Rs. 35,224.86 (inclusive of taxes). Since the claim is limited up to 15-7-2014, an appropriate credit also has been shown. The total outstanding as per this statement of account thus comes to Rs. 1,94,304.88 for the period 1-2-2014 to 15-7-2014.

In view of the subscription agreement and supporting invoices along with the statement of account, we accept the claim of the petitioner for the revised sum of Rs. 1,94,304.88 in place of original claim of Rs. 199,697. The petitioner has also claimed interest @ 18% per annum for the entire period of delay. In our view, it would be reasonable and in the interest of justice to allow the claim of interest only @ 8% per annum on the sum allowed till the date of realization.

It is to be noted that the petitioner had also impleaded M/s Courtyard Marriott, Gurgaon as respondent No. 2 since they were receiving channels of the petitioner through Respondent No. 2 as 'commercial subscriber'. The respondent no. 2 has appeared in the case and stated that there is no privity of contract between him

and the petitioner. The said subscription agreement dated 7-3-2014 which the petitioner so relies upon, is between the petitioner and respondent no. 1 only. He admittedly had an agreement with the respondent no. 1 and was responsible for making payment to respondent no. 1 only for the services rendered. He has also submitted the invoices raised by the respondent no. 1 and his statement showing the payments made. We thus find no liability of Respondent No. 2 towards the petitioner in this case.

Prayers in the BP No. 18(C) /2015 are allowed only to the extent mentioned above and the petition is disposed of. Let a decree be drawn up accordingly.



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(S.K. Singh, J)
Chairperson

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(B.B. Srivastava)
Member

(A.K. Bhargava)
Member