

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL
NEW DELHI

Dated 04th September, 2018

R.A. No.1 of 2017

In
Broadcasting Petition No. 342 of 2013

Digicable Network (India) Pvt. Ltd. Mumbai ...Petitioner

Vs.

Sai Prasad Media Pvt. Ltd. ...Respondent

BEFORE:

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

For Petitioner : Mr. Diggaj Pathak, Advocate
Ms. Shweta Sharma, Advocate

For Respondent : None

ORDER

By **S.K. Singh, Chairperson** – This Review Application has been preferred by the petitioner / applicant for a partial review of final judgment and order dated 29.3.2016 passed in B.P.No.342 of 2013.

2. The prayer made in the Review Application is for grant of a decree of Rs.1,26,69,600/- towards the claim under the analogue agreement and for Rs.1,43,40,058 under the digital placement agreement along with interest at the rate of 18%.

3. The Review Application was first considered on 11.1.2018. By order passed on that date, this Tribunal confined the consideration of the Review Application only to the claim under the analogue placement agreement dated 9.8.2012. Notice was issued accordingly only for that issue. That order discloses that this Tribunal went through reasons assigned by the Tribunal for rejecting the petitioner's claim under the digital placement agreement and found no error so as to warrant exercise of review jurisdiction. Special mention was made to the findings recorded in the first and second paragraphs at the penultimate page of the Judgment (Page 25 of the Review Application). Hence, the Review Application has been heard only for holding a scrutiny as to whether in the last paragraph of the judgment the claim under the analogue placement agreement has been rightly recorded to be only Rs.63,03,058/- or, as pleaded in the Review Application, it should be for a larger sum of Rs.1,26,69,600/- along with interest at the rate of 18%.

4. In spite of service of notice upon the respondent through publication in two newspapers of the concerned area, the respondent has chosen not to appear and contest the Review Application. It may be noted that during the hearing of the main petition also the respondent had abandoned the contest and nobody had appeared.

5. Having heard learned counsel for the petitioner / applicant and having seen the relevant documents and Exhibits available on record, we find that the

prayer of the applicant for review in respect of the claim under analogue placement agreement needs to be allowed. The reasons are glaring and apparent on the face of the record. A careful perusal of the judgment under review shows that so far as the claim under the analogue agreement is concerned, the Tribunal noticed that the petitioner's witness Birender Kumar identified the statements of account under this agreement which were marked as Exhibit P-8 and P-29. Immediately thereafter, the Tribunal had recorded (at page 17 of the brief of Review Application) thus: "Exhibits P-8 and P-29 show that the petitioner's dues under the analogue agreement amounted to Rs.63,03,058/-." Thereafter the entire discussion led to rejection of the claim of the petitioner under the digital placement agreement, as per findings recorded in the first paragraph at page 25. In the next paragraph, the Tribunal gave a categorical finding that "there is, however, no such infirmity in case of analogue placement agreement dated 9.8.2012 and the petitioner's claim under the analogue placement agreement, therefore, must be allowed." Some minor discrepancies in the amounts in the concerned invoices were thereafter noticed but the Tribunal held the same to be on account of lack of proper care but not fatal to the claim of the petitioner arising from the analogue placement agreement. Then, in the following (last) paragraph, the Tribunal allowed the claim of the petitioner in following terms:

"The claim of the petitioner is accordingly allowed in the sum of Rs.63,03,058/-. The aforesaid amount will carry interest at the rate of

18% from the date of filing of the petition till the date of realization. The office is directed to make a decree accordingly.”

6. Learned counsel for the petitioner/ applicant has drawn our attention to the statements of account under the analogue agreement which are Exhibits P-8 and P-29 and correspond to annexures P-4 and Annexure P-10 of the main petition. Exhibit P-8 at page-40 covers the entire period of the analogue agreement from 9.8.2012 to 8.8.2013 and also some earlier periods. As per this statement of account which is comprehensive and covers the entire claim period, the outstanding dues are of Rs.1,26,69,600/-. In the other statement of account Exhibits P-29, the period covered is only of four invoices from 9.8.2012 to 8.5.2013 when the outstanding was Rs.63,03,058/-.

7. As indicated earlier, the Tribunal recorded the dues under the analogue agreement to be only Rs.63,03,058/- on the basis of both the Exhibits i.e. P-8 and P-29.

8. This was an error on account of apparent misreading of Exhibit P-8, otherwise the amount would have been Rs.1,26,69,600/- as claimed in the Review Application. The entire discussion in the judgment under review reveals that no infirmity was found in the case of the petitioner on the basis of analogue agreement dated 9.8.2012 and such a claim was allowed in full without any reservation or reduction.

9. In the aforesaid facts and circumstances, we hold that the petitioner/ applicant has succeeded in pointing out an error apparent on the face of the record. Such error in the judgment and order under review needs to be corrected and hence, the Review Application is allowed in part by holding that the entire claim of the petitioner under the analogue placement agreement is allowed in the sum of Rs.1,26,69,600/-. In substance, the amount of Rs.63,03,058/- mentioned in the last paragraph of the judgment and order under review shall stand replaced by Rs.1,26,69,600/-. This amount will carry interest at the rate of 18% from the date of filing of the Petition till the date of realization. The judgment and decree passed earlier will stand modified to the aforesaid extent. The office is directed to prepare modified decree accordingly.

10. The Review Application stands allowed to the aforesaid extent but there shall be no order as to costs.

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(S. K. Singh, J)
Chairperson



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(A.K. Bhargava)
Member