

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL
NEW DELHI

Dated th 8 March, 2019

Petition No.43 of 2013

Intermedia Cable Communication Pvt. Ltd. ...Petitioner

Vs.

ABS Media Services Pvt. Ltd. & Anr. ...Respondents

BEFORE:

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

For Petitioner : Mr. Atul Sharma, Advocate

For Respondents : None

ORDER

A. K. Bhargava – The Petitioner is an MSO while Respondent 1, ABS Media Services Pvt. Ltd, is an authorized agent/distributor of the Respondent 2, Sahara India TV Network. Respondent 2 (R2) is the Principal/Broadcaster for channels “Sahara One” and “Sahara Filmy” among others. This is a recovery petition filed on 29-1-2013 with the following prayers:



(a) Direct the respondents to jointly and severally, pay the outstanding amount of Rs. 92,85,304/- (Rupees Ninety Two Lacs Eighty Five Thousand Three Hundred Four only) plus applicable taxes, along with interest of 24% per annum from the date of outstanding due, till the date of realization.

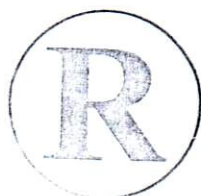
(b) Direct the respondents, to jointly and severally, pay the interest of 24% per annum on the amount due from the date of outstanding due, till the date of realization.

(c) Costs

(d) Pass such other and further orders as may be deemed to be fit and proper in the facts and circumstances of the case.

2. Respondent 1 (R1) after initial appearance has not been appearing. R2 has filed its reply and also cross-examined the petitioner's witness but even after many opportunities did not file its evidence affidavit. Later R2 also stopped appearing and when the matter was finally heard, R2 was not present.

3. An MoU was executed between the petitioner and the Respondent 1 (R1) on 22-4-2011 for the placement of its channels "Sahara One" and "Sahara Filmy" on S-9 and S-28 respectively on the petitioner's network for a consideration of Rs. 1,60,00,000 plus taxes. The MoU was valid for a period of one year w.e.f. 23-4-2011 to 22-4-2012 and the agreed amount was to be paid in 12 equal monthly installments of Rs. 13,33,333 which



comes to Rs. 14,70,666 inclusive of applicable Taxes. Accordingly, petitioner raised the invoices but the respondent was not regular in payment resulting in mounting dues during the agreement period ending 22-4-2012. Petitioner kept following up these dues and was able to recover them subsequently.

4. In the meantime, before expiry of the MoU, petitioner claims to have reminded the respondents for renewal of the placement agreement/fresh arrangement, vide its letter dated 29-3-2012. Petitioner also claims that the respondents sent a letter dated 16-4-2012 to the petitioner wherein respondents requested a 30% reduction in the placement charges for renewal and that the petitioner did not accept the request of the respondents. Both the letters are not on record. However, we have on record at Annexure P-2, an e-mail dated 19-4-2012 from petitioner to R1 which states that *"we are yet to receive your confirmation as to whether the subject Channel Placement arrangement would be renewed by you for a further period commencing from 23-4-2012 onwards. We therefore request you to kindly intimate us immediately your intent so as to enable us proceed further in the matter"*. There are further follow-up mails on 24-4-2012 and

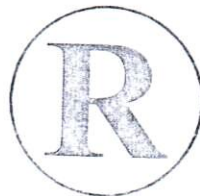


25-4-2012. The respondent 1, vide e-mail dated 24-5-2012 requested the petitioner to start channel "Sahara One" on the Prime band/frequency and sought confirmation of the commencement of desired placement. The petitioner, vide e-mail dated 25-5-2012 confirmed that "Sahara One" channel has been placed on its network on the Prime Band at E-11 frequency with effect from 25-5-2012 and asked for signing of a formal channel placement agreement. It also intimated that the fee shall be applicable and payable as per the market rates applicable for prime band frequency. On 7-9-2012, Petitioner reminds the respondent that although channel "Sahara One" has been running on prime band in terms of e-mail confirmation, respondent has not concluded the channel placement agreement till date. In this e-mail, petitioner also states that the annual placement fee of Rs. 1,75,00,000 will be applicable for placement in the Prime Band frequency. On 22-10-2012, petitioner raised five invoices for the period 25-5-2012 to 24-10-2012 adding up to Rs. 81,92,915. While forwarding these invoices vide letter dated 22-10-2012, petitioner also issued 21 day notice for switching off Sahara One channel. The respondent finally replied on 10-11-2012 with corrigendum dated 19-11-2012 that it was returning the agreement as the deal value should have been 30% less



than the last time value. On 3-1-2013, the petitioner served a legal notice upon the respondent detailing the whole chain of events and asking the respondent to pay an amount of Rs. 92, 85,304 along with interest. This amount included the demand for Rs. 10, 92,389 for the notice period. Having received no payment despite the legal notice, petitioner has filed this petition.

5. There is no dispute to the written agreement between petitioner and the respondents. R2 claims that the outstanding for the agreement period is nil. The petitioner has also admitted in its rejoinder (Para 7) that it has received the outstanding amount for the period up to 22-4-2012 finally only in the month of September 2012. Petitioner however contends that an outstanding of Rs. 92,85,304 is due, pertaining to the period starting from 25-5-2012 and upto the notice period. As is evident from the Para 4 above, there is no written agreement for this period of claim. Petitioner placed the respondent's channel on his network on 25-5-2012. Subsequently it pursued diligently with the respondent but could not arrive at a written agreement and stopped the placement of respondent's channel after issuing a due notice.

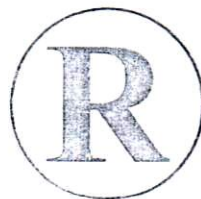


6. Petitioner's case is that the respondents induced the petitioner to place the said channel on the preferential Band by giving false assurance, confirmation and promise to pay placement fees and enter into Agreement/MoU. Having established that the said channel was placed on the Band as requested by R1, petitioner claims to a fee of Rs. 1,75,00,000 per annum, which he communicates to R1 on 7-9-2012 as per the record submitted (Annexure P9). Even though there is no agreement to this rate by the respondent who wanted 30% reduction, petitioner maintains that the demand to decrease was not bonafide since the same was refused implied/expressly by the petitioner. Petitioner maintains that Respondents have thus wrongfully gained by commercially exhibiting the said channel on a preferential frequency on petitioner's network and then not paying for the same. In support of his claim, learned counsel for the petitioner has relied on many judgments including one from this Tribunal in BP 140 of 2012 (Manthan Broadband Services Pvt. Ltd. vs. Sahara India TV Network & Ors) wherein under similar circumstances, relief was granted even in absence of a written agreement. However, in a subsequent judgment of this Tribunal in BP No. 611 of 2015 (*UCN Cable Network India Pvt. Ltd. vs. Raj*



Cable Network & Anr.) it has been held that a relief for recovery of outstanding dues can be granted only if there is a written agreement for that period between the parties. The law thus laid down has held the field for more than two years and has governed a large number of similar cases. We are therefore not persuaded to take a different view. Accordingly, we are of the considered opinion that the petitioner's claim of Rs 92,85,304, not being covered by a written agreement, cannot be allowed.

7. Before parting with our order, we also consider a provision in Interconnect Regulation 2004 where by a provision has been made for continuation of negotiation and supply of signals for three months beyond the expiry of the written agreement. If such circumstances are shown, we have generally granted recovery relief for three months on the basis of terms and conditions of the earlier agreement, even if a written agreement is not reached between the parties. The relevant provision in the Telecommunication (Broadcasting and Cable Services) Interconnection Regulations, 2004 under clause 8 is as follows



"8. Time Period for Renewal of existing agreements

8.1 Parties to an interconnection agreement for supply of TV channel signals shall begin the process of negotiations for renewal of existing agreement at least two months before the due date of expiry of the existing agreement.

PROVIDED that if the negotiations for renewal of the interconnection agreement continue beyond the due date of expiry of the existing agreement then the terms and conditions of the existing agreement shall continue to apply till a new agreement is reached or for the next three months from the date of expiry of the original agreement, whichever is earlier. However, once the parties reach an agreement, the new commercial terms shall become applicable from the date of expiry of the original agreement.

PROVIDED FURTHER that if the parties are not able to arrive at a mutually acceptable new agreement, then any party may disconnect the retransmission of TV channel signals at any time after the expiry of the original agreement after giving a three weeks' notice in the manner specified in clause 4.3. The commercial terms of the original agreement shall apply till the date of disconnection of signals."

In this particular case, MoU was for two channels (Sahara One and Filmy), placed on S-9 and S-28 at a combined rate of Rs. 1,60,00,000 plus taxes per annum. Though the petitioner had made offer for renewal, this placement stopped on the expiry of MoU. Later, only Sahara One got placed on 25-5-2012 in a different band E-11 for which the petitioner asked new rate of Rs. 1,75,00,000 plus taxes per annum for which there was no agreement. Thus there was neither any continuation of old arrangement nor any new agreement after the expiry of written agreement. This new arrangement



therefore is not covered by the aforementioned clause 8 of Interconnection Regulation 2004. Accordingly, we find that limited relief for recovery of placement charges for three month after expiry of the written agreement is also not available to the petitioner.

8. In view of the discussion above, the petition is disallowed. No cost to either party.



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(S.K. Singh, J)

Chairperson

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(A.K. Bhargava)

Member