

**TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL
NEW DELHI**

Dated 16th April, 2020

Broadcasting Petition No.129 of 2016

Indusind Media & Communication Ltd.Petitioner

Versus

Mi Marathi MediaRespondent

BEFORE:

HON'BLE MR. JUSTICE SHIVA KIRTI SINGH, CHAIRPERSON

Petitioner : Ms. Vandana Jai Singh, Advocate
Ms. Kanupriya Gupta, Advocate
Mr. Rohit Kaul, Advocate
Ms. Roopali Wadhawan, Advocate

Respondent : None.

ORDER

By S.K. Singh, Chairperson – Heard learned counsel for the petitioner. Nobody has appeared on behalf of the respondent inspite of service of notice and as a result the petition has been heard *ex parte* as per order passed earlier. The respondent had appeared at early stage and had filed reply but later its advocate withdrew *Vakalatnama* and no contest was made at the trial stage nor any evidence affidavit has been filed on its behalf.

2. The petitioner company carries on the business of receiving signals from broadcasters of various television channels and of redistributing the same through franchisee cable network. The respondent company carries on business as a broadcaster/content provider. Both the parties are service providers and as such amenable to the jurisdiction of this Tribunal.

3. Through this petition, the petitioner is seeking recovery of Rs.1,44,84,050/- (Rupees One Crore Forty Four lakhs Eighty Four Thousand Fifty Only) said to be the outstanding dues inclusive of interest as on 09.02.2016 along with interest @ 18% till the date of realization from the respondent. The dues are towards carriage fee for the services availed by the respondent from the petitioner for carriage of its television channel “Mi Marathi”.

4. The petitioner has filed affidavit of evidence along with relevant documents to support its case. The documents include: (i) a letter and MoU dated 11.02.2015 disclosing the commercial terms between both the parties for two channels, namely; “Live India” and “Mi Marathi” for the period 19.08.2014 to 31.08.2015. Parties had also agreed to execute a Long Form Agreement. Accordingly a Channel Placement Agreement dated 19.10.2014 was also executed for the same aforesaid period 19.08.2014 to 31.08.2015. This agreement is also a part of affidavit of evidence.

5. For the channel “Mi Marathi” for its coverage on the DAS network for the said period the respondent agreed to pay Rs.1,17,00,000/-. Through another agreement dated 19.11.2014, for the distribution of the same channel over Analogue network the respondent agreed to pay Rs.18 lakhs for the same period.

6. According to petitioner’s case, supported by evidence, the respondent was irregular in making the required payment to the petitioner and on account of default, the petitioner deactivated the said channel on 31.07.2015. The respondent through a letter dated 10.08.2015 requested to reactivate the channel with an assurance to make the required payment and also accepted the earlier agreement

for further period. It is petitioner's case that respondent also assured to execute agreement for further period. The letter dated 10.08.2015 is on record along with affidavit of evidence.

7. The last proforma invoice dated 08.02.2016 shows the total amount due after the period 09.12.2015 to 22.01.2016 to be Rs.95,63,060/- in respect of the aforesaid outstanding dues for the DAS area, as per statement of accounts the petitioner has also calculated interest upto 09.02.2016 at the rate 18% per annum amounting to Rs.25,93,918/-. The total of the two figures amounting to Rs.1,21,56,978/- has been claimed as the total dues against the respondent for DAS area.

8. Similarly, for non-DAS area the outstanding principal dues in the statement of account is Rs.24,47,200 /- over which an amount of Rs.79,873/- has been added by way of interest calculated upto 09.02.2016. On adding the principal dues for non-DAS area and the interest, the total claim is for Rs.23,27,073/-. The grand total of dues and interest for the DAS and non-DAS area thus, as per the statement of accounts, comes to Rs.1,44,84,050/-.

9. For the aforesaid amount a demand notice was issued by the petitioner on 12.02.2016. This notice is on record along with the affidavit of evidence.

10. Although the respondent did not contest the claim of the petitioner during trial and did not lead any evidence, it had filed a written statement. The same has been perused only in the interest of justice. No documents have been annexed even with the written statement/reply to dispute the claim of petitioner. Bald and vague denials have been pleaded in reply to petitioner's all the material facts which cannot be legally treated as a valid denial. The respondent has accepted the receipt of legal notice dated 12.02.2016 and has admitted that no reply was sent to dispute the claim made thereunder.

11. Even when the matter is being heard *ex parte* the petitioner has to prove that its entire claim is correct. It must stand on its own legs and strength. Hence, in the interest of justice the statement of accounts available on record for the DAS area as well as non-DAS area along with summary (Annexure P-8) has been perused minutely. In the summary, the outstanding dues for the non-DAS, Rs.22,47,200/- has been added to the principal outstanding of Rs.95,63,060/- for the DAS area and thereafter interest on both the amounts upto 09.02.2016 has been added for arriving at the claimed amount of Rs.1,44,84,050/-. As per statement of accounts available on record also this amount is incorrect. This is also supported by the figures of outstanding (of the principal amount) as shown in the last invoice (Annexure P-5).

Hence, on the basis of documents and materials on record, the respondent is found liable to pay towards channel carriage fee by way of principal amount only Rs.1,18,10,260 /- (One Crore Eighteen Lac Ten Thousand Two Hundred Sixty only). The claim for interest needs to be addressed separately.

12. The statement of account also contains calculation of interest for each day of default at the rate of 18% per annum. This appears to have been computed per month till 09.02.2016.

13. The petition is well within the period of limitation and suffers from no legal infirmity so as to disentitle the petitioner from advancing its claim for recovery of channel carriage fee on the basis of commercials agreed between the parties. The necessary documents are on record and they support the claim of the petitioner for the principal outstanding dues of Rs.1,18,10,260 /- . In absence of any merit in the reply and for lack of any evidence on behalf of respondent, the principal outstanding indicated above is allowed as an amount which the petitioner is entitled to recover from the respondent.

14. So far as interest is concerned, following several recent judgments, it is allowed only at the rate of 9% per annum from March, 2016, i.e., the month in

which the petition was filed upto the date of this judgment and thereafter also till the decretal amount is realized. The respondent is directed to pay the decretal amount within two months from the date of this judgment failing which petitioner will be entitled to recover the same through an appropriate execution proceeding. The Registry is directed to prepare a decree on the basis of this judgment at an early date preferably within four weeks. The petition is allowed to the aforesaid extent and disposed of accordingly along with M.As., if any.

15. Since the respondent has not contested the claim by leading evidence, there shall be no order as to costs.

.....**J**
(S.K. Singh)
Chairperson

sks