

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

Dated 13th January, 2020

Broadcasting Petition No.877 of 2012
(with M.A. Nos.142 and 145 of 2016)

Indusind Media & Communications Ltd.

....Petitioner

Versus

Allied Infotainment Distribution Ltd.

....Respondent

BEFORE:

HON'BLE MR. JUSTICE SHIVA KIRTI SINGH, CHAIRPERSON

Petitioner : Ms. Vandana Jai Singh, Advocate
Ms. Kanupriya Gupta, Advocate

Respondent : Ms. Yashsvika Sharma, Advocate

ORDER

By S.K. Singh, Chairperson – The petitioner company is a Multi-System Operator (MSO). At the relevant time it had executed a Channel Placement Agreement with the respondent for transmitting/carrying their TV channels namely, “News 24” and “E 24”. It is the case of the petitioner that both the parties have this business relationship since last several years. As per the Placement Agreement the petitioner carried the channels of the respondent on its network and issued invoices to the respondent from time to time. However, the respondent did not make payments as required by the agreement against the invoices. On account of such default in payment of channel placement fees, the total outstanding as on 17.11.2012 for both the channels came to Rs.4,02,81,354/-. This included interest calculated at the rate of 18% for the period when the amount became payable and till 17.11.2012. This petition was filed soon thereafter on 27.11.2012. The interest at rate of 18% was claimed in view of stipulation in the agreement.

2. In the reply filed on behalf of the respondent in January 2014, two main defenses were raised against the claim. Firstly, the respondent pleaded that the channels of the respondent were not placed regularly and due to such irregularity, the respondent suffered loss of revenue and loss in viewership. Secondly, it

claimed that payment had been made regularly as per the agreed terms. In other words, the second defense was that all the lawful outstanding dues have been paid by the respondent and, therefore, the demand is on account of errors in accounts etc.

3. Through a rejoinder filed in February 2014, the petitioner denied the defense of the respondent and some other allegations and pointed out that at no point of time any grievance or notice was communicated to the petitioner about the alleged irregularity in placement. Through the rejoinder an updated statement of accounts in respect of both the channels was brought on record as annexure to show payment made after the filing of the petitioner and also updated claim of interest. On the basis of statement of accounts the rejoinder disclosed that the claimed amount stood reduced and the respondent was liable till 17.01.2014 only for Rs.2,34,11,552/-.

4. Through MA No.145/2016 filed on 11.05.2016, the respondent sought permission and brought on record a copy of amended reply to reagitate that it had made payments every month in due time as per the Placement Agreement and hence, there was no outstanding payable by the respondent. Respondent produced its own statement of accounts from 31.10.2011 to 31.03.2015 as an annexure. That

document is in fact a copy of entries in the petitioner's bank account maintained by the Bank of India. The purpose of said document is to show all the money paid out of respondent's account to different MSOs including the petitioner.

5. During the course of hearing of the petition, the only issue that was found surviving between the parties was in respect of an amount of Rs.1,33,40,902/- as the principal outstanding amount. The subsequent payments after filing of the petition were admitted by the petitioner in the affidavit of evidence. The amount claimed towards interest was separated so that it could be considered by the Tribunal separately and the accounts could be understood more clearly in view of principal dues worked out separately. Learned counsel for the petitioner, on instructions, filed written submissions in July 2019 in respect of the aforesaid issue relating to Rs.1.33 crores approximately. As per observations of the Tribunal both the parties went through the exercise of reconciliation of accounts and then addressed the Tribunal on the sole surviving issue as to whether the accounts of petitioner suffered from any error.

6. Written submissions were filed in September, 2019 on behalf of the respondent also. Based upon allegation made by the respondent in an affidavit filed on its behalf on MA No.137 of 2016 that seven payments allegedly made to

the petitioner as per copy of its bank account were not reflected or included in the statement of accounts filed by the petitioner. Interestingly, respondent did not produce its own statement of accounts nor it ever disputed an entry in the statement of accounts furnished by the petitioner (Annexure 8) showing an amount of Rs.1,33,33,332/- credited in favour of the respondent on 31.03.2012 by way of transfer of amount from that of M/s BAG Newslite Networks Ltd.

7. Learned counsel for the petitioner explained that M/s BAG News was another company of same group engaged in similar business as the respondent and the seven entries alleged to be not reflected in respondent's favour are duly reflected in the ledger account of M/s BAG News and this was demonstrated during the reconciliation of accounts. With the written notes a copy of statement of accounts of M/s BAG News has been produced which supports the petitioner's case and shows that on 31.03.2012 an amount of Rs.1.33 crores, found in excess was credited to the respondent and duly reflected in Annexure 8.

8. On going through the entire materials it is clear that respondent has not whispered a word as to how and why the amount of Rs.1.33 crores approximately was transferred from the account of M/s BAG News to its own account. The issue of seven payments not being reflected in the statement of accounts (Annexure 8)

has not been pleaded or raised in any of the two replies filed on behalf of the respondent. It was apparently only to create a confusion that a misrepresentation of facts was made during arguments leading to further reconciliation of accounts. Admittedly, the defense of irregular placement has been given up as will appear from written submissions also. The only defense based upon seven payments allegedly made wrongly to M/s BAG News is clearly a defense based on no foundations in the pleadings. Further, the parties were given opportunity and still the respondent has not explained as to why a credit of Rs.1.33 crores approximately was given to it on 31.03.2012. Such peculiar stance of respondent leaves no manner of doubt that the defense of the respondent is fit to be rejected, both on merits as well as for lack of pleadings even though respondent brought on record even a second(amended) reply. It is also worth noticing that the respondent chose not to reply and raise any defence although notices were sent by the petitioner in April, May and September, 2012 and the respondent's witness has admitted the receipt of those notices.

9. The claim of the petitioner for the principal amount of Rs.1,33,40,902/- is found to be duly supported by relevant materials including statement of accounts maintained during the regular course of business and supported by evidence of

witness. Hence, the claim of the petitioner for principal amount as noted above is allowed.

10. The petitioner is also found entitled to interest for the pre-litigation as well as post-litigation period. However, following the recent judgments of this Tribunal, the claim for interest is allowed only @ 9% per annum payable on the aforesaid principal amount from October, 2012 (the month next to the deactivation notice of September, 2012) till the date of realization of the decretal amount. In the facts of the case, petitioner is also held entitled to costs of Rs.2 lakhs. The decretal amount and the costs should be paid within two months failing which the petitioner shall be entitled to recover the decretal amount through appropriate execution proceedings. The Registry is directed to prepare a decree on the basis of this judgment at an early date preferably within four weeks.

11. The petition is allowed to the aforesaid extent.

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

