

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

Dated 20th March, 2020

Broadcasting Petition No.219 of 2016
(with M.A. No.329 of 2017)

Indusind Media & Communication Ltd.

....Petitioner

Versus

Lemon Entertainment Ltd.

....Respondent

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 even after service of notice and as a result the petition has been heard *ex parte*. The respondent has not appeared at any stage and has filed neither reply nor any affidavit of evidence.

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.40,98,090/- said to be the outstanding dues inclusive of interest as on 15.03.2016 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 channels.
4. The names of channels, description of areas and other details including the schedule of carriage fee and payment schedule are mentioned in the agreement

dated 17.04.2014 which was valid for one year. A copy of the agreement is annexed with the petition and has also been proved as exhibit. True and correct copies of the invoices and a credit note have also been proved as an exhibit (colly.). These show that the dues are as per invoices and pertain to the period covered by the agreement.

5. It appears that due to continuous default on account of non-payment of the invoiced amounts the petitioner had discontinued the service of redistribution of respondent's channels before 18.02.2015 and therefore, the credit note was later issued so as to reduce the amount of charges for the period of discontinuation of the service extending till the expiry of the agreement period.

6. The aforesaid claim of the petitioner is supported by a copy of statement of account which has also been proved as an exhibit. However, the statement of account shows that the respondent was liable to pay towards channel carriage fee only an amount of Rs.31,67,287/- duly reflected as the closing balance. Thereafter an amount of Rs.9,30,803/- has been added as interest upto 15.03.2016. By adding the actual outstanding and the interest, the total receivables has been shown as Rs.40,98,090/- i.e. the amount claimed through this petition.

7. The affidavit evidence discloses that instead of charging interest on a reasonable basis, the calculation is at the rate of 18% per annum compounded per month from the date of default till 15.03.2016.
8. The petition is found to be well within the period of limitation and there is no legal infirmity in the petition which may disentitle the petitioner from advancing its claim for recovery of channel carriage fee based upon agreement between the parties. The necessary documents have been exhibited and they support the claim of the petitioner for the principal outstanding dues of Rs.31,67,287/-. The issue of interest shall be considered separately.
9. On the other hand, the respondent has chosen not to appear and has not contested the claim even by filing a reply much less any evidence. In such circumstances the principal outstanding of Rs.31,67,287/- is allowed as an amount which the petitioner is entitled to recover from the respondent.
10. So far as interest is concerned, following several recent judgments, it is allowed only at the rate of 9% per annum from April, 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 along with M.As., if any.

11. Since the respondent has not come forward to contest the claim, there shall be no order as to costs.



(S.K. Singh)
Chairperson

sks