

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

Dated 11th November, 2020

Broadcasting Petition No.347 of 2019

Asianet Satellite Communications Pvt.Ltd.

....Petitioner

Versus

Kerala Kaumudi Pvt. Ltd.

....Respondent

BEFORE:

HON'BLE MR. JUSTICE SHIVA KIRTI SINGH, CHAIRPERSON

Petitioner : Ms. Shirin Khajuria, Advocate

Respondent : None.

ORDER

By S.K. Singh, Chairperson – The petitioner is a MSO whereas the respondent is a broadcaster of a regional TV channel, namely “Kaumudi TV”. The parties have been in business relationship at least since they entered into a carriage agreement dated 25.04.2013, followed by another agreement of 05.08.2015 which has expired by the efflux of time on 24.03.2017. In terms of the last agreement, the respondent agreed to pay a carriage fee of Rs.4,60,00, 000/- plus applicable taxes for a period of two years. The estimated value at the time of agreement came to Rs.5,24,40,000/- payable quarterly in advance. In case of delay the respondent also agreed to pay an interest @ 18% per annum.

2. On account of alleged default in payment by the respondent, petitioner filed B.P. No.392/2016 for recovery of Rs.8.33 crores approximately under the agreements of 2013 and 2015. That petition filed on 31.05.2016 is ready for hearing and pending in this Tribunal.

3. The respondent wanted to have further agreement beyond 24.03.2017 but the difficulty in the way of renewal was demand for payment of past dues. The respondent filed B.P. No.76/2017 on 21.03.2017 seeking a direction against the

petitioner herein to renew the existing agreement on RIO basis and a permanent injunction against the disconnection of its TV channel. In this second petition, this Tribunal passed an interim order on 21.04.2017 directing the petitioner to continue to carry the channel of the respondent in its network and directing the respondent herein to continue to pay as per agreement dated 05.08.2015 although it had come to an end on 24.03.2017. Additionally, the respondent herein was required to pay Rs.2 crores upfront by 05.05.2017 without prejudice to the rights of either party. It was also directed to submit a schedule of Payment Plan for the balance admitted amount within 10 days. As per interim arrangement the respondent herein was required to adhere to payment of monthly subscription fee which came to Rs.19,16,667/- plus taxes in terms of the previous agreement dated 21.08.2015.

4. Because of delay by respondent herein in the payment of Rs.2 crores and also because of failure to pay the monthly dues of Rs.19,16,667/- as required by order dated 21.04.2017, the petitioner alleged disobedience and sought action against respondent by filing MA No.174/2017 in the second petition preferred by the respondent. The Tribunal vide order dated 16.08.2017 found the broadcaster in contempt and imposed a penalty of Rs.1 lakh. The Tribunal directed the broadcaster to show complete compliance otherwise further action would be taken. By filing writ petition and also taking the matter to the Supreme Court, the

respondent broadcaster could get some more time to comply with the order of this Tribunal dated 16.08.2017. However, while enjoying the benefit of its channel placement, the respondent continued to default. In view of such a situation the petitioner herein filed MA No.209/2019 in the second petition on 05.08.2019. It sought further direction for full payments for carriage as per the interim orders or else it sought dismissal of the second petition on account of the broadcaster not being interested in making payments even as per the interim orders.

5. This Tribunal granted opportunity but no reply was filed to MA No.209/2019 which was taken for consideration along with B.P. No.76/2017. By order dated 14.10.2019, the main petition of the respondent broadcaster was dismissed after noticing that towards the past dues, the respondent had paid only a sum of Rs.1.5 crores and that too after a delay of nearly eight months. It was further noted that according to the petitioner herein, a sum of Rs.3,99,81,667/- had become due and payable by the broadcaster for the period 25.03.2017 to 24.07.2019 for which a Calculation Chart was also annexed. It was left open for the respondent/applicant to seek appropriate orders for restitution of its right to receive payment on account of interim arrangement made by this Tribunal. In view of such observation in the order dated 14.10.2019, the present petition was

filed on 27.11.2019 to claim by way of restitution, an amount of Rs.4,52,66,667/- along with interest.

6. There is no reply to contest the claim of restitution.

7. In the facts of the case the prayer for restitution has to be allowed because the petitioner was made to continue with the placement of respondent's channel under interim orders of this Tribunal for the entire period from 25.03.2017 till dismissal of the second petition on 14.10.2019.

8. A Chart of calculation is available as Annexure P-9 which accounts for also the amount received during the relevant period. As noted earlier the amount till 24.07.2019 was approximately Rs.3.99 crores and for the entire period till 14.10.2019, it is shown to have become Rs.4,52,66,667/-. The prayer in the petition is to pass a decree for that amount along with interest @18% per annum so as to offset the loss caused to the petitioner due to the interim orders. So far as the principal amount claimed as restitution i.e. Rs.4,52,66,667/- is concerned the same is required to be paid by the respondent to the petitioner in view of the interim order of this Tribunal under which the respondent derived benefits. Hence, a decree for the aforesaid principal amount is granted in favour of the petitioner.

petitioner has claimed interest @18% per annum, following orders and judgments in several other similar cases, interest is allowed on the aforesaid amount from December, 2019 i.e. after filing of the present petition, @9% per annum till the date of realization. The petitioner is also found entitled to costs which are quantified at Rs.1 lakh payable along with the principal amount decreed above.

9. The petition is allowed to the aforesaid extent. In case the respondent does not pay the decretal amount within six weeks, the petitioner would be entitled to realization of the same through an appropriate execution application. The office shall prepare a decree in terms of this order at an early date, preferably within four weeks.

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