

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

Dated ^{1st} October, 2020

Broadcasting Petition No.602 of 2016

Siti Network Ltd.(earlier known as Siti Cable Network Ltd.)Petitioner

Versus

Acme Digicom Pvt. Ltd. & Anr.Respondents

BEFORE:

HON'BLE MR. JUSTICE SHIVA KIRTI SINGH, CHAIRPERSON

Petitioner : Ms. Ritwika Nanda, Ms. Apoorva Vijn,
Mr. Abhishek Bose, Advocates

Respondents : None

ORDER

By S.K. Singh, Chairperson – Learned counsel for the petitioner has been heard in detail. Nobody has appeared on behalf of respondents since long, hence, as per orders passed for *ex parte* hearing, the matter is being decided *ex parte*.

2. The petitioner has prayed for a decree for Rs.46,26,415/- and also for interest at the rate of 18% from the date of default till realization of the due amount. For the records, it is noted that respondent No.1, in spite of service of notice, chose not to appear at any stage or to file any reply. Respondent No.2 filed a reply to which a rejoinder was filed in April, 2017 but thereafter *ex parte* order was passed *qua* respondent No.2 as well because of continued non-appearance. No evidence has been filed on behalf of respondents. However, petitioner has filed evidence affidavit in support of its pleadings.

3. It is petitioner's case supported by an Email of respondent No.2 dated 23.07.2013 that respondents Nos.1 and 2 had entered into a Memorandum of Understanding/Agreement on 02.04.2013 under which respondent No.1 was made the authorized distributor/agent of respondent No.2 and on that basis petitioner accepted respondent No.1 as a representative of the broadcaster, respondent No.2 and agreed to carry the channels of respondent No.2 as per agreement between the petitioner and respondent No.1 acting on behalf of respondent No.2. An Email

dated 26.07.2013 is available on record as part of **Annexure P-3** whereby respondent No.1 confirmed that the petitioner shall be paid a sum of Rs.55 lakhs as carriage fee for carrying the channels of respondent No.2 for the specified territory for the period 13.08.2013 to 14.07.2014. It is petitioner's case that on the basis of understanding indicated above the petitioner dealt with its obligations and carried the channels of the respondents for the agreed areas. It regularly raised invoices which were received and accepted by respondent No.1 without any protest but no payments were made. Copies of the invoices have been brought on record to show that for the period beginning from 29.08.2012 till 28.08.2014, altogether 8 invoices were issued for an amount of Rs.50,56,200/-.

4. The statement of accounts in respect of respondent No.1 for the period 01.04.2011 to 30.08.2016 has been brought on record to show that there was some payment during the relevant period since August, 2013 and on adjustment of the same, the outstanding against the 8 invoices issued between 04.09.2013 to 29.05.2014 stood at Rs.46,26,415/- for which the petitioner has sought relief in this petition.

5. On behalf of respondent No.1 there is neither any pleadings nor any evidence to deny the case of the petitioner and hence, it is clear that respondent No.1 acted as agent and representative of respondent No.2, the broadcaster, whose channels were carried by the petitioner, an MSO, as per understanding between the

parties. So far as respondent No.2, the broadcaster, is concerned, the defence as per reply is simple denial of any agreement/understanding with the petitioner and that liability, if any, is that of respondent No.1 alone. However, respondent No.2 had sent an Email on 23.07.2013 which is at pages 14-15 of the petition to convey to the petitioner that respondent No.2 had authorized respondent No.1 represented by Sh.Raj Kumar Mishra for distribution of its channels as per an agreement of April, 2013. Hence, the defence of respondent No.2 stands falsified by the above Email which has not been disputed by any cogent evidence. In such circumstances, respondent No.1 must be accepted as duly authorized representative of respondent No.2 to enter into agreement with the petitioner and respondent No.2 is, under law, bound by the terms of such agreement. It is not the case of respondent No.2 even in pleadings that the authority granted to respondent No.1 had been revoked or rescinded prior to agreement with the petitioner. Further, there is no evidence to that effect.

6. On behalf of petitioner, learned counsel has placed reliance upon several judgments including that of Hon'ble Supreme Court in **Vasantkumar Radhakisan Vora Vs. The Board of Trustees of the Port of Bombay; (1991) 1 SCC 761** and in **Dilawari Exporters Vs. Alitalia Cargo & Ors.; (2010) 5 SCC 754** that as a principal, respondent No.2 held out to a third party that respondent No.1 is

authorized to act on its behalf and hence respondent No.2 is in law *estopped* from resiling from its obligation *qua* the petitioner in this case.

7. Having considered the pleadings, the evidence and the relevant case laws, this Tribunal has no difficulty in holding that respondent No.2 had duly appointed respondent No.1 as its agent and is liable for the obligations arising from the agreement made between the petitioner and the agent representing respondent No.2.

8. In view of findings recorded above, the claim of the petitioner against respondents for an amount of Rs.46,26,415/- is allowed being the outstanding channel placement charges/carriage fee. A decree for such amount will be recoverable from the respondents in case the amount is not paid within six weeks from today. So far as claim for interest is concerned, following several judgments and orders of this Tribunal in similar circumstances, interest is allowed but only at the rate of 9% per annum on the above mentioned amount from October, 2016, i.e. after filing of the petition till the date of payment by the respondents. Since, the respondents have abandoned the contest and the decree is *ex parte*, there shall be no order as to costs.

9. In case the principal amount and the interest are not paid by the respondents within six weeks the petitioner shall be entitled to recover the entire decretal

amount including interest by filing an execution application in accordance with law. The Registry is directed to prepare a decree in terms of this judgment and order at an early date preferably within four weeks.

10. The petition is allowed to the aforesaid extent but without costs.

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

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