

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL

NEW DELHI

Dated 22nd September 2022

Broadcasting Petition No. 793 of 2020

Den Networks Ltd. (Maharashtra)

...Petitioner

Vs.

Shiva Media Network & Production Solutions LLP

...Respondent

BEFORE:

HON'BLE MR. JUSTICE RAM KRISHNA GAUTAM, MEMBER

For Petitioner : Mr. Vibhav Srivastava, Advocate

For Respondent : Mr. Ankit Jain, Advocate
Ms. Ritwick Shukla, Advocate

JUDGMENT

1. This Broadcasting Petition was filed by Den Networks Ltd., against Shiva Media Network & Production Solutions LLP, under Section 14 read with 14A of the Telecom Regulatory Authority of India Act, 1997 ("TRAI Act"), with a prayer for a decree of Rs. 10,79,235/- (Rupees Ten Lacs Seventy Nine Thousands Two Hundred and Thirty Five only) as on

18.9.2018,towards placement charges, with interest @ 18% p.a, from the date of invoice till realisation, or at such rate as the Tribunal may deem fit, with cost for this petition.

2. In brief, the contention of petitioner is that Shiva Media Networks & Production Solutions LLP, a broadcaster, had entered into a contract of placement of their channels with the petitioner on 1.5.2018 for a period of 10.11.2017 till 9.11.2018, wherein Den Networks, carrying on business of distribution/redistribution/transmission of TV signals of various distributors through cable Networks in various cities /towns/villages situated all across India, was to distribute respondent-broadcaster's channels, as defined under clause (c), for a period of 10.11.2017 to 9.11.2018, unless terminated earlier, in accordance with the provisions of agreement. If parties wish to renew agreement on the expiry of term of this agreement, they shall enter into discussions atleast 60 days prior to expiry of the term with a view to enter into a new agreement on mutually agreed terms with effect from the expiry of this agreement.
3. Rights and obligations were enumerated in this agreement of placement of channels. Interest agreed was @ 1.5% per month during period of such delay in payment of dues to be paid within seven days' notice from

the date of receipt of invoice. The agreed placement fees was Rs. 22 lakhs exclusive of all applicable taxes / GST, which was to be paid to Den in equal monthly instalments in advance basis.

4. Petitioner, carrying on as 'Multi System Operator' (hereinafter referred to as MSO) business made placement of broadcaster's channel 'HNN 24*7' as per TRAI Regulations since 10.11.2017 till 18.9.2018. But as Rs. 10,79,235/- was outstanding dues, not paid by the respondent, compelling petitioner to dis-continue respondent's channel. Hence, a notice, dated 18.12.2020, as a demand notice, for the outstanding channel placement charges was issued to the respondent and even after the requesting the same, no heed was paid by the respondent. Hence, this petition, with above prayers, was filed.
5. Prior to disconnection on 18.9.2018, which came into effect on 19.9.2018, a statutory notice was issued to respondent. Which was a condition precedent, before termination of and was an obligation. This notice was served over the respondent and the notice has been annexed with the petition.
6. Written submission in brief is with a counter claim on behalf of respondent and it was stated that respondent is a limited liability partnership firm incorporated and registered under the laws of India and

is inter alia engaged in the business of publishing, printing and reproduction of recorded media. As a part of its business operations, it broadcasts and runs a news channel viz 'HNN 24*7' which is a leading regional Hindi news channel in the State of Uttarakhand and U.P. and has a high-viewership rating. In the year 2016, petitioner being in business of distribution/redistribution/transmission of Tv signals of various distributors through cable networks in various cities/towns/villages situated all across India entered into a contract with the respondent by way of offering respondent's news channel on its network and it was conceded. The channel placement agreement dated 5.11.2016 was entered with the petitioner. It was for a period of 12 months with stipulation of payment of annual placement fees @ 24 lakhs (Rupees Twenty Four lakhs only) plus applicable taxes, payable in four equal quarterly instalments, by respondent. Clause 7 of this agreement provides that petitioner shall raise quarterly invoices, in advance, upon the respondent and upon receipt of same, the respondent will clear it within stipulated period. This agreement dated 5.11.2016 was Annexure-2 of written statement.

7. Clause 10(i) of the agreement further provides that in the event of default by respondent in payment of placement fees, the petitioner was

to issue a notice to the respondent informing such default and calling upon respondent to pay outstanding placement fees together with interest @ 1.5 per month for the period of default within such time as stipulated in the notice.

8. The said notice also provided that in case of respondent's failure to make the payment of outstanding placement fees within a stipulated notice period, petitioner was entitled to termination of agreement. This channel placement agreement was fully obeyed by both sides and there is no dispute between the parties in regard to such agreement.
9. This further continued by way of further agreement entered into for a period of 12 months i.e. November 10, 2017 till November 9, 2018 on the same terms and conditions subject to reduced amount of channel placement fees of Rs. 22 lakhs in place of Rs. 24 lakhs, as was earlier therein. Although taxes were payable as per previous one. Accordingly, invoices were to be raised and obeyed. This subsequent agreement of dated 1.5.2018 is Annexure R-3 with the written statement. Accordingly, quarterly invoice for Rs. 5,50,000/- plus applicable GST @ 18% on the respondent towards placement fees was to be raised. It amounted to Rs. 6.49,000/- only. But the first invoice raised for first quarter was for Rs.

7,08,000/- in place of Rs. 6,49,000/- i.e. it was @ Rs. 24 lakhs per annum as against Rs. 22 lakhs agreed in between.

10. It itself was in defiance of agreement in between. The first invoice of first quarter is annexed as Annexure R-4. This enhanced raising of invoice was instantly brought to the notice of petitioner with a request for raising a fresh invoice as per renewed agreement. This protest was acknowledged by the petitioner.
11. A request was made for making the payment as per raised invoice with an assurance of adjusting excess raised amount. The payment of Rs. 7,08,000/- was made under above assurance of adjustment. But again same invoice for Rs. 7,08,000/- commencing from February till May 2018 was raised. Whereas it was to be of Rs. 6,49,000/- as per @ Rs. 22 lakhs per annum. The amendment was never made by the petitioner. This subsequent invoice is annexed as Annexure R-5. Again a protest was raised with a prayer that after due acknowledgment, additional amount of Rs. 59,000/- invoice was not to be raised. The mistake was admitted but a further assurance was made for adjustment in future.
12. Abruptly contract was terminated in June 2018 without any prior notice to the respondent and thereby placement of channel was stopped by the petitioner. By this breach of contract admitted by the petitioner by

way of abruptly terminating the agreement in June 2018, Respondent's channel in the State of Uttarakhand has suffered immensely, resulting a significant impact on respondent's channel revenue. Actual loss of Rs. 33,50,000/- occurred to the respondent. Hence, petitioner is liable to make compensation to the tune of Rs. 33,50,000/- to respondent for the loss incurred by the respondent, for which this counter claim is being raised. In addition to above loss, interest has also been claimed.

13. Rejoinder cum reply to the counter claim has been filed by the petitioner with same reiteration of petition and adherence that termination of agreement was made on 18.9.2018, that too, after issuing a notice for default made by the respondent.
14. On the basis of pleadings made by both the sides, following issues were framed, vide order dated 11.5.2022 :

"1. Whether the Petitioner is entitled to a decree for recovery of an amount claimed in the instant petition towards the placement charges or the Petitioner himself has breached the terms of the Channel Placement Agreement dated 01.05.2018 executed between the parties?

2. Whether the Petitioner is entitled to recover any amount from the Respondent along with interest @ 18% p.a. as claimed or the Petitioner himself is liable to pay an amount of Rs. 33,50,000/- along

with interest @18% p.a. from June, 2018, till the actual date of payment?

3. To, what other relief/ reliefs the parties are entitled to?

15. In evidence, affidavit of Mr. Mayank Jain on behalf of petitioner company as PW-1 has been filed and respondent side has filed an affidavit in the form of evidence of Mr. Amit Kumar Sharma on record.
16. Heard learned counsel for both sides and gone through the material placed on record.
17. The undisputed fact is that respondent is Limited Liability Partnership firm engaged in the business of broadcasting and it runs a news channel 'HNN 24*7'. An agreement, Annexure R-2, was entered in between petitioner and respondent for placement fees of Rs. 24 lakhs p.a. for channel placement broadcasted by the respondent valid for an year and it was un-disputed. This agreement was subsequently renewed by way of agreement dated 1.5.2018 for a further period of one year i.e. w.e.f. 10.11.2017 to 9.11.2018. By way of agreement annexed as Annexure R-3 the change occurred in only placement fees which was reduced to Rs. 22 lakhs p.a. Rest of the terms and conditions were as previous one. The quarterly invoices were raised and it was paid for two quarters and it was

admitted by the petitioner that this raising of invoices were in excess and were in accordance with previous agreements i.e. only placement fees Rs. 24 lakhs per annum whereas it ought to have been for placement fees of Rs. 22 lakhs only for that annum.

18. Subsequently, protest was raised and payments were made. The placement was terminated on 18.9.2018. The only dispute was as to whether notice was issued for default of payment or not and whether statement of account of disputed amount of money by respondent reveals payment till termination of agreement.
19. **Issue No. 1** - The statement of account annexed with the affidavit with no counter statement of account of respondent reveals that the invoice raised were for excess amount, but upon the protest it was agreed to be adjusted and in the statement of account Rs. 2,76,000/- has been debited. Meaning thereby, the payment of same was shown to be adjusted by the petitioner. Hence, the very object raised by the respondent was clarified/ adjusted in the statement of account. But the payment of subsequent dues was not made. The liability in the statement of account is for the amount claimed by the petitioner in this petition of above dispute of disconnect / termination of agreement.

20. The agreed rate of interest was @ 1.5% per month i.e. 18% p.a and it is undisputed and in this business transactions both sides agreed upon such rate of interest. The very contention of respondent that it was the failure of petitioner in following the agreement, could not be substantiated by him because once the notice of demand cum termination of agreement was served to the respondent they ought to be complied with, within stipulated time, either by way of making the payment of dues or by complying the terms of agreement. But no such documentary evidence i.e. statement of account of respondent has been filed to show that payment was made by the respondent. Whereas statement of account, annexed with the affidavit of petitioner, has been filed mentioning outstanding liability of respondent. Hence, the petitioner is entitled to recovery of dues of claimed amount of placement charges in view of subsequent agreement dated 1.5.2018 executed between the parties alongwith interest of 1.5% per month i.e. 18% per annum. This issue is decided affirmatively.

21. **Issue No. 2** – Mere pleadings of loss of Rs. 33,50,000/- by way of abrupt termination of agreement and nothing as evidence or document for placing the damages suffered by respondent has been filed on record. More so, it is proved in issue no. 1 the excess raised amount was

adjusted subsequently by the petitioner. But the dues, standing in statement of account, were not cleared by the respondent and as a result of which in default of respondent, agreement was terminated. Hence, the termination of agreement was owing to default and failure of respondent entitling no claim of damages, in favour of the respondent. Accordingly, this issue is being decided negatively.

22. **Issue No. 3** – The agreement was validly terminated by the petitioner and as per statement of account of petitioner the outstanding dues, on date of filing of this petition, was Rs. 10,79,235/- in favour of petitioner with agreed rate of interest @ 1.5 per month. Meaning thereby 18% per annum. Rate of interest has not been opposed by respondent too and hence, the petitioner is entitled for a decree of Rs. 10,79,235/- plus interest @ 1.5 per month meaning thereby 18% per annum from the date of petition to actual date of payment by respondent to the petitioner.

23. As the default in raising the high invoices were by petitioner which has caused confusion in making payment of dues. Hence, in the interest of justice, there is no reason of awarding cost. This issue is decided accordingly.

Petition is being allowed. Respondent is being directed to make the payment of Rs. 10,79,235/- plus interest @ 18 p.a, within two months from the date of petition to the actual date of payment to the petitioner, in this Tribunal.

Decree / formal order be got prepared accordingly.

Counter claim is being dismissed.

/NC/

.....
(Justice Ram Krishna Gautam)
Member

