TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL

NEW DELHI

MAY 09, 2012

E.A. No. 4 of 2012 & M.A. No. 118 of 2012
in

Petition No. 397(C) of 2010

Eswara Communication (S Channel) ...Petitioner

Vs.

Zee Entertainment Enterprises Ltd. ...Respondent

BEFORE:

HON'BLE MR. JUSTICE S.B. SINHA, CHAIRPERSON
HON'BLE MR.P.K. RASTOGI, MEMBER

For Petitioner : Mr. Navin Chawla, Advocate
Ms. Nidhi Parashar, Advocate

For Respondent : Mr. Maninder Singh, Senior Advocate
Mrs. Pratibha M. Singh, Advocate
Mr. Tejveer Singh Bhatia, Advocate
Mr. Vadivelu Deendalayan, Advocate
Mr. Upender Thakur, Advocate

O R D E R

Interpretation of the Judgement and Order dated 14.02.2012 passed in Petition No. 397 (C) of 2010 is the subject matter of these two applications.

2. The Petitioner has filed the original petition for a direction upon the Respondent herein to supply signals of its channel, namely, Zee Telugu to its network.

During the pendency of the said petition, however, negotiations were held between the parties hereto.

Learned counsel for the Petitioner by an e-mail dated 15.12.2010 made some offers to the Responder herein, which has been noticed by this Tribunal in paragraph 3 of the order under review. The said offer was accepted by the Respondent herein.

3. The Petitioner contended that such an offer had been made by learned counsel by mistake.

Keeping in view the fact that no settlement as such ocould be arrived at by the parties and furthermore as learned counsel, who made that offer was also changed, the parties were permitted to adduce oral evidence by an order dated 18.04.2011.

4. Despite the same, however, talks for settlement were carried out, and the parties met on 21.9.2011.

Minutes of meeting was allegedly drawn. The Petitioner, however, did not put his signature on the said minutes.

5. By reason of the order dated 14.02.2012, the following directions were issued:-

> *"15. Mr. Chawla contended that if the subscriber base is determined at about 4600 keeping in view the rate of the channel of the Respondent being Rs. 13/- per subscriber, it would be obtaining almost the same subscription fees which the Petitioner had been paying to VISSA TV or MAA TV.*
>
> *16. We, however, are of the opinion that keeping in view the conduct of the Petitioner vis-à-vis the Respondent, the interest of justice would be sub-served if the subscriber base is provisionally determined so far as the channel of the Respondent are concerned at 5000."*

6. *Inter-alia* on the premise that the said order has not been implemented by the Respondent, the Execution Application was filed by the Petitioner praying for as under:-

> *"(a) Detain the Authorized Representative of the Respondent, d. Rajan, in civil prison for willfully disobeying the Order dated 14.2.2012 of this Tribunal in Petition No. 397 (C) of 2010.*
>
> *(b) Attach all equipment/property of the Rspndent including the Headend, Decoders, Wires/Cables laid down etc. till compliance of the directions passed by this Hon'ble Tribunal in its order dated 14.2.2012 passed in Petition No. 397 (C) of 2010.*

(c) *Direct the appointment of a local commissioner to act on behalf of the Respondent and enter into the Provisional Agreement as directed as per order dated 14.2.2012 passed in Petition No. 397 (C) of 2010 and to oversee the supply of decoders and signals of Zee Telugu TV channel to the Petitioner as directed by this Hon'ble Tribunal."*

7. Respondent/Judgement Debtor, however, contended before this Tribunal on 12th March, 2012 that an application for clarification has been filed. Both the applications were taken up for hearing together.

8. Mr. Maninder Singh, learned senior counsel appearing on behalf of the Respondent-Applicant made three-fold submissions before us:-

(i) The Judgement under review if read as a whole and together with the other materials placed on record, there cannot be any doubt or dispute that a mistake was committed in paragraph 16 thereof in as much as in stead and in place of the word 'channels', the term 'channel' has been mentioned.

(ii) In any event keeping in view the provisions contained in paragraph 3 (C) of the Telecommunication (Broadcasting & Cable) Services (Second) (Tariff) (Eighth Amendment) order 2007 dated 04.10.2007 having been found by this

Tribunal to be illegal, by its order dated 15.01.2009 passed in Appeal No. 9 (C) to 13 (C) of 2007, and Appeal No. 15 (C) of 2007, the Respondent could not have been directed to supply the signals of one of its channels being Zee Telugu on *a-la- carte* basis.

(iii) Pursuant to or in furtherance of the order of the Supreme Court of India passed in Civil Appeal No. 829 to 833 of 2009 whereby and whereunder an interim order of status quo was passed in the appeal preferred by the TRAI and pursuant to or in furtherance thereof, the TRAI having proposed a new Tariff Order which was filed before the Supreme Court of India by way of a report and it having sought permision to notify the Telecommunication (Broadcasting & Cable) Services (Fifth) (Non-addressable System) Tariff Order 2010, opining that supply of a channel on *a-la-carte* basis is neither desirable nor technically feasible, it must be held that the direction issued by this Tribunal cannot be implemented, the judgment dated 14.02.2012 should be suitably modified.

(iv) This Tribunal in any event having not considered the implication of its judgement dated 15.01.2010 in the said Appeal No. 9 (C) to 13 (C) of 2007, it is fit case where the order dated 14.02.2012 should be reviewed.

9. Mr. Navin Chawla, learned counsel apearing on behalf of the Petitioner (Decree-holder), on the other hand, would contend that:-

(i) A Review Application will not be maintainable on a new plea.

(ii) Respondent having all along been aware of the Regulatory regime, it could point out that the Petitioner has no such right.

(iii) The Tariff Order of 2007 having not provided for any prohibition in law to provide a channel on a-la-carte basis, the order under review is sustainable.

(iv) Even otherwise the Tariff Order was found to be not applicable not with regard to the Tariff Order which is in two parts; the first part dealing with supply of channels on a-la-carte basis and the second part related to fixing of a tariff for such channel, and only the second part having been found to be unworkable on the premise that the same was for the benefit of the MSO and not for the customers, the same cannot be said to have any application whatsoever in the facts and circumstances of the present case.

10. An interconnect agreement between a Broadcaster and a Distributor of a TV channel is governed by the provisions of the

Telecommunication (Broadcasting & Cable) Services Interconnection Regulations 2004 as amended from time to time.

11. Clause 3.2 of the said Regultions reads as under:-

> *"3.2 Every broadcaster shall provide on request signals of its TV channels on non-discriminatory terms to all distributors of TV channels, which may include, but be not limited to a cable operator, direct to home operator, multi system operator, head ends in the sky operator; [HITS operators and multi system operators shall also, on request, re-transmit signals received from a broadcaster, on a non-discriminatory basis to cable operators.]*
>
> *Provided that this provision shall not apply in the case of a distributor of TV channels having defaulted in payment.*
>
> *Provided further that any imposition of terms which are unreasonable shall be deemed to constitute a denial of request.*
>
> *[Provided also that the provisions of this sub-regulation shall not apply in the case of a distributor of TV channels, who seeks signals of a particular TV channel from a broadcaster, while at the same time demanding carriage fee for carrying that channel on its distribution platform.]"*

12. Clause 3.2 applies both to digital supply as also non-digital supply of signals of TV channels. The said Regulations, therefore,

may be hedged with conditions laid down in other cognate Regulations/Statutes.

13. Petitioner in this case prayed for supply of the signals of Zee Telugu channel only. It is, however, true that an offer was made by the counsel for the Petitioner, which however having not fructified, no reliance thereupon can be placed.

It however, appears in our order dated 14.02.2012, the submissions of Mr. Chawla was recorded in the following terms:-

> *"Mr. Navin Chawla, learned counsel appearing on behalf of the Petitioner, however, submitted that his client did not agree to subscribe all the Bouquets but only of Bouquets I, II and IV of the Respondent on a subscriber base of 4500"*

14. Our attention has furthermore been drawn to the cross-examination of Mr. Venkat Saradhi , the witness of the Respondent which is in the following terms:-

> *"Q:- Are you aware that the petition was filed only to seek Zee Telugu channel?*
> *Ans:- Yes. But in every meeting we talked about the Bouquet of the channels.*
> *Q:- You mean to say Bouquet 1,2 & 4?*
> *Ans:- No. All Bouquets."*

15. Our attention, moreover, has also been drawn to an application filed by the Respondent itself being M.A. No. 155 of 2011, wherein the following prayer was made:-

> *"(a) This Hon'ble Tribunal may be pleased to dispose of the present Petitioner in terms of the offer made by the Petitioner on 20.9.2011 wherein the Petitioner has agreed for a connectivity of 4500 subscribers for Zee Telugu channel and has further agreed to take other bouquets for connectivity of 800 subscribers subject to the Petitioner restricting itself to the LCOs declared by it and not expanding its area of operations and number of LCOs without the prior writeent permission of respondent."*

16. A Judgement as is well known is not to be read as a Statute. It has to be read in its entirity. Judgement, however, must also be read in the context of the pleadings of the parties and/or materials brought on record.

17. Our attention on the one hand has been drawn to paragraph 6 of the order under review where the dispute between the parties was taken to be considered in the background of the case; on the other hand the sole question, before this Tribunal was found to be as to what should be the subscriber base of the Petitioner.

18. Our attention has also been drawn to paragraph 14 of the Order under review, wherein negotiaitons were held to be necessary to ascertain the subscriber base of the MSOs having regard to the Regulatory regime.

19. Whether the regulatory regime would include the 2000 Tariff Order is one of the quesitons.

It is true that some typographical errors have crept in in the Order under review but the same if read as a whole, in our considered opinion, is clear and unambiguous.

This Tribunal while considering the prayer of the Petitioner, did not consider the subsequent events.

It granted a relief. In absence of any explicit statement, the judgement must be held to be confined to the prayers made in the petition.

20. In paragraph 6 of the Order under review the word 'background' has been used only for the purpose of noting that the parties have adduced their respective evidence(s) in the matter having regard thereto.

This Tribunal categorically noticed that the core dispute between the parties was the subscriber base, namely, as to whether it should be 1100 or more.

The objection of the Respondent as noticed in paragraph 8 of the order under review reveals that apart from the requirements or the lack of it as also the question as to whether the Petitioner has complied with these regulatory requirements, no other question has been raised.

21. The parties having not arrived at any settlement and/or the purported offer of the counsel for the Petitioner having not been given effect to, the question of passing the Judgement/order relying on or on the basis thereof did not arise.

In paragraph 10 of the Order under review, only Zee Telugu channel has been referred to. We have noticed heretobefore that even in its application, the Respondent has clearly prayed for a direction upon the Petiitoner to enter into an agreement inter alia in respect of Zee Telugu channel.

22. Petitioner furthermore in its letter dated 20.9.2011 made an offer of 4500 connectivity for Zee Telugu channel and 800 connectivity for other bouquet of channels.

Had the intention of the Petitioner been to enter into an agreement with the Respondent for bouquets 1,2 & 4, it could not have in all probability agreed for a subscriber base of 4500 for all the bouquets, having regard to the expressions used in the said letter dated 20.9.2011.

23. Moreover, the Order under review has been passed having regard to the fact that this Tribunal in two of the petitions which the Petitioner filed against the Broadcasters issued a direction that the later supply signals of their respective channels on a subscriber base of 5000 so far as VISSA channel is concerned and 7500 sofar as MAA channel is concerned, which clearly go to show that consideration which weighed with it was supply of signals of Zee Telugu channel only.

24. Submission of Mr. Chawla as has been noticed heretobefore, on the aforementioned premise, was that the subscriber base should be determined at 4600.

This Tribunal also noticed the rates of MAA TV, and VISSA TV being Rs.9/- and Rs.11/- respectively and only in that context, the subscriber base was fixed at 5000 noticing that the rate of ZEE Telugu is Rs.13/- per subscriber per month.

25. On the conspectus of the above factual matrix, we are of the opinion, that in paragraph 16 of the Judgement, the word 'are' has been mentioned inadvertently, in stead and in place of the word 'is'.

26. Mr. Maninder Singh has relied upon a large number of decisions to contend that an additional point by itself should not be refused to be considered for the purpose of exercising the review jurisdiction of this Tribunal.

27. We shall consider the said question a little later.

If the Judgement dated 14.02.2012 does not require any clarification, should it be reviewed is the question?

28. It is neither in doubt nor in dispute that the Respondent did not raise the contention with regard to the applicability or otherwise of the 2007 Tariff Order. Moreover, our attention has not been drawn to the Judgement of this Tribunal dated 15.01.2010.

29. On a query made by us, Ms. Singh would very fairly state that supply of signals of a channel on a-la-carte basis to a MSO is technologically possible.

Zee Telugu channel is a well known channel. It has its own rate. It was not contended that supply of signals of Zee Telugu Channel on a 'stand alone' basis is prohibited by reason of 2007 Tariff Order or otherwise.

30. We have been taken through the judgement passed by this Tribunal in Appeal No. 9 (C) to 13 (C) of 2007.

By reason of the said judgment; what has been struck down was paragraph 3 C of the Tariff Order.

It reads as under:-

> ***"3C. Manner of offering channels by broadcasters.***
>
> *(1) Every broadcaster shall offer or cause to offer on non-discriminatory basis all its channels on a-la-carte basis to the multi system operator or the cable operator, as the case may be, and specify an a-la-carte rate, subject to provisions of sub-clause (2) of this clause and clauses 3 and 3B, for each such pay channel offered by him.*
>
> *(2) In case a broadcaster in addition to offering all its channels on a-la-carte basis, provides, without prejudice to the provisions of sub-clause (1), to a multi system*

operator or to a cable operator, pay channels as part of a bouquet consisting only of pay channels or both pay and free to air channels, the rate charged for such bouquet and a-la-carte rates for such pay channels forming part of that bouquet shall be subject to the following conditions, namely:-

(a) the sum of the a-la-carte rates of the pay channels forming part of such a bouquet shall in no case exceed one and half times of the rate of that bouquet of which such pay channels are a part; and

(b) the a-la-carte rates of each pay channel, forming part of such a bouquet, shall in no case exceed three times the average rate of a pay channel of that bouquet of which such pay channel is a part and the average rate of a pay channel of the bouquet be calculated in the following manner, namely:-

If the bouquet rate is Rs. 'X' per month per subscriber and the number of pay channels is 'Y' in a bouquet, then the average pay channel rate of the bouquet shall be Rs. 'X' divided by number of pay channels 'Y':

Provided that the composition of a bouquet existing as on the 1st day of December, 2007, in so far as pay channels are concerned in that bouquet, shall not be changed:

Provided further that —

(i) in cases where the broadcaster ceases to make available a pay channel existing as on the 1st day of December, 2007 for broadcasting or for distribution, the rate of the bouquet containing such a pay channel existing on that date shall be reduced in the same proportion which the a la-carte rate of the said pay

channel bears to the aggregate sum of the a-la-carte rates of all pay channels comprised in the said bouquet;
(ii) in cases where a bouquet existing on the 1st day of December, 2007 consists of both free to air and pay channels, and if any free to air channel is converted into pay channel after that date, then the said existing bouquet (excluding the said free to air channel) shall be offered at or below the rates prevailing as on that date for such bouquet;

(iii) in cases where a bouquet existing on the 1st day of December, 2007 consists of both free to air and pay channels, and if any pay channel is converted into free to air channel after that date, then the said existing bouquet shall be offered, with or without such free to air channel so converted after reducing the rate prevailing as on that date for such bouquet, by an amount not less than the amount which bears the same proportion the a la carte rate of the said pay channel bears to the aggregate sum of the a-la-carte rates of all pay channels comprised in the said bouquet.

(3) A broadcaster may, without prejudice to the provisions contained in sub clause (1) and other provisions of this Tariff Order, offer discounts to multi system operators and cable operators on ala-carte rates of its channels or bouquet rates and such offer of discounts, in no case, shall, directly or indirectly, have effect of contravening the provisions of sub-clause (2) and any other provisions of this Tariff Order."

31. It appears to be a composite provision whereby and whereunder the manner of fixation of price had also been laid down.

It was held therein that the MSO will have an upper hand in choosing the channels and the consumers will not have any choice in terms thereof.

The TRAI intended to make that Tariff Order for the ultimate benefit of the customer. From the report filed before the Supreme Court of India by the TRAI, it will appear that the commercial as also the technological aspects of the matter have been taken into consideration keeping in view the interest of the customers in mind as would appear from Clauses 3.92, 3.93 and 3.94 thereof.

The said clauses are as under :-

> *3.92 The Authority has taken note of the fact that in the context of price controls at the wholesale level where ceiling prices for bouquets as well as channels are derived from current tariff levels, some element of cross-subsidization is inherent in the pricing structure i.e. the a-la-carte price of driver channels in every bouquet would be higher than current levels in a free pricing regime and the connectivity of non-driver channels in every bouquet would be lower than current levels in a free-pricing regime. Dismantling the bouquet system in the circumstances could have a detrimental impact on the broadcasters' business model because driver channels will not be able to effectively monetize their leadership position (as the a-la-carte price is capped) and non-driver channels will experience a*

dramatic fall in reach/ connectivity as they will no longer be carried/ purchased by MSOs.

3.93 *The Authority has also observed that a la carte has not translated into practice even after broadcasters had been mandated to offer their channels on a la carte basis by the 8th Tariff Amendment Order of 04.10.2007. In an environment where wholesale level pricing is determined by market forces, the a la carte price of a channel is likely to be disproportionately higher than the bouquet price. This has also been the experience in international markets. In the non-CAS regime, the gap between a la carte and bouquet pricing is lower, due to applicable price controls and the perverse pricing conditions. However it is observed that broadcasters demand higher connectivity to offset the impact of price control. Until the lack of transparency in the system persists, this practice cannot be controlled and MSOs are thus unlikely to opt for a la carte. In the absence of addressability, mandatory a-la-carte at the wholesale level is therefore not an implementable solution.*

3.94 *Further, the Authority also has noted that in an analogue system, the benefit of a la carte provisioning cannot be passed on to subscribers due to technological constraints. Thus even if MSOs purchase content on a-la-carte basis, the subscriber has limited choice, as the analog service is a bundled service of ~80 FTA and pay channels at the retail level. The full benefits of a la carte can be achieved only if it translates into genuine choice for the individual subscriber.* ***In the analog, non-addressable environment, the Authority is of the view that a***

la carte should not be made mandatory at the wholesale level as technological constraints in any case make it impossible for the benefits of a-la-carte provisioning to be passed on to the subscribers.

32. It is true that the matter is pending for consideration before the Supreme Court of India and an order of status-quo passed by it on 27.3.2012 but prima-facie it does not appear to us that any prohibition with regard to implementation of statutory regulations has been created by reason thereof.

In the aforementioned backdrop, we may notice the decisions relied upon by Mr. Singh.

In Hari Sankar Pal and Anr. Vs. Anath Nath Mitter & ors reported in 1949 Federal Court Page.106, it was stated:-

> *"18. That a decision is erroneous in law is certainly no ground for ordering review. If the Court has decided a point and decided it erroneously, the error could not be one apparent on the face of the record or even analogous to it. When, however, the Court disposes of a case without adverting to or applying its mind to a provision of law which gives it jurisdiction to act in a particular way, that may amount to an error analogous to one apparent on the face of the record sufficient to bring the case within the purview of*

Order 47, Rule 1, Civil P.C. No reference to the provisions of Order 41, Rule 33, Civil P.C, occurs in the judgment of the High Court which was delivered on 12th December 1944. After holding that the landlords were entitled to twenty-five times the yearly rent as their share of the compensation money, the judgment of the High Court goes on to say that the appellants, who had one-third share of the proprietary right vested in them, would be entitled to one-third of the total amount which the lessors would get on that computation. It is said then that the proprietors to the extent of the remaining two-thirds share, as they have preferred no appeal, were not entitled to claim the benefit of this decision."

In BCCI Vs. Netaji Cricket Club 2005 (4) SCC 741, the Supreme Court of India opined that a mistake on the part of the court would justify review of a Judgement as the said jurisdiction should be exercised with a view to prevent miscarriage of justice.

In Bahadur Vs. Bachai & ors reported in 1963 Allahabad page 186, keeping in view the fact that a notification issued under Section 4 of the Land Acquisition Act was found to be a new discovery of an important document, which had a bearing on the subject matter of controversy, the review jurisidcaton was exercised.

In K. Veluswamy Vs. N. Palanisamy (2011) 11 SCC 275, the Apex Court opined that Section 151 of the Code recognises the discretionary power inherent in every court as a necessary corollary for rendering justice in accordance with law, to do what is 'right' and

undo what is 'wrong', that is to do all things necessary to secure the ends of justice and prevent abuse of its process. It may further be noticed that, it was also stated:-

> "***15.*** *The learned counsel for the respondent contended that once arguments are commenced, there could be no reopening of evidence or recalling of any witness. This contention is raised by extending the convention that once arguments are concluded and the case is reserved for judgment, the court will not entertain any interlocutory application for any kind of relief. The need for the court to act in a manner to achieve the ends of justice (subject to the need to comply with the law) does not end when arguments are heard and judgment is reserved. If there is abuse of the process of the court, or if interests of justice require the court to do something or take note of something, the discretion to do those things does not disappear merely because the arguments are heard, either fully or partly. The convention that no application should be entertained once the trial or hearing is concluded and the case is reserved for judgment is a sound rule, but not a straitjacket formula. There can always be exceptions in exceptional or extraordinary circumstances, to meet the ends of justice and to prevent abuse of process of court, subject to the limitation recognised with reference to exercise of power under Section 151 of the Code. Be that as it may. In this case, the applications were made before the conclusion of the arguments."*

33. We are herein not concerned with the question of applicability of Order XVIII Rule 17 of the Code of Civil Procedure. Inherent jurisdiction, it is trite, is exercised in exceptional circumstnces and only when the other provisions of the Code have no application

In Hathway Mysore Cable Network Pvt. Ltd. Vs. Zee Turner Ltd. M. A No. 208 of 2008 in Petition No. 82 (C) of 2007 disposed of 13th April, 2010, this Tribunal held that in certain situations inherent power can be exercised for the purpose of restitution of a benefit to the one party, which was obtained by the other.

In Sanjeev Co-manufacturing company Ltd. Vs. Bharat Co Ltd. (1983) 1 SCC Page147, the Supreme Court of India was dealing with a case involving constitutionality of Coking Coal Mines (Nationalisation) Act, 1972. The said decision, in our opinion, is not applicable.

In P. Nalambar Vs. State represented by Inspector of Police reported in (1999) 6 SCC Page 559, the Supreme Court of India held that on a question of law, even a concession by an officer would not be binding on the Union of India.

We are of the opinion that the said decision hass also no application to the fact of the present case.

34. Reliance has also been placed on a decision in Bharat Sanchar Nigam Ltd. Vs. Telecom Regulatory Authority of India decided on 23.01.2009, wherein the P. Nalamar was followed.

For the self same reasons, the said decision of this Tribunal is also not applicable.

35. Mr. Singh has also placed reliance on a Judgement of the Allahabad High Court in Shivcharan Das Vs. Gulabchand Chhote Lal AIR 1936 Allahabad Page to contend that negotiations were been conducted with a view to arrive at a settlement which was without prejudice to the rights of the parties. The said decision has also been considered by the Orissa High Court in Shri Boribandi Mohanty Vs. Shri Suresh Chand Mohanty & Ors reported in 1992 Orissa page 136.

In our opinion, the said decisions are also of not much assistance to us in these proceedings.

36. Reliance has also been placed on a judgement of this Tribunal in Eureka Cable TV Network Vs. Balrik Cable and Anr, Petiiton No. 29 (C) of 2008 disposed upon 28.5.2010 wheein the question which arose for consideration related to the jurisdiction of this Tribunal. The said decision, in our opinion, has also no application in the facts and circumstances of the case.

37. For the proposition that Order VI Rule 2 of the Code of Civil Procedure postulates that proprieties are to be maintained in the pleadings, reliance has been placed on Hari Shanker Jain Vs. Sonia Gandhi reported in (2001) 8 SCC Page 233.

In our opinion the said decision is not applicable in the instant case as it was held therein that no triable issue had been raised in the Election Petition of the Petitioner therein.

38. We may, on the other hand, notice that in Intermedia Cable Communications Ltd. Vs. Zee Turner Ltd. & Ors, Review Application No. 1 of 2010 disposed of on 15.01.2010, upon taking into consideration the decision in Supreme Court of India in Anibam Tuleshwar Sharma Vs. Aribam Pishak Sharma & Ors reported in (1979) 4 SCC 389 and in Sow Chandra Kante and Another Vs. Sheikh Habib reported in (1975) 4 SCC 674, involving a the case where new plea was sought to be raised on the basis of a new document which was not available/applicable to the applicant despite due deligence, this Tribunal held:-

> *"A review is not an appeal in disguise. A petition for review would be maintainable inter-alia when there is an error apparent on the face of the record. Even any other sufficient reason would mean a reason sufficient on grounds which is at least analogous to those specified in Rule 1 of Order 47 of the Code of Civil Procedure."*

39. Yet again in Sahara Sanchar Ltd. Vs. Hathway Cable & Datacom Ltd., R.A. No. 1 of 2011 disposed upon 13.11.2011, this Tribunal opined as under:-

> *"18. It is not a case where this Tribunal has committed an error apparent on the face of the Record. Nothing has been pointed out in the Review Application as to the nature of the mistake committed by this Tribunal far less any apparent mistake. It cannot be said that in this case a miscarriage of justice has occured.*
>
> *It is also not a case where a subsequent event has taken place or there are other supervening circumstances, necessitating review of the judgment."*

40. Some of the decisions cited by Mr. Singh, as noticed heretobefore, only lay down the proposiiton that the question of law can independently be raised wherefor no pleading may be necessary to be raised.

It is trite that ordinarily no new material or new document can be relied upon to invoke the review jurisdiction of this Tribunal.

A distinction is required to be made between an appellate power and a power to review. This has been so held by this Tribunal in MSO Alliance Industrial Area, Delhi Vs. TRAI Appeal No. 9 (C) of 2006

decided on 15.01.2009, wherein one of the issues which was framed, reads as under:-

> *"4.G. Whether the stipulation that Broadcasters should provide channels on a-la-carte basis to the MSOs/LCOs is wrong?*

The said issue was answered in the following terms:-

> *"6. On the issue of whether the stipulation that Broadcasters should provide channels on a-la-carte basis to the MSOs/LCOs is wrong, we hold that while the idea of making a-la-carte choice of channels available to them is desirable, it must be backed up by adequate safeguards both to the consumer as well as to the broadcaster."*

41. In this case, the subscriber base of the Petitioner on a provisional basis has been determined by this Tribunal. It has not been contended nor it could be, that it is technologically impossible to supply the signals of the channel of the Zee Telugu on a stand alone basis. As indicated heretobefore even a part of negotiation was held for supply of the signal of the said channel on that basis.

42. If the Statute does not prohibit supply of signala of a channel on mutually negotiated terms, the Tariff Order cannot be held to have provided for a prohibition with regard thereto.

Tariff Orders are framed by the TRAI in terms of sub-section 2 of Section 11 of the TRAI Act, 1997. It reads as under:-

> *"(2) Notwithstanding anything contained in the Indian Telegraph Act, 1885, the Authority may, from time to time, by order, notify in the Official Gazette the rates at which the telecommunication services within India and outside India shall be provided under this Act including the rates at which messages shall be transmitted to any country outside India;*
>
> *Provided that the Authority may notify different rates for different persons or class of persons for similar telecommunication services and where different rates are fixed as aforesaid the Authority shall record the reasons therefor."*

43. Oridnarilay, therefore, Tariff Orders do not regulate supply of signals. We, therefore, are of the opinion that there is no merit in the Review Application which is accordingly dismissed.

44. Respondent is hereby directed to implement the Order of this Tribunal within one week from date. The Execution Application filed by the Petitioner is allowed.

45. In the facts and circumstances of the case, however, there shall be no order as to costs.

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(S.B. Sinha)
Chairperson

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(P.K. Rastogi)
Member

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