

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

Dated 10<sup>th</sup> August, 2017

**M.A. No. 186 of 2016**  
**In**  
**Broadcasting Petition No.295 of 2014**  
**(with M.A. Nos.318, 332, 333 of 2014 & M.A Nos. 86, 124 & 185 of 2016)**  
**With**  
**E.A. No. 10 of 2016**

M/s Noida Software Technology Part Ltd. New Delhi ... Petitioner

Vs.

M/s Media Pro Enterprise India Pvt. Ltd. Mumbai & Ors. ... Respondents

**Along with**

**M.A.No.35 of 2016 in**  
**Broadcasting Petition No.526 of 2014**  
**(With M.A. No. 167 and 206 of 2015)**

Noida Software Technology Park Ltd. ...Petitioner

Vs.

Taj Television India Pvt. Ltd. & Anr. ... Respondents

**ALONG WITH**

**Broadcasting Petition No.313 of 2015**

Noida Software Technology Park Ltd ...Petitioner

Vs.

Taj Television India Pvt. Ltd. ... Respondents

**M.A. Nos.36 and 37 of 2016 in  
Broadcasting Petition No.314 of 2015  
 (With M.A. in 110 of 2015)  
 With  
E.A.No.11 of 2016**

M/s Noida Software Technology Park Ltd. ...Petitioner

Vs.

M/s. Star India Pvt. Ltd. & Ors. ... Respondents

**BEFORE:**

**HON'BLE MR. JUSTICE SHIVA KIRTI SINGH, CHAIRPERSON  
 HON'BLE MR. B.B. SRIVASTAVA, MEMBER  
 HON'BLE MR. A.K. BHARGAVA, MEMBER**

For Petitioner	:	Mr. Vivek Chib, Advocate Ms. Ruchira Goel, Advocate Mr. Asif Ahmed, Advocate Ms. Pracheta Kar, Advocate
For Respondent (Media Pro and Taj Television)	:	Mr. U. Thakur, Advocate Mr. Kunal Vats, Advocate
For Respondent (Star)	:	Mr. Gopal Jain, Sr. Advocate Mr. Saurabh Srivastava, Advocate Ms. Shilpa Gupta, Advocate Mr. Ranjeet Singh, Advocate Ms. Arpika Singhal, Advocate

**ORDER**

**MA No.185 of 2016 and M.A. No.186 of 2016 in B.P. No.295 of 2014.**

By **S.K. Singh, Chairperson** – Both the MAs under consideration have been filed by M/s Noida Software Technology Park Ltd (Applicant) for initiation of contempt proceedings under Section 20 of the Telecom Regulatory Authority of India (TRAI) Act, 1997 (for brevity “the Act”). While one is

directed against M/s Star India Pvt. Ltd., the other is against M/s Zee Entertainment Enterprises Ltd.(hereinafter both described as “Respondent”). According to the applicant, the respondent have willfully disobeyed the relevant direction issued by this Tribunal vide order dated 07.12.2015 in Broadcasting Petition No.295 of 2014.

On behalf of the applicant, it has been submitted that the respondent has published a Reference Interconnect Offer(RIO) but it is not in accordance with the order and directions of this Tribunal. To the contrary, the stand of the respondent is that the RIO published on their behalf is in accordance with the directions of this Tribunal and the Regulations of TRAI.

There is no controversy that order of this Tribunal dated 07.12.2015 has survived a challenge before the High Court and the Supreme Court. Accordingly, it has attained finality. A perusal of the order clearly shows that several larger issues relating to RIO were discussed in detail and thereafter operative directions were issued whereunder both, Star and TAJ (subsequently taken over by Zee Entertainment Enterprises Pvt. Ltd.) were directed to issue fresh RIOs in compliance with the Interconnect Regulations, as explained in that judgment, within a fixed timeframe. There is no controversy that the respondents have issued their RIOs which they claim to be fully compliant with the judgment. However, according to the applicant, it violates the spirit of last two paragraphs of the judgment whereby Issue No.4 was decided and the Tribunal observed how the RIO should be framed so that it is available on a

non-discriminatory basis to all seekers of signals. It is the case of the applicant that the RIOs offered by the respondent is not transparent and enables the broadcaster to enter into any kind of negotiated deal with impunity in violation of clause 13.2A.12 of the relevant regulation.

On behalf of the respondent, it has been submitted that the allegation of the applicant to make out a case of contempt is based upon a particular interpretation of the judgment and order of this Tribunal dated 07.12.2015 and also of various provisions of RIOs which is not permissible or desirable in exercise of contempt jurisdiction, particularly, when no case of willful disobedience is made out on the basis of materials on record. In support of this stand reliance has been placed upon a judgment of Hon'ble Supreme Court in the case of **Indian Airports Employees' Union Vs. Ranjan Chatterjee & Anr.** – (1999) 2 SCC 537.

Respondent have also placed reliance upon another judgment of Hon'ble Supreme Court in the case of **J.S. Parihar Vs. Ganpat Duggar & Ors.** – (1996) 6 SCC 291. In that case, in paragraph 6, the Apex Court declined to review a seniority list in the contempt proceedings to find out whether it was in conformity with the directions issued by earlier benches. It was held that the issue whether the seniority list was correctly prepared or not can be adjudicated only as a fresh cause of action, by availing available opportunity of judicial review. A wrong or incorrect seniority list cannot be considered to be willful violation of the earlier order.

Lastly, it was submitted that under provisions of the relevant regulations, as held by this Tribunal in its order dated 17.12.2013 in Petition No.450(C) of 2013 (Dish TV India Ltd. Vs. Star Sports India Pvt. Ltd.), the question of validity of the terms of a RIO can be first examined by TRAI and the petitioner should avail such a remedy.

Although on behalf of applicant it was vehemently urged that a case of willful disobedience is made out against the respondent, but when examined in the light of judgments and orders relied upon by the respondent, we find that the validity, propriety or correctness of provisions RIOs of the respondent need to be interpreted and examined in detail to find out whether they are in consonance with the judgment and order of this Tribunal. This task will also involve interpretation of the judgment and order itself.

We are of the considered view that no case of willful disobedience can be made out when the matter requires detailed consideration involving interpretation as indicated above. We are also of the view that if the RIOs are not compliant with the judgment and order of this Tribunal, they do provide a cause of action for the applicant. If so advised, the applicant may approach TRAI or any suitable forum for assailing the RIOs on the basis of allegations made out in these MAs. However, we are not persuaded to hold that a case of contempt is made out.

With the liberty indicated above, the prayers made in both the MAs are declined. MAs stand disposed of.

**E.A. No.10 of 2016 in B.P.No.295 of 2014 and E.A. No.11 of 2016 in B.P. No.314 of 2015.**

Both the Execution Applications have been filed by M/s Star India Pvt. Ltd. after about three months of filing of the MAs Nos.185 and 186 of 2016 considered above. Through these EAs, the petitioner seeks execution against the respondent M/s Noida Software Technology Park Ltd., of judgment and order dated 07.12.2015 passed in Broadcasting Petition No.295 of 2014 and also of orders dated 18.12.2015 and 29.01.2016 passed in Broadcasting Petition No.314 of 2015. On the basis of aforesaid three orders, petitioner has prayed that the respondent be directed to pay Rs.1,89,79,847/- only. According to the petitioner, Rs.1,69,46,292/- is towards principal and Rs.20,33,555/- is towards interest.

From the submissions made on behalf of petitioner, it is clear that execution has been claimed on the basis of findings in the order dated 18.12.2015 wherein the agreement between the petitioner and the respondent was held to be valid for the period upto 30.07.2015 and also for further three months in terms of clause 8 of the Interconnect Agreement.

Petitioner has then relied upon order dated 18.12.2015 passed in Broadcasting Petitions Nos.526 of 2014, 313 of 2015 and MA No.377 of 2015 in Broadcasting Petition No.314 of 2015. That order noticed the relevant part of judgment dated 07.12.2015 in Broadcasting Petition No.295 of 2015 whereby

the petitions listed subsequently on 18.12.2015, all filed by the respondent, were kept pending so that at appropriate stage the accounts of the two sides may be reconciled to determine the final liability of the petitioner (respondent herein) or the other party to make any further payments. The order further noticed a chart submitted by the respondent herein revealing certain amounts payable to broadcasters, Star and TAJ, as on 30.09.2015. The amount in the chart was subject to the qualification that in case the incentive scheme offered in the Star's RIO is made available to the respondent herein, it would be entitled to receive from Star a sum of Rs.19,90,241/- on the aforesaid date, instead of liable to pay anything to Star. The petitioner, of course, claimed a higher amount as its outstanding. By that interim order this Tribunal gave a direction in following words:

“At this stage, without going into the issue of applicability of the Star's incentive scheme to the petitioner and even without fixing the exact amount owed by the petitioner to Star in the absence of the scheme, we direct the petitioner to pay the admitted dues to Star i.e. the sum of Rs.1,69,46,292/-.”

Similarly, in respect of payment to TAJ, the order reads as follows:

“Leaving aside this dispute also for the present, we direct the petitioner to pay to Taj the admitted amount of Rs.58,24,142/-.”

This Tribunal further clarified that the aforesaid amounts due to Star and TAJ should be paid by 31.01.2016 failing which it will be open to the broadcasters to discontinue the supply of their channels to the petitioner (respondent herein). It was also made clear that the above interim and *ad hoc*

arrangement is only upto 30.09.2015 in case of Star and upto 30.06.2015 in case of TAJ. For making further arrangements with effect from later dates, certain directions were issued for production of agreements between broadcasters and three other distributors, in sealed covers. Admittedly, those directions were not carried out and no further interim arrangement could be made in respect of the respondent herein because it failed to pay the amounts even within the extended period of one month which was allowed on its prayer vide order dated 29.01.2016. As a result, in spite of extension granted to the respondent as per its prayers in MAs Nos.35 and 37 of 2016, due to inability to make interim payment, its signals got disconnected and that is the situation till date. According to petitioner, the order dated 29.01.2016 shows that respondent undertook to pay the claimed principal amount and interest.

It is evident from the order dated 29.01.2016 that Star and TAJ were willing to supply signals to the petitioner even on deferred payment but did not want the Tribunal to look into other agreements for making any interim arrangement for the period after expiry of the earlier agreement. That order was also only a part of interim arrangement with specified consequences. It cannot be a substitute for final adjudication in the matters left pending for exactly such purpose.

We have noticed the relevant orders in some detail only with a view to decide whether petitioner's claim that it has a concluded judgment and decree in its favour for execution is worth acceptance or is there any merit in the reply

and counter stand of the respondent herein that the accounts between the rival parties has not been finally decided by this Tribunal because for that purpose, its petitions which were considered on 18.12.2015 and 29.01.2016 are still pending before this Tribunal and there is no final determination between the parties as yet by this Tribunal which can entitle the petitioner to claim a specific amount as principal or interest.

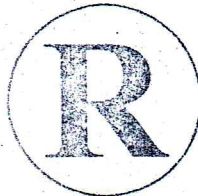
Having considered the entire materials in the light of aforesaid rival stands and having gone through the three orders relied upon by the petitioner and also subsequent orders dated 09.02.2016 and 16.02.2016 in MAs Nos.34 and 36 of 2016 in the pending broadcasting petitions relied upon by the respondent, it is evident that the orders on which petitioners are relying to claim a decree for execution were orders passed by way of interim arrangement and that Broadcasting Petition No.526 of 2014 as well as Broadcasting Petitions Nos.313 and 314 of 2015 preferred by the respondent herein were noticed therein and it was observed that they would be decided on their own merits and if need be, after taking evidences from both sides. Hence, we find merit in the submissions advanced on behalf of respondent herein that the petitioner, Star India Pvt. Ltd. cannot claim any decree in its favour at this stage because the controversy relating to accounts is still pending before this Tribunal and there is no final adjudication on the relevant issues between the parties. It may be noticed here that TAJ which has been succeeded by M/s Zee Entertainment Enterprise Ltd. have not filed any E.A. so far on the basis of same very orders

and in our view rightly so, because the issues remain to be adjudicated finally for deciding the liability of the parties to pay or receive money on account of their business relationship.

Both E.A. No.10 of 2016 (in B.P.No.295 of 2014) and E.A. No.11 of 2016 (in B.P. No.314 of 2015) are dismissed as pre-mature and therefore, not maintainable. However, there shall be no order as to costs.

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(S.K. Singh, J)  
Chairperson

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(B.B. Srivastava)  
Member



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(A.K. Bhargava)  
Member