

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

Dated 25th June, 2018

Broadcasting Petition No.374 of 2016
(With M.A. No. 303 of 2017 & 494 of 2016)

Intermedia Cable Communication Pvt. Ltd. ...Petitioner

Vs.

Zee Entertainment Enterprise Ltd. ...Respondent

Broadcasting Petition No.382 of 2016
(With M.A. Nos.393 & 495 of 2016 & M.A.No.302 of 2017)

JPR Channel ...Petitioner

Vs.

Zee Entertainment Enterprise Ltd. ...Respondent

Broadcasting Petition No.394 of 2016
(With M.A. Nos.395 & 496 of 2016 & M.A.No.304 of 2017)

Home Systems Pvt. Ltd. ...Petitioner

Vs.

Zee Entertainment Enterprise Ltd. ...Respondent

BEFORE:

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

For Petitioner (In B.P. Nos. 374 of 2016): Mr. Aditya V. Singh, Advocate
 Mr. Anurup Narula, Advocate

For Petitioner (In B.P. Nos. 382 of 2016): None

For Petitioner (In B.P. No.394 of 2016) : Mr. Varun Mathur, Advocate

For Respondent : Mr. Upendra Thakur, Advocate
 Mr. Rohan Swarup, Advocate
 Ms. Nikita Khetrpal, Advocate

ORDER

By S.K. Singh, Chairperson – Parties were heard in respect of M.A. Nos.302, 303 and 304 of 2017 preferred by the respondent, ZEE Entertainment Enterprises Ltd. (ZEEL) in the three broadcasting petitions bearing No.382, 374 and 394 of 2016 respectively. The nature of the petitions and the MAs are similar. Hence, this common order will govern all the three MAs. For the sake of convenience, the facts and prayers made in MA No.303 of 2017 are being used in this order, unless otherwise stated.

2. The prayers in the MA are as follows:

- (a) Direct the petitioner to honor the invoices already raised by the answering Respondent for the period up to 22.08.2017 thereby clear the outstanding dues of Rs.2,00,46,86/-.

- (b) In the event of failure of the Petitioner to clear the aforesaid dues, permit the answering respondent to deactivate supply of its TV channels to the petitioner;
- (c) Take cognizance of the order dated 27.07.2017 passed in Broadcasting Petition No.440 of 2016 in the similar factual score thereby directing the petitioner to hold time bound negotiation and execute either mutually negotiated Agreement or RIO based Agreement for the period going forward and until the final determination of the present petition;
- (d) Pass such other or further order as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present case."

It is noticed that the amounts in prayer (a) are different in the other two MAs; it is Rs.98,89,953/- in MA No.302 of 2017 and Rs.50,41,788/- in the MA No.304 of 2017.

3. The facts relevant for considering these applications are not under dispute. The last agreement between the parties expired by efflux of time, long back on 31.03.2016. Similar was the fact situation in Broadcasting Petition No.358 of 2016 preferred by one Star Broadband Services (I) Pvt. Ltd. against ZEEL. In that petition also a similar challenge was made to the RIO offered by the respondents. On 02.06.2016 an interim order was passed in B.P. No.358 of 2016 directing the respondent ZEEL not to give effect to the impugned disconnection notice and to continue to supply its TV signals to the petitioner in terms of the earlier arrangements subsisting before the issuance of the impugned notice. It was made clear that in case of any default in payment in terms of the subsisting agreement, it will be open to the broadcaster to proceed in

accordance with law. On that date, i.e. 02.06.2016, interim orders were passed in all these three matters also by adopting the order passed in B.P. No.358 of 2016.

4. It is not in dispute that B.P. No.358 of 2016 is still pending but the subsequent interim orders passed therein on 14.06.2016 in respect of MA No.192 of 2016 preferred in that very petition and order dated 04.09.2017 whereby this Tribunal directed the parties therein for execution of fresh interconnect agreement either on the basis of RIO terms or mutually agreed terms within 30 days, have been strongly relied upon by the respondent applicant (ZEEL). It is the case of applicant that in view of identical provision in the interconnect agreement subsisting till 31.03.2016, 15% increase was made in the invoiced amount w.e.f. 01.04.2016. Against that increase, Star India Broadband Services preferred MA No.192 of 2016 which came for consideration on 14.06.2016. The Tribunal simply directed the MA to be put up with the main petition on the date fixed but the petitioner therein got no relief from this Tribunal against 15% increase and it had to honor the obligation of paying the invoices with such increase from 01.04.2016 until this Tribunal directed the parties to enter into a fresh agreement vide order dated 04.09.2017, while keeping the petition pending for deciding the challenge to RIO terms of ZEEL. The applicant has also placed reliance on the facts of another B.P. No.409 of 2016 preferred by M/s Satellite Channels Pvt. Ltd. in which similar

15% increase in the invoiced amount was effected by the applicant from 01.04.2016. By interim order dated 14.06.2016 passed in that petition (at page 36 of MA No.303 of 2017), the petitioner was required to make payment of the increased monthly subscription fees which was as per the existing arrangement.

5. Besides supporting its prayer for a direction to the petitioner/non-applicant to pay the dues arisen on account of 15% increase, or to suffer disconnection, the applicant has also sought a direction in terms of order dated 04.09.2017 passed by this Tribunal in B.P. No.358 of 2016. That order is the sheet anchor of the applicant's case in these MAs and is, therefore, deserves to be kept in mind. That order reads as follows:

“ORDER

Heard the parties. It appears that the matter will take some time for final adjudication on the dispute which the petitioner has raised in this petition.

Our order dated 12.05.2017 indicates that in this matter the relationship between the parties is being governed since long on this basis of an order passed on 02.06.2016. That order has permitted the petitioner to continue getting signals from the respondent on the basis of an earlier agreement which expired on 31.03.2017.

We have been taken through orders annexed with the reply and some other orders in which lately we have taken a consistent view that even if the interim orders are to be governed by the final outcome, in respect of agreements that shall bind the parties during the pendency of the petition, the parties should be in compliance with the regulations; they should have a written agreement to govern their relationship. In view of such consistent view, following the line of orders including order dated 21.07.2017 available at page no. 83 of the volume containing reply of the respondent, we direct as follows: -

(i) The petitioner will enter into a written interconnect agreement with the respondent on basis of RIO terms or mutually agreed terms within 30 days from today. In case of RIO based agreement, the RIO rates and terms will be subject to final decision in the petition. It is made clear that past liabilities, if any, will be subject matter of further adjudication and that will not be used by the respondent for refusing to enter into an agreement with the petitioner.

(ii) After signing of the agreement the petitioner will make payment as per the invoices raised on the basis of the agreement and within the time-frame mentioned therein, failing which respondent will be free to proceed in accordance with law.

(iii) This arrangement will be without prejudice to the rights and contentions of either party and shall be subject to final decision of the Tribunal.

Post the matter before the court of Registrar on 10.10.2017 who will ensure that the matter is ready for hearing.

6. It is clarified that this Tribunal passed the aforesaid order on the basis of a bunch of orders passed in different petitions taking a similar consistent view that parties should not be permitted to flout the regulations and receive signals without written agreement only on account of interim orders of this Tribunal. A similar view was taken in B.P. No.440 of 2016 (Seven Star.Com Pvt. Ltd. Vs. ZEEL). The applicant has annexed that order dated 27.07.2017 as **Annexure A-4** to MA No.303 of 2017. It was that order which has been followed in the order dated 04.09.2017 passed in B.P. No.358 of 206 and two other matters. The date of that order has been wrongly shown as 21.07.2017 due to a typographical error.

7. On behalf of non-applicant/petitioner emphasis has been placed upon the fact that the dispute over terms of the RIO agreement remains to be adjudicated and therefore, the subsequent order passed in B.P. No.358 of 2016 need not be followed in these petitions.

8. According to learned counsel for the non-applicant, the 15% increased invoice amount is contrary to the interim order passed by this Tribunal which requires the petitioner/non-applicant to pay only as per the agreement subsisting prior to 01.04.2016. It is also submitted that 15% increase should not be permitted because the petitioner signed the agreement after putting a note of “without prejudice”. It is also submitted that 15% increase would have been applicable till the negotiations between the parties would have continued after 01.04.2016 but the negotiations did not last long and were called off and therefore, the 15% increase would not be applicable at all.

9. Lastly it has been submitted on behalf of non-applicant that the RIO terms would cause huge hardship to the petitioner because the cost per subscriber would be much more compared to some other MSO which is availing a lesser cost because of agreement on the basis of negotiation with ZEEL. Such submission is difficult to be accepted on its face value without going into issues relating to validity of RIO terms assailed in these petitions. At interim stage, similar pleas were recently rejected by this Tribunal vide order dated 23.05.2018 in B.P. Nos.150 and 173 of 2018.

10. At the present stage, we find that the interim order governing the rival parties is same as was passed in B.P.No.358 of 2016 in identical facts and circumstances. Since, the challenge to RIO terms of the respondent remains to be decided at the time of final hearing of these petitions, we find no good ground to permit the parties to supply and receive TV signals without any agreement since such a long time. In fact, we find absolutely no good reason to take a different view than what has been taken in the order dated 27.07.2017 passed in B.P. No.440 of 2016 (**Annexure A-4**) and the order dated 04.09.2017 in B.P. No.358 of 2016 and some other similar/connected matters. Hence, while deferring the other prayers made in these miscellaneous applications for determination at the final stage, we allow the prayer (c) in terms of the following three directions:

- (i) The petitioner will enter into a written interconnect agreement with the respondent on basis of RIO terms or mutually agreed terms within 30 days from today. In case of RIO based agreement, the RIO rates and terms will be subject to final decision in the petition. It is made clear that past liabilities, if any, will be subject matter of further adjudication and that will not be used by the respondent for refusing to enter into an agreement with the petitioner.

(ii) After signing of the agreement the petitioner will make payment as per the invoices raised on the basis of the agreement and within the time-frame mentioned therein, failing which respondent will be free to proceed in accordance with law.

(iii) This arrangement will be without prejudice to the rights and contentions of either party and shall be subject to final decision of the Tribunal.

Post these matters before the court of Registrar on 17.07.2018 for getting the matters ready for hearing.

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(S. K. Singh, J)
Chairperson

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(A.K. Bhargava)
Member