

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

Dated 24<sup>th</sup> January, 2020

**Broadcasting Petition No.103 of 2019**  
**(with M.A. Nos.162, 211 and 288 of 2019)**

Multi Reach Media Pvt. Ltd.

....Petitioner

Versus

Zee Entertainment Enterprise Ltd.

....Respondent

**BEFORE:**

**HON'BLE MR. JUSTICE SHIVA KIRTI SINGH, CHAIRPERSON**

Petitioner

: Ms. Anand Kumar Parsaniya, AR of the  
Petitioner

Respondent

: Mr. Kunal Tandon, Advocate  
Mr. Amandeep Singh, Advocate

**ORDER**

**By S.K. Singh, Chairperson** – This petition filed by the petitioner-MSO on 07.05.2019 against a disconnection notice dated 18.04.2019 issued by the respondent-broadcaster is still pending because serious grievances of the respondent remain pending in spite of a technical audit of petitioner's system having been held under the orders of this Tribunal.

2. The subscriber reports furnished by the petitioner since the introduction of new regime from 01.02.2019 as per new Regulations and Tariff Order of 2017 were not in accordance with the legal requirement. In the notice, the respondent had alleged under-reporting of subscribers in respect of its channels and later also alleged that petitioner was redistributing Zee Bangla channel in unencrypted mode. As the earlier orders would disclose, technical audit held under the orders of this Tribunal was not a smooth affair. The audit report of KPMG is on record. The parties have filed their response to the audit report. Some of the initial difficulties in the audit and reasons for delay of several months will appear from orders passed on 23.07.2019 and also some of the subsequent orders. The initial shortcomings in the petitioner's system are clear not only from the facts available on record and in

the order sheets but also from reports of technical audit of petitioner's system prepared at the instance of some other broadcasters. As an interim measure, provisional bills were directed to be raised by the respondent on the basis of subscriber reports of the petitioner but it has been made clear that this arrangement shall not prejudice the claim of the respondent for a higher amount, if justified.

3. According to the authorized representative of the petitioner, at least since June 2019 the system of the petitioner is working in total compliance with the technical requirements under the relevant regulations but this stand has been seriously contested by the respondent taking support from the technical audit report and its contents. According to the respondent, the continued loss to the respondent should come to an end and respondent should be permitted to raise revised invoices for the period February 2019 till November 2019 on a reasonable basis. Initially, figures of active subscribers were claimed to be above 5 lakhs with penetration level of a popular channel as 100% taking the claimed amount to absurdly high levels. But on account of further suggestions and discussions, a rational method has been forwarded by the respondent by treating the active subscriber base for the said period to be 3,28,000. It has suggested that said subscriber base be divided into the ratio of 60:40 so that for 60%, the broadcaster may charge for its lowest priced bouquet containing its most popular channel in the concerned area, Zee

Bangla. The cost of this bouquet is said to be Rs.39/- per month per subscriber. For the remaining 40% subscribers, the suggestion is to charge them on *a la carte* rate for Zee Bangla i.e. Rs.19/- per month per subscriber and further at the rate of Rs.2/- per month per subscriber for another popular channel – Bangla Cinema. But later the claim for Bangla Cinema has been dropped. By applying the aforesaid methodology, according to the respondent, after adjusting the amounts received from the petitioner for the period till November 2019, it would be entitled to a further total amount of Rs.6.22 crores on the basis of penetration of its channels at the level of 80% (At 100%, the amount would have come to Rs.7.78 crores).

4. The subscriber base, according to learned counsel for the respondent, should have been 5.6 lakhs as per numbers supplied by the petitioner in the subscriber report of February 2019 but since that figure has been claimed to be the number of total STBs and not the active connections, the figure of 3,28,000 has been used because this has been found to be the number of active subscribers in the audit held at the instance of another broadcaster, Star India. To support the percentage of penetration at higher than 80%, relevant materials were produced in a cover for perusal of the Tribunal. For the most popular channel in the area concerned, the percentage of penetration at 80% appears to be acceptable. This figure of penetration has not been countered during arguments.

5. According to learned counsel for the respondent, on the basis of trade practice and data, for the most popular channel the ratio of 60:40 for bouquet and *a la carte* subscription is justified. The Authorized Representative of the petitioner has not supplied any material or figures to controvert this claim. He submitted that a more just approach would be to take the figures available in petitioner's system after it was found compliant with the technical requirements of the relevant Regulations in the audit conducted after June 2019.

The above stand of the petitioner is not acceptable at least for the months in question for several shortcomings found in the technical audits held so far. There has been no commercial audit so far.

6. It is very difficult to include different channels of the respondent available on *a la carte* basis into working out the approximate monthly charges payable by the petitioner. Such an exercise to be reasonable and practical, it would be fair to include only one popular channel into zone of consideration for charges under the *a la carte* basis along with the most popular bouquet. Hence, the calculation made by the respondent on the basis of viewership of 60% for its most popular bouquet and the *a la carte* rate for its channel Zee Bangla for 40% of the viewers is accepted as reasonable and a practical way out to work out the past liabilities from February 2019 to November 2019.

7. It is made clear that the relevant Regulations and Tariff Order of 2017 provide for calculating such liability on the basis of figures of the previous month under the presumption that the subscriber report of an earlier month is not in dispute. However, in the present case the dispute is genuine and has arisen from the very first month of the new regime i.e. since February 2019 and therefore, there is no way out available under the provisions of the Regulations and the Tariff Order. Hence, on account of there being no other alternative, the aforesaid method is accepted as a reasonable method for the respondent to work out the liability of the petitioner for the months of February 2019 to November 2019. Even if there be some approximation in the method, the petitioner must bear with the same because it had the means to know the exact numbers to work out the exact figures but it did not keep its system compliant with the requirements of Regulations and therefore, adverse inference has to be drawn that the real figures if made available would have gone against the interest of the petitioner. Respondent shall issue the raised invoices as per this order and the dues on that basis shall be paid within two weeks thereafter.


8. So far as liability for the months after November 2019 is concerned, the existing arrangement will continue and the petitioner will have to satisfy that it has

taken care of the drawbacks in its system pointed out in the audit and the system is now reliable both technically as well as commercially.

9. Although the respondent has also objected, like some other broadcasters, to the request of the petitioner for holding a comprehensive audit till the system is found technically compliant, it is now necessary to accept the request so that figures of subscribers and other relevant informations are available and transparency is restored. Without prejudice to the rights of the broadcasters and the respondent, the request of the petitioner for audit under the orders of this Tribunal is accepted. Such an audit should be by BECIL. Since the petitioner has shown its anxiety and willingness to have it at the earliest, it is expected that BECIL shall complete a comprehensive audit at an early date preferably within two weeks. The respondent broadcaster will be entitled to have its own representative during such audit and communicate its concerns to BECIL before the audit begins. The audit by BECIL should begin within a week from today. However, if BECIL reports non-cooperation by the petitioner then further adverse inference shall be drawn against the petitioner. If a similar dispute is pending between the petitioner and any other broadcaster such broadcaster will also have the same liberty as made available to the respondent broadcaster. The concerns of such broadcasters shall also be kept in mind by the BECIL while conducting a

technical as well as commercial audit of petitioner's system. The cost of such comprehensive audit shall be borne by the petitioner. The report should be shared and brought on the records of this case at the earliest and preferably before the next date.

10. Post the matter on 04.03.2020 for further directions.



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

sks

24/11/2020