

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

Reserved on: 8th April, 2022

Pronounced on: 20th April, 2022

BROADCASTING PETITION No. 463 Of 2017

Zee Entertainment Enterprise Ltd.Petitioner
Through: Mr. Tejveer Singh Bhatia, Advocate with
Mr. Kunal Vats, Advocate

Versus

Respondent Name: Moon Network Pvt. Ltd. & Anr.Respondents
Through: Mr. Swapnil Gupta/ Ms. Shivambika
Sinha, Advocates for Respondent No. 1
Ms. Vandana Jaisingh, Advocate with
Ms. Kanupriya Gupta, Advocate for
Respondent No. 2

CORAM:
HON'BLE MR. JUSTICE DHIRUBHAI NARANBHAI PATEL,
CHAIRPERSON
HON'BLE MR. SUBODH KUMAR GUPTA, MEMBER

JUDGMENT

: **Per D.N. PATEL, J.**

Factual Matrix

1. This petition has been preferred by M/s. Zee Entertainment Enterprise Ltd., Mumbai, Maharashtra under Section 14 to be read with Section 14A of the Telecom Regulatory Authority of India Act, 1997. This petitioner is a company incorporated under the

Companies Act, 1956 and is engaged in business of distributing TV channels comprising Zee Entertainment channels as well as Turner channels w.e.f. **1.5.2016**.

2. Respondent no. 1 is a Multi System Operator (MSO). Respondent no. 1 is retransmitting signals of TV channels of various broadcasters including that of petitioner in DAS Phase – II areas of Agra and DAS Phase – III areas of Firozabad and Shikohabad.
3. Petitioner executed **Tripartite Interconnect Agreement** with respondent no. 1 and 2 on **2.12.2016** for the supply of Zee Group of channels and Turner channels.
4. The Interconnect Agreement/Distribution Agreement for Digital Addressable Cable Systems (“DACs”) was executed for the period running from 01-11-2016 to 31-03-2017 i.e. for the period of five months (**Annexure P-1**) collectively.
5. Respondent no. 1 received continuous and uninterrupted supply of petitioner’s TV channels during the aforesaid period and thereafter.
6. There is a correspondence from the petitioner to the respondents for renewal of the agreement even after the aforesaid period of five months; there was supply of petitioner’s TV channels signals to the

respondent no. 1 and ultimately the petitioner was constrained to disconnect the supply of its TV channel signals on 12.6.2017.

7. There is a dispute about the payment for the period running from 1.11.2016 to 31.3.2017 and for the period running from 1.4.2017 to 12.6.2017 for the supply of TV channel signals of the petitioner, invoices were raised by the petitioner but the payment was not made.
8. The table of calculation of the outstanding amount as per petitioner which is reproduced at **Annexure P-3** reads as under: -

“Outstanding statement as on 16.08.2017 of Moon Network Pvt. Ltd.					
		Zeel	Turner	Sports	Total
Billing 2016	Nov	1,725,000	217,350	115,000	2,057,350
Billing 2016	Dec	1,725,000	217,350	115,000	2,057,350
Billing 2017	Jan	1,725,000	217,350	115,000	2,057,350
Billing 2017	Feb	1,725,000	217,350	115,000	2,057,350
Billing 2017	March	17,25,000	2,17,350	-	19,42,350
Collection received from Nov 2016 to March 2017		20,00,000	-	-	20,00,000

Special Discount credit note for the month of Nov 2016	5,14,280	-	-	514,280
Special Discount credit note for the month of Dec 2016	5,14,280	-	-	514,280
Outstanding as on 31.03.2017 billing till March 2017	55,96,440	10,86,750	4,60,000	71,43,190
Billing April 2017	17,25,000	2,17,350	-	19,42,350
Billing May 2017	17,25,000	2,17,350	-	19,42,350
Billing June 2017 till 12 th Jun 2017	6,90,000	86,940	-	776,940
Total Outstanding as on 16.08.2017 billing till 12th Jun 2017	97,36,440	16,08,390	4,60,000	1,18,04,830"

9. As the aforesaid amount was not paid even after due notices, the present petition has been preferred for recovery of the outstanding amount of Rs. 1,18,04,830/- with 18% interest per annum.

Arguments canvased by the counsel for the petitioner

10. Counsel appearing for the petitioner has submitted that respondent no. 1 has continuously and uninterruptedly received the signals of petitioner's channels as well as Turner channels for the period running from 1.11.2016 to 31.3.2017 as well as for the period running from 1.4.2017 to 12.6.2017.
11. It is also submitted by the counsel for the petitioner that respondent no. 2 is a Multi System Operator (MSO) having PAN India Operations and respondent no. 1 is an Affiliate/Associate/Joint Venture/Subsidiary with the respondent no. 2 and for that Tripartite Agreement was entered into between petitioner and both the respondents for supply of signals of petitioner's channels as well as Turner channels w.e.f. 1.11.2016 to 31.3.2017 i.e. for the period of five months. He further submits that even after the expiry of period of five months the supply of signals of petitioner's channels as well as Turner channels were continued to be supplied to the respondent no. 1 for further period of three months as per the provisions of Regulations 5(3) to be read with 5(16) of the Telecommunications (Broadcasting and Cable Services) Interconnection (Digital Addressable Cable Television Systems) Regulations, 2012.

12. It is further submitted by the counsel for the petitioner that, though the respondent no. 1 has received the TV Channel signals of the petitioner as well as of Turner channels but the legally payable amount as per the Interconnection Agreement between the petitioner and the respondents has not been paid.
13. Counsel appearing for the petitioner has taken this Tribunal to various annexures annexed with this petition which are the invoices raised by the petitioner for the supply of the channels to the respondent no. 1 and also various Clauses of the Interconnection Agreement/Distribution Agreement for Digital Addressable Cable Systems which is at **Annexure P-1** to the memo of this petition. Petitioner has also highlighted the amount which is due as per the calculation given at **Annexure P-3** to the memo of this petition and has submitted that petitioner is liable to make the payment of Rs. 1,18,04,830/- along with interest @18% per annum.

Arguments canvased by the counsel for respondent no. 1

14. Counsel appearing for respondent no. 1 has submitted that the petitioner has never supplied Sports Channels and, therefore, there is a mistake in calculation on the part of the petitioner which is at **Annexure P-3** to the memo of the petition. Sports Channels'

amount reflected as Rs. 4,60,000/-requires to be deducted because as per the agreement which is at **Annexure P-1**, petitioner has supplied the Zee Group Channels which are at **Annexure – III** to the memo of agreement which is at **Annexure P-1**. Looking to **Annexure – III** there is no narration of Sports Channels and hence the amount added towards the Sports Channels i.e. Rs. 4,60,000/-requires to be deducted.

15. It is also submitted by counsel for the respondent no. 1 that there is no agreement for the supply of the signals of the petitioner's channels as well as for Turner channels for the period running from 1.4.2017 to 12.6.2017 and, therefore, amount demanded for the period running from 1.4.2017 to 12.6.2017 also not payable by the respondent no. 1 to the petitioner.
16. It is also submitted by counsel for respondent no. 1 that there is a substantial reduction of the subscribers of the respondent no.1 from January, 2017. The subscriber base of the respondent no. 1 has declined from 58133 activated boxes in January 2017 to 55397 activated boxes in June, 2017 and, therefore, the respondent no. 1 had assured that the amount payable was to be adjusted after accounting for the declining revenue based on the decreased

subscriber base. It is also submitted by the counsel for respondent no. 1 that the subscription fee being charged by the petitioner from other MSOs was lesser than what is charged by the petitioner from respondent no. 1 and that there cannot be any discrimination so far as the application of charges are concerned by the petitioner for the different MSOs. It is also submitted by the counsel for the respondent no. 1 that the invoices raised by the petitioner to the respondent no. 1 are incomplete invoices and they are without accompanying annexures. It is also submitted by the counsel for the respondent that there is a violation of Tripartite Agreement by the petitioner and hence, the respondent no.1 is not liable to make the payment as mentioned in the memo of the petition.

Arguments canvassed by the counsel for Respondent No. 2

17. Counsel appearing for the respondent no. 2 submitted that there is no relationship between respondent no. 1 and respondent no. 2 and that respondent No. 2 has been wrongly joined as a party in this Broadcasting Petition.
18. It is further submitted by counsel for the respondent no. 2 that no financial liability is arising out of an agreement upon which the

petitioner is relying upon which is at Annexure P-1 to the memo of petition.

- 19.** It is further submitted by counsel for the respondent no. 2 that the signals of the channels of the petitioner as well as the signals of Turner channels has never been consumed by the respondent no. 2. Looking to the agreement which is at **Annexure P-1** it was the respondent no. 1 who received the signals of the TV channels from the petitioner. The counsel for the petitioner has taken this Tribunal to various Clauses of an agreement which is at **Annexure P-1** especially Clause No. 7, 8 and 9 etc. of an agreement and submitted that the financial liability was on respondent no. 1 alone and not upon respondent no. 2. Counsel for respondent no. 2 has read and reread the Clauses of the agreement and has submitted that there is no liability on respondent no. 2 for payment of the amount for receiving the signals of the channels.
- 20.** It is further submitted by counsel for the respondent no. 2 that all the invoices were also raised by the petitioner upon respondent no. 1 and hence, this petition may be dismissed for the respondent no. 2 with costs.

Reasons and Analysis

- 21.** Petitioner is engaged in a business of distribution of TV channels comprising of Zee Entertainment channels and Turner channels. Petitioner has entered into an agreement with respondent no. 1 and 2 for supply of signals of TV channels thus petitioner is a broadcaster and respondent no. 1 is a Multi System Operator (MSO).
- 22.** The Tripartite agreement between the petitioner and respondent no. 1 and respondent no. 2 is for retransmissions of signals of TV channels in DAS Phase – II areas of Agra and DAS Phase – III areas of Firozabad and Shikohabad.
- 23.** The agreement entered into between the petitioner and the respondents is a Tripartite Interconnect Agreement dated 02.12.2016 for the supply of Zee Group of channels and Turner channels for the period of five months running from 1.11.2016 to 31.3.2017.
- 24.** For the ready reference areas of operation of respondent no. 1 was as under: -

Area of Operation of MOON Cable TV Network

Sl. No.	SMS ID	Platform	Subscriber Name	DAS Notified Areas	Installation Address
1.	166258	DAS – II	Indusind Media & Communication	Restricted to Agra City Only	Moon Cable TV Network,

			Limited – A/c Moon Network Pvt. Ltd.		Hotel Eastline, 1/47, Delhi Gate, Agra – 282002, Uttar Pradesh
2.	166258	DAS – III	Indusind Media & Communication Limited – A/c Moon Network Pvt. Ltd.	Restricted to Firozabad & Sikohabad only	Moon Cable TV Network, Hotel Eastline, 1/47, Delhi Gate, Agra – 282002, Uttar Pradesh

25. The list of Zee Group channels reads as under: -

ZEE Group Channels

I. List of Zee Group SD Pay Channels (Standard Definition pay Channels)

Sr. No.	Name of the Channel(s)
1.	Zee TV
2.	Zee Cinema
3.	Zee Marathi
4.	Zee Café
5.	Zee Studio
6.	Zee Bangla
7.	Zee Salaam
8.	Zee ETC
9.	Zing
10.	Zee Talkies
11.	Living Foodz
12.	Zee Kannada
13.	Zee Telugu

14.	Zee Classic
15.	Zee Action
16.	Zee Bangla Cinema
17.	Zee Q
18.	& Pictures
19.	Zindagi
20.	Zee Punjab Haryana Himachal
21.	Zee Business
22.	24 Ghanta
23.	Zee 24 Taas
24.	Zee Kalinga
25.	Zee Madhya Pradesh Chhattisgarh
26.	Zee Rajasthan News
27.	& TV
28.	Zee Yuva
29.	Zee Cinemalu
30.	WION

II. Free to Air (FTA) Zee Group Channels

S. No.	Name of Channel
1.	Zee Tamil
2.	Zee Anmol
3.	India 24X7
4.	Zee Punjabi
5.	Zee News

26. Similarly, the list of Turner channels which are supplied by the petitioner to the respondent no. 1 are as under: -

SCHEDULE A – TURNER CHANNELS (STANDARD DEFINITION)

I. List of Turner Pay Channels:

Sr. No.	Name of Channel
1.	Cartoon Network
2.	Pogo
3.	WB
4.	HBO
5.	CNN International

27. Counsels appearing for both the sides has taken this Tribunal to the various Clauses of Interconnect Agreement which is at **Annexure P- 1** which is also known as Distribution Agreement dated 2.12.2016.

28. As per **Annexure P-3** the following is the calculation as per petitioner for the amount to be paid by the respondent no. 1 to the petitioner.

Outstanding statement as on 16.08.2017 of Moon Network Pvt. Ltd.				
	Zeel	Turner	Sports	Total
Billing Nov 2016	17,25,000	2,17,350	115,000	20,57,350
Billing Dec 2016	17,25,000	2,17,350	115,000	20,57,350
Billing Jan 2017	17,25,000	2,17,350	115,000	20,57,350
Billing Feb 2017	17,25,000	2,17,350	115,000	20,57,350
Billing March 2017	17,25,000	2,17,350	-	19,42,350
Collection received from Nov 2016 to March 2017	20,00,000	-	-	20,00,000

Special Discount credit note for the month of Nov 2016	5,14,280	-	-	5,14,280
Special Discount credit note for the month of Dec 2016	5,14,280	-	-	5,14,280
Outstanding as on 31.03.2017 billing till March 2017	55,96,440	10,86,750	4,60,000	71,43,190
Billing April 2017	17,25,000	2,17,350	-	19,42,350
Billing May 2017	17,25,000	2,17,350	-	19,42,350
Billing June 2017 till 12 th Jun 2017	6,90,000	86,940	-	7,76,940
Total Outstanding as on 16.08.2017 billing till 12th Jun 2017	97,36,440	16,08,390	460,000	1,18,04,830

29. Looking to an agreement which is at **Annexure P-1**, which is a Distribution Agreement. Sports Channels have not been referred at all in the list of channels as stated hereinabove and, therefore, there is no liability of respondent no. 1 for the payment of any amount towards the Sports Channels.

30. The amount towards the Sports Channels of Rs. 4,60,000/- for which no liability is arising out of the agreement, nor the petitioner has proof that they have supplied these Sports Channels to the respondent no. 1.

31. Looking to the facts of the present case and evidences on record the petitioner has supplied and respondent no. 1 has received continuous and uninterrupted the signals of Zee Entertainment channels and Turner channels for the period running from 1.11.2016 to 31.3.2017 (contractual period) and thereafter also for the period running from 1.4.2017 to 12.6.2017.

32. Clauses 7, 8 and 9 are about main obligations of respondent no. 1 as well as for license fee as well as for the payment terms. Looking to the Distribution Agreement/Interconnection Agreement as per Clause 8(i) the respondent no. 1 was liable to make the payment of Rs. 75,00,000/- plus applicable service tax and other applicable taxes for the ready reference Clause 7, 8 and 9 reads as under: -

“7. MAIN OBLIGATIONS OF MOON

- (i) Any agreement entered into by MOON, its sub-operations and their respective Affiliates with a Subscriber shall not relieve MOON, its sub-operators and their respective Affiliates of any of their Obligations under this Agreement and MOON shall ensure that such agreements are not in any manner prejudicial to the rights and obligations between the parties as set out in this Agreement.
- (ii) MOON agrees that it shall not make its Subscribers take other channels or services or fulfill any other commercial consideration as a precondition to receive the Zee Group Channel(s).

- (iii) Once a Zee Group Channel(s) has been included in a Subscriber package, Moon shall not stop exhibition of any Zee Group Channel(s) without strictly following the procedure prescribed for changing the composition of the Subscriber package under "Standards of Quality of Service (Digital Addressable Cable TV Systems) Regulations, 2012 (12 of 2012).
- (iv) MOON agrees not to connect or make available the signals of the Channels through the Distribution System to any Independent Affiliate without prior written intimation to ZEEL. It is specifically agreed and acknowledged by MOON that within a period of 30 days from the date of such intimation, MOON shall execute agreement for such additional Territory/network, then ZEEL will be well within its rights to take appropriate action including but not limited to disconnection of signals of Zee Group Channels without any further notice to entire network of MOON. For the sake for clarity the 30 days period mentioned herein shall be considered as Notice Period.
- (v) MOON shall protect the Intellectual Property of ZEEL and shall not cause or permit anything which may damage or endanger the Intellectual Property or assist or allow others to do so. MOON shall not apply for registration of Trade Mark of ZEEL, Zee Entertainment Enterprises Limited (ZEEL) and Zee Media Operations Limited (ZMCL) as a Trade Mark in its own name and shall not use any name or mark similar to or capable of being confused with the Trade name of mark of ZEEL, ZEEL & ZMCL, MOON shall not acquire or claim any property Rights in the Intellectual Property of ZEEL, ZEEL & ZMCL.
- (vi) It is agreed that no independent advertising shall be inserted by MOON and MOON shall not superimpose or otherwise alter any copyright, trademarks, trade names, logos, names on any Zee Group Channel.
- (vii) MOON undertakes to take all appropriate and necessary steps and measures to prevent piracy or any other violation, disclose correctly all the information as required by ZEEL distributed by sub-operator only to person in MOON's SMS and CAS database and operating

within the limits of the subscription limits as conferred in terms of this Agreement.

8. LICENSE FEE

- (I) MOON hereby agree and acknowledge to pay ZEEL, in consideration of rights granted by ZEEL in Territory for Zee Group Channels listed in Annexure – III, MOON to pay to ZEEL the License Fee (“Fixed Fee”) as mentioned below:
- (a) For the period 1st November, 2016 to 31st March 2017 MOON agrees to pay a Fixed Fee Attributable to its own network amounting to Rs. 75,00,000/- *(Rs. Seventy Five Lacs only) plus applicable service tax.
- (b) The aforementioned Fixed Fee of the period 1st November, 2016 to 31st March, 2017 will be paid by MOON in monthly installments (“Monthly Fixed Fee”) as mentioned in details in Annexure – II.

*Plus Applicable Taxes

- (II) Service Tax/VAT/Entertainment Tax or any other indirect tax shall be over and above the Fixed Fee amount, which shall be borne entirely by MOON.
- (III) MOON has agreed that the Monthly Fixed Fee payable for the months shall be paid on or before the end of the concerned month (“Due Date”). For example, the Monthly subscription fee for the month of November, 2016 shall be paid by MOON to ZEEL on or before 31st November, 2016.
- (IV) Payment of the License Fee shall be subject to deduction of any withholding tax/TDS in accordance with the provisions of the Indian Income Tax Act, 1961, as amended from time to time.
- (V) Notwithstanding anything to the contrary contained in this agreement it has been agreed by both the parties that the terms of this Agreement have been mutually agreed upon between the Parties and the said terms will be binding on both parties and they shall not have the right to terminate this present Agreement for Zee

Group Channels till 31/03/2017. MOON further agrees and undertakes that the above mentioned License Fee has been arrived based on mutual negotiators, and therefore it will not be entitled for any sort of reduction in the aforementioned License Fee during the Term of this Agreement.

- (VI) In the event of failure by MOON to pay the License Fees and/or, upon expiry of, or termination of this Agreement, ZEEL shall be entitled to take back the possession of the Equipment from MOON, its sub operators and their respective affiliates and deactivate the Viewing Cards(s). Upon return of the Equipment in proper working condition by MOON, the IRD Deposit shall be refunded to MOON. In case Moon returns the IRDs, but the Viewing Card and remote (where applicable) are damaged or missing, then MOON shall be liable to pay to ZEEL such charges at actual cost of the damaged equipment as may be determined by ZEEL. ZEEL shall be authorized to deduct the cost of damages from the IRD Deposit.
- (VII) All the payments from MOON to ZEEL under the Agreement shall be paid either by (i) Demand Draft/Cheque in favor of Zee Entertainment Enterprise Limited - A/C Zee Channels, payable at its head office or any other place that may be specified by ZEEL in writing from time to time; or (ii) electronic wire transfer into ZEEL's bank Account, accompanied by documentary evidence certified by MOON's bank that the payment has been transferred to ZEEL's Bank Account.

9. PAYMENT TERMS

- (i) MOON shall pay the Monthly Fixed Fee for a particular month on or before the end of the concerned month ("Due Date"). For example, the Monthly Fixed Fee for the month of November, 2016 shall be paid by MOON to ZEEL on or before 30th November, 2016.
- (ii) Within seven days of end of each month, MOON shall provide opening and closing number of subscribers for that month. In case of default by MOON on account of non-submission of Reports for more than two (2)

consecutive months, it shall be deemed to be a material breach of this Agreement.

- (iii) MOON shall be required to make payments by the Due Date in accordance with the terms hereof, and any failure to do so the part of MOON shall constitute a material breach hereunder and shall be liable to pay interest on such late payment at the rate of 1.5% per month. The imposition of collection of interest on the late payments does not constitute a waiver of MOON's obligation to pay the License Fee by the Due Date, and ZEEL shall retain all its other rights and remedies under this Agreement.
- (iv) All License Fee payments hereunder are exclusive of all applicable taxes including any service taxes, VAT, works contract taxes, customs duties, excise duties, entertainment taxes and other such taxes. All such applicable taxes shall be at MOON's cost and will be charged at the prevailing rates by ZEEL to MOON.
- (v) If payment of the License Fee is subject to deduction of any withholding tax/TDS in accordance with the provisions of the Indian Income Tax Act 1961, as amended, MOON shall provide tax withholding certificates to ZEEL within such period as has been specified in the Income Tax Act/Rules/Notifications/Circulars issued thereunder.
- (vi) MOON shall make payment of the Monthly Fee to ZEEL as per the terms of this Agreement without making any deduction or adjustments whatsoever on account including but not limited to any carriage fee or placement charges, if receivable by MOON from ZEEL and/or its affiliated companies (including any holding, subsidiary and or associate entities of the Company), channel owners and/or Service Providers as agreed between the Parties.
- (vii) It is explicitly made clear that in the event of any dispute including but not limited to commercial terms, pricing, tiering, and channel placement MOON shall continue to make the payment of License Fee as per Clause 8 of this Agreement till such time the dispute is resolved. Appropriate adjustment in this regard shall be made by the respective parties on final

resolution of the dispute. The Parties will endeavor that the dispute is resolved within one month.”

(Emphasis Supplied)

- 33.** Thus, upon reading of Clause 8(i) to be read with other Clauses of the Agreement at **Annexure P-1** and as the respondent no. 1 has received the signals of channels of the petitioner as well as of Turner channels. Therefore, the respondent no. 1 is liable to make the payment of Rs. 75,00,000/- plus applicable service tax.
- 34.** Much has been argued by the respondent no. 1 that Distribution Agreement/Interconnection Agreement comes to an end on 31.3.2017 and, therefore, the respondent no. 1 is not liable to make the payment of any amount for the period running from 1.4.2017 to 12.6.2017. This contention is not accepted by this Tribunal mainly for the reason that once the petitioner has supplied the signals of their TV channels as well as the signals of Turner channels and once the respondent no. 1 has received the same uninterruptedly they are liable to make the payment of receipt of the signals even though there is no contract.
- 35.** As per the provisions of the **Indian Contract Act, 1872** especially **Section 70** which is popularly known as Quasi Contract, there exist a

liability to make the payment in receipt of the signals of the TV channels by the respondent no.1. Once the goods are supplied by the petitioner and are consumed by the respondent no. 1, the liability arises for the payment of the consideration even in absence of any agreement e.g. if the Wheat is ordered by one person and by mistake it is delivered to his neighbour and thereafter neighbour is consuming that Wheat, even in absence of any agreement, the neighbour is liable to make the payment of consideration of Wheat.

36. In the facts of the present case also the signals of TV Channels were provided by the petitioner of the channels to the respondent no. 1 and respondent no. 1 had received those signals for further retransmission thereof. Once the respondent no. 1 has received the signals of TV Channels and redistributed the same, the liability for the payment arises.

37. Moreover, the invoices were also raised by the petitioner to the respondent no. 1 for the payment of receipt of signals of TV Channels for the period running from 1.4.2017 to 12.6.2017 along with the applicable taxes. The calculation has been mentioned at **Annexure P-3** as mentioned hereinabove.

Provided that if service providers are not able to enter into a new agreement, they may be entitled to disconnect the signals of TV Channels by giving three weeks' notice published in two local newspapers, out of which one shall be published in the newspaper of the regional language of the area for which the said agreement is applicable.”

(Emphasis Supplied)

- 40.** In view of the aforesaid provisions relating to Interconnect Agreement every service provider shall enter into a new agreement before expiry of the existing agreement. In case the service provider fails to enter into the new agreement before the expiry of the said agreement, the provisions of the existing agreement shall continue to apply till the new agreement is entered into or for the **next three months** from the date of expiry of existing agreement, whichever is earlier. In view of these provisions especially 5(16) of Regulations the petitioner has supplied the signals of Zee Entertainment Enterprises as well as Turner channels upto 12.06.2017 even after the Interconnection Agreement had expired on 31.3.2017 and, therefore, respondent no. 1 was liable to make the payment of the receipt of the signals of the TV Channels of petitioner as well as of Turner channels for the period running from 1.4.2017 to 12.6.2017.

41. Much has been argued out by the counsel for the respondent no. 1 that petitioner is charging lesser amount from the other MSOs and, therefore, petitioner is not entitled to the amount as claimed at Annexure **P-3** from the respondent no. 1. This contention is also not accepted by this Tribunal mainly for the reason that **Court of Law is the Court of Evidence**. Respondent no. 1 has failed to prove that petitioner is charging from other MSOs lesser amount. The burden of proof is upon respondent no. 1 to prove that respondent no. 1 was saddled with more liability in comparison with the amount charged by the petitioner from other MSOs. In absence of any evidence on record, we are not accepting this argument of respondent no. 1.

42. Much has been argued out by the counsel for the respondent no. 1 that there was a reduction of number of subscribers or the consumers. The subscriber base has reduced from 58133 activated boxes in January, 2017 to 55397 activated boxes in June, 2017 and, therefore, pro-rata the amount should be reduced. This contention of the respondent no. 2 is also not accepted by this Tribunal because the liability of the respondent no. 1 is arising out of an agreement which is at Annexure P-1. Looking to Clause 8(i) of an agreement the liability of the respondent no. 1 was to make the

payment which has no causal connection with the number of subscribers. It was a lumpsum general payment for five months for receiving signals of petitioner's channels as well as Turner channels and therefore, the contention of the respondent no. 1 for pro-rata reduction in the consideration is not accepted by this Tribunal.

43. Looking to the Distribution Agreement/Interconnection Agreement which is at **Annexure P-1** and especially Clause Nos. 7,8 and 9 to be read with Clause No. 33 and 33A and also looking to the other documents Annexed with the Memo of the petition, there is no financial liability arising out of an agreement for the respondent no. 2 for the signals of TV Channels which are received by the respondent no. 1 for redistribution. **Nowhere** in the agreement it has been mentioned that if the respondent no. 1 fails to make the payment of the money it shall be paid by the respondent no. 2. **Nowhere** in the agreement it has been mentioned that there will be any financial liability on respondent no. 2. **Nowhere** in the agreement has it been mentioned that there will be joint and several liabilities of respondent no. 1 and 2 to make the payment of receipt of the signals of TV Channels of the petitioner as well as Turner channels. Moreover, the signals supplied by the petitioner was received by the respondent no. 1 for its redistribution. Moreover,

looking to Clause 7, 8 and 9 there is all liability on respondent no. 1 alone and not of the respondent no. 2 in case of the non-payment of the consideration. The petitioner has failed to prove any financial liability of the respondent no. 2 arising out of an Interconnection Agreement. Thus, we hereby hold that the respondent no. 2 is not at all liable for the payment of any consideration to the petitioner under the Interconnection Agreement which is at Annexure P-1.

44. In view of the aforesaid facts, reasons, evidences and the provisions of the law, petitioner is entitled to receive an amount of Rs. 1,18,04,830 out of which an amount of Rs 4,60,000 (towards sports channel) shall be deducted and hence respondent no. 1 is liable to make the payment of final amount of Rs 1,13,44,830/- to the petitioner. Moreover, the aforesaid amount is to be paid with interest @ 1.5% per month as per the Clause 9(iii) of the agreement from the date of filing of this Broadcasting Petition i.e. w.e.f. 22.11.2017 till actual date of payment. This amount shall be paid by the respondent no. 1 to the petitioner within a period of four weeks.

45. This Broadcasting Petition is partly allowed and disposed of.

(JUSTICE D. N. PATEL)

CHAIRPERSON

**(SUBODH KUMAR GUPTA)
MEMBER**

/NS/