

**TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL**

**NEW DELHI**

**Dated 20<sup>th</sup> April 2023**

**Broadcasting Petition No. 2 of 2019**

Zee Entertainment Enterprise Limited

...Petitioner

Vs.

Krishna Cable Network

...Respondent

**BEFORE:**

**HON'BLE MR. JUSTICE RAM KRISHNA GAUTAM, MEMBER**

For Petitioner : Mr. Tejveer Singh Bhatia, Advocate

Mr. Kunal Vats, Advocate

Mr. Rohan Swarup, Advocate

For Respondent

: Mr. Vineet Bhagat,

Mr. Mohit Gulati, Advocates

**JUDGMENT**

1. This petition, under Section 14 read with Section 14 A of Telecom Regulatory Authority of India Act, 1997 (hereinafter referred to as TRAI Act,) has been filed by petitioner-Zee Entertainment Enterprise Ltd., with a prayer for a decree in favour of petitioner against respondent - Krishna Cable

Network, for an amount of 10,52,943/-, being outstanding subscription fee, payable by respondent to petitioner, with pendentelite and future interest, @18% per annum, and cost of this petition, with a prayer of interim nature, for the same prayed relief.

2. In brief, petition contends that Zee Entertainment Enterprises Ltd., a company incorporated under the provisions of Companies Act, 1956, is in the business of distribution of TV channels, comprising Zee Entertainment channels and Turner channels, w.e.f. 1.5.2016. But on the date of petition, it is distributing only Zee Entertainment channel, because it is no longer in the business of distribution of Turner channels, w.e.f. 1/4/2018.

Respondent is a Multi System Operator (MSO) for retransmitting signals of TV channels of various broadcasters, including petitioner, in various DAS notified areas of Uttrakhand. Accordingly, parties, being in business of broadcasting and distribution of TV channel signals, are service providers, as per Interconnect Regulations. Petitioner, in furtherance of its business relationship with respondent, executed an Interconnect Agreement on 13/9/2017 with respondent, for the supply of Zee group of channels, for the period 1/4/2017 to 31/3/2018, pertaining to various DAS notified areas of Uttrakhand. Respondent, in addition to pay monthly subscription fee, also agreed to clear the past outstanding dues for the period upto 20/9/2017.

Copy of Interconnect Agreement, dated 13/9/2017, entered in between, was Annexure P-1 to petition. Respondent had received continuous and uninterrupted supply of petitioner's TV channels, during the currency of aforesaid agreement, and even thereafter. After the expiry of agreement by efflux of time, on 31/3/2018, the respondent continued to engage in process of negotiations for renewal of agreement and accordingly, received continuous and uninterrupted supply of TV channels, from the petitioner till 22/11/2018. Petitioner, while acting bonafidely, and in good faith, continued to supply its TV channels to the respondent, believing upon the assurances of the respondent, regarding clearance of its hugely accommodated outstanding dues and onward renewal of the Agreement. The Petitioner was constrained to issue a Disconnection Notice dated 11.09.2018, under Clause 6.1 of the Interconnect Regulations, 2012, followed by a Public Notice dated 15.10.2018, under Clause 6.5 of the Interconnect Regulations. Copy of the Disconnection Notice, dated 11.09.2018, under Clause 6.1, and Public Notice, dated 15.10.2018, under Clause 6.5 of the Interconnect Regulations, are ANNEXURE P-2 (Colly) to petition.

3. Respondent had collected subscription dues from its subscribers and/or last mile operators, without even making the needful payment, towards subscription dues to the petitioner. Rather in utter disregard to the

binding obligations, as per the duly executed agreement, in between, respondent has chosen to make part payments only, that too, as per its whims and fancies. Petitioner had time to time, raised invoices on the respondent towards regular monthly subscription fee, which were duly received and acknowledged by the Respondent, without any demur whatsoever. But in complete defiance of the Interconnect Agreement, respondent failed to honour those invoices, which were ANNEXURE P-3 (Colly) to petition.

4. As on date, respondent is liable to pay a sum of Rs. 10,52,943/- (Rupees Ten Lakhs Fifty Two Thousand Nine hundred and Forty Three Only) to petitioner. Statement of Account reflecting the dues to the above tune, was ANNEXURE P-4 to petition. The payment was not made by respondent, compelling petitioner for disconnecting the signals, which caused a cause of action, within the jurisdiction of this Tribunal, within the limitation period. Hence, this petition, with above prayers.

5. In its reply, general allegation was made of *Suppressio veri* and *suggestio falsi* against petitioner. As per books of accounts, maintained by respondent, there was no outstanding due, payable by respondent to petitioner. Even upon reconciliation of the accounts, being said to be of petitioner, there is excess payment to petitioner from respondent. The total

payment made by respondent from May 2016 to May 2018, was wrongly indicated by petitioner, to be of Rs. 41,97,422/-. Whereas the payment made by respondent in above period was Rs. 60,09,036/-. A comparative table, was Annexure R-1 and a Proof of the payments, was ANNEXURE-R/2 (Colly)\_to reply.

6. The payment made by respondent for a period of 1/4/2014 to 31/3/2017, were also in excess than the due. Hence, the petitioner may be directed to supply the updated statement. The Interconnect Agreement executed, in between, expired on 31/3/18 and since then, there was no written interconnection agreement, in between the parties. Therefore, the demand of outstanding due from the date of expiry of the agreement, is *prima-facie*, illegal and bad in law.

7. No Interconnect Agreement was executed in between. Rather petitioner got the blank agreement signed by the respondent and had never supplied the copy of the agreement to the respondent. Rather this agreement, came to the knowledge of the respondent through this proceeding. No agreement with regard to clear the outstanding dues for the period upto September 2017, was ever entered. It is denied that petitioner continued to engage in the process of negotiations on 31.3.2018. Rather

respondent was requesting the petitioner for downgradation and / or, for RIO based agreement, whereupon the petitioner kept on using dilatory tactics and no renewal of agreement was there. Ultimately, signals were disconnected in November 2018.

8. Petitioner had not supplied the copy of subscription agreement and invoices since 2014 and invoices were started to be raised only after implementation of GST regime and they still contained many discrepancies, because they do not tally with the amounts mentioned by the petitioner in their own statement of account, attached with the petition. There was no outstanding dues against the respondent. Whereas as per statement of account, provided by the petitioner, to respondent, it was liable to be pay a total amount of Rs. 55,74,672/- to the petitioner, for the period from May 2016 to November 2018, whereas respondent has made payment in total in the tune of Rs. 60,09,036/- during above period, excluding the credit of Rs. 3,06,958/- already standing in the account of the Respondent, maintained by the Petitioner. Hence, Petitioner has extracted and extorted an excess amount of Rs.4,32,788/- from the Respondent, with addition of Rs.3,06,958/, already paid an excess of Rs.7,39,746/-, to the Petitioner. After expiry of interconnect agreement on 31.3.2018, the payment for the period April 2018 to 20.11.2018 amounting to Rs. 17,07,714/- after expiry of

interconnect agreement is, prima facie, illegal and bad in law, because of the fact that respondent cannot demand / claim any amount of outstanding, outside the scope of duly executed written agreement. Hence, the liability to pay respondent an amount of Rs. 4,32,788/- + Rs. 3,06,958/- + 17,07,714/-, totally to Rs. 24,47,460/-, alongwith interest @ 18%, from the date of respective payments, to the date of realisation is against petitioner itself.

9. Hence, a direction was prayed to dismiss the relief claimed/prayed therein, with a further filing of counter claim for and on behalf of respondent, with the reiteration of written statement, was made by respondent and relief for refund of amount of Rs. 24,47,460/- alongwith interest @ 18% from the date of respective payments to the date of actual realisation, was also made. A further prayer was with regard to a direction for entering into fresh agreement and restoring supply of signals with a further prayer of imposing exemplary costs and other reliefs, which the Tribunal deems fit, was made. An interim prayer with same effect was also made.

10. This counter claim was replied by the petitioner with the same contention, as was there in the replication / rejoinder, previously filed by the petitioner. The same were in the tune of the contention of petition itself.

11. Court of Registrar of this Tribunal vide order dated 27.9.2019, framed following issues :

[1] Whether the Respondent is liable to pay and clear the outstanding dues of Rs.10,53,943/-towards the subscription fee, as is claimed by the Petitioner?

[2] Whether the Petitioner's demand of outstanding dues after the expiry of Inter-connect Agreement on 31<sup>st</sup> March, 2018, is illegal and bad in law and the Respondent is not liable to pay any sum after 31.3.2018?

[3] Whether the Petitioner is liable to refund an amount of Rs.24,47,760/- to the Respondent, as have been prayed in the counter claim?

[4] To what relief, if any, the Petitioner is entitled?

12. The petitioner filed its evidence by way of affidavit for and on behalf of petitioner (PW 1) i.e. of Mr. Anurup Narula. Whereas respondent filed the evidence by way of affidavit for and on behalf of respondent i.e. affidavit of Mr. Krishna Bahadur Mall.

13. Written submissions by both sides have been filed.

14. Heard arguments of learned counsel for both sides and gone through the material placed on record.

15. The proceeding before this Tribunal is a civil proceeding, as has been given in the TRAI Act, itself. In a civil proceeding, the preponderance of probabilities, is the touchstone for making a decision, as against strict burden of proof, required in criminal proceeding.

16. Hon'ble Apex Court in Anil Rishi Vs. Gurbaksh Singh – AIR 2006 SC 1971 has propounded that onus to prove a fact is on the person who asserts it. Under Section 102 of The Indian Evidence Act, initial onus is always on the plaintiff to prove his case and if he discharges, the onus shifts to defendant. It has further been propounded in Premlata Vs. Arhant Kumar Jain- AIR 1976 SC 626 that where both parties have already produced whatever evidence they had, the question of burden of proof ceases to have any importance. But while appreciating the question of burden of proof and misplacing the burden of proof on a particular party and recording of findings in a particular way will definitely vitiate the judgment. The old principle propounded by

Privy Council in Lakshman Vs. Venkateswarloo – AIR 1949 PC 278 still holds good that burden of proof on the pleadings never shifts, it always remains constant. Factually proving of a case in his favour is cost upon plaintiff when he fulfils, onus shifts over defendants to adduce rebutting evidence to meet the case made out by plaintiff. Onus may again shift to plaintiff. Hon'ble Apex Court in State of J& K Vs Hindustan Forest Co. (2006) 12 SCC 198 has propounded that the plaintiff cannot obviously take advantage of the weakness of defendant. The plaintiff must stand upon evidence adduced by him. Though unlike a criminal case, in civil cases there is no mandate for proving fact beyond reasonable doubt, but even preponderance of probabilities may serve as a good basis of decision, as was propounded in M Krishnan Vs Vijay Singh- 2001 CrLJ 4705. Hon'ble Apex Court in Raghvamma Vs. A Cherry Chamma – AIR 1964 SC 136 has propounded that burden and onus of proof are two different things. Burden of proof lies upon a person who has to prove the facts and it never shifts. Onus of proof shifts. Such shifting of onus is a continuous process in evaluation of evidence.

17. **Issue No. 2**

Petition, replication, counter to counter claim, specifically pleads that pursuant to expiry of aforesaid agreement, by efflux of time on 31.03.2018,

the Respondent continued to receive uninterrupted supply of TV Channel signals from the Petitioner till 22.11.2018. But this disconnection by Petitioner on 22.11.2018 was made after due notice, required under Interconnect Regulations, for making non-payment of subscription fee, and non-renewal of Interconnect Agreement. In view of Judgment dated 20.04.2022, passed by this Tribunal, in B.P No. 463 of 2017 (Zee Entertainment Enterprise Ltd. Vs Moon Network Pvt. Ltd. and Anr), Respondent cannot seek to evade the payment of subscription fees on the ground that the Interconnect Agreement has expired by efflux of time. The disconnection notice, required under Clause 6.1 and Public notice required under Clause 6.5 of Interconnect Agreement, were respectively issued on 11.09.2018 and 15.10.2018. Ultimately, disconnection was made on 22.11.2018. The Statement of Account, reveals and proves that the dues, in tune of Rs. 10,52,943/- are for above period of disconnection.

18. Learned Counsel for Respondent, had vehemently argued that after the expiry of Interconnect Agreement, there was no agreement in existence, in between, and for the subsequent period, no claim may be raised in view of law laid down by this Tribunal in Judgment dated 10.05.2016 in the matter of UCN Cable Network India Pvt. Ltd. Vs. Raj Cable Network and Anr,

as well as Regulatory change of year 2017 i.e. Regulation 10(21), which specifically prohibits overall non-existence of Interconnect Agreement for raising any claim or responsibility.

19. Learned Counsel for Petitioner has argued that Judgment of UCN Cable, supra, is not applicable in the present case, in view of Regulatory change in year 2017, especially in view of Regulation 10(21), which provides prohibition with regard to non-stoppage of relay of Channel, in condition of subscription of more than 20%, even if the Interconnect Agreement between the parties, had expired, making a complete change from the earlier Regulation.

20. Having gone through the Judgment of B.P No. 463 of 2017, (Zee Entertainment Enterprise Ltd. Vs Moon Network Pvt. Ltd. and Anr.) dated 20.04.2022, supra, it is apparent that the law laid down by this Tribunal, in UCN Cable Networks India Pvt. Ltd. Vs Raj Cable Network and Anr. dated 10.05.2016, in B.P. No. 611 of 2015 along with B.P. No. 176 of 2015 (2016 SCC online TDSAT 125) and principles laid therein had neither been mentioned, nor discussed, nor followed nor deviated with reasons. Rather is having no mention of the same.

21. Hence, the Rule of Precedent never permits for disobeying the law, propounded by UCN Cable Judgment (supra), as well as the Interconnect Regulations, which was followed in above Judgment and is still in operation. For making a ready reference, the relevant para of Judgment, is being reproduced as below:

*“35. We may at this stage advert back to the statutory position. Interconnection Regulations, 2004 were issued by the Telecom Regulatory Authority of India (TRAI) vide notification issued on 10<sup>th</sup> December 2004 in order to cover arrangements for interconnection and revenue sharing among service providers in the broadcasting sector. On 17<sup>th</sup> March 2009 a notification was issued incorporating clause 4A in the body of the Regulations. Clause 4A lays down as under:*

*“4A. Interconnection Agreements to be in writing.*

*4A.1 It shall be mandatory for the broadcasters of pay channels and distributors of TV channels to reduce the terms and conditions of all their interconnection agreements to writing.*

*4A.2 No broadcaster of pay channels or distributor of TV channels, such as multi system operator or head end in the sky operator, shall make available signals of TV channels to any distributor of TV channels without entering into a written interconnection agreement.*

*4A.3 Nothing contained in regulations 4A.1 or 4A.2 shall apply to any supply of signals or continuance of supply of signals of TV channels by a broadcaster or distributor of TV channels, such as multi system*

*operator or headend in the sky operator, in pursuance of or in compliance with any order or direction or judgment of any court or tribunal, including any order or direction or judgment of any court or tribunal on any proceeding pending before such court or Tribunal.*

*4A.4 It shall be the responsibility of every broadcaster of pay channels who enters into an interconnection agreement with a distributor of TV channels to hand over a copy of signed interconnection agreement to such distributor of TV channels and obtain an acknowledgement in this regard within a period of 15 days from the date of execution of the agreement and, similarly, it shall be the responsibility of every multi system operator or headend in the sky operator, as the case may be, who enters into an interconnection agreement with a cable operator to hand over a copy of signed interconnection agreement to such cable operator and obtain an acknowledgement in this regard within a period of 15 days from the date of execution of the agreement.”(emphasis added)*

*36. Provisions identical to the above are to be found in the Das Interconnection Regulations in causes 5 (17) to 5 (20) which are as under:*

*5. General Provisions relating to interconnection agreements —*

*(17) It shall be mandatory for the multi system operator to reduce the terms and conditions of the interconnection agreements into writing.*

*(18) No multi system operator, shall make available signals of TV channels to any linked local cable operator without entering into a written interconnection*

*agreement.*

*(19) Nothing contained in regulations (17) or (18) shall apply to any supply of signals or continuance of supply of signals of TV channels by a multi system operator in pursuance of or in compliance with any order or direction or judgment of any court or tribunal, including any order or direction or judgment of any court or tribunal on any proceeding pending before such court or tribunal.*

*(20) It shall be the responsibility of every multi system operator to hand over a copy of signed interconnection agreement who enters into an interconnection agreement with a linked local cable operator/s to hand over a copy of signed interconnection agreement to such cable operator and obtain an acknowledgement in this regard within a period of 15 days from the date of execution of the agreement.*

*(emphasis added)*

*37. As may be seen, these provisions, phrased in the negative plainly forbid any supply of TV signals for redistribution in the absence of an interconnect agreement in writing. Apart for the rigor of these provisions, it is also important not to look at these provisions in isolation but as a part of the overall regulatory framework.*

*38. The preamble to the TRAI Act reads as under:*

*“An Act to provide for the establishment of the Telecom*

*Regulatory Authority of India and the [Telecom Disputes Settlement and Appellate Tribunal to regulate the telecommunication services, adjudicate disputes, dispose of appeals and to protect the interests of service providers and consumers of the telecom sector, to promote and ensure orderly growth of the telecom sector] and for matters connected therewith or incidental thereto.” (emphasis added)*

39. It is further to be noted that the scheme of interconnections for distribution of TV signals as set out under clause 3.2 of both the Interconnect Regulations, 2004 and the DAS Interconnect Regulations, 2012 rests on the principle of “must provide on a non-discriminatory” basis.

40. Further, clause 9 of the DAS Regulations, 2012 casts the obligation of reporting to TRAI all Interconnect agreements. Clause 9 provides as under:

“9. Reporting Requirements. - (1) Every multi system operator shall submit to the Authority information, in the proforma specified in Schedule-III to these regulations, all interconnect agreements entered into by it with the broadcaster and local cable operator and subsequent modifications made therein.

(2) Every existing multi system operator shall submit to the Authority by 31<sup>st</sup> July, 2012, all interconnect agreements entered into by it and amendments made therein prior to the date of notification of these regulations.

(3) Every multi system operator commencing its services after the notifications of these regulations shall submit to Authority its

*interconnection agreement with in thirty days of entering into the agreement or 31st July, 2012 whichever is later.*

*(4) Every broadcaster shall furnish the details of carriage fee paid by him to the multi system operator along with the information furnished by him under the Register of Interconnect Agreements (Broadcasting and Cable Services) Regulation 2004 (15 of 2004), as amended from time to time. Such information henceforth shall also include details of carriage fee paid to the multi system operator by the broadcaster.”*

*41. The supply of TV signals on an oral arrangement, therefore, does not only flout the statutory injunction but viewed in the larger perspective such an arrangement cuts at the very roots of the statutory scheme of interconnections. Any oral arrangement for supply of TV signals without an agreement in writing is antithetical to both orderly growth of the sector and non-discrimination in interconnect arrangements with different distributors.*

*42. Here it would be relevant to note that clause 5(16) of the DAS Interconnect Regulations 2012 (corresponding to clause 8 of the Interconnect Regulations 2004) allowed, after expiry of an agreement, three months' time to the parties to negotiate the terms of the fresh agreement (which on being executed would relate back to the date of expiry of the previous agreement). The provision was widely misused, especially under DAS transmission, and supply of TV signals would be continued, in many cases for long periods of over a year after the existing agreement came to end. The Regulator clearly viewed it as an abuse of the regulation and by notification issued on*

*07.01.2016 amended clause 5(16) of the DAS Regulations 2012 with effect from 01.04.2016. In terms of the amended regulation, no supply of signals can be made for a single day unless a fresh agreement is executed to replace the previous agreement on its expiry. The change brought about in the Regulations clearly shows the importance attached by TRAI to an agreement for interconnection in writing*

*43. In our view, in a case for recovery of dues for supply of TV signals the Tribunal, unlike a court established under the Code of Civil Procedure, cannot view the matter as purely a private dispute concerning the rights of two individuals. This Tribunal set up under the TRAI Act is duty bound to also examine whether or not the relationship between the parties from which the claim arises was lawful and in case the relationship was not lawful, its likely impact and consequences on the broadcasting sector as a whole.*

*44. Cases coming to the Tribunal show a clear pattern. When a major MSO wishes to enter a market, it poaches upon the LCOs, affiliated with other MSOs operating in the area from before by offering them much lower rates. As the LCOs shift to the new entrant in large numbers, conflicts arise between the LCOs and the MSO from which they earlier received signals. The new entrant gives its own STBs to the LCOs shifting to it for having the boxes seeded at the subscribers' places. After LCOs in substantial numbers come under it and a large number of its boxes are seeded, the new entrant starts increasing its rates and then there is another round of conflict between the new entrant and its poached LCOs. All the arrangement is oral and without*

*any interconnect agreement. Hence, when the matter comes to the Tribunal, it is the word of one side against the word of the other side. In the past months, a large number of such cases have come to the Tribunal. It is obvious that such practices based on oral arrangements, besides being in violation of the regulation, vitiate the market and disrupt the orderly growth of the sector.*

*45. In the light of discussions made above, we confirm the view taken in the earlier cases and answer the question framed at the beginning of the judgment in the negative.”*

22. Hence, the Judgment of UCN Cable Network is with interpretation of Interconnect Regulation and is in conformity with other previous Judgments of same effect. Whereas, Judgment of Zee Entertainment Enterprise Ltd. was with no mention of above Judgment. Probably above Judgment was not placed before Tribunal, in subsequent case. The Regulatory change in the year 2017, and subsequently, Regulation 10(21), is reproduced hereunder -

“10. Interconnection agreement... .

(21) Every distributor of television channels shall enter into a new written interconnection agreement, for carrying television channels requested by a broadcaster, before the expiry of the existing interconnection agreement:

Provided that the distributor of television channels shall, at least sixty days prior to the date of expiry of the existing interconnection agreement, give notice to the broadcaster to enter into new written interconnection agreement: Provided further that in case the parties fail to enter into new interconnection agreement before the expiry of the existing interconnection agreement, the distributor of television channels may not carry such television channels on expiry of the existing interconnection agreement:

Provided further that a distributor of television channels shall not discontinue carrying a television channel if the signals of such television channel remain available for distribution and monthly subscription percentage for that particular television channel is more than twenty percent of the monthly average active subscriber base in the target market:

Provided also that if the distributor of television channels decides to discontinue carrying a television channel due to expiry of the existing interconnection agreement, it shall, fifteen days prior to the date of expiry of its existing interconnection agreement, inform the

subscribers through scrolls on the channels included in the said agreement—

(a) the date of expiry of its existing interconnection agreement; and

(b) the date of disconnection of signals of television channels in the event of its failure to enter into new interconnection agreement.”

23. So, it is apparently mandated that distributor of television channels shall enter into a new written Interconnection Agreement, for carrying television channel, requested by broadcaster, before expiry of existing Interconnection Agreement, provided that the distributor of Television Channel shall at least 60 days prior to the date of expiry of the existing Interconnection Agreement, give notice to the broadcaster to enter into a new written Interconnection Agreement. Provided further that in case the parties failed to enter into new Interconnection Agreement, before the expiry of existing Interconnection Agreement, the distributor of Channel may not carry such Television Channels on expiry of the existing Interconnection Agreement. Provided further that a distributor of Television Channels shall not discontinue carrying a Television Channel, if the signals of such Television Channels remain available for distribution and monthly

subscription percentage for that particular Television is more than 20% of the monthly average active subscriber base in the target market.

24. This proviso is being highly pressed by learned Counsel for Petitioner that as the weightage of 20% and its above was the subscription in the market, hence, the Petitioner was to continue its channel under above provision. Whereas, this proviso is further appended with a proviso of this effect that the distributor of Television Channel, if decides to discontinue carrying a Television Channel, due to expiry of the existing Interconnection Agreement, it shall, 15 days prior to the date of expiry of its existing Interconnect Agreement, inform the subscribers through scrolls on the Channels included in the said Agreement, the date of expiry of its existing Interconnection Agreement, and the date of disconnection of Channels, in the event of its failure to enter into new Interconnection Agreement.

25. Hence, the disconnection, after the expiry of Interconnect Agreement, is to be made, but the condition precedent is that 15 days before the expiry for disconnection, the users are to be apprised that Interconnect Agreement is going to be expired and is not be renewed and the prospective disconnection, is to be there. Hence, in view of this proviso, which is with

this further proviso, this may not be pleaded that there was any Regulatory mandate for continuing Channel, even after expiry of Interconnect Agreement. Rather the Regulatory mandate is that not even for a single day, after expiry of Interconnect Agreement, the continuation is to exist i.e. transmission or service providing without existence of written Interconnect Agreement, was not permitted at all, unless the same was got renewed in writing, prior to that expiry date.

26. On the basis of above discussions, it is established that after the expiry of Interconnect Agreement on 31.03.2018, there was no Interconnect Agreement in existence, because the same was not renewed at all. Hence, for that past period, neither Petitioner may make a claim nor Respondent may make a claim for its refund.

This Issue No.2 is being decided against the Petitioner.

27. **Issue No.1**

The claim, in view of Interconnect Agreement dated 13.09.2017, which was in operation from 01.04.2017 till 31.03.2018, was made in the tune of Rs. 10,52,943/- and this was with this contention that the same was included with the subscription fee due, and not paid, till 22.11.2018 i.e. date of disconnection of distribution. As per decision of Issue No. 2, it is apparent

that after expiry of Interconnect Agreement on 31.03.2018, there was no renewal of same and in view of Judgment of UCN Cable Network Ltd., supra, because of being no written Interconnect Agreement, in between, no claim for a period beyond 31.03.2018, till 22.11.2018, may be made before this Tribunal, by either side. Because it is against the Statutory Regulation, as well as Public Policy, propounded in the above judgment. The previous due, as on 20.09.2017, was also to be paid by Respondent, in accordance with Interconnect Agreement dated 13.09.2017. This Interconnect Agreement was disputed by Respondent, but at one place counter claim, is being raised in the light of above Interconnect Agreement. On the other hand, it is being said that no such Agreement was there, rather a blank deed was got signed, subsequently, it came in existence along with this Petition.

28. Either blow hot or blow cold. Hot and cold may not be blown at a time. Either this Agreement was to be denied and for this no payment would have been made or this Agreement is being admitted and payment under it, ought to have been admitted, or this agreement is being expired, payment under it is being admitted, again counter claim is being raised. No specific pleading with regard to fraud and void Agreement dated 13.09.2017 is there, nor it was duly proved by Respondent. Even at the time of argument, the

term and period of this Agreement was being admitted. Rather a claim, after the expiry of above Agreement on 31.03.2018, is being denied. Hence, the above Agreement under above facts and circumstances, is with preponderance of probabilities, of being undisputed Agreement. And in this Agreement a condition was for making payment of previous dues and this Agreement was of dated 20.09.2017, for outstanding dues and was effective from 01.04.2017 to 31.03.2018. Hence, nothing was pleaded that the outstanding amount was not there. Rather some amount was paid and it was adjusted against some other concern etc. etc. The document itself is a proof of this fact and the strict interpretation of the fact, written therein, is to be taken into consideration i.e. to be read, in between the line and this document, is with its specific condition for making of payment of subscription fees for future at above rate and outstanding till 20.09.2017. Hence, anything against it, is of no avail, for both side, i.e., for Petitioner as well as for Respondent. The Petitioner, in its written submission, as well as evidence of PW1, has said that invoices were raised and those were acknowledged and received by Respondent. But the affidavit filed by Petitioner and his witness PW1, is of no annexures written in it. Hence, the invoices and the Statement of Accounts, being said to be Annexed with affidavit in evidence, had not been annexed therein. Hence, it itself is not

able to prove the fact pleaded by Petitioner with regard to its dues and payment. But the Respondent in its written statement had annexed the invoices and had pleaded with regard to Statement of Account pleaded by Petitioner, wherein specific mention of Statement of Account of Petitioner, has been made. At Page No. 161 of reply, on behalf of Respondent to the Petition, Annexure-A, of the invoice reveals, that closing balance on 01.03.2018 for period 01.03.2018 to 31.03.2018 was Rs. 3,10,684/-. Hence, the actual subscription fee due, till 31.03.2018 i.e. date of end of Interconnect Agreement was Rs. 3,10,684/- only. Hence, this much amount along with simple interest @ 7% p.a, from the date to due to actual date of payment, is to be awarded, against Respondent in favour of Petitioner.

Hence, this issue is being decided with this effect that Respondent is liable to make payment towards outstanding dues of Rs. 3,10,684/-, due as subscription fee, till end of the Interconnect Agreement on 31.03.2018, along with simple interest @ 7% p.a.

30. **Issue No.3**

At one place, Respondent pleads that after efflux of time and end of Interconnect Agreement on dated 31.03.2018, there was no written

Interconnect Agreement, in between, and as per Interconnect Agreement dated 13.9.2017, there was no renewal. Hence, in view of Interconnect Regulations 2017, as well as law laid down by this Tribunal in UCN Cable, supra, there is no liability of Respondent to make payment. On the other hand, Respondent is claiming payment, said to be made for the period after end of agreement to Respondent. Hence, in view of law laid down as above, neither Petitioner nor Respondent may claim any liability or duty on the basis of any oral agreement or relations continued, in between, before this Tribunal. The decision over Issue No. 1 and 2 had specifically propounded as above, that once Agreement was entered, the same was reduced in writing, with a specific mention of outstanding dues as on 20.09.2017, in the tune of Rs. 6,31,987/- with a prospective subscription fees, as well as continuation of this Agreement from 1.4.2017 till 31.03.2018. This may not be resiled by Respondent by saying that even before 01.04.2017, there was excess payment made to Petitioner, or some payment was made prior to 01.04.2017 or 20.09.2017, and it was said to be adjusted against some other entity. This all are the facts before the enforcement of Interconnect Agreement dated 13.09.2017. Rather terms agreed and reduced in writing in above agreement. Hence, the counter claim or refund, being prayed by Respondent, is also not maintainable on the same policy and proposition of

law laid down by this Tribunal in UCN Cable Limited Case, supra. Hence, this issue is being decided against Respondent.

31. **Issue No. 4**

On the basis of discussions made above, this counter claim is to be dismissed. The Petition is to be partly allowed for an amount of Rs. 3,10,684/- and pendentelite and future simple interest @7% per annum.



**ORDER**

On the basis of discussions made above, this counter claim is being dismissed. Petition is being partly allowed. Respondent is being directed to make deposit of Rs. 3,10,684/- with a pendentelite and future simple interest @7% per annum, till actual date of payment, within two months from the date of judgment, in this Tribunal, for making payment to Petitioner.

Formal order/ decree be got prepared by office, accordingly.

.....  
(Justice Ram Krishna Gautam)

20.04.2023  
/NC/

