

**TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL**

**NEW DELHI**

**Dated 21<sup>st</sup> February 2023**

**Broadcasting Petition No. 405 of 2018**

Zee Entertainment Enterprise Ltd. (Maharashtra) ...Petitioner

Vs.

Venkata Sai Media Pvt. Ltd. and Anr. ...Respondents

**BEFORE:**

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

For Petitioner : Mr. Tejveer Singh Bhatia, Advocate  
Mr. Kunal Vats, Advocate

For Respondent No. 1 : Ms. Shweta Sharma, Ms. Prachi Kohli,  
Advocates

For Respondent No. 2 : Mr. Nasir Husain, Advocate

**JUDGMENT**

1. This Petition, under section 14 read with 14A of Telecom Regulatory Authority Act, 1997 (hereinafter called as 'TRAI Act'), has been filed by

Petitioner- Zee Entertainment Enterprise Ltd. against two Respondents – Venkata Sai Media Pvt Ltd, respondent no. 1 and GTPL Hathway Pvt. Ltd., respondent no.2, with a prayer for a decree in favour of the Petitioner against the Respondents for an amount of Rs. 2,70,28,834/- (Rupees Two Crore Seventy Lakh Twenty Eight Thousand Eight Hundred and Thirty Four Only), being the outstanding subscription fee, payable by the respondents to the petitioner alongwith pendente lite and future interest, till actual date of payment, @ 18% p.a. in favour of Petitioner, with a further prayer for award of cost of this Petition.

2. In Brief the contention of Petition is that Petitioner M/s. ZEE Entertainment Enterprise Ltd. is a company incorporated under the provisions of the Companies Act, 1956 and is in the business of distributing TV Channels comprising ZEE Entertainment Channels and Turner Channels w.e.f 01.05.2016. Prior to it, the aforementioned channels were distributed by the agent/distributor of the Petitioner Company, namely Taj Television (India) Pvt. Ltd. Petitioner's Company is in the business of distributing only ZEE Entertainment channels with effect from 01.04.2018. It is a Service Provider.

3. The Respondent No.1 is a Multi System operator (MSO), retransmitting the signals of TV channels of various Broadcasters, including Petitioner, in various DAS specified areas in the states of Andhra Pradesh and Telangana. Respondent No.2 is another MSO operating on PAN-India basis and retransmitting TV channel signals of various broadcasters including the Petitioner.

4. Respondent No.1 is availing the TV Channel Signals of the Petitioner from Respondent No.2, without observing the terms and conditions of statute. Hence, it has been arrayed as a party, in this Petition with a prayer of interim relief in form of an order of an injunction, restraining Respondent No.2 for providing TV signals to Respondent No.1 in utter dis-regard of statutory provisions. This Tribunal has got jurisdiction to decide this dispute, arising in between Petitioner and Respondent No. 1. The relief claimed, is within the period of limitation.

5. The ongoing business relationship between the parties resulted Respondent No.1 for executing Interconnect Agreement with the Petitioner on 22.07.2017 for the supply of Standard Definition (SD) channels of ZEE and Turner Group. This Interconnect Agreement was executed for a period of 12

months starting from 01.04.2017 to 31.03.2018. This was executed for various DAS specified areas in the states of Andhra Pradesh and Telangana. The outstanding dues for the period upto 14.06.2017, resulting with previous interconnect agreement in between was also agreed to be paid by Respondent No.1 in the interconnect agreement dated 22.07.2017. The same agreement is ANNEXURE P-1 (Colly). The above Interconnect Agreement qua SD Channels, was executed by Respondent No.1, pursuant to the disconnection of the supply of Signals on 15.06.2017 by the Petitioner, on account of non-clearance of outstanding dues and non-renewal of the Interconnect Agreement for the year 2017 - 2018.

6. Respondent No.1 approached the Petitioner and gave an undertaking to clear the outstanding dues. Upon this undertaking and assurances, this subsequent Interconnect agreement dated 22.7.2017 was got executed between Petitioner and Respondent No.1. Wherein Respondent No.1 acknowledged and agreed to make good the outstanding dues with a further regular payment towards monthly subscription fee. The same interconnect agreement was also not complied with. Though a payment through RTGS in the tune of Rs. 1,00,00,000/- (Rupees One Crore only) was made and it was given credit, in Statement of Account, filed by Petitioner. Three other

cheques, towards payment of outstanding dues, were given but it is undisputed that all those three cheques were dishonoured, resulting to no payment for it. The remaining amount, along with three months' subscription fee became further due against Respondent No.1.

7. The notices were issued to Respondent No.1 on 10.05.2017 and 23.05.2017 in accordance with Clause 6.1 and Clause 6.5 of the Interconnect Regulations, respectively, prior to the disconnection of the supply of signals to the network of the Respondent and same are ANNEXURE P-2 (Colly.). The term of interconnect agreement, wherein assurance and undertaking was there, was not complied with by Respondent No.1, besides availing TV channel signals from the Petitioner, Respondent No.1 failed to make regular payments towards subscription fee and clear previous outstanding dues agreed upon as well as running subscription fees. As a result of continuous default on part of Respondent No.1, in clearing the outstanding dues, despite various assurance given by him, Petitioner was constraint to issue a disconnection notice on 05.03.2018. Again, a public notice dated 09.03.2018 under Clause 6.5 of the Interconnect Regulations was issued, but of no avail. As a result of which, Petitioner discontinued the supply of its TV channel signals on 02.04.2018. Copies of disconnection notice dated 05.03.2018 and

Public notice dated 09.03.2018 issued by petitioner under clause 6.1 and 6.5 of the Interconnect Regulations respectively, were annexed with Petition as ANNEXURE P- 4 (Colly). After disconnection of the supply on 02.04.2018, Respondent approached the Petitioner and gave false assurance of clearing of all outstanding dues.

8. A Memorandum of Understanding dated 24.04.2018 was again executed, whereby, the Respondent No.1 gave an explicit undertaking to clear the entire outstanding dues without any further delay. Upon this assurance, Petitioner reconnected the supply of signals on 24.04.2018 itself, but the dues remained, as such. The outstanding dues, as stipulated in the Memorandum of Understanding dated 24.04.2018, as well as running subscription charges remained unpaid, resulting a duty to pay Rs. 2,70,28,834/ - to Petitioner by Respondent No.1. The Statement of Account, specifying the credit and debit towards above transaction, has been annexed with Petition as Annexure P- 7. The interest payable towards above liability was also agreed, in the terms written in above agreement. Hence, this cause of action further had arisen resulting this Petition, before this Tribunal. Hence, this Petition with above prayers.

9. Even after appearance of both of Respondents on the very first day appearing on 14.08.2018, no reply either by Respondent No. 1 or by Respondent No. 2, got filed. Repeated orders in order-sheet reveal that sufficient time was given to Respondents for submission of their written statement.

10. Though repeated assurance was given for settlement in between, but neither settlement could be achieved, nor reply could be filed. Ultimately, a last opportunity for filing written statement to both of Respondents was given, but it too, was not availed.

11. The evidence by way of affidavit has been filed by Petitioner and the same is on record. But none of the Respondents have filed any evidence in support of their case. There is no pleading, nor any evidence by any of the Respondents.

12. The Court of Registrar of this Tribunal fixed this Petition for hearing, before this Tribunal, because there were no written statements, resulting in framing of any issues.

13. The evidence by way of affidavit for and on behalf of Petitioner as PW-1 Mr. Himanshu Kaushik along with Resolution of Board authorizing Mr. Himanshu Kaushik to depose for and on behalf of Petitioner has been filed and is on record.

14. Heard Learned Counsels. Learned Counsel for Respondent mentioned that as Respondent is not in contact and is not giving any instruction, nor any reply, in form of written statement, nor any evidence is there, hence, nothing is to be argued by and on behalf of Respondent.

15. **Burden of proof:**

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.

16. This Petition, before this Tribunal, is a civil proceeding and in civil proceeding, the preponderance of probabilities, is the touchstone for making a decision, as against strict burden of proof, required in criminal proceeding.

17. The Interconnect Agreement entered in between Petitioner and Respondent is fully intact and vetted by the testimony of PW-1 which is unrebutted affidavit corroborating and proving the facts of pleadings of Petitioner.

18. The Statement of Accounts is also annexed with Petition and given in affidavit. The same reveals the acknowledgment of outstanding amount by Respondent No.1. The payment through RTGS amounting Rs. 1,00,00,000/- (Rupees One Crore only) is shown in the Statement of Accounts. The same has been credited too. The three cheques issued by Respondent No.1 specified in plaint/Petition are specifically said to be dis-honoured resulting in, no payment for it. Hence, the same amount has been shown to be due, as outstanding, in the Statement of Account. The three months' subscription fees, with no payment towards it, have been specified in the Statement of Account and were averred in testimony of PW-1. Hence, the entire contention of the Petition is very well there in the affidavit. The same is uncontroverted and unrebutted. The Interconnect Agreement with full terms and conditions were given in Petition itself. As a result of which, the contention of Petition is fully proved by unrebutted testimony.

19. Admittedly, there is no privity of contract in between Respondent No. 2 and Petitioner and no claim may be raised against Respondent No. 2 towards outstanding dues as well as subscription charges, which were admitted and acknowledged, as a liability by Respondent No.1 towards Petitioner, in the basis of this Petition i.e. Interconnect Agreement.

20. Hence, the order of injunction was passed by this Tribunal against Respondent No. 2 for not giving signals to Respondent No.1 for re-transmitting it in defiance of the Statutory Interconnect Regulations. Even after this injunction order, no reply or response by Respondent No. 2 is there. Hence, the liability against Respondent No. 2 is not made out. The cause of action had arisen against Respondent No. 1 and the claim is made out against Respondent No. 1 only.

21. So far as, interest rate is concerned, this Tribunal in many Petitions had granted interest @ 9% per annum towards pendentelite and future interest.

22. Accordingly, considering the present financial fiscal scenario and the grant of interest by this Tribunal, in like Petitions, the simple rate of interest is rational and reasonable @ 9% per annum for pendentelite and future.

23. Accordingly, this Petition merits to be allowed/decreed for amount Rs. 2,70,28,834/- (Rupees Two Crore Seventy Lakh Twenty Eight Thousand Eight Hundred and Thirty Four Only) alongwith pendentlite and future interest @ 9% per annum against Respondent No. 1 - Venkata Sai Media Pvt. Ltd. in favour of Petitioner- Zee Entertainment Enterprise Ltd.

**ORDER**

The Petition is being decreed. Respondent No. 1- Venkata Sai Media Pvt. Ltd. is being directed to make payment of Rs. 2,70,28,834/- (Rupees Two Crore Seventy Lakh Twenty Eight Thousand Eight Hundred and Thirty Four Only), alongwith pendentelite and future interest @ 9% per annum, within two months from today, in the Tribunal, for making payment to the Petitioner. Formal order/ decree be drawn by office accordingly.

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(Justice Ram Krishna Gautam)  
Member

21.02.2023  
/NC/