

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL**NEW DELHI****Dated 18th May 2023****Broadcasting Petition No. 185 of 2018**

Union of India

...Petitioner

Vs.

Bharat Broadcasting Network Ltd.

...Respondent(s)

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

For Petitioner : Mr. Ankur Singh, Advocate

For Respondent : Mr. Zulfiker Ali P.S, Advocate

JUDGMENT

1. This Petition, under Section 14 read with Section 14A of the Telecom Regulatory Authority of India Act, 1997 (hereinafter referred to as "TRAI Act") has been filed by Union of India, petitioner, against Bharat Broadcasting Network Ltd, respondent with following prayers:-

- a. Pass an order / decree in favour of the Petitioner and against the Respondent for an amount of 1,50,71,399/- (Rs. One crore, fifty lakh

seventy one thousand three hundred and ninety nine only) plus Foreign Exchange Fluctuation and penal interest for the period 2016-17 onwards;

b. Pass an order/decreed awarding pendentelite interest and future interest till the time of realization of principal amount by the Petitioner at a rate of 18% per annum;

c. Pass any other order (s), which this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case, in favour of the Petitioner and against the Respondent.

2. In Brief, the petitioner is the Union of India (i.e. Department of Space), as a service provider. The Respondent is a broadcast licensee and a service provider. Both the Petitioner and the Respondent are covered by the definition of a "service provider" in terms of Section 2 (1) of the TRAI Act. Further, the Respondent is a "licensee" within the meaning of section 2(1)(e) of the Act. The present dispute, is wholly covered, within the jurisdiction of this Tribunal. The Petitioner and the Respondent entered into an agreement dated 24.09.2007 for provision of 3 MHz of Ku- Band capacity on INSAT-4 / INSAT 4CR / INSAT 4G satellite or any other satellite having coverage over India.

3. In reply, the agreement and liability was not substantially disputed.
4. Heard learned counsel for both sides and perused the material placed on record.
5. Vide order dated 31.1.2023 it was specifically mentioned that:

“Learned counsel for both sides are present. Learned Counsel for Petitioner, firstly placed the order of Court of Registrar of this Tribunal of 05.02.2019, wherein it was specifically mentioned that parties are at no issues to be adjudged. Meaning thereby, if parties are not at issues, then nothing is to be adjudicated by this Tribunal.

Once the contention of pleading is not denied in written reply, the only thing remains, calculation of the principle and the interest, till filing of this Petition, plus pendent lite plus prospective interest, till actual payment, and for this calculation, the written submission has been filed by Counsel for Petitioner.

Learned Counsel for Respondent mentioned that Respondent Company is under critical financial situation. Nothing was denied, except inability to make payment and a request for recession, some concession by Union of India, for which, parties were at table for one or two times, for final settlement in between, though not formally. But four weeks' time is being requested by Respondent, which is vehemently opposed by Counsel for

Petitioner with this contention that the Petition itself is of year 2018 and Respondent Company is in pitiable financial condition. Hence, the recovery of the dues may be badly effected in case of any further delay.

Considering all those contentions, one and last opportunity, for conciliation in between, is being given for three weeks. Ultimately, this will be heard and decided on 28.03.2023, in case of no fruitful conciliation is there”.

6. In consequence thereof, it is being reported by learned counsel for both sides that reconciliation could not be fruitful, but nothing is under dispute to be adjudged by this Tribunal, except a request for grant of some time for making payment of above outstanding dues, calculated and given by learned counsel for petitioner, in its written submissions, at **Annexure-A** at page No. 5. However, the interest *pendentelite* and future, till actual payment, is not calculated in it. Though it was claimed to be 18% p.a., but it is a discretion of this Tribunal and very often, this Tribunal has awarded simple interest @ 9% p.a., in other petitions, decided by this Tribunal. Hence, this interest was not calculated, in above chart. But, this chart is undisputed and interest *pendentelite* and future, is undisputed and this is discretion of this Tribunal. Considering the pitiable financial circumstances of respondent company, is to be given discretion in the rate of interest, as well as the installments, for making whole of the payment, within six

months, from the date of judgment. The only prayer and dispute of this fact, is by counsel for respondent.

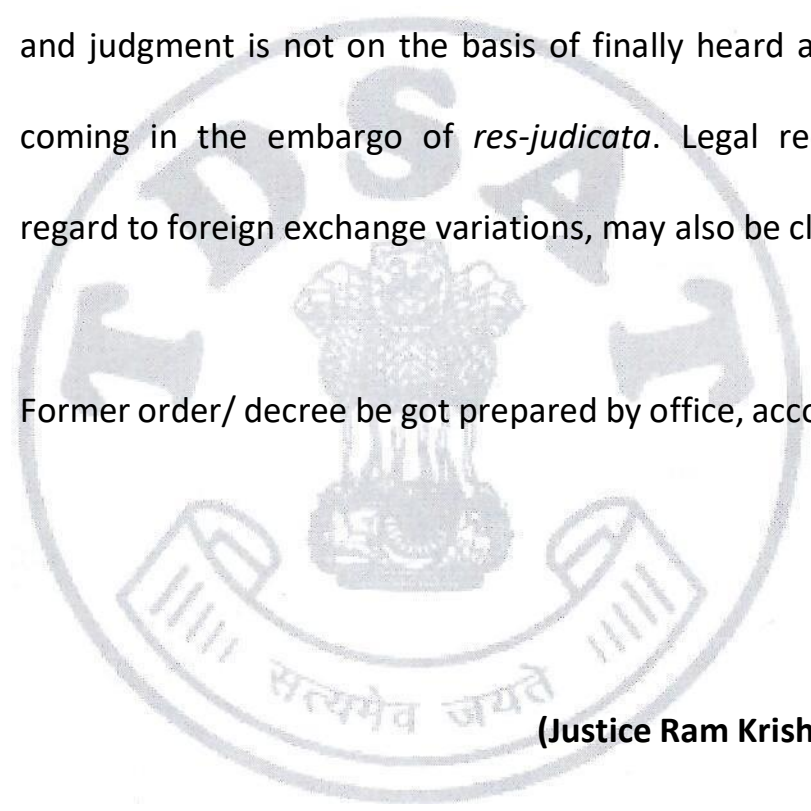
7. This has been vehemently opposed by counsel for petitioner that he is having no instruction with regard to fixing any installment or giving any time, but so far as rate of interest is concerned, the present fiscal and financial scenario and grant of interest by this Tribunal, in many previously decided petitions are @ 9% p.a. as a simple interest, which is being undisputed. This has also been said by counsel for respondent that the financial condition and the occurrences compelled and constrained respondent company for making payment of petitioner. But the bonafide is always there, which is proved by this that after filing its petition, Fifty Lakhs was deposited by respondent. It shows the bonafide of the respondent company and Twenty five Lakhs is to be paid within one month from the date of judgment, further Twenty five Lakhs will be paid in another one month and for remaining amount, the payment will be made within four months, in equal installments. This grace too, be given by this Tribunal. Learned counsel for petitioner has opposed this request too, but could not oppose the fact that Fifty Lakhs was paid by respondent at a time after filing of this petition and it was mentioned in the pleadings / rejoinder / replication, by petitioner.

8. Considering this facts and circumstances, it is apparent that there remains nothing for adjudication, except the rate of *pendentelite* and future interest, and the time for making payment. Hence, the relief prayed is for the penal interest of the period 2016-17. But this interest too, is to be @9% p.a., Simple interest along with other *pendentelite* and future interest.

9. Accordingly, this petition is being allowed and disposed of with following directions :

- a. Petition is being allowed. Respondent is being directed to make payment of Rs. 25 Lakhs within one month of judgment, Rs. 25 lakhs in other one month and rest of amount i.e, Rs.45,62,079/- as in Annexure-A at page No. 5 of written submissions, plus interest of 2016-17 and pendent lite and future interest, till actual payment @ simple interest of 9% p.a. over above amount, given in Annexure- A be paid in another four months, in equal installments i.e, the whole amount is to be paid within six months from the date of judgment.

- b. In case of failure, the interest will be escalated to simple interest @ 12% p.a., in case of any execution proceeding, if any, if to be filed.
- c. In case of failure of respondent company in making above promise fulfilled, the petitioner – UOI, will be at liberty to take available legal recourse, because of the fact that above finding and judgment is not on the basis of finally heard and decided, coming in the embargo of *res-judicata*. Legal recourse with regard to foreign exchange variations, may also be claimed.
10. Former order/ decree be got prepared by office, accordingly.



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(Justice Ram Krishna Gautam)
Member

18.5.2023
/NC/