TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL

NEW DELHI

Dated 14th February 2024

Broadcasting Petition No. 182 of 2018

Union of India …Petitioner
(Through Secretary, Department of Space, Govt. of India)

Vs.

C-Voter Broadcast Private Ltd. …Respondent

BEFORE:

HON'BLE MR. JUSTICE RAM KRISHNA GAUTAM, MEMBER

For Petitioner : Mr. Ankur Singh, Advocate
Mr. Abhijeet Singh, Advocate

For Respondent : Mr. Shishir Prakash, Advocate
Ms. Karuna Krishnan Thareja, Advocate

JUDGEMENT

1. This Petition, under Section 14, read with Section 14 A, of the Telecom Regulatory Authority of India Act, 1997 (hereinafter said to be the Act) has been filed by Petitioner Union of India, through Secretary, Department of Space, Government of India, by authorized signatory, Shri M.S. Krishnan, Sr. Head (Legal), Antrix Corporation Ltd. (Contract Administrator) against C-Voter Broadcast Private Limited, Respondent, with a prayer for a decree in favour of Petitioner, against Respondent, for an amount of Rs.1,37,66,249/- (Rupees One Crore Thirty Seven Lakh Sixty Six Thousand Two Hundred and Forty Nine only), apart from pendentelite and future interest, as well as amounts due for foreign exchange fluctuation, with prayer for grant of interest, till the actual date of realization, at the rate of 18% p.a as well as, any other relief, which this Tribunal deems fit.

2. In brief, the Petition contends that Respondent, a broadcaster, with license for broadcast and being a service provider, requested Petitioner i.e., Department of Space, Union of India, to provide capacity, on its satellites for the purpose of meeting its Digital Satellite News Gathering (DSNG) service requirements. Petitioner and Respondent entered into an agreement dated 02.02.2011 for provision of 2 MHz of Ku-Band capacity on Asiasat5 satellite,

or any other satellite having coverage over India. In order to provide services to Respondent, the Petitioner took capacity on Asiasat5 satellite from a Foreign Service provider. Under Article 20 of the Agreement, it was made explicit that the agreement constitutes full understanding and agreement of the parties, and all prior correspondences and agreements stood superseded by the agreement dated 02.02.2011. This agreement dated 02.02.2011 is **Annexure P – 1,** to Petition. Under Article 4 of said agreement, the charges were payable in accordance with Exhibit B to the agreement. The Respondent was obliged to pay USD 46,741/- per MHz per annum, payable prior to the beginning of every month for the month period in question. The Respondent was further required to give an interest free, 'security deposit' of Rs. 22,43,568/-, being approximately 50% of annual charges. Despite availing services of the Petitioner, by making use of the transponder capacity, provided by the Petitioner, the Respondent failed to make regular and timely payments of monthly charges, due under the agreement from September 2011. Antrix was constrained to send a letter dated 24.05.2012, attached with email dated 25.05.2012, to the Respondent, with request for making clearance of outstanding dues, which on the date, stood at Rs. 39,18,463/-. True copies of letter and email, dated 24.05.2012 and 25.05.2012, are **Annexure P - 3 (Colly),** to Petition.

3. The Respondent replied to these letters, vide its email dated 30.05.2012, regretting its inability to make payment of entire sum in one go, with a further acknowledgment of its liability and requested Antrix to pay, pending amounts, in parts to the Petitioner. This copy of email dated 30.05.2012 is **Annexure P- 4**, to Petition. A reminder, seeking clearance of outstanding dues, approximately Rs.50,00,000/-, outstanding as on that day, was sent vide email dated 26.06.2012, with a provision for releasing some amount of its outstanding dues, while Antrix was reviewing Respondent's request to release payment, in instalments. Antrix also reminded to Respondent to release the payment at the earliest, as the billing was monthly and that the outstanding was building up, on a cumulative basis. True copy of this email dated 26.06.2012 is **Annexure P – 5,** to Petition. Another email, on 27.06.2012, was sent by Antrix to Respondent, enquiring about the status of payment amount, another details, regarding payment and amount with timeframe, performance guarantees etc. This email dated 27.06.2012 is **Annexure P – 6,** to Petition. Another email dated 27.08.2012, of Antrix sent to Respondent was with mention of update outstanding amount, at that time in the tune of Rs. 60,00,000/- and this email is **Annexure P – 7,** to Petition. Vide email dated 05.12.2012 i.e., **Annexure P -**

8 (Colly), to Petition, Antrix pointed out to Respondent, that the term of agreement dated 02.02.2011, was expiring on 30.06.2012 and a request was there to Respondent to express its willingness, to extend the agreement for another 2 to 3 years duration, based upon which, Antrix would initiate discussions with the Asiasat team. Another email sent was of 11.12.2012. A reply, **Annexure P – 9,** to Petition by Respondent, dated 11.12.2012, was received by Antrix, with a request for waiting next management meeting, to decide and respond. **Annexure P – 10**, an email dated 15.12.2012 of Respondent, send to Antrix with regard to renewal of Asiasat5 satellite segment and enquiries about link budget calculation, carrier plan, authorization for use of satellite Asiasat5, with uplink and downlink frequencies. Antrix replied to Respondent vide its email dated 15.12.2012 and 17.12.2012 with all sought informations. This is **Annexure P – 11** to Petition. Respondent replied to the aforesaid email on 17.12.2012, informing Antrix that the Respondent was permitted to use license of news agency, by the Ministry of Information and Broadcasting. The Respondent further informed Antrix that Respondent was in process of applying NOCC, for carrier plan, subsequent to which, they would reply to WPC, for decision letter and operating license. True copy of this email dated 17.12.2012 is **Annexure P – 12** to Petition. Despite repeated letters and requests, for the

payment of space segment charges, Respondent failed to clear its remaining outstanding dues, approximately to the tune of Rs. 90,42,813/- and Rs. 99,92,691/-. Vide email letter dated 17.07.2013, outstanding dues to the tune of approximately Rs. 1.1 Crore, was requested to be paid by Respondent. This is **Annexure P – 13 (Colly),** to Petition. Respondent failed to honour its legal obligations, by way of making payment of the outstanding dues, to the Petitioner, against the services utilized by it.

4. Ledger account of Respondent, maintained by Antrix Corporation Limited, depicts the outstanding dues of the Respondent, after giving due credit to payments made by it. Respondent is liable to make payment of space segment charge i.e., charges for use of transponders made available by Petitioner/Antrix on the Asiasat5 satellite, under Agreement dated 02.02.2011, and as per Clause (9) of Exhibit - B of the agreement dated 02.02.2011, in the event of delayed payment, the Respondent was liable to pay a penal interest, at the Prime Lending Rate, plus 3% for Public Sector Banks, as published, on a quarterly basis by RBI. A table obtained from the website of the State Bank of India, depicting the Prime Lending Rates, as amended from time to time was **Annexure P – 14,** to Petition. Respondent had been availing the services of Petitioner and utilizing the satellite

transponders, provided by the Petitioner, for its broadcasting services/ business. He was liable to make payment for these charges, in terms of Agreement, irrespective of its use of the capacity, provided by the Petitioner, for the duration of agreement. But it failed to make payment. A cause of action, had arisen for outstanding dues of Respondent, depicted in the tune of Rs. 1,38,06,795/-, as on 31.03.2015 in **Annexure P - 15** to Petition, within the jurisdiction of this Tribunal, under the period of Limitation, given in Article 112 of the Schedule to the Limitation Act, for the suit in nature of, a suit for or on behalf of Central Government. Antrix Corporation Limited ("Antrix") was appointed as the "Contract Manager" and vested with all powers on behalf of Union of India, including initiation of legal proceedings, in Exhibit - B in Clause (11) of the agreement, dated 02.02.2011, **Annexure P - 1**. Shri M.S. Krishnan, Senior Head (Legal), has been authorized by the Board of Directors of M/s Antrix Corporation Ltd. to take all necessary steps to institute the present proceeding before this Tribunal, vide Authorization letter **Annexure P – 2,** to Petition.

5. As this Tribunal has been conferred with the exclusive jurisdiction to decide the disputes, in respect of a dispute between : (a) a licensee and licensor; (b) two service providers; (c) a service provider and a group of

consumers, and Broadcasting Services have been included, within the purview of this Tribunal's jurisdiction, by S.O. 44(E) dated 29.01.2004, issued by Ministry of Communications and IT (Department of Telecommunications), as per the Telecommunication (Broadcasting and Cable Services) Interconnection Regulations 2004. 'Broadcasting Services' has been defined to mean "dissemination of any form of communication ..... by transmission of electromagnetic waves through space ... intended to be received by the general public either directly or indirectly...". Petitioner being an instrumentality of Government of India, a service provider, and Respondent is a broadcast licensee i.e., a service provider. Hence, both the Petitioner and Respondent are covered by definition of 'service provider', given in Section 2(j) of the Act. Further, the Respondent is a "licensee" within the meaning of Section 2(1)(e) of the Act. Hence, the present dispute is wholly covered within the ambit of Section 14 of this Act. Hence, this Petition, with above prayer.

6. A reply by Respondent, in form of counter affidavit of Mr. Yashwant Rao Deshmukh, Ex-Director of Respondent Company, for and on behalf of Respondent Company, was with this preliminary objections that this Petition is not maintainable, because of being unreasonable delay i.e., of four (4)

years and ten (10) months, on the part of Petitioner. Hence, it is barred by limitation.

7. There was a provision of arbitration, agreed between the parties, under Article 18 of the agreement. But it was not exhausted. Rather, this Petition was filed straight way, that too with about five years delay. The bandwidth, which was provided to Respondent and license needed to operationalise the channel, was kept in deep freeze inexplicably, by the other arm of the Government i.e., Ministry of Broadcasting, without any reason whatsoever, for years on end. The Antrix Corporation Ltd. is a Limited Company, incorporated under Companies Act, 1956. Hence, it is a statutory body, possessing a distinct legal entity, so far as the initiation of legal proceedings are concerned, and the said recourse is not available to the Petitioner, as provided in Article 112 of Limitation Act. Because, as under Part II of the Limitation Act – Suit, Relating to Contract, Article 55 of the Limitation Act, states, "For compensation for the breach of any contract, express or implied, not herein specifically provided for, three years is the period of limitation". But this Petition is beyond that given limitation of three years. Even otherwise, on the basis of equity, justice and good conscience, the Petition is to be dismissed. On the factual matrix, it was

submitted that deponent is founder of Communications & Research Consultancy YRD Network. He did his major in Media from prestigious Indian Institute of Mass Communication, New Delhi and has been trained professionally in Evaluations & Research (University of Ulster, UK), Polling & International Observations Missions (University of Bergen, Norway) and Elections Administration (Auburn University, USA). He started Team CVoter in 1993; when he was still studying in IIMC. After receiving the UNI award for best research dissertation and for topping in 1993 batch across all streams; his C-Voter was hired by premier news agency UNI to take care of online real time election analysis. Mr. Yashwant's innovative and original analysis across the spectrum of Transitional, Disaster & Conflict hit societies is widely quoted; especially his defining works in South Africa, Egypt, Pakistan, DR Congo, Indonesia and Sri Lanka. His repertoire of works spans 15 Union Budgets and over 100 Union & Assembly Elections, besides a host of International socio-political and economic events across 30 nations & territories. Over the last two decades, he has become a respected figure in the South Asian media and communication industry for his special emphasis on impeccable research, design and production and for having delivered innovative and original news across the spectrum. TV news agency (CVoter Broadcast) in collaboration with UNI (United News of India) was

conceptualized in 2011. That as per Government of India Rules, in order to give live telecast to all subscribing channels, the TV News Agency requires an up-linking license from Ministry of Information and Broadcasting (MIB). A copy of Memorandum of Association is marked and filed as **Annexure 1** to counter affidavit (CA) to this reply. The Respondent Company initiated the process for applying the license in 2011, and it is during this process, it was learned that it is mandatory to purchase the provisioning of communication satellite transponders (bandwidth) from Antrix Corporation Limited (referred to as Antrix), a wholly owned Government of India Company, under the administrative control of Department of Space (DOS), even prior to applying for an up-linking license from MIB.

8. Respondent C-Voter Broadcast requested Antrix for meeting its Digital Satellite News Gathering (DSNG) requirement. It was agreed that Antrix shall provide the Respondent a provision of 2MHz of Ku-Band capacity in INSAT - Asiasat5 system in pursuant to agreement made on 02.02.2011. Meanwhile, in accordance with the Central Government guidelines, the Respondent kept pursuing the other arm of the Government of India, which is of Ministry of Information and Broadcasting, for the license for up-linking, which was under absolute prerogative of MIB, under the extant policy framework.

Antrix and MIB do not work in tandem with each other. It was further mentioned that up-linking and down linking of satellite TV channels, is regulated by the Central Government. The Section 4 of Indian Telegraph Act states that the Central Government has the exclusive privilege of establishing, maintaining and working telegraphs within India. Furthermore, as per up-linking permission, granted by MIB, for a TV channel, up-linking of signals of satellite TV channels having valid permission from MIB, requires separate permission/ endorsement from WPC (The Wireless Planning & Coordination) Wing of the Ministry of Communications, created in 1952, i.e., National Radio Regulatory Authority responsible for Frequency Spectrum Management, including licensing and caters for the need of all wireless users in the country. Thereafter, receiving the permission for up-linking of satellite TV channels from MIB, the Applicant Company must apply to the WPC wing of DoT for grant of wireless operating license to operationalise the channel. Accordingly, a satellite TV channel uses the up-link spectrum, satellite transponder and the downlink spectrum for transmitting the signals of TV channels from broadcaster to distributors of TV channels. That the simple meaning of operationalisation of channel for the purpose of up-linking could be the date from which a licensee Company starts transmission of signals of the permitted TV channel. It is therefore, important to note that

use of a particular up-linking satellite spectrum and the corresponding satellite transponder capacity are tightly coupled with each other i.e., the satellite transponder capacity allocated to a Company cannot be used without corresponding up-linking satellite spectrum and similarly a particular up-linking satellite spectrum beamed towards a particular satellite, is of no use if the corresponding right to use of that satellite is not available with the same entity. Therefore, for success of satellite TV broadcasting, it is important to ensure that right to use of satellite transponder capacity and corresponding up-linking, down linking satellite spectrum license is allocated to the same entity within the period of provision set forth and in absence of one, would frustrate the purpose of rollout obligations and grant of license for satellite TV channel.

9. In light of above, it is succinctly placed that each month the Respondent Company was making the necessary payments towards the Bandwidth, in good faith that they will be able to procure the permissions and approvals, from MIB, within the period of agreement with DOS, to launch their news agency within time. However, the Respondents were in for a rude shock, as the application for the up-linking license was placed in deep-freeze with no information, whatsoever about the status of the

application, and only false hopes were given to the representatives of the C-Voter Broadcast without any formal communication about the same from MIB, due to which the Company remained in a state of limbo, for years even beyond the expiration of the period of provision i.e., 30.06.2013 as provided by Antrix. On the other hand, Antrix kept following up with the Respondent for payment having nor regard to fact that in the absence of license to uplink the channel, the available transponder capacity is of absolutely no use to the Respondent.

10. Though the Respondent was allocated satellite transponder capacity swiftly, but did not get the license for corresponding up-linking, down linking satellite spectrum license for years, which was the miserable plight of the Respondent that even after paying a huge quantum of sum, they did not have the license to use it, due to which the business suffered substantially and the Respondent Company faced huge losses to the extent their collaborators, UNI walked out of the arrangement and potential arrangement with International News Agency APTN, was staggered indefinitely. Despite this unfortunate state of events, the directors/ shareholders of the Company kept on trying to keep business afloat, but eventually, under too much of financial distress, C-Voter Broadcast was left

with no choice, but to shut down their business. Though the grave loss to Respondent was there owing to conduct of officers of Petitioner. But this Petition has been filed for above recovery. The same is to be dismissed.

11. A rejoinder with the reiteration of contention of Petition and negating the contention of reply was filed.

12. On the basis of pleadings of both side, following issues were framed on 11.01.2019, by Court of Registrar, as below :

[1] Whether the present petition is barred by limitations, as is alleged in Paras 3 to 8 of the preliminary objections and Para-36 of para-wise reply submitted by the Respondent?

[2] Whether, despite allocation of Satellite Transponder capacity to the respondent, the agreement executed between the parties on 02.02.2011 could not virtually be operationalised due to failure on the part of the Ministry of Information & Broadcasting to issue the up-linking and Down-linking Satellite Spectrum Licences till 2014 and thus no liability accrued on the part of respondent, as is alleged by the respondent in its reply, if so its effect?

[3] Whether the amount received by the petitioner against the unused bandwidth is liable to be refunded to the respondent along with interest, as is alleged by the respondent?

[4] Whether the respondent is liable to pay to the petitioner a principal sum of Rs.1,37,66,249/- [or any lesser amount], and amounts due for foreign exchange fluctuations as is prayed for in the petition?

[5] Whether the Respondent is liable to pay interest on the above, including *Pendentelite* and future interest, and at what rate?

[6] To what relief, if any, the petitioner is entitled?

13. Petitioner filed its affidavit of Smt. Sonali Nanda, for and on behalf of Petitioner, as evidence. Whereas, Respondent, filed affidavit of Shri Yashwant Rao Deshmukh, Ex-Director of Respondent Company, as its evidence. Both side were given opportunity for making a request for cross-examination of witnesses, if needed, but none applied for it, as has been mentioned, in Order dated 21.05.2019.

14. Heard arguments of learned Counsel for both side and gone through the material placed on record, as well as written submission, filed by both side.

15. 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 PremlataVs. Arhant Kumar Jain- AIR 1976 SC 626 that where both parties have already produced whatever evidence they had, the question of burden of proof seizes 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 LakshmanVs. 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. In all civil cases, required degree of proof is preponderance of probabilities.

17. **Issue No.1**

This was an issue raised by Respondent, who had argued that Petitioner had instituted the suit for recovery, against Respondent for breach of contract. The period of limitation available for seeking compensation, for breach of contract, given under Article 55 of Schedule I of Limitation Act, is of three years, from the date, when the contract had been breached and a cause of action had arisen. Learned Counsel for Petitioner argued for Limitation, given under Article 112 of the Limitation Act, which is for a suit, for and on behalf of Union of India. Antrix Corporation, cannot be

equated with the Central Government, as it is distinctly, independent and separate entity and therefore, the provision applicable to Central Government, cannot be applied to the present case. The law cited by Apex Court, in Delhi Development Authority Vs. M/s Manohar Singh Sahny & Co., Delhi Development Authority attempted to classify itself as a 'Central Government' to avail of the extended period of 30 years, as provided under Article 112 of Limitation Act, but Hon'ble Delhi High Court rejected this argument, and held that DDA is a statutory body, established under the Delhi Development Authority Act, 1957 and thus, could not be equated with the Central Government. The Court also clarified that the provision of Article 112 of Limitation Act, do not extend to any agency or instrumentality of the State. As a result, the Court concluded that the period of Limitation available to the appellant/ DDA for seeking compensation, for breach of contract must be computed, under Article 55 of Schedule I of the Limitation Act, which provides for a period of three years, from the date of breach of contract.

18. Learned Counsel appearing for Petitioner pressed the law laid down by Hon'ble Apex Court in Nav Rattanmal Vs. State of Rajasthan, AIR 1961, SC 1704, as well as Accountant General (A & E) & Anr. Vs. Sethumadhavan Nair, (2004) 13 SCC 14, wherein, it was propounded that Article 112 of Limitation

Act, will be applicable to all categories of claims, suit, etc., instituted on behalf of the Central Government or the State Governments, and this Tribunal itself, in Union of India Vs. Seashore Securities Ltd., BP No. 98 of 2018, date of judgment 13.01.2020, [2020 SCC Online TDSDAT 3] in Para 9 and 10 here , that there will be limitation of 30 years, as per Article 112 of the Limitation Act.

19. Hence, the reply filed by Respondent Company in Para – 14, has admitted this fact that provisioning of transponder's capacity in Ku band capacity in INSAT- Asiasat5 system was an act of Antrix, within the control of Central Government. Hence, this suit has been filed by way of a Petition, in the name of Union of India, through Secretary, Department of Space, Government of India, by authorized signatory Shri M. S. Krishnan, Head (Legal), Antrix Corporation Limited, being a Contract Administrator for this cause of action. Hence, this suit, is not by Antrix i.e., an instrumentality of Union of India. Rather by Union of India itself. Hence, in view of law cited as above of Hon'ble Apex Court and of this Tribunal itself, this proposition is well settled, that for such type of suits, the limitation given under Article 112 of the Limitation Act i.e., of 30 years will be applicable. Hence, this issue is being decided against the Respondent.

20. The very argument with regard to Arbitration clause or referring the matter for Mediation is of no force, because it has been settled by this Tribunal that a suit or proceeding, within the domain of Section 14 of the TRAI Act, is to be decided by this Tribunal itself, a specialized adjudicating authority given in above legislation and provision of Arbitration is not applicable in it. Though, a request for referring to Mediation was denied by this Tribunal in its judicial decision making, and it was not challenged at any other point of time, or at any superior forum. It is noteworthy that learned Counsel for Respondent at the time of placing of argument conceded on this point that law with regard to Arbitration is now a settled one and its argument for this arbitration clause, is a formal one.

21. **Issue No. 2**

Annexure – P1, to the Petition, which is an agreement in question dated 02.02.2011, is undisputed document. Execution of same, terms and conditions of same, has not been disputed, and an instrument which is in question, if not being disputed, is to be taken, in between the line, and as it is. Hence, as per Article 2B of the agreement dated 02.02.2011, the commencement date was 02.02.2011 for provisioning of transponder

capacity of 2MHz on INSAT-Asiasat5, and all formalities for making this transponder capacity operationalize by customer, is to be performed, on or before this day of commencement i.e., 02.02.2011. Payment schedule is given in Exhibit-B, to this agreement. There is a specific provision in Article 2B that in case the customer fails to commence, its payment on or before the above mentioned date, DOS shall have no obligation under this agreement, including provision of transponder capacity and/ or return of security deposit, unless specifically agreed to by DOS. Article 2C specifically provides "Customer can commence up-linking after it has obtained all the clearances from DOT, WPC, SACFA and NOCC's type approval for the antennas. It is specifically understood that customer assumes responsibility, for obtaining the above clearances, before the commencement date. Any delays, either in obtaining the clearances, or in the commencement of up-linking shall not absolve the customer's liability to pay the provision charges from the commencement date (vide Article 2b), unless specifically agreed to by DOS". From the bare reading of the above reproduced Article, it can be clearly seen that the customers i.e., the present Respondent, is liable to pay charges, from the date of commencement day i.e., 02.02.2011, agreed under this agreement, irrespective of any delay in obtaining the requisite clearances, permissions, licenses, etc., as per Article 2(c) of this agreement.

In reply to, it has been specifically written by Respondent in Para 14, that "the Respondent approached Antrix for meeting its Digital Satellite News Gathering (DSNG) requirement. It was agreed that Antrix shall provide the Respondent the provision of 2 MHz of Ku Band capacity in INSAT-Asiasat5 system in pursuant to the agreement made on 02.02.2011. Meanwhile, in accordance with the Central Government guidelines, the Respondent kept pursuing the other arm of the Central Government of India, which is the MIB for the up-linking license, unaware of the fact that under the extant policy framework, grant of license is an absolute prerogative of the MIB, and that Antrix and MIB do not work in tandem, with each other".

22. In Para 15, further, it has been said that "up-linking of signal of satellite TV channels requires valid permission from MIB. Further, it requires separate permission/ endorsement from WPC (The Wireless Planning & Coordination) Wing of the Ministry of Communications, created in 1952, as National Radio Regulatory Authority, responsible for Frequency Spectrum Management, including licensing and caters for the needs of all wireless users (Government as well as Private) in the country. Thereafter, receiving the permission for up-linking of satellite TV channels from MIB, the applicant company must apply to the WPC wing of DoT for grant of wireless operating

license to operationalize the channel. Accordingly, a satellite TV channel uses the uplink spectrum, satellite transponder, and the downlink spectrum for transmitting the signals of TV channels, from broadcaster to distributors of TV channels.

23. In Para 16, of reply, this has further been written that use of a particular up-linking satellite spectrum and the corresponding satellite transponder capacity are tightly coupled with each other i.e., the satellite transponder capacity allocated to a Company, cannot be used without corresponding up-linking satellite spectrum, and similarly, a particular up-linking satellite spectrum, beamed towards a particular satellite, is of no use, if the corresponding right to use of that satellite transponder capacity is not available with the same entity.

24. Meaning thereby, the Respondent was fully aware about the policy of Union of India. It was well versed and after knowing all these provisions he entered into agreement Annexure P-1. He expected the things, to be in accordance with given provisions, but he could not have the license, required for up-linking till 2014 i.e., recession of this agreement. Hence,

there was specific provision that there will be no absolve of liability because of any delay or failure, for using that transponder capacity, which was allocated and which was commenced, for use that too, a foreign satellite borrowed by Union of India. Hence, the liability is very well there and unless specifically agreed by DOS, this liability may not be absolved. Hence, liability on the part of Respondent, has accrued under the agreement, despite the fact that Respondent was unable to obtain requisite clearance. Hence, the statement of account filed with Petition, as well as by evidence, alongwith compliance of Section 65 B of Evidence Act, and not disputed by other side, or no other statement account of Respondent, in Respondent's evidence, the alleged disputed accrued amount of Rs. 1,37,66,249/- Indian Rupees along with Foreign Exchange value was due, and this issue No. 2 is being decided in favour of Petitioner.

25. **Issue No. 3.**

The amount received as security, was received under above agreement, and this has been written in Petition too. This was Rs. 22,43,568/-, being approximately 50% annual charges. As per agreement, there was no liability for return of this amount, and it was to be interest free. But it is undisputed fact that this annual charge, which was for use of transponder's capacity for invoices to be raised. But at no point of time, this

capacity could be used. Though there was a provision for no repay. But it can never be taken, within the natural justice. More so, there was a provision for an agreement with regard to absolve of liability provided specifically agreed with DOS, but no effort by DOS was made in this pretext, while repeated reminder till termination of this Contract, by efflux of time, was made by Petitioner. Whereas, there was a specific provision in Article 6, with regard to Termination, and this clause was apparently one sided, that Customer shall not terminate this agreement till the end of the period of provision, as defined in Article 2(c). However, the customer shall have the right to terminate this agreement, at any point of time, if the Satellite does not perform, as per Technical specifications, given in Exhibit – A. Though, under Article 5(c), this right was given to DOS, that it may terminate this agreement, notwithstanding, any other provision of this agreement. DOS reserves the right to terminate the availability to customer of the transponder capacity, under this agreement, at any time of providing three month prior notice, in writing. The judgment of DOS regarding the above termination shall be final. In the event of such termination by DOS, customers shall have no further obligations to pay the utilization charges, in respect of balance period of this agreement or terminated part thereof, if applicable. DOS shall refund to customer any advance payment, already

received by DOS, for which customer has not received benefit of any utilization of the terminated capacity. However, any or all charges, payable to DOS by customer, till date of termination, shall be paid by customer to DOS. Hence, DOS has got right to terminate and after this termination, there will be no liability. But customer is having no right for it. In case in hand, customer could not use or utilize, even for a single moment of this transponder capacity, but he is still said to be liable for making payment and forfeiture of its security. The termination, in case of failure to make payment, is also provisioned in this agreement that DOS shall have the right to terminate the contract, if customer has failed to meet its payment obligation, in spite of two reminders, the judgment of DOS shall be final regarding the decision of termination. Such termination shall not absolve, customer from the liabilities, already incurred to pay under the agreement. Meaning thereby, in case of non-payment and issuance of two reminders, DOS is with authority, to terminate this agreement. Whereas, in present case, the Respondent could not up-link or use the transponder capacity for all the period of this agreement, and this was owing to, non-grant of license by a wing of Union of India itself. Whereas, this was granted after the cease period of this agreement, said in the year 2014. Hence, it is apparent by this red-tapism of the officers of DOS and MIB, the agreement could not be acted

upon. More so, there is another provision for termination of this agreement in Article 8, by way of force majeure and there is a condition that if the continuation of this agreement is not being permitted by any act of Government, in its sovereign capacity, national emergencies, riots, war, launch and satellite failures, or any such similar events, then the agreement will be terminated by force majeure. In present case, in hand, by way of non grant of license for up-linking, by officers under the sovereign function of Union of India, Ministry of Information and Broadcasting, the agreement in question, could not be acted upon. Hence, under above situation too, there was provision for termination of this agreement. But as this Tribunal, is not exercising jurisdiction under Article 226 or Article 32 of the Constitution of India, hence, the sanctity of this agreement that of being unconstitutional, as per Article 14, or act of the officers of DOS, appearing to be ultra virus, may not be commented, in adjudication of this Petition, which is a Civil Court Proceeding, given under TRAI Act. Hence, under civil suit adjudication, the agreement which is undisputed, liabilities, which incurred and which were agreed, is to be adjudged. But so far as security and interest over it, refund of it is concerned, it is in accordance with principle of natural justice, equity and fairness, that it be adjusted towards the liabilities with same rate of

interest pendentelite and future, which is being granted to Petitioner. Hence, this issue is being decided in favour of Respondent.

26. **Issue No. 4**

As per written and undisputed agreement Exhibit – P1, the Statement of Account, filed with affidavit, having no rebuttal evidence over it, establishes the liability, as of a principal sum of Rs. 1,37,66,249/-, along with amount due, for Foreign Exchange fluctuation. As per Article 8 of Exhibit B of agreement, it has been duly proved by Petitioner. More so, Respondent never disputed its liability to pay the space segment charges. Rather, it acknowledged its liability with a prayer, for making a part payment and fixing installments, as per email dated 30.05.2012, sent by Respondent to Petitioner, given at Page 40 of petition. Hence, Respondent is liable to pay Petitioner a sum of Rs. 1,37,66,249/- with Foreign Exchange fluctuation, to be calculated, at the time of payment actually made, payable over it. This issue is being decided, accordingly.

27. **Issue No. 5**

No doubt, Article 7(d) of the agreement provides that non-payment or delayed receipts of payment from the due date of payment, shall attract penal interest at the Prime Lending Rate plus 3% for Public Sector Banks, as published on quarterly basis by RBI. But this Tribunal in many decisions of alike nature, like BP No. 98/2018, Union of India vs. Seashore Securities Limited, decreed on 14.01.2020, BP Nos. 39 and 163/ 2019, Union of India vs. Me Marathi Media Limited and Ors, pertaining to similar facts, had awarded Foreign Exchange variation, along with simple interest at the rate of 9% per annum. Hence, the same will be reasonable and to be awarded in this Petition too. Accordingly, this issue is being decided.

28. **Issue No. 6**

Upon over all discussions made above, this Petition merits to be allowed, with a direction to Respondent for making payment of Rs. 1,37,66,249/-, plus pendentelite and future interest, till actual date of payment @ rate of Simple Interest of 9% per annum, with adjustment of security amount, written as above, and interest of Simple Interest @ rate 9% per annum from the date of deposit to actual calculation.

ORDER

Petition is being allowed. Respondent is being directed to make deposit, within two months from the date of judgment Rs. 1,37,66,249/- along with pendentelite and future interest, till date of actual payment @ rate of 9% p.a. In addition to, Foreign Exchange value over it, to be calculated at the date of deposit, by Counsel for Petitioner, as well as by Registrar of this Court, after the deduction of security amount Rs. 22,43,568/, previously deposited, with a simple interest of 9%, over above principal amount, from the date of deposit, till actual date of calculation and payment in Tribunal, for making payment to Petitioner.

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

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(Justice Ram Krishna Gautam)
Member

/NC/