TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL

NEW DELHI

Dated 2nd April 2025

Broadcasting Petition No. 477 of 2018

With MA Nos. 416 of 2022 and 271 of 2023

Union of India …Petitioner

Vs.

Rahul Springs Pvt. Ltd. …Respondent

BEFORE:

HON'BLE MR. JUSTICE RAM KRISHNA GAUTAM, MEMBER

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

For Respondent : Mr. Vivek Sarin, Advocate
Mr. Upender Thakur, Advocate
Mr. Dhruv Dev Gupta, Advocate
Mr. Satish C. Kaushik, Advocate

JUDGMENT

1. The present 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 the Union of India, through Secretary, Department of Space, Government of India, Antariksh Bhavan, Near New BEL Road Bengaluru, through authorised Signatory, Shri M.S. Krishnan, Sr. Head (Legal), Antrix Corporation Ltd. (Contract Administrator), against Rahul Springs Pvt. Ltd., a company, incorporated under the Companies Act, 1956, having its office at 27, Mirza Ghalib Street, 3rd Floor, City Centre Building, Kolkata – 700016, West Bengal (Through its Managing Director), with a prayer for award of a Decree, in favour of Petitioner, against Respondent, for an amount of Rs. 1,30,01,472/- (Rupees One Crore Thirty Lakh One Thousand Four Hundred and Seventy Two only), inclusive of delayed payment interest, till 31.03.2015, and thereafter, from 01.04.2015 at the rate of Rs. 2440.49/- per day, with the taxes, liable to be paid, by the Respondent, up to the said date; and for the future period an Order/Decree awarding *pendente lite* and future interest, till the time of actual realization of principal amount, at a rate of 18% per annum; and the other reliefs, which this Tribunal deems fit and proper.

2. In brief, the petition contends that Respondent, is a Company, incorporated under Companies Act 1956, being a service provider, having its business of running/operating a Television Channel, known as "RPLUS", requested Petitioner i.e, Department of Space, Union of India, to provide

capacity on its satellite for the purpose of meeting its broadcasting requirements, that is, Digital Satellite News Gathering (DSNG). The Petitioner and Respondent entered into an Agreement No. INSAT- Asiasat5-DSNG-Ku-[1]-2010, dated 08.12.2010, whereby transponder capacity (1.5 MHz of Ku band on INSAT-AS5), was leased for the broadcasting requirements of the Respondent's DSNG vans. The period of lease, contemplated under the said agreement, was to expire / terminate on 30.06.2013. Under the payment schedule (Exhibit B), annexed to the subject agreement, dated 08.12.2010, (Annexure P-1), the Respondent was liable to pay US$ 46,741 per MHz per annum, that is (US$ 5842.625/- per month for 1.5 MHz). Further, the Respondent was also liable to maintain a 'security deposit' of Rs.16,82,676/-, representing 50% of the annual charges (at exchange rate of 48), for the transponder capacity, which was interest free, and adjustable with the last three months' invoices. The subject agreement, prescribed for invoices to be raised in advance, payable on or before the first day of the month in question. In the event of default, or delayed payment, interest was chargeable at 3% over and above, the Prime Lending Rate of Public Sector Banks. In order to provide services to Respondent, despite scarcity of ISRO satellite capacity/transponder bandwidth, the transponder capacity, which is the subject matter of the aforesaid agreement, was a procured capacity,

originating from a foreign service provider i.e. Asia Satellite Telecommunications Holdings Limited (hereinafter referred to as “AsiaSat”). The said capacity was taken on lease by Antrix, in order to provide services to the Respondent for its use. As a result, Antrix was obligated to remit timely payments, against the provisioned capacity to AsiaSat, irrespective of whether or not the Respondent herein, who was the ultimate user / subscriber of the capacity, complied with the terms and conditions of the Agreement, entered into between, the Petitioner and Respondent herein.

3. Despite availing the services for use of capacity of the subject satellite transponders, the Respondent failed to make regular and timely payments of monthly charges, due under the agreement, dated 08.12.2010, since the very beginning. The Petitioner sent an email, dated 14.03.2011, to the Respondent, stating that the commencement date for the agreement between the parties had been shifted from 01.12.2010 to 10.12.2010, and that the total outstanding amount, as on 14.03.2011, was Rs. 11,79,778/-. The said mail by Antrix, pursuant to a telephone conversation, between Antrix and the Respondent, requested the Respondent, to sign and send the said amendment to the agreement, which was sent by Antrix to the Petitioner on 03.02.2011, as well as to clear the entire outstanding amount. The trailing e-mail dated 03.11.2010, also clearly revealed that as per the

terms and conditions on which the bandwidth was offered, billing would begin immediately upon issuance of allocation letter. These two Emails are Annexure P-3 Colly to the petition. The Respondent sent a letter, dated 03.06.2011, requesting it to waive off the agreed charges payable to Antrix till June 2011, or in the alternative to deduct the said agreed charges from the Respondent's security deposit. This Email of Respondent, dated 03.06.2011, is at Annexure P-4 in petition. On 17.06.2011, an Email of Petitioner, sent to Respondent, was with specific mention of extension of 'commencement date' from 01.12.2010 to 10.12.2010, and no possibility of any further deviation on above already extended date of commencement. But adjustment of outstanding dues Rs. 20,44,631/-, as on date, from security deposit, and the same was required to be replenished by 30.11.2011, was written therein. Above Email, dated 17.06.2011, is Annexure P-5 in the petition. Respondent's letter, dated 08.07.2011, was confirmation of Respondent's acceptance of Antrix's proposal, dated 17.06.2011, with a further assurance that the Respondent would make payment against the applicable invoices from July 2011 onwards, immediately on signing of such amendment agreement, and that it would replenish its security deposit with Antrix on obtaining its operating licenses.

True copy of the said letter, dated 08.07.2011, by the Respondent to Petitioner Antrix, is annexed herewith as Annexure P-6 to petition.

4. Vide letter dated 27.12.2011, Antrix called upon the Respondent to clear the outstanding dues, amounting to Rs. 38,55,247/- as on date, which is Annexure P-7 of the petition. Subsequently, the Respondent, vide its letter dated 28.05.2012 to Antrix, informed that it was in the process of completing its regulatory clearance for its DSNG vans, which would take about 15 (fifteen) days more. Respondent was unable to use the contracted bandwidth, without such regulatory clearance, and that it was not in a position to pay the outstanding billed amount, without using the said bandwidth. The Respondent requested Antrix, to charge them for the said bandwidth after 15 (fifteen) days, by when it would have allegedly completed its regulatory clearances. This letter, sent by Respondent, to Antrix, is annexed as Annexure P-8 to petition. In reply to Respondent's above letter, dated 28.05.2012, Antrix served a letter, dated 13.06.2012, to the Respondent informing that it's request for change of the agreed date of commencement for billing against the contracted bandwidth, cannot be entertained. The cumulative outstanding dues, against the Respondent, as on 13.06.2012, stood at Rs. 62,00,83/- and requested the respondent for making payment thereof. This letter is annexed as Annexure P-9 to petition.

5. Respondent failed to make payments against the outstanding dues, but Antrix, in its bona fide attempt to resolve the matter amicably, issued similar demand letters/emails, dated 16.05.2012, 24.05.2012, 26.06.2012, 11.10.2012, 01.02.2013, 21.02.2013 and 16.04.2013. These letters/emails are annexed as Annexure P-10 (Colly) in the petition. Despite all these letters, emails, and follow ups, Respondent failed to make payment and as on 16.04.2013, the cumulative outstanding amount due from the Respondent, in favour of Petitioner, was in tune of Rs. 1,08,15,168/-. E-mail dated 23.04.2013 of Respondent, showing its inability for making payment, as per above demand, towards its allotted capacity, is annexed as Annexure P-11 to petition. Annexure P-12 is also of the same effect. Annexure P-14 of petition, is the letter-Email, sent by Respondent by which, it blatantly refused to execute any of the amendments on the spurious ground of alleged non-utilization of capacity from their end. Article 2(c) of the agreement, dated 08.12.2012, as Annexure P-1, does take into account a situation, where the Respondent delays, either in obtaining the requisite clearances or in the commencement of up-linking, nevertheless, it stipulates that liability of the Respondent to pay the capacity charges, would strictly arise from the date of commencement (i.e. 10.12.2010). Further, Article 6(A) of the subject agreement, provides that the customer, that is,

Respondent herein, has the right to terminate the agreement only if the satellite does not perform, as per the technical specification, given in Exhibit A. Barring this, the Respondent has no right to terminate the said agreement, and its liability to pay the charges would continue, until the end of the period of provision i.e. 30.06.2013. This is particularly so, since Antrix/Petitioner was incurring a back-to-back liability for providing services to the Respondent, from a Foreign Service provider, on the AsiaSat-5 satellite. Hence, the alleged non-usage by Respondent, is of no effect under above agreed terms of Annexure P-1. Annexure P-15 as well as Annexure P-16 were written by Antrix to Respondent, with same request to make payment of the outstanding dues, as on 01.12.2014, to the tune of Rs. 1,36,64,539/-. Respondent sent its letters, dated 07.03.2014 & 07.01.2015, to Antrix whereby, while entirely mis-applying the terms and provisions of the agreement dated 08.12.2010, it was asserted that the aforesaid agreement stood *ipso facto* terminated, due to its failure to meet with the financial obligations under the agreement. This letter is annexed at Annexure P-17 (colly). A letter dated 16.03.2015, demanding outstanding dues, of Rs. 1,40,29,716/-, as on 10.03.2015, as Annexure P-18, was served by Petitioner to respondent. A legal notice dated 04.04.2015, by Respondent

to Antrix was sent with same contention of non-utilisation of alleged bandwidth, and this notice is Annexure P-19 to the petition.

6. This was replied, which has been filed by Antrix at Annexure P-20. No payment was made. Rather a letter, reiterating the same, was sent at Annexure P-21. The Respondent is liable to make payment of Space Segment Charges i.e. charges for retention / usage of transponders on the INSAT-AS5 satellite. Under Article 4 of the Agreement, Respondent is liable to pay charges, in terms of Exhibit B to the Agreement, dated 08.12.2010, in accordance with Article 7 of the Agreement. Under Article 7(d) of the Agreement, dated 08.12.2010, in the event of delayed payment, the Respondent is liable to make payment of interest based on "prime lending rate" for public sector banks, as published by Reserve Bank of India, plus 3% (three percent). In terms of Article 2(d) of the subject agreement, the Respondent is liable to pay Space Segment Charges (SSC) from the "Commencement Date", irrespective of the fact, whether there is a denial or delay in obtaining regulatory licenses / clearances, such as from Department of Telecom, the Wireless Planning and Coordination / Standing Advisory Committee on Radio Frequency Allocation or Network Operation & Control Centre.

7. A cause of action had arisen, within the period of limitation, covered by Article 112, of the Schedule to the Limitation Act, because of being in the nature of suit, for or on behalf of Central Government. Under Clause 11 of Exhibit-B annexed to the agreement, dated 08.12.2010, Annexure P-1, Antrix Corporation Ltd. (Antrix) was appointed as the 'Contract Manager' and was vested with all powers, for and on behalf the Petitioner, including initiation of legal proceedings, and Shri M.S Krishnan, Sr. Head (Legal) being authorised by the Board of Directors of M/s Antrix Corporation Ltd., to take all necessary steps to institute the present proceedings, before this Tribunal under Letter of Authority, in form of authorisation of Shri M.S Krishnan through Circular Board Resolution, as Authorised Signatory (Annexure P-2) to Petition, has filed this Petition, before this Tribunal, having jurisdiction to decide the present Petition, under Section 14, of the Telecom Regulatory Authority of India Act, 1997, because of being conferred with exclusive jurisdiction, to decide in respect of disputes between : (a) a licensee and licensor, (b) two service providers, and (c) a service provider and a group of consumers.

8. 'Broadcasting Services' have been included within the purview of the this Tribunal's jurisdiction, by S.O. 44(E) dated 09.01.2004, issued by Ministry of Communications and IT (Department of Telecommunications). As per the

Telecommunication (Broadcasting and Cable Services) Interconnection Regulations 2004, 'Broadcasting Service' 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 ...." and in the present case, the Petitioner is the Central Government of India, as a service provider, as well as Respondent is also a service provider, engaged in the business of running/ operating a television channel known as 'RPLUS'. Hence, both the Petitioner and Respondent, being 'service provider' in terms of Section 2 (j) of the Act, are within jurisdiction of this Tribunal. Hence, this Petition, with above prayers for a decree as above.

9. Reply, was with preliminary objection that Petition was misconceived, vexatious and under abuse of process of Law. In reference to communication number, SCNP/F.631/Rahul Springs/10 dated 22.12.2010, the Respondent was informed that the allocation on the 1.5 MHz capacity in Ku-band on Asiasat-5, is subject to necessary MI&B/WPC/NOCC clearances. The Respondent, via communication dated 03.06.2011, requested the Petitioner to waive off charges to the Petitioner till 2011, on the basis of the Respondent not getting the abovementioned clearances and this request was denied. Whereas, despite of its best efforts, Respondent was never

granted the Licences required in terms of subject agreement, to be able to avail the services. As a result of which, the Respondent was never allocated any capacity by the Petitioner. Under the circumstances, the subject agreement, between the Petitioner and Respondent, stand discharged due to frustration of Contract. However, the Petitioner in an un-conscientious use of power arising out of these circumstances and conditions, continued to bill it for services, which were never rendered and utilised. As per Article 8(A) of the agreement, neither of the parties shall be liable for any failure or delay in the performances of its obligations, if such failure or delay is due to 'force Majeure', as defined by Article 8(B). On 03.06.2011, the Respondent sent a letter communicating the unforeseen delays, in obtaining requisite licences and approvals, from MIB due to general elections in West Bengal, and various other hurdles in completing the regulatory clearances, as the Respondent was allegedly defaulting on financial obligations for transponder capacity, which it was unable to use. The Respondent was further informed by the Petitioner that as a matter of policy, it will be constrained to withhold clearances until all alleged outstanding dues were cleared. It is important to note that the clearances were imperative for the Respondent to run its operations and meet its financial obligations under the agreement. As per Article 8(B) of the agreement, term 'Force Majeure' has been defined as an

event which is (i) beyond reasonable control of either parties, (ii) happens without the fault or negligence of either party and is (iii) an act of the government in its sovereign capacity. The act/omission in delay in granting the license, including the penal action of withholding clearance will fall the ambit of an act of the government in its sovereign capacity. Since delay and eventually, no clearance being granted, go to the root of the agreement, it is clear by Article 2(C), 6(E), 10, 11 and 12 that requisite clearances and approvals were understood to be an essential term of the contract by the parties while entering into an agreement without which contract can never commence.

10. The contention with regard to outstanding amount of Rs. 1,30,01,472/- (Rupees One Crore Thirty Lakhs One Thousand Four Hundred Seventy Two only) was denied, because of the fact that capacity to be allocated to Respondent in terms of the subject agreement, was contingent upon granting of licences by MIB, WPC and NOCC to the Respondent and Respondent, was never granted such licences, despite all remarkable efforts made by it. In fact, it was multiple windows for different permissions, of different departments of Union of India, who do not work in tandem. Hence, Petitioner was not entitled to forfeit the security deposit of Rs. 16,82,676/- (Rupees Sixteen Lakhs Eighty Two Thousand Six Hundred Seventy Six Only).

There arises no liability, either under facts or law for payment, towards interests from any date, including from 01.04.2015. Respondent is not liable for any pendente lite and future interest. Rather, Petitioner is liable to return Rs. 16,82,676/- (Rupees Sixteen Lakhs Eighty Two Thousand Six Hundred Seventy Six Only), deposited by Respondent, as security deposit, under the terms of subject agreement. The Petition is not maintainable due to the presence of an arbitration clause. The alleged transponder capacity has been taken by Antrix Corporation Ltd., from Asia Satellite Telecommunication Ltd.(AsiaSat), for the purpose of marketing and promoting to the Indian customers. While doing so, Antrix Corporation Ltd., is acting only as an agent. The transponder capacity, is not owned by Antrix Corporation Ltd., or the Petitioner. Nor Antrix Corporation Ltd., is duly authorised by the Department of Space, or the Union of India. The agreement dated 08.12.2010, can never be a valid instrument to vest powers of the Union of India into a body incorporated under the Companies Act, 1956. The person filed this Petition is with no authority to institute this proceeding. Authorisation, vide Circular Resolution, dated 24.07.2017, is invalid. This Tribunal is with no jurisdiction, under Section 14 of TRAI Act. Neither the Petitioner, nor the Respondent falls under any of the categories given under Section 14. Rather, the jurisdiction of the dispute, at hand, will

be governed through Article 18 of the Agreement No. INSAT- Asiasat5-DSNG-Ku-[1]- 2010. The Petitioner is not a 'Service Provider' as per Section 2(j) of the TRAI Act, 1997. The Respondent is not licensed, under sub-section (1) of Section 4 of the Indian Telegraph Act, 1885 by the Petitioner. Hence, Petitioner is also not a 'licensor' under Section 2(e) of the TRAI Act, 1997. No cause of action pleaded, nor Petition is under period of limitation. Hence, the cause of action stated by petitioner, arising in December 2010 and petition being filed after 8 years, that is, beyond period of limitation was not maintainable. The petitioner cannot claim benefit of Article 112 of the Limitation Act. Hence, a prayer for dismissal of this petition is there.

11. Replication cum rejoinder was the reiteration of contention of petition and denial of the contention of reply. In accordance with the request made by respondent, relaxation of 9 days was granted and billing commenced only from 10.12.2010. The security deposit, against the outstanding amount, was adjusted wholly in terms of the request, made by respondent, in this regard. Pursuant to said adjustment, the petitioner duly provided with an opportunity to the respondent to replenish the security deposit of Rs.16,82,676/- by 30.9.2011. Although the use of allocated capacity was contingent upon respondent receiving all requisite licenses / clearances, the liability, as against allocation of capacity was expressly agreed to commence

in terms of Article 2(c) of the subject Agreement, Annexure P-1. Article 2(c) of the Agreement stipulates that the customer shall be responsible for obtaining the clearances from DoT, WPC/SACFA and NOOC's approval for antennas. However, any delays in obtaining the clearances or in the commencement of up-linking shall not absolve the customer, i.e. the respondent herein, from paying the space segment charges from the commencement date, as provided under Article 2(b), unless specially agreed to by Department of Space (DoS).

12. Article 2 (b) specifically stipulates that "the period of provision shall commence on a date to be advised by the customer, which shall be on or before December 01, 2010 for 1.5 MHz on INSAT-Asiasat5 (hereinafter referred to as the "Commencement Date") and there shall start normal payment on or before December 01, 2010, as per the frequency allocation letter from SCNP for the provision of 1.5 MHz, as the terms and conditions, listed in Exhibit-B (Payment Schedule). 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 (Refer Terms (2) in Exhibit B), unless specifically agreed to by DOS. Article 2(c) 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 provision charges from the Commencement Date (vide Article 2b), unless specifically agreed to by DOS.

13. In term of aforesaid clauses, a frequency allotment letter dated 16.12.2010 was issued by the Petitioner and it was revised on 22.12.2010. Hence, at least from 16.12.2010, Respondent was liable to pay space segment charges. These two letters are Annexure P-24 (colly) to petition. The agreement between AsiaSat and Antrix, Petitioner and Respondent, is a back-to-back arrangement, whereby the said capacity was taken from AsiaSat by Antrix, on behalf of the Petitioner, on a long-term basis in turn to provide such capacity to the Respondent. The Petitioner has appointed Antrix as the 'Contract Manager' which has been stipulated in Clause 11 of Exhibit B to the subject agreement. This Tribunal, in its order, dated 06.02.2019, in the present petition itself, has decided Petitioner to be a "service provider" in term of Section 2(1) (j) of Telecom Regulatory Authority of India Act, 1997. Commencement of this Agreement was not contingent upon the Respondent obtaining requisite licenses/permissions/clearances.

Rather this subject agreement, in express terms, provided that Respondent would be liable to pay SSC, irrespective of whether licenses, etc. had been granted to it or not.

14. In light of the Article 2 (c) of the Agreement, liability of the Respondent is absolute from the commencement date, provided under the agreement. The very contention, with regard to arbitration clause, was previously heard and negated by this Tribunal, vide order dated 06.02.2019. The contention with regard to the limitation is also with wrong facts. Under Article 112 of schedule, appended to the Limitation Act, 1963, the period of limitation prescribed is 30 years. The provision squarely applies to the present case, which has been filed by Department of Space, for recovery of money from Respondent.

15. This Tribunal, vide its order dated 10.12.2019, had framed following issues, on the basis of the pleadings of both sides :

1. Whether the Petitioner is entitled for the amount, along with interest from Respondent as claimed in the petition?

2. Whether the petition is barred by Law of Limitation?

3. Whether the petition is maintainable in the present form?

4. Whether the person signing the petition on behalf of the Petitioner is duly authorised?

16. Evidence by way of Affidavit of Ms. Sonali Nanda, Sr. Manager with Antrix Corporation, PW-1 and Affidavit by way of evidence of Mr. M.S. Krishnan, Sr. Head(Legal) with Antrix Corporation, PW-2, was filed by Petitioner. Whereas, affidavit of Respondent's witness, Mr. Prem Nath, General Manager with respondent was filed by Respondent.

17. Heard learned counsel for both side and gone through the material placed on record.

18. 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.

19. 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.

20. M.A. No 472 of 2018, was filed by the Respondent, raising its preliminary objections, with regard to maintainability of this petition, under Section 14, and Section 14A of TRAI Act, 1997. And this Tribunal, after hearing both side, passed order dated 06.02.2019 and held no merit in the preliminary objections, raised by Respondent and thereby rejected M.A. No. 472 of 2018. In this very application, it was written that Petition has been filed in the name of Union of India, through the Secretary, Department of Space, Government of India by Authorised Signatory, Shri M S Krishnan, Senior Head (Legal), with the prayer mainly for a recovery of amount of Rs. 1,30,01,472/-, from the Respondent, payable under an agreement, dated 08.12.2010, entered, in between, Petitioner and Respondent, which is Annexed as Annexure P-1. Under clause 11 of Exhibit-B of this Agreement, Antrix Corporation Ltd., was appointed as "Contract Manager" and it was vested with all powers on behalf of the Petitioner, including initiation of legal proceedings. Antrix has authorized concerned officer, through a Board Regulation (Annexure P-2), to institute the present petition, before this Tribunal. The 'Broadcasting Services' have been included within the jurisdiction of this Tribunal, vide Gazette Notification No. S.O. 44(E) dated 09.01.2004, issued by Ministry of Communications and IT. Petitioner as well as Respondent is 'Service Provider'. As both parties were 'Service Provider'

in terms of Section 2(1)(j) of TRAI Act, hence, dispute involve in the petition lies within jurisdiction of this Tribunal, given under Section 14 of the TRAI Act. There is bar of other court's jurisdiction, except of TDSAT in this Act. Whereas Respondent's objection by this M.A of 472 of 2018, was that the main agreement for the provision of KU – Band Space Segment Capacity(SSC) in Asiasat5 system, dated 28.05.2010, between a foreign entity namely, Asia Satellite Telecommunications Company Ltd. and Antrix.

21. With regard to implementing Satellite based services throughout India, does not make Antrix a 'Service Provider' under TRAI Act. The law propounded by the Division Bench of Delhi High Court, in case of VIOM Network Limited V/s S. Tel Private Limited (2013) 139 DRJ 641, was argued. The dispute with regard to matter in question, was to be dealt by an international institution, and this dispute, which is based on its subordinate agreement, will be subject to the same limitations of jurisdiction, which are to be found in the main agreement, between AsiaSat and Antrix. This Tribunal has rejected the objection, raised by the Respondent. The very argument, with regard to arbitration clause, was also raised there at, and it was rejected, in view of the law laid down in the matter, by this Tribunal, in case of Aircel Digilink India Ltd. V/s Union of India and other related matters, decided on 06.01.2005 (Petition No.6/2003) (2005 SCC

OnLine TDSAT 105), and subsequently, followed in recent judgments and orders, such as order dated 24.4.2018, in Digicable Network India Ltd V/s Disha Media Pvt Ltd., in Broadcasting Petition No. 548 of 2017. Hence, the preliminary objection with regard to jurisdiction of this Tribunal, and maintainability of this petition, as well as existence of arbitration clause in main agreement, and its effect has already been heard, and decided against the Respondent. **This order dated 06.02.2019, will be part of this judgment.**

22. The limitation period has been vehemently argued by learned counsel for respondent to be of six months, as against Article 112 of the Limitation Act, and it was held to be decided, in disposal of issue no. 2, along with final disposal of this petition. Hence, issue no.2 is being decided as below:

Issue No. 2

23. Learned Counsel for Respondent argued that present petition, is barred by a limitation. A limitation of six months applies, as per the Telecom Regulatory Authority of India (Period for filing an application to Authority) Rules, 1999, notified by GSR 72 (E) dated 08.02.1999, on an "application"of Section 14 (A)(1), as notified under Section 35 (2) (e) of 1997 Act, which were laid before the Parliament, under section 37 of 1997 Act. This Rule continues to apply as per Section 24 of General Clauses Act, 1897, as well as the law laid down, in Fibre Boards Pvt Ltd V/s CIT, Bangalore, (2015) 10 SCC

333, in paras 20 to 22. Wherein, repeal and re-enactment and substantially covering the subject matter, is laid down. Section 14 and 15 of original enactment of TRAI Act 1997, were omitted and re-enacted, in the form of Section 14 and 14 A, covering the subject matters of disputes, and their adjudication on an 'application'. Expression 'application' in repealed Section 15 and expression 'application' in re-enacted section 14 A, are same to be governed by limitation of six months, given under 1999 Rules. The limitation of three years applies as per Article 137, read with section 2 (b) and 2(l) of the Limitation Act 1963, on an application under section 14 A (1) of TRAI Act 1997. Article 112 of the Limitation Act, is not attracted for an 'application', under Section 14 A(1), because it is not a suit. Section 2 (b) and 2 (l) of Limitation Act, 1963, are mutually exclusive, as law laid down by Gauhati High Court in Union of India V/s Bimal Kumar Kar 1973 SCC Online Gauhati 5 has been pressed. Even otherwise, if it is assumed that no limitation period was prescribed in TRAI Act, 1997, then reasonable period, in view of the scheme of 1997 Act, shall apply and it shall be not more than three years. For this argument, precedents propounded, in State of Punjab and Ors Vs. Bhatinda District Cooperative Milk Producers Union Limited (2007) 11 SCC 363, CIT V/s NHK Japan Broadcasting Corporation 2008 SCC Online Delhi 1433, M/s Bisesar, House Vs. State of Bombay, 1958 SCC Online Bombay

118, has been pressed. The law laid down by this Tribunal, in Union of India V/s Seashore Securities Ltd, 2020 SCC Online TDSAT 3, Union of India V/s Mahua Media Pvt. Ltd. 2023 SCC Online TDSAT 252, Union of India V/s C-Voter Broadcast Pvt. Ltd. In B.P 182 of 2018, judgment and order dated 14.02.2024, are judgment *per incuriam.* Hence, Miscellaneous Application No. 225 of 2023 for referring the issues to larger Bench was moved.

24. The Law, being said to be *per incuriam,* is not of that nature, as is being argued by learned counsel for the respondent. Rather claims instituted, for and on behalf of the Central Government, or the State Government, is provided with the period of limitation of thirty years, as per Article 112 of the Limitation Act 1963, and it has been propounded by the Hon'ble Apex Court in *Nav Rattanmal v. State of Rajasthan, 1961 SCC OnLine 321 ; Accountant General (A&E) & Anr. v. Sethumadhavan Nair, (2004) 13 SCC 14. This Tribunal in its judgment, Union of India v. Seashore Securities Ltd.(BP No. 98 of 2018), 2020 SCC OnLine TDSAT 3, as well as Judgement dated 14.02.2024 in B.P. No. 182 of 2018, 'Union of India v. C-Voter Broadcast Pvt. Ltd.'* has held that the petition, under section 14 as well as 14A, of TRAI Act before TDSAT, by Union of India or State Government, will be with limitation of thirty years, provided under Article 112 of the Limitation Act of 1963. The very argument that it is an 'application', under

repeal as well as re-enacted Act, and for 'application' for limitation period, will be of six months, given in Rules, followed by repealed Act, is not tenable. This Act has specifically barred the jurisdiction of Civil Court, with regard to Suit, falling under the category of Section 14 and 14 A of TRAI Act, for which this Tribunal has been constituted. Meaning thereby, a proceeding, filed before this Tribunal, for the relief in the cases of that category, for which this Tribunal has been created, will be of the same category of suits, and this has specifically given under the Act, and the Rules, that the proceeding before this Tribunal, is a civil proceeding. More so, Code of Civil Procedure, 1908, in its strict sense, has not been implicated to be followed, by this Tribunal. Rather Principle of Natural Justice and few of the provisions with regard to procedure, are to be followed. Hence, the very argument that the Article 112, is for suits only, and this petition is an 'application', hence, Article 112 will not be applicable, is of no merit. More so, this Tribunal after hearing the same issue with regard to limitation, in those cited precedents, has held that Article 112 will be applicable, and the limitation period will be of thirty years, for such types of petitions. Hence, this petition is not barred by law of limitation. Accordingly, issue no.2 is being decided against the respondent.

Issue No. 4

25. This Petition, in the name of Union of India, through Secretary, Department of Space, Government of India, was filed by Mr M.S Krishnan. Sr. Head (Legal), Antrix Corporation Ltd., which was written to be 'Contract Administrator', in Principal Contract, against Respondent. Para 2 of the Petition specifically mentions that under clause 11 of Exhibit-B, annexed to the agreement, dated 08.12.2010, Antrix Corporation Ltd., (Antrix) was appointed as the 'Contract Manager' and vested with all powers on behalf of Petitioner, including initiation of Legal proceedings. This agreement is Annexure P-1 to Petition, and the authorization, in favour of Mr. M.S Krishnan, by way of Circular of Board Resolution, is Annexure P-2 to Petition, and it was specifically mentioned that Mr M.S Krishnan, Sr. 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 proceedings, before this Hon'ble Tribunal. Hence, Annexure P-2, of the Petition specifically mentions the authorization, in favour of Mr. M.S Krishnan for filing this Petition, and it is of date 24.07.2017 of the 106th Board meeting held on 24.07.2017, whereby, specific mention is of "The Board approved proposal for initiating recovery proceedings before TDSAT in respect of the defaulting customers.

The Board also approved engaging the services of Shri Arjun Krishnan, Advocate of Samvad Partners, and also authorized Shri M.S Krishnan, Sr. Head (Legal) to sign the affidavits on behalf of the Company". This fact has been reiterated in rejoinder affidavit of Petitioner. The evidence filed by Mr M.S Krishnan PW-2, is of specific mention that under Clause 11 of Exhibit-B annexed to agreement, dated 08.12.2010, Antrix Corporation Ltd., was appointed as the 'Contract Manager' and was vested with all powers on behalf of Petitioner, including initiation of legal proceedings. In furtherance of the Clause 11 of Exhibit-B, to the aforesaid agreement, the Board of Directors of Antrix (i.e., Contract Manager), have duly authorized the Deponent, Mr M.S Krishnan to take all necessary steps to institute the present proceedings, before this Tribunal and the true copy of authorization, by way of Circular Board of Resolution, as authorized signatory in favour of Mr M.S Krishnan, Exhibit PW-2/1 to this affidavit. This uncontroverted statement on oath, supported with Exhibits, reveals the filing of this Petition, for and on behalf of 'Contract Manager', is under valid authorization. Nothing against this as a cogent evidence, is by Respondent. Hence, this Issue No. 4 is being decided in favour of Petitioner.

Issue no.3

26. The objection was raised before Tribunal at a very preliminary stage, that Petitioner is neither a licensor, nor a service provider, for the services involved in this Petition. The contention was heard and set aside, vide order 06.02.2019. It was further held that Petition was maintainable before this Tribunal. It was specifically held that "for the above stated reasons, we find no merit in the preliminary objection and the same is accordingly, rejected. M.A 472 of 2018 stands disposed of. The Petition shall now be listed before the Court of Registrar on 20.02.2019, for passing necessary orders, and directions to make it ready for hearing." Hence, the very contention with regard to maintainability of Petition, in present form, was heard and decided against the Respondent. But as the same was again pleaded in reply, hence, this issue was got framed and while arguing on this point, Learned Counsel for Respondent had pressed its M.A 225 of 2023, with a prayer for pressing this Petition before Division Bench, because the previous judgment/ precedent was made by the Division Bench of this Tribunal. This was heard by this Tribunal, and vide order dated 19.09.2023, it was held that "…Meaning thereby, a request is being made for referring previous judgment for review by Division Bench, in disposal of present Petition. It is apparently a baseless application, but any way before making final opinion,

hearing of Counsel is needed in the interest of Natural Justice. Hence, this application is to be heard and disposed of, along with final disposal of this Petition ….” and at the time argument, this point was again raised, but there was no substantial reason for referring this Petition for making a review by the Division Bench with regard to precedent/ law laid down by this Tribunal by its Division Bench. The law is settled one, and the same was passed on the basis of precedent of Hon’ble Apex Court. It has been written in it itself. Hence, in a subsequent Petition, no reference can be made, for making a review, with regard to previous judgment holding some law.

27. So far as the other argument of Learned Counsel for Respondent is concerned, the Counsel for Respondent argued that there was no cause of action and it was not disclosed as to when it arose. Hence, the present Petition is liable to be dismissed, as it does not disclose, as to when the cause of action arose. This violates Order VII Rule 1 (e) of CPC, 1908 and it was the law laid down by Hon’ble Apex Court, in K. Akbar Ali V/s K. Umar Khan and others (2021) 14 SCC 51, as well as Draupati Devi and others V/s Union of India and others (2004) 11 SCC 425. From the very perusal of Petition, it is apparent that the Petition was filed on 07.09.2018, with its specific mention of Agreement No. INSAT-Asiasat5-DSNG-Ku-[1]-2010 dated

08.12.2010, Exhibit P-1, whereby transponder capacity of 1.5 MHz of Ku-band on INSAT-AS5, was leased for the Broadcasting requirements of the Respondents DSNG vans, for a period of lease, to be terminated on 30.06.2013, i.e., this lease agreement was to expire on 30.06.2013. The terms and conditions of this agreement were written therein. The compliance by Respondent was not made and repeated letters, mails, annexed with Petition, were sent, and were replied by Respondent, which are made Annexure to Petition. Persistent demand, by way of written notices, were being made for making payment, as well as settlement, toward outstanding dues, accrued under above agreement, and it was letter, Annexure P-21, dated 18.02.2017, written by Respondent to Antrix that it was not liable to make any payment, as against the outstanding dues, since the agreement deemed to have been terminated, on 17.06.2011, and this compelled Petitioner to file this Petition. Hence, from the overall perusal of the pleadings of both side, it is very well apparent that after denial of the liabilities, this Petition was filed.

28. Hence, a clear-cut fact with regard to cause of action is there, and after this present Petition was filed. Hence, this cannot be said that there is no cause of action, given in the Petition. More so, the law cited by

Respondent, written as above, are with not regard to the Petition filed before TDSAT, wherein strict adherence with provisions of Code of Civil Procedure, 1908, has been exonerated**.** Hence, apparently strict adherence with Order VII Rule 1(e) of CPC, 1908, is not mandatory in proceeding, filed by way of Petition, under Section 14 and 14 A of TRAI Act, before this specialized Tribunal. Hence, this contention of Respondent is not tenable. Accordingly, this Petition is very well maintainable in given form. Hence, this issue is being decided against respondent.

Issue No. 1

29. Execution of agreement, in between, that is, Exhibit P-1, is undisputed. Annexure P-1 to the petition, which is an agreement in question, dated 08.12.2010, is an undisputed document. Execution of same, terms and conditions of same, has not been disputed. An instrument, which is in question, if not being disputed, is to be taken, in between lines, and as it is. The agreement, Exhibit P-1, was with terms and conditions, for allocation of 1.5 MHz of Ku Band on INSAT-AS5, in favour of Respondent, for Broadcasting requirements of respondent's DSNG Vans for period to expire on 30.06.2013, under the payment schedule, (Exhibit -B), annexed to the subject agreement dated 08.12.2010, the Respondent was liable to pay

US$46,741 per MHz per annum (US $ 5842.625 per month for 1.5 Mhz). The security deposit of Rs 16,82,676/-, representing 50% of annual charges (at exchange rate of 48), for the transponder capacity, was to be there and it was to be interest free, and was to be adjusted with last three months' invoices. The commencement date was written to be 01.12.2010, but it was shifted to 10.12.2010. For provisioning of transponder capacity of 1.5 MHz on INSAT AsiaSat, and all formalities for making this transponder capacity operationalized by customer, was to be performed, on or before the day of commencement, i.e., 10.12.2010. Payment schedule was given in Exhibit-B to this Agreement, Annexure P-1. There is specific provision in Article 2 (b) that in case, customer fails to commence its payment, on before the abovementioned 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. Under Article 2(c), it was specifically provided that customer can commence up-linking after it has obtained all the clearances from DOT, WPC/SACFA and NOCC's type approval from the antennas. It was specifically understood that customer assumed responsibility for obtaining the above clearances, before the commencement date. There was specific provision that any delays, either in obtaining clearances, or in the commencement of up-linking, shall not

absolve customer's liability to pay the provision charges, from the date of commencement, unless specifically agreed to by DOS. From the bare reading from above reproduced article, it can be clearly seen that the respondent, that is, the present customer, was liable to pay charges from the date of commencement, that is, 10.12.2010, agreed under this agreement, irrespective of any delay in obtaining the requisite clearances/permissions/license, etc., as per Article 2 (c) of the agreement.

30. The very argument of learned counsel for Respondent, is that it was Standard Form of Contract, Respondent did not have any bargaining power, before Union of India, and such Standard Form of Contract, authored by Union of India based on 'take it or leave it' policy was signed, containing several unfair and unreasonable terms, namely Article 2 (c) and Article 6 (A) (second part). '*Rule of Contra Proferentem'* is applicable, which stipulates that unfair or unreasonable contract or clauses thereof, shall be read against the author/draftsmen, as has been propounded by Hon'ble Apex Court in Manmohan Nanda V/s United Assurance India Pvt. Ltd. (2022) 4 SCC 582 and Life Insurance Corporation V/s CERC (1995) 5 SCC 482. It is a contingent contract rendering of Ku-band frequency Satellite broadcasting service, and consumption thereof are contingent upon, the grant of license by MIB, and

frequency clearance by WPC/ NOCC, under the Indian Telegraph Act, 1885, Indian Wireless Act, 1933. All the terms of agreement, dated 8.12.2010 (Exhibit P-1), are subject of 1885 Act, as well as 1933 Act. It can be commenced only after license/permission therein, and failure of it, fastens Criminal prosecution. Hence, petitioner cannot trick argument that even without permission/license, the agreement can commence fastening liability on citizen. The term of the contract, which indicate that the contract is contingent in nature, are Article 2(c) and 6 (E), 8, 10, 11. The application for getting all those clearances, as well as licenses were moved by Respondent to appropriate Authority, but owing to notification of General Election in State of West Bengal, on 14.12.2010, the Departments of Union of India went into slumber and those clearances/licenses were not even considered.

31. The agreement, in question, was determinable, and in case of determinable contract, or contract for service, no specific performance can be ordered. Subject matter of the present dispute, was satellite transponder service, and it was determinable in nature, as was given under Article 6 of the Agreement. Hence, specific performance thereof cannot be claimed as per Section 14(c) of the Specific Relief Act, 1963. In present petition, the relief claimed by petitioner is for service charges as per Exhibit-

B, payment schedule to the agreement. Whereas Article 9 b(iv) provides for exclusive remedy of damages/compensation in line with Section 73 of Indian Contract Act, 1872, and in view of above facts and legal proposition, specific performance of contract was not maintainable. Rather, the only remedy, which may be available, in case of breach of claim for compensation/ damages, under section 73 of Indian Contract Act, 1872, was to be pleaded and proved. But in present petition, no proof thereof, has been made, nor pleaded by petitioner. Hence, in view of law laid down by Hon'ble Apex Court, in Maula Bux Vs Union of India, AIR 1970 SC 1955, as well as Murlidhar Charanjilal vs. Harishchandra Dwarkadas and Anr, 1961 SCC Online SC 100, this claimed amount may not be awarded.

32. The mitigative steps had not been taken by petitioner as per Article 2(b). The agreement commences on the advance payment and unless DOS agreed contrary to it, no service will be provided. Respondent never paid, as no mandatory license/permission, under 1885 Act, as well as 1933 Act, were granted for the reasons, beyond the control of Respondent, and the Respondent clearly refused to pay, vide its letter dated 28.05.2012, as well as 30.04.2013, in the absence of permissions by MIB/NOCC/WPC. No liability of Respondent accrued as per above terms. The Respondent attempted to work out the future course of action, in term of Article 8(c),

but was refused by DOS, by Email/letter dated 14.03.20211, and 17.06.2011. Whereas mitigative steps, mandatory to be taken, as per Section 73 Indian Contract Act, 1872 and termination, under Article 6(D) have been effected by DOS, after two defaults, that is, in month of December 2010 and January 2011. Mutually agreeable way forward, should have been arrived under Article 8 (c), which was refused by DOS, and once no monthly payment was made, the agreement never commenced, and capacity was never allocated to Respondent. Hence, in view of law, laid down by Hon'ble Apex Court, in para 14 of M.Lachia Setty and Sons Ltd vs Coffee Board, Bangalore (1980) 4 SCC 636, this claim may not be awarded.

33. Learned Counsel for Petitioner replied the argument that failure to obtain requite licenses and approval from the relevant authorities, could not be covered under 'force majeure', in view of law laid down by Hon'ble Apex Court, in Naihati Jute Mills Ltd V/s Khayaliram Jagannath, 1967 SCC Online SC 10. It was not disputed that use of allocated capacity was contingent upon Respondent receiving all requisite by licenses/clearances, as was stipulated in Article 2(b) of the agreement, but there was specific provision, that delay in obtaining the clearance should not absolve the Respondent from its liability to pay the charges under Article 2(c) of the Agreement Exhibit-P-1. The recovery of dues under written agreement entered, in between, is being

prayed in present petition, and not, for damages, under Section 73 of Indian Contract Act, 1872. In petition, as well as in evidence, filed by PW-1 and PW-2, in the rejoinder, filed after reply, it was specifically written that Respondent, being a 'service provider', in terms of section 2 (j) of the TRAI Act, requested the Petitioner that is, Department of Space, to provide capacity on its satellite for purpose of meeting Broadcasting requirements, that is, Digital Satellite News Gathering (DSNG), and upon this offer, agreement was entered, in between, on 08.12.2010, whereby, transponder capacity of 1.5 MHz Ku-band on INSAT AsiaSat5, was leased for broadcasting requirements of the Respondent's DSNG Vans, for a period to be expired on 30.06.2013, subject to payment schedule (Exhibit-B), of above contract. The security clause was there, and this subject agreement was with clauses regarding invoices, to be raised in advance, payment to be made. It was with specific mention that in order to provide services to the Respondent, despite scarcity of ISRO Satellite capacity/transponder bandwidth, the transponder capacity, which is the subject matter of the aforesaid agreement, was a procured capacity, originating from a foreign service provider i.e. Asia Satellite Telecommunications Holdings Limited (hereinafter referred to as "AsiaSat") and the said capacity was taken on lease by Antix, in order to provide services to the Respondent for its use. As a result, Antrix was

obligated to remit timely payment against the provisioned capacity to AsiaSat, irrespective of whether or not, the Respondent herein, who was ultimate user/subscriber of the capacity, complied with the terms and conditions of the agreement entered, in between, Petitioner and Respondent therein**.** The specific mention was there that as per Article 6(A) of the subject agreement customer, that the "Customer" i.e. the Respondent herein, has the right to terminate the agreement only *if the satellite does not perform as per the technical specification given in Exhibit A.* Barring this, the Respondent had no right to terminate the said agreement and its liability to pay the charges would continue until the end of the period of provision i.e. 30.06.2013. This is particularly so since Antrix/Petitioner was incurring a back-to-back liability, for providing services to the Respondent, from a Foreign Service provider on the AsiaSat-5 satellite.

34. It was specifically given in Article 2(d) of the agreement Exhibit P-1, that is, the subject agreement, that the Respondent is liable to pay Space Segment Charges(SSC), from the 'commencement date', irrespective of the fact, whether there is denial or delay in obtaining regulatory Licenses/clearance, such as from Department of Telecom, the Wireless Planning and Coordination / Standing Advisory Committee on Radio Frequency Allocation or Network Operation & Control Center. Hence, the

justification being taken by Respondent for non-payment of charges, such as non-usage of capacity, is deemed termination of agreement etc. are misconceived, unfounded and irrelevant. It is contrary to agreed terms between the parties. The exchange of E-mails, in between, accrual of outstanding dues, the interest agreed, in between, are uncontroverted or that is, undisputed. The only dispute is with regard to situation of contract frustration and force majeure, said as above.

35. From the pleading, it is apparent that it was agreed, in between, that up-linking of signals of satellite required valid permissions from MIB, endorsement from the WPC/NOCC and SACFA, including licenses, and caters for need of all wireless users. Therefore, for receiving the permission for up-linking of satellite from MIB, the Respondent was to apply to the WPC wing of DoT, for grant of wireless license to operationalize the channel. It was said to be applied with, but owing to declaration of General Election in West Bengal, the same could not be procured, resulting in non-use of space leased. Meaning thereby, the Respondent was fully aware about the policy of Union of India, it was all versed and after knowing all these provisions, he entered into agreement Annexure P-1. He expected the things, to be in accordance with the given provisions, but he could not have the license/clearances, required as above. As there was specific provision that

there will be no absolve of liability of Respondent, because of any delay or failure, for using the transponder capacity, which was allocated and for which, date of commencement was there. A Foreign satellite, borrowed by Union of India, was to be paid, as per the agreed terms, unless specifically agreed by DOS separately. Hence, the liability is very well there, and unless specifically agreed by DOS, this liability will not be absolved. Rather, liability on the part of the Respondent had accrued, under the said agreement, despite the fact that respondent was unable to obtain requisite clearances. Hence, the statement of account filed by Petitioner, and the evidence filed in support thereof, along with compliance of Section 65 B of Indian Evidence Act, not being disputed by other side, with regard to above agreed terms, or any other statement of account, by respondent in Respondent's evidence, the alleged disputed amount accrued to the tune of Rs. 1,30,01,472/-, is to be paid by Respondent.

36. No doubt, owing to non-issuance of clearances/ licenses by another wing of Union of India, the agreement in question, could not be acted upon i.e., allocation leased to respondent over AsiaSat 5, could not be used, by way of up-linking by Respondent, and there was provision with regard to termination or exoneration, subject to agreement of the DOS, considering all those facts. But it was not considered by DOS, nor agreed. Hence, this ought

to be adjudged, by appropriate forum in appropriate proceeding, for which Respondent would have availed, in case of rejection, or no heed by DoS, if it was prayed for that. But in a proceeding before this Tribunal, wherein Civil Court Jurisdiction, is being exercised, and not the Writ Jurisdiction, as has been given under Article 226, as well as Article 32, of the Constitution of India, this Tribunal is to take in account the agreement entered, in between, and liability accrued therein.

37. The rest of the arguments with regard to sanctity of the agreement that of being unconstitutional, as per Article 14, or the Act of the officers of the DoS, appearing to be ultra-virus, might have been raised, before a jurisdiction exercising under Article 226, or Article 32 of Constitution of India. This may not be commented by this Tribunal, at this juncture, in adjudication of this proceeding, which is a Civil Court proceeding, given under TRAI Act. Hence, under Civil Suit adjudication, the agreement which is undisputed, liabilities, accrued under above agreement, is to be adjudged. The Principle of Natural Justice, equity and fairness, with regard to security, and its adjustment, interest rate, pendente lite and future, is to taken into consideration.

38. Accordingly, the arguments raised by learned counsel for Respondent, appear to be a laborious exercise, made by this learned counsel, who argued nicely, but is of no help to Respondent, in this adjudication. The matter in question, is alike dispute in B.P No. 182 of 2018 (Union of India through Secretary, Department of Space, Government of India V/s C-Voter Broadcast Pvt Ltd.), which has already been decided by this Tribunal. The same facts and circumstances are in present petition too. Accordingly, petitioner is entitled for the amount, along with interest, from Respondent, as claimed in the Petition. This issue is being decided in favour of Petitioner.

On the basis of above discussions, this petition merits to be allowed, accordingly.

ORDER

Petition is being decreed. Respondent is being directed to make deposit, within two months, from the date of judgment, Rs. 1,30,01,472/- (One Crore Thirty Lakh One Thousand Four Hundred and Seventy Two only), along with *pendente lite* and future interest, till the date of actual payment, at the rate of Simple interest 9% per annum. 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 adjustment/deduction of security amount, previously agreed to be

deposited, with a simple interest of 9% over it, till actual date of calculation, for making payment to petitioner. Pending MAs, if any, shall also stand disposed of.

Formal order/Decree be got prepared by the office, accordingly.

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(Justice Ram Krishna Gautam)
Member

02.04.2025
/NC/