

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL  
NEW DELHI

Dated 16<sup>th</sup> February, 2016

M.A.No.34 & 35 of 2016 in  
Broadcasting Petition No.526 of 2014  
(With M.A. No. 167 and 206 of 2015)

Along With impleadment applications no. 233 to 237, 246, 247 & 257 of 2015)

Noida Software Technology Park Ltd. ...Petitioner

Vs.

Taj Television India Pvt. Ltd. & Anr. ...Respondents

ALONG WITH

Broadcasting Petition No.313 of 2015

Noida Software Technology Park Ltd ...Petitioner

Vs.

Taj Television India Pvt. Ltd. ...Respondents

MA Nos.36 and 37 of 2016 in  
Broadcasting Petition No.314 of 2015  
(With M.A. in 377 of 2015)

M/s Noida Software Technology Park Ltd. ...Petitioner

Vs.

M/s Star India Pvt. Ltd. & Ors. ... Respondents

BEFORE:

HON'BLE MR. JUSTICE AFTAB ALAM, CHAIRPERSON

HON'BLE DR. KULDIP SINGH, MEMBER

HON'BLE MR. B.B. SRIVASTAVA, MEMBER

For Petitioner : Mr. Vivek Chib, Advocate  
Mr. Asif Ahmed, Advocate  
Ms. Ruchira Goel, Advocate

For Respondent – Star : Mr. Saikrishna Rajgopal, Advocate  
Mr. Saurabh Srivastava, Advocate  
Ms. Shilpa Gupta, Advocate

For Respondent – Taj : Mr. Tejveer Singh Bhatia, Advocate  
Mr. U. Thakur, Advocate  
Mr. Rohan Swarup, Advocate  
Mr. Kunal Vats, Advocate

For Respondent – TRAI : Ms. Asiya Khan, Advocate

For Intervenors (MA 257/2015) : Ms. Shruti Garg, Advocate  
Ms. Vasudha Gupta, Advocate

### **ORDER**

By order dated 18.12.2015, both Star and Taj were directed to submit the details of their interconnect arrangements with 3 pan-India MSOs in order to give an interim direction in terms of which the petitioner should make payments to the two broadcasters until the matter attains finality and the respective liabilities and entitlements are finally determined.

On 29.1.2016, Mr. Saikrishna, counsel appearing for Star submitted that Star is willing to continue to supply its signals to the petitioner without any payments on interim basis and until its dues are finally determined once the matter attains finality in terms of the Tribunal's judgement or fresh regulations, if any, framed by TRAI.

Following the stand taken by Star, on 9.2.2016, Taj also took the same position and Mr. Bhatia appearing on its behalf made the statement that since in pursuance of the Tribunal's judgement, TRAI has already initiated the process of framing fresh regulations, Taj too would continue to supply its signals to the

petitioner without any monthly payments fixed under any interim arrangement and would have its dues settled when the matter attains finality.

On that date, Mr. Chib, counsel appearing for the petitioner expressed his objection to the stand taken by the two broadcasters and submitted that both Star and Taj should be compelled to comply with the direction given on 18.12.2015 and on the basis of all the materials produced by them, the Tribunal should make an interim arrangement under which the petitioner may make regular monthly payments to the two broadcasters.

On that date, the petition was adjourned for today for hearing the two sides on the issue in detail.

Heard Mr. Chib, counsel for the petitioner, Mr. Saikrishna, counsel appearing for Taj and Mr. Bhatia, counsel appearing for Zee.

Mr. Chib submitted that the petitioner's claim against Star that it was entitled to the latter's incentive package still remained pending adjudication in Broadcasting Petition no.314 of 2015 and in case it is found and held that the petitioner is in fact entitled to the incentive package, it would be the petitioner that would be entitled to recover a substantial amount from the broadcasters and not the other way round. He further submitted that apart from Broadcasting Petition no.526 of 2014, two other petitions being Broadcasting Petitions nos.313

of 2015 and 314 of 2015 also remained pending (which are duly noticed by the Tribunal in its earlier order and tagged with Broadcasting Petition no. 526 of 2014). In those two petitions (Broadcasting Petitions nos. 313 and 314 of 2015), the petitioner has challenged a circular letter of IBF that allows the broadcaster/agents of broadcasters to give signals free of cost for a period of six months. He strongly submitted that leaving the matter unsettled at this stage and not fixing any interim amount as monthly subscription payable by the petitioner to the two broadcasters would be quite prejudicial to the petitioner in its commercial operations.

In our view, the submissions of Mr. Chib are misconceived and unacceptable. The present proceedings are an outcome from the concluding observations and directions made in the Tribunal's judgement dated 7.12.2015 by which Broadcasting Petition no.526 of 2014 was finally disposed of. The observations and directions under reference are as under :

**" X. Tying up the loose ends.**

Suspension of this judgment, as explained above is in the larger interest of the broadcasting sector. It does, however, leave open the question of the petitioner's liability to pay licence fees to the broadcasters, Star and Taj, for their signals received by it during the pendency of the petitions before the Tribunal and further until execution of fresh agreements in terms of this judgment or in terms of fresh Regulations, if any, framed by TRAI. It will not be fair that the broadcasters should continue to supply signals to the petitioner without any payment for the next several months. It is, therefore, necessary to make some interim arrangement under which the petitioner should make payment of licence fees to the two 83 broadcasters until after execution of fresh agreements accounts are finally reconciled. The determination of payment liability by the petitioner may also

require some evidence to be taken. For this purpose, Petition No. 526 (C) of 2014 is de-tagged from this judgment and kept pending. Star has already filed an application (M. A. No.377 of 2015) in Petition No. 314 (C) of 2015 claiming the dues of licence fees from the petitioner. Petition No. 526 (C) of 2015 is directed to be tagged with Petition No. 314 (C) of 2015. In these two petitions, the Tribunal proposes to determine the Petitioner's liability to pay the license fees to Star and Taj on an ad hoc basis and as an interim measure until the execution of the agreements with the two broadcasters, and when the accounts of the two sides may be reconciled to determine any final liability of the Petitioner or Respondents to make any further payments."

From a bare reading of the aforequoted passage it is clear that the Tribunal proposed to make an interim arrangement for the protection of the interests of the two broadcasters/agents of broadcasters so that they may not be forced to supply signals to the petitioner for a period of several months without any payment to them.

As regards the petitioner's apprehension that part of its claims against the broadcasters relating to application of the incentive package in the case of Star or the claim of parity with other distributors in regard to both Star and Taj would not be addressed even if TRAI comes with fresh interconnect regulations, suffice to say that the three petitions in which these claims are raised, namely, Broadcasting Petitions nos. 526/2014, 313 and 314 of 2015 remain pending before the Tribunal and they would be decided on their own merits and if need be, after taking evidences from both sides.

We are, thus, unable to see how the petitioner may suffer by not making a direction for any adhoc or interim payment by it to the respondent broadcasters

until the matter is settled in terms of the TDSAT judgement or in terms of the fresh regulations framed by the TRAI.

The objections raised by Mr. Chib are accordingly rejected.

This is, however, not the end of the matter.

As noted above, this proceeding being a sequel to the judgement in Broadcasting Petition no.295 of 2014 was meant to protect the interests of the broadcasters and to that end, the two broadcasters were asked to submit before the Tribunal their interconnect arrangements with 3 pan-India MSOs so that the petitioner may also be directed to make payment to the two broadcasters/agents of broadcasters at the same rates as being paid by the other distributors of channels. The broadcasters, however, chose not to share the details even with the Tribunal and instead expressed willingness to supply signals to the petitioner without any payment for several months, the cost of which may run into crores of rupees.

We feel that this aspect of the matter is also quite relevant to be brought to the notice of TRAI which, we are informed, is engaged in framing fresh regulations on inter-connections.

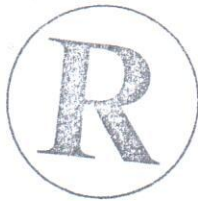
In course of hearing in Broadcasting Petition no.295 of 2014, the Tribunal was repeatedly told by the counsel representing TRAI that non-discrimination is

the essence of interconnect regulations. We fail to see how would non-discrimination can be made effective while the broadcasters so rigidly guard the commercial details of their interconnect arrangements with other distributors of signals.

Let copies of the orders dated 18.12.2015, 29.1.2016, 9.2.2016 and this order be sent to TRAI.

The respondents are directed to file their respective replies in Broadcasting Petition nos. 313 & 314 of 2015 positively within two weeks from today.

Put up under the same head 8.3.2016.



/pkb/

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(Aftab Alam)  
Chairperson

.....  
(Kuldip Singh)  
Member

.....  
(B.B. Srivastava)  
Member