

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL
NEW DELHI

Dated 27 July, 2017

Broadcasting Petition No.440 of 2016

Seven Star Dot Com Pvt. Ltd.

Vs.

Zee Entertainment Enterprise Ltd.

... Petitioner

... Respondent

BEFORE:

HON'BLE MR. B.B. SRIVASTAVA, MEMBER
HON'BLE MR. A.K. BHARGAVA, MEMBER

For Petitioner

: Mr. Navin Chawla, Advocate
Mr. Diggaj Pathak, Advocate
Ms. Shweta Sharma, Advocate
Mr. Anurup Narula, Advocate

For Respondent

: Mr. U. Thakur, Advocate
Mr. Kunal Vats, Advocate

ORDER

The petitioner Seven Star Dot Com Pvt. Ltd is an MSO operating in the DAS notified areas of Municipal Council of Greater Mumbai and has filed this petition against the Broadcaster respondent M/s Zee Entertainment Enterprise Ltd. in July 2016 with the following prayer: -

“(a) Hold the public notice dated 14/05/2016 and the notice dated 08/07/2016 issued by the respondent as illegal and unsustainable and quash the same; and

(b) Direct the respondent to reveal/disclose the rates on the basis of which they have signed agreements with the major MSOs and to offer the same terms and conditions to the petitioner;

(c) Direct the respondent to revise the rates of the RIO published on its website(s) on 11/05/2016 in terms of the CPS rates offered by it to the other MSOs as well as in compliance of the TRAI direction dated 09/05/2016".

The petitioner has also made an interim prayer as follows: -

"(a) Restrain the respondent from in any manner interfering/disrupting or disconnecting the signal services being provided to the area of operation of the petitioner and continue to provide signals to the petitioner in terms of the last executed agreements (subscription and placement) between the parties; and

(b) This Hon'ble Tribunal may be pleased to fix an interim subscription amount and/or the terms and conditions for the supply of signals till the final disposal of the present petition in the interest of Justice".

The petitioner had a subscription agreement with the respondent which expired on 31/3/16. The petitioner had also executed placement agreement for different channels. On 14/5/16, the respondent issued a public notice calling upon all distribution platforms to enter into interconnect Agreements based on their new RIO which have been hosted on their respective websites. The petitioner filed this petition in July 2016. The tribunal on 10/8/2016 directed the petitioner to pay the amount due as on 31/7/16 as per the petitioner, without prejudice to the rights and contention of either parties, and further ordered on 2/9/16 that the petitioner will continue to pay the monthly subscription fee on the basis of invoices raised in accordance with the previous arrangement.

While the respondent maintains its RIO terms to be in accordance with the TDSAT judgment of Dec. 2015 in NSTPL case and TRAI Interconnect regulations, the petitioner has challenged it saying their RIO terms are discriminatory and not based on parity.

The learned counsel from petitioner Mr. Navin Chawla has argued that issues herein are akin to signing of interconnect agreement on RIO basis which is under consideration of the Tribunal in a batch of petitions. Mr. Upender Thakur, learned counsel for the respondent does not agree at all with Mr. Chawla's contention that this matter is akin to signing of interconnect agreement on RIO basis as in the batch of petitions. Besides the issue of RIO terms and conditions, both sides also differ on whether the subscription agreement and placement agreements are co-terminus, amount due and monthly payments. These issues need adjudication in due course.

Be that as it may, the issue at the moment is to make an equitable and regulation compliant interim arrangement till the petition is adjudicated. The first thing we notice is that there is no written agreement between the two parties. The petitioner has challenged the RIO terms which are under adjudication and therefore there is a difficulty in executing an agreement. Hence, with a view to move forward, we would first like that a written agreement comes in existence so that the pendency of adjudication does not have the effect of prolonging the implementation of regulation and then only any equitable arrangement can be meaningful. Accordingly we direct the followings: -

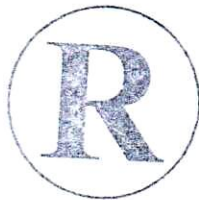
- (i) The petitioner will enter into a written interconnect agreement with the respondent on the basis of RIO terms or mutually agreed terms within 30 days from today. In case of RIO based agreement, RIO rates and terms will be subject to the final decision in the petition. Past liability, if any of the petitioner being the subject matter of adjudication before the Tribunal will not be used by the respondent as a ground for refusing to enter into an agreement.
- (ii) After signing of the agreement, the petitioner will make the monthly payments as per the invoices raised on the basis of the agreement and within the time

frame mentioned in the agreement, failing which respondent will be free to proceed in accordance with law. This arrangement will be without prejudice to the rights and contention of either parties and shall be subject to final decision of the Tribunal.

- (iii) The petitioner has paid Rs. 50 lakhs; as submitted on 2nd September, 2016. It was directed to pay the monthly subscription on the basis of invoices raised in accordance with previous arrangement. It is directed accordingly that this arrangement shall continue till the date new agreement, as mentioned above, become effective. This shall be without prejudice to the rights and contentions of either party.

Put up before the court of Deputy Registrar for completion of pleadings, framing of issues and filing of evidence on affidavit. In case any of the party wishes to lead oral evidence, it will make an application, and the same shall be listed before the Tribunal for orders.

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



.....
(A.K. Bhargava)
Member