

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL  
NEW DELHI

Dated 26th May, 2017

Broadcasting Petition No.86 of 2015

Star India Pvt. Ltd.

....Petitioner

Versus

Trustline Broadband Service Pvt. Ltd.

...Respondent

**BEFORE:**

**HON'BLE MR. JUSTICE SHIVA KIRTI SINGH, CHAIRPERSON**

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

**HON'BLE MR. A.K. BHARGAVA, MEMBER**

For Petitioner : Mr.Kunal Tandon,Advocate  
Mr.Saurabh Srivastava,Advocate  
Ms.Shilpa Gupta,Advocate  
Ms. Arpika Singhal, Advocate  
Mr.Ranjit Singh Sidhu,Advocate

For Respondent : None

**ORDER**

**By A. K. Bhargava, Member** - The Petitioner is a broadcaster who has filed this petition against the respondent multi system operator (MSO) with the following prayers -

- "a. Issue a direction to the Respondent to forthwith pay to the Petitioner a sum of Rs. 135,25,051/- plus Rs 21,54,374/- (interest @ 18% per annum as on 17<sup>th</sup> February, 2015);
- b. Issue a direction to the Respondent to pay pendent lite and future interest @ 18% till the date of payment"

After the petition was filed on 20-2-2015, the matter had proceeded on its own pace. The petitioner's evidence was completed and closed before the learned Advocate Commissioner on 18-10-2016. Thereafter, affidavit of evidence of the respondent was not filed despite many opportunities given to the respondent. Learned council for the respondent sought discharge in the matter and notices were issued in view of non-appearance of the respondent, but there was no appearance on behalf of the respondent or representation either. In view of this, the matter was permitted to proceed *ex-parte*.

The petitioner, "Star India Private Limited" was part of a joint venture named "Media Pro". The respondent company "Trustline Broadband Services Pvt. Ltd" was formed in February, 2014 with conglomeration of six networks, some of whom had some interconnect agreement with Media Pro. Media Pro later entered into an interconnect agreement dated 31-3-2014 with the respondent "Trustline Broadband Services", effective from 1-02-2014 till 31-3-2014 for a monthly subscription fee of Rs. 32,35,288/- for the area of Jamshedpur, Adityapur, Kandra, Chandel. Thereafter, pursuant to the Amendment dated 10-02-2017 in the Interconnection Regulations by TRAI, the petitioner Star India started entering into Interconnection Agreement for its TV channels on its own.

Media Pro informed the respondent vide letter dated 22-5-2014 that with effect from 1-4-2014, the respondent would have to enter into an agreement with the petitioner (i.e. Star India) and till a new agreement was signed, the petitioner will raise provisional invoice as per the old

agreement i.e. 50.39% of the total subscription fee mentioned in the last agreement with Media Pro. Petitioner avers that as per the aforesaid Agreement, the respondent was liable to pay 50.39% of Rs. 32,35,288 i.e. Rs. 16,30,314/- per month. However, due to oversight, Star India was raising invoices on the respondent at the rate of Rs. 10,10,675/- which was subsequently rectified by issuing fresh invoices and they were duly received by the respondent. As per the invoices raised, the respondent was liable to pay Rs. 1,35,25,051/- as on 17-02-2015.

The petitioner further submits that there were numerous discussions between the parties in relation to the payment of the outstanding amounts to the petitioner and signing of fresh agreement. However, the respondent neither paid the outstanding amount nor entered into an Interconnection Agreement for the general entertainment channels of the petitioner. The petitioner also submits that in order to avoid payment of the aforesaid amount, the respondent wrote to the petitioner on 15-12-2014 seeking down gradation but did not submit any proof reflecting decrease/reduction in subscriber base. Since the respondent failed to pay the outstanding amounts and sign a new agreement with the petitioner, the petitioner issued disconnection notice to the respondent as well as a public notice on 25-12-2014 and disconnected the signals in February, 2015.

The prayer is for the recovery of outstanding dues from April 2014 to February 2015. The petitioner has not been able to show that there was a written interconnect agreement between the parties during this period. In the light of judgment of this Tribunal dated 10.5.2016 in the

case of UCN Cable Network India Pvt Ltd Vs. Raj Cable Network and analogous matter, the claim for a period when there was no interconnect agreement cannot be entertained by this Tribunal. Learned Counsel for the petitioner Mr. Kunal Tandon argued that prior to April 2014, there was a written interconnect agreement between the parties. On the basis of this agreement, signals were continued to be provided and invoices were also raised on the basis of the same agreement. The respondent enjoyed the signals, received the invoices and made some payments also. Therefore, this case is different in circumstances and the UCN Cable judgment of the Tribunal is not applicable. We do not agree with this argument since the key issue is whether the written agreement exists or not. Generation of invoice and the receipt thereof is not a substitute for a written agreement. Similarly, unilateral intimation of signals being provided on the basis of previous expired agreement does not obviate the need for signing a fresh written agreement. It is therefore clear that in this case also, in the light of this Tribunal's judgment dated 10-5-2016 in the UCN Cable vs. Raj Cable, the claim for the aforesaid period cannot be entertained in the absence of a written interconnect agreement.

At this stage, we take note of the fact that Clause 5(16) of the DAS Interconnect Regulations 2012 allows, after expiry of an agreement, three months' time to the parties to negotiate the terms of a fresh agreement. If executed, such fresh agreement would relate back to the date of expiry of the previous agreement. Thus at least for three months, the Regulations permitted the parties to continue with the terms of the old agreement even after its expiry. The petitioner has placed on record the letters dated 22-5-2014 and 4-6-2014 to show that they were trying to enter into a fresh interconnect agreement with the respondent. Thus, considering the supply of

signals for the three months as permitted under the regulation, we allow the claim of petitioner for the period 1-4-2014 to 30-6-2014 i.e. for three months. The petitioner has placed on record the statement of accounts for the petitioner company from page 166-169 and the invoices from page 170-189 of the Paper book. As per the Statement of Account, billed amount for April-June 2014 for the Head-end at Singhbhum is shown as Rs. 30,34,595.28 and the payment shown is Rs. 15,00,000 by cheque dated 30-6-2014. The billed amount for the Head-end at Jamshedpur for the period April-June 2014 is Rs. 19,01,090.28 and the payment shown is Rs. 5,51,000 by cheque dated 30-6-2014. We thus allow a total sum of Rs. 28,84,685.56 to be paid to the petitioner by the respondent. The petitioner has also prayed for an interest @ 18% per annum on the amount due. In our view, it would be reasonable and in the interest of justice to allow the claim of interest only @8% per annum on the amount allowed (i.e. Rs. 28,84,685.56) from the date of filing the petition till the date of realization.

Prayers in the BP No. 86(C) /2015 are allowed only to the extent mentioned above and the petition is disposed of accordingly.

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(S. K. Singh, J)  
Chairperson

(B.B. Srivastava)  
Member

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(A.K. Bhargava)  
Member

