

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL
NEW DELHI

Dated 21st November, 2017

Broadcasting Petition No.314 of 2015

Noida Software Technology Park Ltd ...Petitioner
Vs.
Star India Pvt. Ltd. & Ors. ...Respondents

BEFORE:

HON'BLE MR. JUSTICE SHIVA KIRTI SINGH, CHAIRPERSON
HON'BLE MR. BIPIN BIHARI SRIVASTAVA, MEMBER
HON'BLE MR. A. K. BHARGAVA, MEMBER

For Petitioner : Mr. Vivek Chib, Advocate
Ms. Ruchira Goel, Advocate
Mr. Asif Ahmed, Advocate
Ms. Pracheta Kar, Advocate
Ms. Gayatri Jamwal, Advocate

For Respondent – Star : Mr. Gopal Jain, Sr. Advocate
Mr. Saurabh Srivastava, Advocate
Mr. Sidharth Chopra, Advocate
Ms. Shilpa Gupta, Advocate
Mr. Ranjeet Singh Sidhu, Advocate
Mr. Vaarish Sawlani, Advocate

For Respondent No.2 - TRAI : Mr. Rishad A. Chowdhury, Advocate

ORDER

By S.K. Singh, Chairperson – Before considering the rival submissions in respect of the issue whether anything survives in this petition for adjudication, it is necessary to note that on inter related issues between the parties this is the third petition filed by the petitioner, the two earlier being

Broadcasting Petitions Nos.526 of 2014 and 313 of 2015. All the three petitions got tagged together because several common issues were involved and convenience required that these be heard together.

2. It is further necessary to take note of the fact that petitioner had filed two contempt applications bearing M.A. Nos.185 and 186 of 2016 relating to an earlier disposed of case – B.P. No.295 of 2014. Soon thereafter M/s Star India Pvt. Ltd. filed two execution applications bearing E.A. Nos.10 and 11 of 2016 in B.P. No.295 of 2014 and B.P. No.314 of 2015 respectively. By a detailed order dated 10.08.2017, this Tribunal held against the petitioner that no contempt was made out and also held against M/s Star India Pvt. Ltd., that the execution applications were pre-matured because the controversy relating to accounts is still pending before this Tribunal and there is no final adjudication on the relevant issues between the parties. This Tribunal observed that the orders on which Star India is relying to claim execution “were orders passed by way of interim arrangement and that Broadcasting Petition No.526 of 2014 as well as Broadcasting Petitions Nos.313 and 314 of 2015 preferred by the respondent herein (reference was to petitioner herein) were noticed therein and it was observed that they would be decided on their own merits and if need be, after taking evidences from both sides”.

3. It is further useful to record here that petitioner prayed for and accordingly Broadcasting Petitions Nos.526 of 2014 and 313 of 2015 have been disposed of as withdrawn.

4. In the aforesaid facts and circumstances, it has fallen for decision whether anything survives in this petition for adjudication. It is clarified that on 24.08.2017, as is apparent from the order passed on that date, our attention was drawn to observations in an earlier order dated 08.04.2016 that required a consideration of the issue whether anything survived for adjudication in B.P. Nos.313 and 314 of 2015. The observation was in the light of final judgment of this Tribunal in B.P. No.295/2014 which was disposed of by a detailed judgment on 07.12.2015. Accordingly, parties have been heard on this issue.

5. The reliefs sought in this petition are as follows:

- “(a) Declare the notice dated 18.06.2015 purportedly issued by the Respondent No.1 Company under Clause 4.1 of the Telecommunication (Broadcasting and Cable Services) Interconnection Regulations, 2004 as well as the purported public notice dated 19.06.2015 issued under section 4.3 of the Telecommunication (Broadcasting and Cable Services) Interconnection Regulations, 2004 as illegal and null and void;
- (b) Declare that the outstanding amount to the tune of Rs.1.69 crores, raised on the Petitioner Company vide the Notice dated 18.06.2015 is illegal and must include deductions based on 27.5% hike in a-la-carte rates struck down by this Hon’ble Appellate Tribunal vide its decision dated 28.04.2015 in Appeal No.1(C)/2014; TDS amounts; and the incentives under the Respondent No.1 Company’s RIO that are applicable to the Petitioner Company;
- (c) Direct the Respondent No.1 Company to continue the uninterrupted supply of its TV Channel signals to the Petitioner Company and to also reconcile accounts with the Petitioner Company;
- (d) Direct the Respondent No.1 Company to enter into fresh non-discriminatory Interconnection Agreements with the Petitioner Company herein based on the commitments provided in the letter issued by the Indian Broadcasting Foundation dated 09.06.2015; and
- (e) Pass such other or further order(s) as this hon’ble appellate tribunal deems fit in light of the aforestated facts and circumstances and in the larger interest of justice.”

6. According to learned senior counsel for the respondent, Star India, a

perusal of the reliefs would show that this petition was filed against a notice of disconnection dated 18.06.2015. Petitioner wanted a declaration that the notice was illegal and similar declaration was sought in respect of outstanding shown against the petitioner. Further relief vide clause (c) was to direct the Star India, Respondent No.1 to continue supply of TV channel signals and to reconcile accounts with the petitioner. The last relief was by way of a direction to Star India to enter into a fresh non-discriminatory Interconnect Agreement. Learned senior counsel highlighted the fact that in spite of opportunities granted by the Tribunal, the petitioner failed to comply with the directions for making payment towards the demand or alleged arrears and hence, disconnection was effected long back on 01.04.2016. In fact, no new agreement could be signed because of continuing default. The petitioner subsequently did not seek any new agreement because of default in complying with the interim directions of the Tribunal. It has been submitted further that ultimately the petitioner is no longer in the business as a HITS Distribution Platform and therefore, all the prayers have become infructuous.

7. On behalf of petitioner, a simple stand is taken that petitioner has also sought a declaration that the demand is illegal and there is a need for reconciliation of accounts and clearly these reliefs cannot become infructuous unless respondent No.1 agrees to give up its claim over the alleged outstanding against the petitioner. In reply, the respondents refused to give up their right to claim money from the petitioner on account of arrears of dues.

8. In our considered view, in the aforesaid circumstances, it would not be proper to dismiss the petition as infructuous. The issue relating to reconciliation of accounts and also legality and validity of the demand raised by the respondent remains to be adjudicated. Hence, the prayer made on behalf of respondent to dismiss the petition on the ground that no cause of action survives has to be rejected. We order accordingly.

9. Let the petition be listed before the court of Registrar on 27.11.2017 for completion of pleadings and to make it ready for hearing.

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(S.K. Singh, J)
Chairperson

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(B.B. Srivastava)
Member



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(A.K. Bhargava)
Member