

**TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL
NEW DELHI**

Dated 16th August, 2018

Broadcasting Petition No. 36 of 2018

Union of India ... Petitioner

Versus

INDIAVISION Satellite Communication Ltd. ... Respondent

BEFORE:

**HON'BLE MR. JUSTICE SHIVA KIRTI SINGH, CHAIRPERSON
HON'BLE MR. A.K. BHARGAVA, MEMBER**

For Petitioner : Mr. Sumit Srivastava, Advocate

For Respondent : Mr. Usman Ghauri Khan, Advocate

ORDER

By S.K. Singh, Chairperson – Learned counsel for the respondent, Mr.Usman Ghauri Khan submits that no reply could be prepared and filed because the respondent did not give required instructions. In the last order, it was recorded that four weeks' further time was being granted to the respondent by way of last opportunity to file reply and if the same is not filed within the time, the matter shall be decided on the basis of the material available on record.

2. Under the circumstances noted above, the right of the respondent to file reply is closed.

3. Heard learned counsel for the petitioner in support of the prayer made in this petition. The reliefs sought are as follows:

“a. Pass an order/decreed in favour of the Petitioner and against the Respondent for an amount of Rs. 2,38,20,153.56 (Rs. Two crore thirty eight lakhs twenty thousand one hundred and fifty three only);

b. Pass an order/decreed awarding *pendente lite* interest and future interest till the time of realization of principal amount by the petitioner at a rate of 18% per annum;

c. Pass any other order(s), which this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case, in favour of the Petitioner and against the respondent.”

4. Union of India, through Secretary, Department of Space, Government of India has filed this petition for the afore-noticed reliefs. The claim is under and in relation to agreements dated 28.02.2010 and 01.04.2012 between the petitioner and respondent, as amended from time to time. The petitioner is represented by the authorised signatory of Antrix Corporation Ltd. (Contract Administrator), Article 25 of the agreement dated 01.04.2012 (**Annexure P-1**) contains provisions for Contract Administrator. A copy of the Board Resolution in favour of the authorised signatory has also been annexed as **Annexure P-2**.

5. It is the case of the petitioner that both the parties are service providers in terms of Section 2(j) of TRAI Act 1997 and this Tribunal has jurisdiction to decide the dispute under Section 14 of the Act.

6. The brief facts of the case given by the petitioner in paragraphs 7 to 16 of the petition are as follows:

“7. That the Respondent requested the Petitioner (i.e. Department of Space) to provide capacity on its satellite(s) for the purpose of meeting its Broadcasting and Digital Satellite News Gathering(DSNG) requirements.

8. The Petitioner and Respondent entered into Agreement Ref. No.INSAT-Lease-2E-31-2010 dated 28.10.2010 for use of 9.0 MHz equivalent units of Normal C-band capacity in the INSAT-2E for the Respondent’s Channel broadcasting requirements. True copy of the Agreement Ref.No:INSAT-Lease-2E-31-2010 dated 28.02.2010 is annexed and marked as **Annexure P-3**.

9. The aforesaid agreement dated 28.02.2010 was amended by Amendment No.1 dated 31.05.2010, Amendment No.2 dated 25.02.2011, Amendment No.3 dated 29.04.2011, Amendment No.4 dated 30.06.2011, Amendment No.5 dated 30.09.2011, Amendment No.6 dated 28.10.2011 and Amendment No.7 dated 01.12.2011. True copy of the Amendments dated 31.05.2010, 25.02.2011, 29.04.2011, 30.06.2011, 30.09.2011, 28.10.2011 and 01.12.2011 are annexed and marked as **Annexure P-4 ‘colly’**.

10. The Petitioner and the Respondent on 28.03.2010 also entered into a “Pre-MIB” Agreement No.INSAT-Lease-4A-64-2010 for reservation for 1.5 MHz of normal C-band space segment capacity on INSAT-4A. In accordance with the terms and conditions thereof, the Petitioner agreed to block for the Respondent 1.5 MHz equivalent units of normal C-band capacity in INSAT 4A satellite system. It was also agreed that once, the Respondent gets necessary approval from

the Ministry of Information and Broadcasting, the Petitioner and the Respondent would enter into a regular INSAT contract agreement, the terms for which would be provided for the Respondent's signature after the MI&B approval. True copy of the Pre-MIB Agreement No.INSAT-Lease-4A-64-2010 dated 28.03.2010 is annexed and marked as **Annexure P-5**.

11. The Pre-MIB reservation agreement was amended for extension of lease period first vide Amendment No.1 dated 01.08.2010 and second vide Amendment No.2 dated 30.09.2010. True copy of the Amendments dated 01.04.2010 and 30.09.2010 are annexed and marked as **Annexure P-6 'colly'**.

12. Subsequent to the above agreement, a regular INSAT contract agreement was signed between the Petitioner and the Respondent on 10.12.2010 vide Agreement No.INSAT-Lease-4A-64-2010. By virtue of the Agreement, the Petitioner agreed to provide the Respondent 1.5 MHz equivalent units of normal C-band capacity in the INSAT-4A or any other INSAT/GSAT satellite for the purpose of meeting the latter's DSNG requirements. True copy of the Agreement No.INSAT-Lease-4A-64-2010 dated 10.12.2010 is annexed and marked as **Annexure P-7**.

13. Thereafter, in supersession of earlier agreements, Agreement No.INSAT4A/C/DSNG/64/2012 dated 01.04.2012 for provision of 1.5 MHz equivalent units of C band capacity in the INSAT 4A satellite was executed by the parties for the purpose of meeting the Respondent's DSNG requirements (herewith marked as Annexure P-1). Vide Article 22 of this agreement, Agreement No.INSAT-Lease-4A-64-2010 dated 10.12.2010 (herewith marked as Annexure P-7) concerning the subject matter of this Agreement stood superseded and terminated. Under the Payment Schedule (Exhibit B) to the

Agreement No.INSAT4A/C/DSNG/64/2012, the Respondent was liable to deposit a 'caution deposit' of INR 5,98,960 representing 25% of the annual rental charges for the transponder capacity, which was interest free, and refundable upon final reconciliation of accounts and remittance of all dues.

14. Initially, the Agreement dated 01.04.2012 was valid up to 31.03.2013. The Agreement dated 01.04.2012 was amended from time to time and term of the agreement was extended till the date of its termination, on 07.02.2017. The Agreement No.INSAT4A/C/DSNG/64/2012 dated 01.04.2012 was amended by Amended No.1 dated 01.04.2013, Amendment No.2 dated 01.04.2014, Amendment No.3 dated 01.04.2014, Amendment No.4 dated 01.04.2015 and Amendment No.5 dated 01.04.2014, interest on delayed payment was chargeable at the same rate as SBI's Base Lending Rate, as opposed to SBI Prime Lending Rate plus 3%. True copies of amendments dated 01.04.2013, two amendments dated 01.04.2014, 01.04.2015 and 01.04.2016 are annexed herewith and marked as **Annexure P-8 'colly'**.

15. By Amendment No.4 dated 01.04.2015 to the Agreement dated 01.04.2012, the parties agreed to the following amendment to Article 2 of the Agreement:

“The applicable space segment charges will be as per the prevailing DOS pricing policy. During the terms of the Agreement, DOS may revise the norms, guidelines, procedures and space segment charges for INSAT/GSAT satellite system. DOS reserves its right to recover the differential Space Segment Charges retrospectively in case the revised charges are higher than the currently applicable charges. CUSTOMER agrees to abide by revised norms, guidelines, procedures and pay the Space Segment Charges including differential Space Segment Charges, as and when it becomes applicable/effective.”

16. By Amendment No.5 dated 01.04.2016 to the Agreement dated 01.04.2012, the parties reiterated the addition of the following condition in the contract:

“2. The applicable space segment charges will be as per the prevailing DOS pricing policy. During the term of the Agreement, DOS may revise the norms, guidelines, procedures and space segment charges for INSAT/GSAT satellite system. DOS reserves its right to recover the differential Space Segment Charges retrospectively in case the revised charges are higher than the currently applicable charges. CUSTOMER agrees to abide by revised norms, guidelines, procedures and pay the Space Segment Charges including differential Space Segment Charges, as and when it becomes applicable/effective.””

7. Petitioner’s grievance is that despite availing services by use of capacity of the petitioner’s satellite transponders, the respondent defaulted in making regular and timely payment of monthly charges falling due under the agreements. True copies of letters dated 15.04.2013 and 15.10.2014 sent by the petitioner to the respondent have been brought on record in support of its case that by these letters, petitioner was forced to demand the then outstanding dues amounting to Rs.75,56,262/- and Rs.1,73,51,846/- respectively. The running account between the parties continued to show different outstanding dues against the respondent. As per letter dated 13.03.2015 the dues were Rs.87,31,564/- and soon thereafter as per letter dated 16.03.2015 respondent was asked to pay the balance outstanding dues of Rs.60,06,417/-. Various

reminders for payment of the outstanding dues sent during the year 2015 and also on 21.01.2016 have been brought on record as **Annexure P-11(Colly.)**.

8. Minutes of a meeting held on 22.02.2016 have also been brought on record as **Annexure P-12** to show that the respondent through its Resident Director, Sh.Jamaludheen Farooquee agreed to the outstanding statement and agreed to clear the dues by March 2016. It also agreed to remit an amount of Rs.33.60 lakhs to Antrix as dues on account of TDS.

9. Petitioner sent a reminder dated 01.06.2016 to the respondent demanding payment of the outstanding amount of Rs.1,86,06,346/- and on 19.05.2016, a notice was sent to clear the entire amount before 25.07.2016. Another reminder was also sent on 29.06.2016. Both the letters are **Annexure P-13(Colly.)**. On 30.09.2016 petitioner again sent legal notice to the respondent demanding dues amount to Rs.1,94,80,888/-. Several letters were exchanged thereafter between 03.10.2016 to 30.11.2016. The stand of the respondent in its replies was for grant of some more time to clear the dues.

10. Ultimately on 07.02.2017 petitioner sent a 'Frequency De-Allocation Letter' to the respondent in respect of agreement dated 01.04.2012. The respondent was advised to stop any uplinking with the C-band capacity of 1.5 MHz in INSAT-4A otherwise penal action may follow. The respondent through Email dated 15.02.2017(**Annexure P-16**) communicated that it was expecting

funds by 24th of that month and therefore, it will be able to clear the outstandings by end of the month. Petitioner has annexed various invoices for services availed by the respondent under the various agreements as **Annexure P-18(Colly.)**. Separate invoices towards penal interest for the FY 2016-17 have also been annexed as **Annexure P-19(Colly.)**. As per final invoice dated 01.02.2017 sent with letter dated 06.02.2017 the dues of the respondent stood at Rs.1,69,75,234.34p. The ledger account maintained by Antrix Corporation Ltd. showing the outstanding dues after giving credit to payments has been annexed as **Annexure P-20**. Department of Space, the petitioner, issued a Policy on revised transponder pricing on 07.08.2017 and by the same, the annual charges were revised w.e.f. 01.04.2016 as per details of the revised price list disclosed in **Annexure P-21**. The petitioner has clearly claimed that the respondent is liable to make payment of Space Segment Charges i.e. charges for use of transponders of the petitioner's INSAT-4A and INSAT-2E satellites. Petitioner has placed reliance upon provisions in the agreements and has alleged that the respondent has failed to abide by the terms of the agreement. It has also been claimed by the petitioner that under Article 10(e) of the Agreement dated 01.04.2012, for delayed payment the respondent's liability is to pay interest at State Bank of India's Base Lending Rate; but prior to execution of Amendment No.3 dated 01.04.2014, the respondent was liable to pay delayed payment interest at SBI's Prime Lending Rate plus 3%. The documents showing the Base Lending Rates

of SBI for the relevant period have been brought on record as **Annexures P-22, P-23 and P-24.**

11. Petitioner has also specifically claimed that respondent has availed the services and used the petitioner's satellite transponders for the broadcast of its television channels but failed to make payment of outstanding dues under the agreement, and that there has not been any deficiency of service on the part of the petitioner. For the purposes of Limitation Act, it has been claimed that the respondent has time and again acknowledged its liability in terms of Section 18 of the Limitation Act. But even after agreeing to make the payments it has chosen not to do so. The petitioner filed this petition on 07.02.2018 with a claim that the total outstanding liability as on 31.01.2018 inclusive of delayed payment interest and after adjusting the security deposit of Rs.44,39,358/- is of Rs.2,38,20,153.56p. This also includes the additional charges due to increase/revision in transponder lease charges and the taxes for the period 01.04.2016 to 07.02.2017, the date of De-Allocation. The additional charges due to the aforesaid increase have been shown to be Rs.4,81,287/-. The chart depicting the outstanding dues as on 31.01.2018 in respect of agreements dated 28.02.2010 and 01.04.2012 is available on record as **Annexure P-25.** The chart depicting break-up of dues of penal interest is **Annexure P-26.**

12. As noted earlier, respondent has not offered any contest. On careful consideration of the pleadings and materials on records, it is found that

petitioner has been able to plead and prove that the respondent failed to clear its outstanding dues as required by the agreements and was also liable for the dues of penal interest in terms of the agreements. However, this finding is with an exception in respect of amount of Rs.4,81,287/- claimed on account of increase/revision in transponder lease charges. This amount cannot be allowed because as per pleadings, the Department of Space issued a Policy on revised transponder pricing on 07.08.2017, with effect from 01.04.2016. In paragraph 25 of the petition, the petitioner has pleaded that two copies of Amendment No.6 dated 01.04.2017 to INSAT-4A agreement incorporating the revision of SSC, extension of term and inclusion of GST related clauses was sent through letter dated 25.08.2017. The respondent was requested to execute this amendment “so that it may enable the petitioner to raise appropriate differential invoices towards the space segment charges pursuant to the Government decision”. An earlier letter in this regard had been sent on 21.08.2017. The petitioner has nowhere pleaded that the respondent executed the Amendment dated 01.04.2017 so as to enable the petitioner to raise the differential invoices. In absence of such pleadings and proof, the total amount claimed in Relief (a) will stand reduced by an amount of Rs.4,81,287/-. Hence, petitioner is held entitled to an order and decree in its favour for an amount of Rs.2,38,20,153.56p (Rupees Two Crore Thirty Eight Lakh Twenty Thousand One Hundred and Fifty Three and paise Fifty Six) Only. Although the petitioner has claimed *pendente lite* interest and future interest @ 18% per annum but considering all

the relevant facts and circumstances and also the rate of interest under the agreement, it appears just and proper to allow *pendente lite* and future interest only @ 9% per annum. Hence, the Petitioner is held entitled to *pendente lite* interest as well as future interest till the time of realisation of principal amount @ 9% per annum from the date of filing of the petition till the date of this order and thereafter till the date of realisation of the decretal amount.

13. The decretal amount including the interest should be paid by the respondent within four weeks from today failing which the petitioner will be entitled to recover the decretal amount through execution proceedings in accordance with law.

14. The office is directed to prepare a decree in terms of this order expeditiously and preferable within four weeks.

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(S. K. Singh, J)
Chairperson

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(A.K. Bhargava)
Member