

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL
NEW DELHI

Dated 21st March, 2018

M.A. No. 76 of 2018

in

Broadcasting Petition No.89 of 2018

Bharti Telemedia Ltd.

... Petitioner

Versus

Star India 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. Ramji Srinivasan, Sr. Advocate
Mr. Harsh Kaushik, Advocate
Mr. Abhay Chattopadhyay, Advocate
Mr. Naveen Hegde, Advocate

For Respondent

: Mr. Amit Sibal, Sr. Advocate
Mr. Saikrishna Rajagopal, Advocate
Mr. Kunal Tandon, Advocate
Mr. Shashank Shekhar, Advocate
Ms. Ria Anand, Advocate

ORDER

By **S.K. Singh, Chairperson** – The petitioner is a Direct-to-Home (DTH) service provider whereas the respondent is a broadcaster. Agreement between the parties enabling the petitioner to redistribute the signals of the respondent expired due to efflux of time on 31.10.2017. Prolonged negotiation

for renewal of Interconnection Agreement did not yield any positive result. The erstwhile agreement of 31.03.2016 was extended by the respondent during the period of negotiation but ultimately on 15.02.2018 a notice for deactivation of signals was issued by the respondent on the ground of non-signing of the subscription agreement, non-payment of subscription dues and non-submission of subscriber reports. Ultimately, the petitioner gave public notice to its subscribers on 22.02.2018 that there was failure to arrive at mutually acceptable terms with Star India Pvt. Ltd. and therefore, the petitioner may modify/rearrange the packaging of the Star channels and offer suitable replacement channels from 08.03.2018. On 03.03.2018 the petitioner claims to be constrained to request the respondent to allow it to avail the signals/channels of respondent on RIO based agreement. On 05.03.2018, the respondent responded and pointed out the requirements of paying the arrears, submitting the pending subscribers' report and signing of the agreement. The petitioner raised dispute with regard to alleged arrears and insisted under its letter dated 06.03.2018 that it was entitled to a RIO agreement w.e.f. 09.03.2018 so that interests of the subscribers are protected.

2. However, a day earlier on 07.03.2018, the present petition was filed and after hearing counsel for the parties an interim order was passed on 08.03.2018. The petition was directed to be heard along with some pending petitions of 2017 between the parties. The issue of dues was taken care of by directing the petitioner to pay the dues as mentioned in respondent's letter dated 07.03.2018,

except a seriously disputed amount of Rs.9.8 crores. It was clarified as to when the amount for the month of March 2018 would become payable. For this, reliance was placed upon due dates mentioned in the letter dated 07.03.2018. There was no specific direction that RIO based agreement shall be effective from 09.03.2018, although the petitioner had pleaded for it as is clear from paragraph 34 of the petition. However, in the prayer part only the disconnection notices were challenged and the direction sought is to direct the respondent to enter into a fresh agreement on reasonable and non-discriminatory terms.

3. Under the interim order of 08.03.2018 parties were given liberty to negotiate and enter into an agreement in accordance with the regulations and their understanding and, if need be, either of the party could file application for clarification and directions. The petition was ordered to be listed along with other connected matters on 06.04.2018.

4. The MA under consideration bearing No.76 of 2018 was filed on 09.03.2018 itself and the respondent/applicant has sought the following prayers:

“i. Pass an order directing the Petitioner to execute the agreement with the Respondent on RIO basis for SD and HD channels of the Respondent effective 09.03.2018; and

ii. Pass an order directing the Petitioner to comply with the Order dated 08.03.2018 and make a payment of the overdue outstanding amount of Rs.17,80,81,423/- (Rupees Seventeen Crores Eighty Lakhs Eighty One Thousand Four Hundred and Twenty Three only) to the Respondent immediately; and/or

iii. In the alternative to the prayers (i) and (ii), pass an order allowing the Respondent to give effect to the Impugned Notices and disconnect the signals from the Petitioner's network."

5. Petitioner/non-applicant has filed its reply and opposed the prayers. As per applicant (respondent), in the context of petitioner's stand and because admittedly negotiations had failed, the respondent was justified in requesting the petitioner on 08.03.2018 itself to sign the executed copy of the RIO sent by the respondent which could be effective from 09.03.2018. On the other hand, stand of the non-applicant (petitioner) is that the interim order passed by this Tribunal on 08.03.2018 gave liberty to the parties to negotiate for entering into an agreement in accordance with Regulations and therefore, the extant arrangement was/is required to be maintained at least till 06.04.2018 when the matter would be reconsidered in the light of developments in the meantime. The stand of the non-applicant/respondent has been criticised on the ground that it has tried to thwart the opportunity of further negotiation by insisting on RIO with immediate effect.

6. In the facts of the case, we had very little hope that parties would be able to negotiate further and therefore, liberty was granted to either of the party to seek clarification and directions. The facts stated in the petition itself make it abundantly clear that petitioner had insisted on RIO agreement as the attempts had failed for a negotiated agreement. Now, the petitioner is trying to take advantage of the interim order to seek continuance of the expired agreement

even beyond 09.03.2018. In our considered view, when the further developments as on date also leave no manner of doubt that negotiated agreement has little or no chance, we should issue directions so as to honour the requirement of Regulations that parties should have a written Interconnection Agreement for supply of signals/channels without unnecessary delay. Hence, we direct the parties to make it clear to the viewers through immediate notice/scroll that the petitioner would be offering the signals/ channels of the respondent on the basis of RIO agreement. This shall be regardless of and in addition to earlier notices. The supply of signals/channels by the respondent to the petitioner shall be on RIO based agreement w.e.f. 01.04.2018 and this should be made known to the public forthwith. The dues for the whole month of March 2018 shall be calculated as per extant arrangement although the agreement has expired and disconnection was threatened after 08.03.2018. The time for payment shall also be governed by the principles flowing from respondent's letter dated 07.03.2018. But from April 2018, the parties shall be governed by RIO agreement and its terms.

7. In spite of aforesaid directions by way of interim arrangement, we leave a window open to the parties that if they are successful in negotiations they can enter into an agreement as per their understanding and agreement but the time for such negotiated agreement shall be available only till end of March 2018. In

case of failure of agreement between the parties, the interim direction for RIO agreement shall come into effect from 01.04.2018 as directed above.

With the aforesaid directions, MA No.76 of 2018 stands disposed of.

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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

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