

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL
NEW DELHI

Dated 23rd May, 2018

Broadcasting Petition No.150 of 2018
(With M.A. No. 128 of 2018)

Star India Pvt. Ltd. ... Petitioner

Versus

Asianet Satellite Communication Ltd. ... Respondent

Along with

Broadcasting Petition No.173 of 2018
(With M.A. No. 127 of 2018)

Asianet Digital Network Pvt Ltd. & Anr. ... Petitioners

Versus

Star India Pvt. Ltd. & Anr. ... Respondents

BEFORE:

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

B.P. No. 150 of 2018 : Mr. Amit Sibal, Sr. Advocate
For Petitioner : Mr. Kunal Tandon, Advocate
Mr. Shashank Sekhar, Advocate
Ms. Niti Jain, Advocate
Mr. Prateek Jain, Advocate
Mr. Vinay Tripathi, Advocate
Mr. Ambar Bhushan, Advocate
Mr. Aditya Swarup, Advocate
Mr. Sidharth Chopra, Advocate
Ms. Sneha Jain, Advocate
Mr. Ranjeet Singh, Advocate

- B.P. No. 173 of 2018
For Respondent : Mr. J.K. Mehta, Advocate
Mr. Atul, Advocate
Ms. Ayushi Gaur, Advocate
Ms. Amrita Cheema, Advocate
- B.P. No. 173 of 2018
For Petitioner : Mr. J.K. Mehta, Advocate
Mr. Atul, Advocate
Ms. Ayushi Gaur, Advocate
Ms. Amrita Cheema, Advocate
- B.P. No. 150 of 2018
For Respondent : Mr. Amit Sibal, Sr. Advocate
Mr. Kunal Tandon, Advocate
Mr. Shashank Sekhar, Advocate
Ms. Niti Jain, Advocate
Mr. Prateek Jain, Advocate
Mr. Vinay Tripathi, Advocate
Mr. Ambar Bhushan, Advocate
Mr. Aditya Swarup, Advocate
Mr. Sidharth Chopra, Advocate
Ms. Sneha Jain, Advocate
Mr. Ranjeet Singh, Advocate

ORDER

By S.K. Singh, Chairperson – An interlocutory order aimed at providing for an interim arrangement between the rival parties was passed by this Tribunal on 18.04.2018. That order was passed after hearing learned counsel for both the parties. After noticing the ultimate relief which the parties wanted we did not discuss the details of the submissions for the reason that a large number of such disputes regularly come before the Tribunal and it saves lot of energy and time if consistency is maintained even in matters of arrangement through interim

orders. We preferred to follow a recent order dated 04.09.2017 and made interim arrangements accordingly.

2. Against the order dated 18.04.2018 passed in these matters, M/s Asianet Satellite Communications Ltd. as well as M/s Asianet Digital Network Pvt. Ltd. along with another, respectively preferred petitions bearing W.P.(C) 4408 and 4409 of 2018 before the High Court of Delhi. The Hon'ble High Court of Delhi disposed of those writ petitions on 16.05.2018. The order discloses that after noticing rival contentions advanced by learned counsel for the parties, the Hon'ble High Court in paragraphs 8 to 12 made certain observations and indicated the reasons for setting aside the interim order of this Tribunal dated 18.04.2018. This Tribunal, as per request of the High Court, has to decide the arrangement at the earliest. The relevant part of the judgment and order of the High Court from paragraphs 8 to 12 have been kept in mind while hearing the parties afresh.

3. In order to avoid unnecessary repetition, it is recorded that earlier order of this Tribunal dated 18.04.2018 be treated as a part of this order.

4. The admitted facts and the case of the parties show that the agreement between the parties came to end on 31.03.2018. In terms of the relevant Regulations, since no agreement could be executed between the parties for the subsequent period, Star India Pvt. Ltd. was entitled to stop transmission of

signals to the other party. Instead, it chose to prefer B.P. No.150 of 2018 on 05.04.2018 seeking an order for an agreement w.e.f. 01.04.2018 on RIO basis.

5. In such a situation, in the larger interest of justice and to prevent avoidable injury to either of the parties, this Tribunal generally grants some time to the parties to try for a negotiated agreement or to exercise the statutory option of an RIO based agreement. The continued transmission of signals to an MSO thus stands protected by such interim order of the Tribunal. Such interim orders are being passed regularly, especially after complete replacement of earlier regime with new regime of Digital Addressable System. Since then many MSOs have themselves preferred petitions seeking RIO based agreement. Cost per customer is not comparable if one MSO has a negotiated agreement and the other as per RIO. Further, even in negotiated agreements it is dependent upon many variable factors.

6. It is also noticed that in the case of petitioner Asianet Satellite Communications Ltd. against Star India Pvt. Ltd. (B.P. No.95 of 2017), vide interim order dated 31.03.2017, an interim direction was issued by the Tribunal for signing of an Interconnect Agreement based on RIO terms. To similar effect is an order dated 31.05.2017 in B.P. No.229 of 2017 (Asianet Satellite Communications Ltd. Vs. Star India Pvt. Ltd.). In the latter proceeding also Asianet Satellite Communications Ltd. had raised grievances against the RIO published by Star India Pvt. Ltd. but ultimately B.P. No.229 of 2017 was

withdrawn on 19.07.2017 on the ground that parties had settled their differences.

7. The interim arrangement is generally made to ensure that parties comply with the Regulations even during pendency of the petition to the extent possible. This practice ensures that the regulatory regime is respected by all, otherwise the situation would be almost chaotic. The balance of convenience for the rival parties, in a regulated regime lies in being Regulations compliant. So far as *prima facie* case is concerned, even if the withdrawal of challenge to the terms of RIO is overlooked for the time being, it is difficult to hold the terms of RIO to be bad in law till the matter is finally heard on this issue. Under the Regulations, as indicated in earlier judgments of TDSAT, terms of RIO offered by a broadcaster can be assailed before the Telecom Regulatory Authority of India (TRAI). It is often seen, as in the present case, that no complaint is filed with TRAI on this score. So far as parity, equality and non-discrimination are concerned, these issues can easily be decided if terms of RIO offered are under challenge. However, when parity with a negotiated agreements between a broadcaster and MSO is claimed by another MSO, thorough examination of all relevant factors becomes necessary before it can be held that both the MSOs are similarly situated and deserve an identical deal. In the present case, parity has been sought by the MSO with another MSO, namely, KCCL. The fact that the said MSO has right of retransmission of broadcaster's signals only for the State

of Kerala whereas the MSO in the present case exercises such right in four States is significant. This is a big distinguishing feature because of the difference in potential of growth. In a negotiated agreement for fixed fee, the broadcaster is precluded from claiming a higher consideration even if there is a significant growth in the business of the MSO. This issue cannot be held to be in favour of the MSO at the present stage.

8. In the larger business interest of the parties this Tribunal would like to go by the interest of justice and for that reason it generally allows supply of signals to the MSO through an interim order under the hope that ultimately market forces will instil good sense in the warring parties. It is very difficult and a time consuming affair for the Tribunal to negotiate or mediate between the parties in larger number of such cases to help them arrive at a negotiated agreement for fixed fees. Only in an exceptional case where parity is ex-facie writ large, such exercise is possible. The present case is not of that nature. Claims made by the MSO can be decided only after detailed hearing at the final stage.

9. Having considered the observations and directions of the Hon'ble High Court, without any prejudice to the right ^{of} the parties available to them at the time of final hearing of these petitions, we hold that this Tribunal is unable to negotiate an agreement on fixed fee between the parties at this interim stage. Hence, there is no option nor there is any *prima facie* case to hold that the MSO is entitled to retransmit signals of the broadcaster without an agreement. The

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only way out for the party MSO is to immediately execute an RIO based agreement which shall be subject to final outcome of these petitions. For this purpose we extend the time period earlier granted by 7 days from today.

10. This arrangement will continue till further orders. The time for filing rejoinder and replies etc. as indicated in the order dated 18.04.2018 shall be counted from the date of this order. The issues relating to interim relief shall stand disposed of by this order.

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(S. K. Singh, J)
Chairperson

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(A.K. Bhargava)
Member