

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

**Dated 22<sup>nd</sup> October, 2018**

**M.A. No. 128 of 2018 and 134 of 2018**  
**in**  
**Broadcasting Petition No. 150 of 2018**

Star India Pvt. Ltd. ... Petitioner

Versus

Asianet Satellite Communication Ltd. ... Respondent

**Alongwith**  
**M.A. No. 277 of 2018**  
**in**  
**Broadcasting Petition No. 173 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**

For - Star India : Mr Amit Sibal, Sr. Advocate  
Mr. Kunal Tandon, Advocate  
Mr. Shashank Shekhar, Advocate  
Mr. Prateek Jain, Advocate  
Mr. Aditya Swarup, Advocate

For Asianet : Mr. Jayant Mehta, Advocate  
Ms. Shirin Khajuria, Advocate  
Mr. Vinod Shanker, Advocate  
Ms. Ayushi Gaur, Advocate  
Mr. Subhankar, Advocate  
Ms. Amrita Cheema, Advocate

For TRAI (R-2 in B.P. No. 173/18) Mr.Arjun Natarajan, Advocate

### **ORDER**

**By S.K. Singh, Chairperson** – We have heard learned counsel for the parties in respect of M.A. No.128/2018 filed in B.P. No.150/2018 by the respondent, M/s Asianet Satellite Communications Ltd. (Asianet). This application was filed at the very initial stage along with a short reply to the petition. The prayer is to direct the petitioner (Star India Pvt. Ltd.) to file an affidavit for making discovery on oath of documents and information in respect of five matters set out in Para 3 of the M.A. The non-applicant (Star) has filed a reply and affidavit and it is no longer in dispute that they have knowledge of and documents only in respect of three matters which have been furnished to this Tribunal in sealed covers. The matter has remained pending on account of serious dispute between the parties in respect of interim arrangements. The interim orders of this Tribunal were challenged but ultimately the second interim order dated 23.05.2018 has become final in the light of orders passed by the High Court and the Apex Court.

2. Mr. Jayant K. Mehta, learned counsel for the applicant, Asianet, has referred to clause 3.2 of the Interconnection (Digital Addressable Cable Television System) Regulations 2012 and highlighted that the broadcaster has an obligation to enter into an agreement on non-discriminatory terms and on reasonable basis; but there is no concept of similarly placed MSOs or distributors based on geography etc. He has pointed out differences between these and similar Regulations of 2004. According to him, Regulations of 2004 dealt with non-DAS regime which changed subsequently and therefore, some parts were omitted in the Regulations of 2012. He has argued at great length on facts and law to submit that classification, in order to meet the requirements of Article 14 of the Constitution should not amount to over-classification or mini-classification. The differences must be substantial, rational, reasonable and have nexus with the object of classification. It is also the submission that as per many orders passed by this Tribunal earlier, disclosure of agreements and facts relating to applicant's rival in Kerala, KCCL, is required otherwise non-discrimination will lose all its meaning.

3. In view of strong objection raised on behalf of non-applicant (Star) and considering that the objection is of preliminary nature, before deciding, even on a *prima facie* basis whether the applicant is equally situated as KCCL and therefore disclosure of rates etc. relating to KCCL is relevant or not, it would be proper to take note of submissions made by the other side.

4. Mr.Amit Sibal, learned senior advocate appearing on behalf of the non-applicant (Star) has submitted that the documents have already been produced before this Tribunal in sealed covers. According to him, the relevancy of the contents of those documents would arise later and can be determined properly and usefully not at the present stage, only on the pleadings but after the issues are framed and parties are allowed to lead evidence. He submits that final hearing after evidence may be expedited and even done issue-wise. If the applicant succeeds in establishing parity then for deciding discrimination, this Tribunal may discover and disclose the relevant materials contained in the sealed covers. According to him a particular clause of confidentiality (Clause 26.3) in the agreement with KCCL requires to be honoured at least till the stage Asianet succeeds in establishing that for the purpose at hand it stands on equal footing with KCCL and is entitled to have the same or comparable rates for the purpose of an Interconnection Agreement.

5. Further case of Star is that it would not be in the interest of justice to return, for the present a *prima facie* finding for deciding relevance and disclose the materials in the sealed covers because in case the finding finally given after evidence goes against Asianet, it would not be possible to undo the damage due to unwarranted disclosure. It was pointed out that there are various issues of fact or mixed issues of law and fact and hence, parties should be permitted to lead evidence and then only the issue of parity should be decided.

6. Some of the judgments and orders of this Tribunal upon which Mr.Mehta placed reliance were shown to have been passed finally by this Tribunal in the light of evidence already produced. Some judgments on disclosure were distinguished by emphasising that production and disclosure of confidential agreements stand on a different footing, more so, especially when third party is involved in an agreement having a confidentiality clause.

7. On perusal of relevant pleadings, submissions made on behalf of Star are found to have more merit. Considering the fact that documents in question are already available with this Tribunal because of interim orders, in our considered view it would be more appropriate as well as just and proper to keep M.A. No.128 of 2018 pending till hearing and decision on the issues of parity and discrimination in the light of evidence that may come on record. If required, hearing may be initially confined to the selected and relevant issues only, for deciding M.A. No.128 of 2018 expeditiously in the light of discussions made above.

8. Accordingly, the issues in the M.A. are kept open. M.A. No.128 of 2018 is ordered to be placed for consideration at the time of final hearing of the main petition.

9. The matter should now be listed again before the court of Registrar on the date already fixed. Parties should bring their evidence on record expeditiously.

The documents submitted in sealed covers should be properly sealed and kept safely.

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**(S. K. Singh, J)**  
**Chairperson**

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**(A.K. Bhargava)**  
**Member**

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