

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

Dated 6th February, 2019

M.A. No.472 of 2018

In

Broadcasting Petition No. 477 of 2018

Union of India ... Petitioner

Versus

Rahul Springs Pvt. Ltd. ... Respondent

BEFORE:

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

For Petitioner : Mr. Arjun Krishnan, Advocate
Mr. Ankur Singh, Advocate

For Respondent : Mr. Vivek Sarin, Advocate
Mr. Brian H Moses, Advocate
Mr. Satish C. Kaushik, Advocate

ORDER

By S.K. Singh, Chairperson – We have heard learned counsel for the respondent/applicant and also learned counsel for the petitioner/non-applicant in respect of a preliminary objection raised by the respondent through MA No.472

of 2018, as to the maintainability of the petition under Sections 14 and 14A of the TRAI Act, 1997.

2. This petition has been filed in the name of Union of India through the Secretary, Department of Space, Government of India and petitioner has disclosed that it is being represented by an Authorised Signatory, an official working as Senior Head(Legal), Antrix Corporation Ltd. (Contract Administrator). The petition is mainly for recovery of an amount of Rs.1,30,01,472/- from the respondent payable under an agreement dated 08.12.2010 between the petitioner and the respondent. The agreement is **Annexure P-1**. It supports the claim made by the petitioner that under clause 11 of “Exhibit B” annexed to the agreement, Antrix Corporation Ltd. (Antrix) was appointed as the “Contract Manager” and vested with all powers on behalf of the petitioner including initiation of legal proceedings. That clause describes Antrix as a hundred per cent owned company of the Department of Space. Antrix has authorised the concerned official through a Board Resolution (**Annexure P-2**) to institute the present proceedings before this Tribunal. Petitioner has pleaded that “broadcasting services” have been included within the jurisdiction of this Tribunal vide Gazette Notification S.O. 44(E) dated 09.01.2004 issued by the Ministry of Communication & IT. This service has been defined in the Telecommunication (Broadcasting & Cable Services) Interconnection Regulations 2004, to mean – “dissemination of any form of

communication.....by transmission of electro-magnetic waves through space.....intended to be received by the general public either directly or indirectly”. The petitioner has claimed that a careful perusal of the entire scheme and policy governing the subject matter of the agreement between the parties as well as the terms of the agreement make the petitioner – a “service provider”.

3. The respondent is, undisputedly a service provider engaged in the business of running/operating a television channel. Hence, the petitioner claims that since both the parties are covered by the definition of “service provider” in terms of Section 2(1)(j) of the TRAI Act, the dispute involved in the petition lies within the jurisdiction available with the Tribunal under Section 14 of the TRAI Act. And as a consequence other courts or tribunals have no jurisdiction over the present dispute.

4. The respondent, on the other hand, has taken a contrary stand and raised a preliminary objection by filing MA No.472 of 2018. It claims that the main agreement for the provision of KU-Band Space Segment Capacity in the AsiaSat 5 System dated 28.05.2010 between a foreign entity, namely, Asia Satellite Telecommunications Company Ltd. and Antrix, no doubt describes Antrix as the customer and that it has obtained KU-Band capacity for use by its

sub-customers who are implementing satellite-based services throughout India, still, the petitioner or Antrix lack the essential attributes of a service provider under the TRAI Act. According to the respondent, the service of leasing of transponder is at best a passive infrastructure service having no semblance of providing transmission or reception services to the members of “public”, the users. In support of this submission, learned counsel for the respondent has highlighted the meaning of licensee as provided in Section 2(1)(e) of the TRAI Act and placed reliance on paragraph 16 of the judgment of a Division Bench of Delhi High Court in the case of **VIOM Network Ltd. Vs. S.Tel Pvt. Ltd., (2013) 139 DRJ 641**. Additionally, it has been submitted that the right obtained through the agreement with AsiaSat is to be governed by a foreign law and dispute under that agreement has to go to an international institution and therefore, the petitioner cannot claim that the present dispute lies within the jurisdiction of this Tribunal. According to the learned counsel for respondent, the present dispute is based on a “subordinate” agreement and therefore, it will be subject to the same limitations of jurisdiction which are to be found in the main agreement between AsiaSat and Antrix.

5. The last submission noted above is absolutely misconceived. The present dispute is covered by a valid agreement between the parties and if petitioner succeeds in showing that it is a service provider under the TRAI Act, the dispute arising under such agreement shall be well within the jurisdiction of this

Tribunal because the respondent admits to be a service provider under the TRAI Act. For deciding this issue, the relevant materials have been brought on record by way of reply to the MA. **Annexure A** is a copy of Policy Framework for Satellite Communications as approved by Government in 1997. **Annexure B** is a copy of norms, guidelines and procedure for implementation of the approved Policy Framework. **Annexure D** is a copy of letter dated 10.10.2000 issued by the competent authority of the petitioner on the subject of lease of transponders for augmenting INSAT capacity for private users through Antrix Corporation. The Policy contemplates taking suitable measures such as lease, buy or build capacity for augmenting INSAT capacity for non-Government users like the respondent. It also contains some other provisions for the same purpose.

6. A careful perusal of relevant provisions of the so-called main agreement between AsiaSat and Antrix, such as Article 9, Article 17 and Article 19 on which learned counsel for the respondent has placed reliance, does not in any way help the respondent in respect of the preliminary objection. The leased transponder capacity is being availed by the respondent through an agreement dated 08.12.2010. The space segment capacity in the INSAT-AsiaSat 5 Satellite System availed by the respondent is subject to various terms and conditions. The petitioner has reserved the right even to reallocate the capacity on any other INSAT/GSAT Satellite consistent with technical performance and other specification defined in Exhibit A to this agreement. The plea of AsiaSat

being a foreign entity governed by foreign law is, thus, without any substance. The respondent is not a party to that agreement and has no right based upon the same. The respondent authorises, as indicated in Exhibit A, to provide frequency range for uplink and downlink, through a separate frequency allocation letter. As indicated earlier, Exhibit B recognises Antrix a hundred per cent owned company of Department of Space, as the Contract Manager to administer the agreements and exercises all powers under the agreement including issue of legal notice and initiating other legal measures.

7. The definition of “licensee” which was the subject matter of judgment in the case of **VIOM Network Ltd.(supra)** is not relevant in this case because petitioner has not claimed to have approached this Tribunal in the present matter as a mere licensee, but as a service provider. This term has been widely defined under the Interconnection Regulations 2004 and includes dissemination of any form of communication and transmission of electro-magnetic waves through space or through cable. The petitioner by providing the respondent space segment capacity in the INSAT System, so as to meet respondent’s digital satellite news gathering requirements, has clearly rendered services which are covered by “broadcasting services” intended to be received by the general public. It does not matter whether such services have been rendered directly or indirectly. The act of providing space segment capacity along with the authorization of appropriate frequency range constitutes services which no other

private person can perform. The petitioner cannot be equated with a provider of a passive infrastructure such as towers and hardware. The Policy Framework, the norms and the guidelines clearly require a very active role of the petitioner in providing INSAT capacity for use by non-governmental parties. A careful perusal of all the relevant provisions discloses that the arrangement under the Policy under which petitioner has entered into agreement with the respondent very much resembles the role of petitioner as a licensor and the respondent as a licensee. This also makes the petition maintainable before this Tribunal.

8. Section 2(1)(j) defines “service provider” to mean “the Government as a service provider and includes the licensee.” In the present case, the petitioner being a Government has obtained internet services as a customer and then the respondent has been authorised to use and utilize the said service as per agreement under which the respondent is also a customer. The service, as noted above, is clearly not a passive service for providing infrastructure alone. We have no hesitation in holding that the petitioner in this case is a service provider under the TRAI Act.

9. Initially it was faintly argued on behalf of the respondent that because of an arbitration clause in the agreement, the dispute requires to be referred to an arbitrator. However, this point is not pressed at later stage and rightly so

because this issue has been settled by a detailed judgment of this Tribunal in the case of **Aircel Digilink India Ltd. Vs. Union of India and other related matters, decided on 06.01.2005** and subsequently followed in recent judgments and orders such as order dated **24.04.2018** in **B.P. No.548 of 2017, Digicable Network India Ltd. Vs. Disha Media Pvt. Ltd.**

10. For the above stated reasons, we find no merit in the preliminary objection and the same is accordingly rejected. MA No.472 of 2018 stands disposed of. The petition shall now be listed before the Court of Registrar on 20.02.2019 for passing necessary orders and directions to make it ready for hearing.

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(S.K. Singh, J)
Chairperson

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(A.K. Bhargava)
Member