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

Dated 28th March, 2019

Broadcasting Petition No.499 of 2015

Discovery Communication India, New Delhi ... Petitioner

Vs.

All Digital Network India Ltd. ... Respondent

BEFORE:

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

For Petitioner : Ms. Payal Kakra, Advocate
Ms. Vidya Prabhakaran, Advocate
Ms. Tanya Gupta, Advocate
Ms. Divyam Dhyani, Advocate
Mr. Sushant Chaturvedi, Advocate

For Respondent : Mr. Mayank Kshirsagar, Advocate
Ms. Pankhuri, Advocate

ORDER

By S.K. Singh, Chairperson – The petitioner company is engaged in the business of distribution of television channels and falls in the category of a broadcaster. The respondent falls in the category of a Multi System Operator (MSO). Undisputedly both the parties are covered under the scope and ambit of



the term "service provider" as defined under the Telecom Regulatory Authority of India Act 1997 (the Act).

2. It is the petitioner's case that respondent was desirous of obtaining authorisation from the petitioner to transmit the signals of petitioner's channels in the particular territory where the respondent carries on its business. On arriving at satisfactory terms, the parties entered into a subscription agreement for the period 01.04.2014 to 31.03.2015. The petitioner was represented in the agreement by its erstwhile authorised agent MSM Discovery Pvt. Ltd. Under the agreement, respondent had agreed to pay the petitioner subscription fee on a monthly basis, of Rs.4,76,000/-, exclusive of all taxes. Although petitioner performed its obligations under the agreement, respondent failed to make regular payments of subscription fees for which invoices were issued regularly and as such it fell into default and that ultimately led the petitioner to disconnect the supply of signals on 02.07.2015. The total outstanding amount for which the petitioner had prayed for a decree against the respondent is Rs.67,01,292/-. In addition, petitioner has prayed for interest in terms of the agreement @ 18% per annum from the date of the institution of the petition till realisation of the amount. The reliefs include a prayer for costs also.

3. Petitioner has brought on record the subscription agreement as **Annexure P-2**. With effect from 01.01.2015, MSMD ceased to be the authorised distribution agent of the petitioner and petitioner itself assumed the power of



dealing under the agreement and also with others. For this the petitioner issued public notice in November 2014 and also wrote a letter to the respondent on the same date i.e. 21.11.2014. The notice and letter have been annexed as **Annexure P-3(colly.)**. Through a letter dated 16.02.2015, petitioner requested respondent to deal directly with the petitioner for execution of fresh subscription agreement and for collection of outstanding dues. The respondent was reminded that the agreement was due to expire on 31.03.2015. The letter dated 16.02.2015 is **Annexure P-4**. Petitioner has pleaded that it raised invoices for the monthly fee regularly, but the respondent, despite providing undertaking and assurance failed to make payments in time and due to its wilful defaults, the outstanding subscription charges remained unpaid. A simplified statement of account along with the invoices has been annexed as **Annexure P-5(colly.)**.

4. Petitioner has claimed that it issued notices as required by the relevant Regulations, both under clauses 6.1 and 6.5. The notices and also the proof of dispatch are on record as **Annexure P-6(colly.)** and **Annexure P-7(colly.)**. The respondent failed to pay the dues and therefore, the petitioner deactivated signals of its channels to the respondent's network on 20.07.2015. Petitioner has also pleaded that the respondent kept extending false assurances to the petitioner that it will clear the entire outstanding subscription dues and also enter into a fresh subscription agreement. In support of this plea, petitioner has



brought on record respondent's letter dated 27.06.2015 as **Annexure P-8**. But despite the categorical assurances that dues shall be cleared before 31.07.2015, no payments were made even when the signals were disconnected in terms of the notice, on 20.07.2015. The respondent did not honour its assurances and did not execute any fresh subscription agreement. Petitioner served a legal demand notice dated 19.08.2015 to pay the outstanding dues but this also had no effect. The said legal notice is **Annexure P-9**. Petitioner was thereafter forced to file the present petition on 19.09.2015.

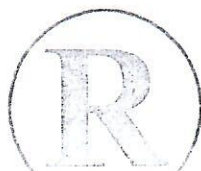
5. On behalf of petitioner, evidence has been filed by way of affidavit of one Mr. Sunil Ganapathy, an authorised representative of the petitioner. He has proved documents annexed with the petition as exhibits bearing Nos. **PW1/1 to PW1/9(colly.)**. With a view to further support the respondent's letter of alleged admission of liabilities, dated 27.06.2015, another letter dated 19.09.2015 available in petitioner's affidavit dated 15.03.2016 has been proved as **Exhibit A**. This exhibit contains a letter from the respondent to the petitioner. Besides communicating a change in the name of the petitioner on account of an alliance with another company, it mentions that the reconciled outstandings as on 31.07.2015 are confirmed and the respondent shall be clearing the outstandings to the petitioner. The assurance to pay the outstanding to the petitioner is also confirmed by the alliance partner of the respondent, GTPL Hathway Pvt. Ltd. through a letter of the same date. The letters were forwarded by the respondent



along with an Email dated 25.09.2015 which is also a part of this exhibit. This affidavit has reaffirmed the money claim made in the main petition.

6. The respondent has appeared and contested the petition by filing a reply to which the petitioner has replied by filing rejoinder. On behalf of petitioner evidence by way of affidavit was filed on 11.07.2017. All the documents annexed with the petition were marked as exhibits bearing similar numbers *in seriatim*. In the evidence affidavit, petitioner has stated that the respondent has raised frivolous disputes in its reply and that while the agreement was in force, it never disputed the authenticity of the invoices and always assured that the subscription fee and the outstanding dues would be paid. In the evidence petitioner has also placed reliance upon relevant clause in the Interconnection Regulations which provides that if the negotiations for renewal of the Interconnection Agreement extend beyond the date of expiry of the agreement then the terms of the agreement shall apply till the execution of a fresh agreement or for the next three months from the expiry of the original agreement. According to petitioner, the respondent has admitted the outstanding dues by the contents of its letter dated 27.06.2015 which is not denied in the reply.

7. It may be relevant to note here that in its reply the respondent has taken a stand that the agreement between the parties which has already worked itself was void *ab initio* because Regulation 5(21) prohibits an agreement with



minimum guarantee clause. According to respondent, the terms of the agreement would show that there is a minimum guarantee clause to the detriment of the respondent and it cannot be treated to be in the nature of a volume discount. The respondent has not denied receipt of signals from the petitioner in terms of the agreement but has taken a vague plea that the signals were of bad quality and suffered frequent disconnections. However, no letter or correspondence has been brought on record to support such allegations in the reply. Similarly, contents of Paras 6 to 10 have been replied together as Para 6-10 by making bald denial to receipt of any communication pleaded in those paragraphs including the invoices for the entire period.

8. It is peculiar that while the amount of subscription fee in the agreement has not been disputed, the respondent has denied that it has defaulted in making timely payments to the petitioner. It has denied that it owes any outstanding money to the petitioner but interestingly it has not brought on record copy of its accounts for the purpose of supporting the stand or to enable the Tribunal to reconcile the accounts for which the respondent had made a request in letter dated 27.06.2015. Receipt of that letter is not denied but in Para 11 of the reply, respondent has submitted that the said letter is being quoted out of its true intent and context.

9. The respondent has also filed its evidence by way of affidavit on 16.07.2018. The deponent, G. Kariappa, is the authorised representative of the



respondent. He has reiterated the defence that the agreement between the parties is void *ab initio* being contrary to the provisions in Regulation 5(21) which prohibits entering into minimum guarantee agreements. The invoices of the petitioner have been alleged to be false and fabricated documents reflecting arbitrary sums of monies. Same is the comment about the statement of account. It has also denied that there is any admission of liability in the letter dated 27.06.2015. However, the letter itself has not been denied. The respondent has denied receipt of demand notice dated 19.08.2015 and has claimed that there has been no default on the part of the respondent. However, there is no whisper or denial of the documents such as letters dated 19.09.2015 which has been proved as **Exhibit A(Annexure A** to the affidavit filed on 15.03.2016). On a careful perusal of the petition including all the documents filed in support of the claim by the petitioner and on going through the reply and defence of the respondent including its evidence, it is found that as a fact the parties had entered into an interconnection subscription agreement which was in force for the period 01.04.2014 to 31.03.2015. There is no denial that the respondent received TV signals under the said agreement not only for the whole term of the agreement ending on 31.03.2015 but also till deactivation of signals on 20.07.2015, after sending the required notice upon the respondent by the petitioner. The monthly subscription fee of Rs.4,76,000/- exclusive of taxes is supported by the terms of the agreement. The statement of account and the invoices are founded on the aforesaid monthly subscription fee and taxes. It is



also found that the respondent has taken no acceptable defence on facts and its vague defence that the quality of signals was poor etc. or that the invoices and agreements reflected imaginary figures are found to have no substance. These are not supported by any contemporaneous letters of protest. Such belated and vague defence on facts deserves no credence at all and is fit to be rejected. The only major defence worthy of consideration is the technical/legal plea that the agreement (which was never challenged by the respondent till it was alive and operational) is void *ab initio* and therefore, fit to be ignored altogether. If this defence raised as an issue of law will be accepted, then the petitioner may not be entitled to recover its claim of money on account of several judgments of this Tribunal that such money claims cannot be maintained if the petitioner fails to show that it had entered into a written interconnect agreement for supply of TV signals, as required under the relevant Regulations framed by TRAI.

10. But before examining the aforesaid legal plea raised by the respondent for a *suo motu* declaration that the agreement is void *ab initio*, it is deemed proper to take note of some other factual issues of minor nature arising out of a submission by learned counsel for the respondent that the invoices are not supported with proof of delivery. Had this plea been raised in a case where there was no other supporting material such as rate of monthly subscription fee in a duly executed agreement, demand of outstanding through notice and response such as in letter dated 27.06.2015, this issue could have been a



significant or a crucial one. However, in the facts of the present case, it is not so. From the pleadings it is clear that receipt of signals by respondent, as alleged by the petitioner is not denied. The execution of the agreement is also not denied. In the letter of petitioner dated 16.02.2015, invoices for January 2015 and for December 2014 are enclosed along with statement of previous outstanding till December 2014. In the notice under clause 6.1, dated 26.05.2015 also the letter dated 16.02.2015 is referred to and the outstanding covers the period upto March 2015. The respondent's reply dated 27.06.2015 raises no objection that it has not received invoice of any period. It may be noted here only, there is no defence raised that the monthly subscription fee amounts to a minimum guarantee and as such it is contrary to the Regulations and not payable. On the basis of pleadings and entire evidence on record, the plea that there is no proof of delivery of invoices is found to have no substance. Respondent in this case has resorted, as an afterthought, to indulge in blanket denial of almost all transactions for some ulterior reasons. The plea of the respondent denying receipt of the invoices is found to be unacceptable and without any merits. The petitioner has been able to discharge the burden to prove the issuance and communication of invoices to the extent necessary for supporting its case for the recovery of monthly subscription fees on the basis of a written agreement, to the extent of agreement period and for three months thereafter because materials disclose that talks for further agreement were going on between the parties.



11. Service of invoices is required under the Regulations but proof of the same is not always imperative and a petition can succeed on the basis of weight of overall evidence as held by this Tribunal in **Den Men Cable Network Pvt. Ltd. Vs. Pragnesh Shah & Anr**, decided on 10.12.2014 and in **Hathway VCN Cablenet P. Ltd. Vs. Cableway Network**, decided on 02.06.2011. The relevant paras of the same read as under:

"20. Mr. Vibhav Srivastava, Ld. Counsel for the petitioner, however, argued that the proof of service of invoices is not imperative and with regard to his this submission, he relied on the Tribunal judgment dated 2.6.2011 in Hathway VCN Cablenet P. Ltd. v. Cableway Network Petition No. 100(c) of 2011.

21. With regard to the delivery of invoices, we may note that the witness (PW 1) has categorically stated that the same were raised and hand delivered each month to the respondents. Though, from the cross examination of the witness, a doubt is cast on the proof of delivery of invoices, the Tribunal has held in Hathway VCN Cablenet P. Ltd. v. Cableway Network that proof of service of invoice is not imperative in character. The relevant part is as under:

"21. It is true that proof of service of invoice is not imperative in character. Invoices, although are required to be served in terms of the Regulations, but if other evidences become available on record to show that petitioner has been able to prove its case of default on the part of respondent, proof of service of invoices cannot be held to be so imperative so as to compel us to dismiss the petition on that ground alone."

22. Mr. Sampath relied on judgment of the Supreme Court in Central Bureau of Investigation v. V.C. Shukla and others MANU/SC/0168/1998 : (1998) 3 SCC 410 and submitted that it is for the petitioner to prove its case.

23. The judgment relied by Mr. Sampath was in respect of a criminal case. Moreover, the respondents at sr. No. 1 have not denied the existence of relationship between the petitioner and the respondents or



that they have been receiving the signals of the petitioner. As seen from parawise reply (petition 683 (C)/2012), the respondent therein only denies receiving signals in digital mode. The reply is as under:

"3. That the contents of para No. 3 to the extent they form matter of record are not denied. **It is denied that the petitioner provided signals to the Respondent in digital mode.** It is further submitted that to the knowledge and belief of the Respondent No. 1 herein that the Respondent No. 2 has always been present in the area of operation of the petitioner. It is denied that there is any connivance between the answering Respondent and the Respondent No. 2 as alleged or at all."

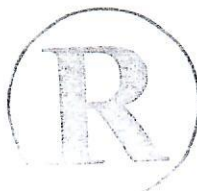
(emphasis supplied).""

12. A plea was also raised that no certificate as required by Section 65B of the Evidence Act has been filed by the petitioner and therefore, most of its documents such as invoices are inadmissible. This plea led us to an enquiry as to whether the Indian Evidence Act is applicable to proceedings before this Tribunal. Learned counsel for the respondent has rendered valuable assistance on this issue by referring to large number of judgments, including some by TDSAT to support his plea that this Tribunal is a Court to which Evidence Act applies because the TRAI Act does not exclude its application although it does so in respect of Civil Procedure Code. Only some of these judgments need to be noticed because we find that this aspect is already covered by some judgments of this Tribunal accepting the above proposition. In the judgment dated 27.07.2011 in **Petition No.67(C) of 2009 (Guwahati Communications Vs. R.B. Network & Ors.)** it was spelt out that TDSAT is a Court within the meaning of Section 3 of the Evidence Act. Hon'ble Patna High Court in the



case of **Ram Sigashan Pathak Vs. K.P. Sinha, Deputy Director, Consolidation & Ors.; AIR 1989 Pat. 39** held that all authorities which are court within Section 3 of the Evidence Act are bound to follow the provisions of the Evidence Act. The Hon'ble Calcutta High Court has taken similar view in the case of **Raghu Singh Vs. The Burrakur Coal Co. Ltd. & Ors.; AIR 1966 Cal 504**. Similar is the view of the Hon'ble Punjab & Haryana High Court in the case of **Municipal Committee, Jullundur City Vs. Shri Romesh Saggi & Ors.; AIR 1970 P&H 137**.

13. Since the Evidence Act applies to proceedings before this Tribunal as held above, learned counsel for the respondent has pointed out that mere statement by the petitioner's witness that the contents of the affidavit of evidence are true and correct to the best of his knowledge and belief derived from official records maintained by the petitioner in the ordinary course of business is not sufficient to meet the requirements of Section 65B of the Evidence Act which requires filing of a detailed certificate to make an electronic evidence admissible. Since there is no such certificate on record, the argument, on its face looks attractive. But on a careful scrutiny of facts available on records, it is found to have no legs to stand upon. No objection was taken in the pleadings that any of the documents with the petition is an electronic record and needs certification as per Section 65B of the Evidence Act. The marking of the documents as exhibits in the evidence affidavit filed



on 11.07.2017 was also never objected to by any means including the evidence affidavit of respondent filed on 16.07.2018. Had such objection been raised to admissibility of any of the exhibits, it would have been looked into and decided on relevant facts. But the respondent acquiesced and raised no objections. In many cases, this Tribunal has granted an opportunity to file certificates as per Section 65B so as to cure such defect, if objected to. Petitioner was clearly deprived of such benefit by respondent's accepting the documents to be admissible. Hence, notwithstanding large number of orders of this Tribunal insisting on compliance of Section 65B in the given facts, we find no merit in the belated objection of respondent based upon Section 65B of the Evidence Act. We are fortified in our view by a recent judgment of Hon'ble Supreme Court in the case of **Sonu Vs. State of Haryana; (2017) 8 SCC 570**.

14. Coming to the major defence of the respondent that the agreement between the parties is contrary to Clause 5(21) of the Regulations, 2012 which prohibits entering into minimum guarantee agreements and therefore, void *ab initio*, it is useful to extract clause 6 of Interconnection Regulations 2004 and clause 5(21) of the Interconnection Regulations 2012. They read as follows:

“6. Prohibition of minimum guarantee clause

Where a distributor of TV channels is using a technology by which pay channels can only be seen through an addressable system, then no service provider shall stipulate, insist or provide for any clause in an



interconnection agreement with such a distributor which would require such distributor to pay a minimum guaranteed amount as subscription fee for the services provided.”

“5(21) No service provider shall demand from any other service provider a minimum guaranteed amount as subscription fee for the channels provided by such service provider.”

15. The purpose of prohibiting minimum guarantee clause so as to require a distributor to pay “a minimum guarantee amount as subscription fee” is a apparent from clause 6 noted above. When the technology under use is an “addressable system”, the actual number of subscribers is available and hence the subscription fee should be based upon the actual number of subscribers available and the subscription fee should be based upon the number of subscribers and not a minimum guarantee amount. Clause 5(21), for the same reason, while omitting the words – “stipulate, insist or provide”, prohibits a service provider from “demanding” from another service provider a minimum guarantee amount as subscription fee.

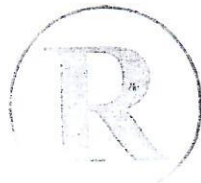
16. The Regulations of 2012 applied to the present case and hence for entering into an interconnection agreement no service provider was entitled to demand a minimum guarantee amount as subscription fee. The plea of the respondent that the payment clause in the agreement amounts to a demand for



minimum guarantee has been seriously contested and disputed by learned counsel for the petitioner. On behalf of petitioner, it has been pointed out that the term "subscriber" has been defined in clause 7 of the agreement to mean each set-top box. Clause 8 contains payment terms and provides that the monthly licence fee shall be paid in the manner prescribed in Schedule 'C'. Schedule 'C' opens with an acknowledgement that the parties agree and acknowledge that they have for themselves chosen the following mechanism of ascertainment and payment of licence fee under this agreement, which is a combination of both fixed fee payment and payments to be made on the basis of monthly average subscriber level, dependent upon the conditions mentioned. Thus, they agreed to the payment terms described for different eventualities. Schedule 'C' further provides the licence fees to be as follows:

"LICENSE FEES

- I. The Parties agree that the Operator shall pay to MSMD, a fixed monthly License Fee of Rs.4,76,0000/(Rupees Four Lakh Seventy Six Thousand Only) exclusive of all taxes and levies.
- II. The Operator shall continue to make the aforesaid payment of fixed Monthly License Fee till the month in which its Monthly Average Subscriber Level (i.e. sum of the number of subscribers on the first and last day of the month in question divided by two) is 1,60,000 or below.
- III. The Operator shall pay to MSMD, the License Fees in respect of that month at the rate of Rs.3.5/- per subscriber exceeding 1,60,000 Subscribers in addition to the fixed monthly License Fee of Rs.4,76,000/- (Rupees Four Lakh Seventy Six Thousand only) plus

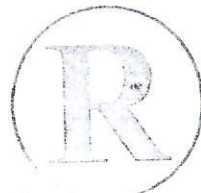


applicable taxes and shall continue to pay at the same rate for all succeeding months in respect of which the Monthly Average Subscriber Level exceeds 1,60,000 subscriber, as specified in above.

- IV. The Parties further agree that once the Monthly Average Subscriber Level in respect of any month reduces to 1,60,000 or below then the Operator shall pay MSMD the fixed monthly License Fee as specified in I above.”

17. The submission on behalf of petitioner is that there is no element of coercion or “demand” in the licence fees and payment terms as indicated in Schedule ‘C’, rather it is on the basis of mutual agreement because the parties found these, more beneficial and suited to their interest. The next contention is that there is no blanket mechanism of fixed fee in supersession of fees as per number of subscribers, because in all eventualities, the parties have settled for a methodology based upon the monthly average subscriber level. It is not the case of the respondent as evident from the pleadings that the stipulations for licence fees are more onerous and harmful for him in comparison to the petitioner. With the help of calculations, it appears that the rate increases to the level of Rs.3.5 per subscriber when the subscriber number exceeds 1,60,000 subscribers. Be as it may, there is no pleading or proof to show “demand” or coercion and that alone is prohibited by clause 5(21) of the 2012 Regulations.

18. On the other hand learned counsel for the respondent controverts the assertion in the Schedule ‘C’ that the method of licence fee is a combination of



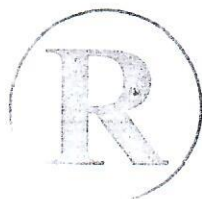
both fixed fee payment and payments on the basis of monthly average subscriber level. According to him, it is a fixed fee stipulation and therefore, in violation of clause 5(21) of Regulations of 2012 and therefore, void *ab initio*.

19. Even if, for the sake of arguments, it be accepted that some part of Schedule 'C' providing a component of fixed fee payment is contrary to clause 5(21), the basic question remains whether such provision adopted by consent of both the parties shall render the agreement void *ab initio* so as to create a situation of "no agreement" between the parties and render the present petition not maintainable in view of judgment of this Tribunal in **B.P. No.611 of 2015 (UCN Cable Network India Pvt. Ltd. & Ors. Vs. Raj Cable Network & Ors.)** decided on 10.05.2016. In this judgment it was held that it was illegal and impermissible to supply signals without a written interconnect agreement and therefore, relief of recovery of money cannot be granted if it is based on oral agreement. In our considered opinion the ratio of that judgment cannot apply to the present case because the claim in this case is not based upon oral arrangements; in fact the execution of written agreement by consent of the parties is not disputed by the respondent. There are limited numbers of fundamental illegalities which alone can render an otherwise valid agreement executed by the parties with consent, as "void *ab initio*". Such effect must flow on the basis of statutory provision or from a proven case of fraud which can vitiate even the most solemn transactions. The provisions in clause 5(21) do



prohibit demand of fees in the form of minimum guarantee clause in an interconnection agreement but it cannot be said that they also prohibit a hybrid clause adopted by the consent of the parties, as in the present case. Even if stipulations be deemed otherwise, the Regulations do not provide the consequence of such disregard. The provision in clause 5(21) is by way of protection to a service provider and such beneficial protection, in our considered view, can be surrendered or given up if the party concerned finds it more advantageous. The normal course permitted by law is to uphold a challenge to such a provision imposed in violation of the Regulation forced upon one of the parties. In the present case, the agreement was allowed to work itself for the whole 10 years and even in the present petition, there is no pleading of coercion/demand and no counter-claim that the agreement be declared illegal or void.

20. Learned counsel for the petitioner has rightly placed reliance upon a number of judgments of Hon'ble Supreme Court to submit that doctrine of election is attracted in this case and since the respondent chose to accept the agreement and derived benefits thereunder, it can not be permitted to "approbate and reprobate" the agreement at the same time. Hence respondent is estopped from arguing against what it approbated itself. Paras 25 to 27 of the judgment in the case of **Cauvery Coffee Traders, Mangalore Vs. Hornor Resources**



(Intern.) Company Ltd.; (2011) 10 SCC 420 refers to some earlier cases and reiterates the above proposition of law. They read as under:

“25. In **R.N. Gosain v. Yashpal Dhir**, AIR 1993 SC 352, this Court has observed as under:-

"Law does not permit a person to both approbate and reprobate. This principle is based on the doctrine of election which postulates that no party can accept and reject the same instrument and that "a person cannot say at one time that a transaction is valid and thereby obtain some advantage, to which he could only be entitled on the footing that it is valid, and then turn round and say it is void for the purpose of securing some other advantage."

26. A party cannot be permitted to "blow hot and cold", "fast and loose" or "approbate and reprobate". Where one knowingly accepts the benefits of a contract or conveyance or an order, is estopped to deny the validity or binding effect on him of such contract or conveyance or order. This rule is applied to do equity, however, it must not be applied in a manner as to violate the principles of right and good conscience. (Vide: **Nagubai Ammal & Ors. v. B. Shama Rao & Ors.**, AIR 1956 SC 593; **C.I.T. Vs. MR. P. Firm Maur**, AIR 1965 SC 1216; **Maharashtra State Road Transport Corporation v. Balwant Regular Motor Service, Amravati & Ors.**, AIR 1969 SC 329; **P.R.Deshpande v. Maruti Balaram Haibatti**, AIR 1998 SC 2979; **Babu Ram v. Indrapal Singh**, AIR 1998 SC 3021; **Chairman and MD, NTPC Ltd. v. Reshmi Constructions, Builders & Contractors**, AIR 2004 SC 1330; **Ramesh Chandra Sankla & Ors. v. Vikram Cement & Ors.**, AIR 2009 SC 713; and **Pradeep Oil Corporation v. Municipal Corporation of Delhi & Anr.**, (2011) 5 SCC 270).

27. Thus, it is evident that the doctrine of election is based on the rule of estoppel- the principle that one cannot approbate and reprobate inheres in it. The doctrine of estoppel by election is one of the species of estoppels in pais (or equitable estoppel), which is a rule in equity. By that law, a person may be precluded by his actions or conduct or silence when it is his duty to speak, from asserting a right which he otherwise would have had."



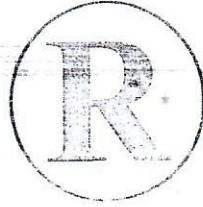
21. In view of aforesaid discussion, we do not find any substance in the stand of the respondent that clause 5(21) is such a mandatory provision of law whose violation shall render an agreement void *ab initio*. The defence of the respondent on this basis is found to have no merits.

22. There is no other issue to be determined. On the basis of issues decided earlier the petition is allowed but not for the entire amount of Rs.67,01,292/- which has been claimed for the period upto 20.07.2015. Since, the agreement expired on 31.03.2015 the claim for a monetary decree in favour of the petitioner and against the respondent is allowed only for that period and a further period of three months from the date of expiry of the agreement i.e. till 30.06.2015. From the accounts, the due and payable amount for above periods is found to be Rs.59,82,891/- only. This calculation is mentioned in the affidavit filed on behalf of the petitioner on 22.02.2016. The claim of the petitioner is decreed only for the aforesaid amount of Rs.59,82,891/-.

23. Although the petitioner has claimed interest @ 18% but following a large number of our recent judgments, we permit interest only @ 9% since the filing of this petition i.e. from October 2015 till this judgment and further till the date of realisation. The respondent should pay the decretal amount within two months failing which the petitioner shall be entitled to recover the same through an execution proceeding. In the facts of the case, the petitioner is also held entitled to a cost of Rs.50,000/-. The Registry should prepare a decree on the



basis of this judgment at an early date preferably within four weeks. The petition is allowed to the aforesaid extent and disposed of accordingly.



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(S.K. Singh, J)
Chairperson

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(A.K. Bhargava)
Member

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