

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

Dated 14th January, 2020

Broadcasting Petition No. 39 of 2018

Union of India ...Petitioner

Versus

Mi Marathi Media Ltd. ...Respondent

Broadcasting Petition No. 163 of 2018

Union of India ...Petitioner

Versus

Kohinoor Broadcasting Corporation Ltd. ...Respondent

BEFORE:

HON'BLE MR. JUSTICE SHIVA KIRTI SINGH, CHAIRPERSON

For Petitioner

Mr. Ankur Singh, Advocate
Mr. Shaurya Bari, Advocate

For Respondent

None

JUDGEMENT (ORAL)

Both the petitions have been heard *ex-parte* because even after valid service of notice, the respondent(s) in both the petitions chose not to appear and contest the petitioner's claim. They have not filed any reply.

2. Only to avoid repetition of facts relating to the petitioner and because the nature of agreements with the respondent(s) in both the petitions are similar, both the petitions involving claim for a money decree have been heard together and shall be governed by this common judgement and order.
3. As noted earlier, the petitions have been filed for money decree. In B P No. 39 of 2018, the total claimed amount is for Rs.1,31,40,753.00 involving dues payable from October 2015 onwards. In B.P. No. 163 of 2018, the claim is for an amount of Rs.7,53,44,675.00 to cover dues from January 2011 onwards. The prayer has been made for *pendente lite* and future interest also at the rate of 18% p.a. in both the petitions. In B.P. No.163 of 2018, there is an additional prayer for an amount of Rs. 63,843.00 said to have been deducted by the respondent(s) as TDS during the Financial Year 2011-12 but allegedly not deposited with the Income Tax Authorities.
4. The petitioner is Government of India in the capacity of a service provider. The respondent(s) who is a broadcaster licensee, is also a service provider. The respondent(s) has been shown to be a "licensee" within the meaning of the term under the TRAI Act, 1999. The petitions are, therefore, claimed to be covered within the ambit of Section 14 of the TRAI Act.

5. From the agreement, particularly clause "h" of Exhibit -B to the agreement, it has been shown that Antrix Corporation Ltd. (Antrix) was appointed as the Contract Manager and vested with all powers on behalf of the claimant Union of India, including initiation of legal proceedings. It has been shown that Antrix is a 100% Company of Department of Space, Government of India.
6. Petitioner has pleaded that for the purpose of meeting their business requirements, the respondent(s) executed the agreements with the petitioner (in the name of President of India) which have been amended/extended from time to time and cover the entire period for which the dues have been claimed. Article 8 of the agreement specifies the charges payable by the respondent(s), as more particularly described in Exhibit B to the agreement. Respondent(s) in both the cases were required to furnish the interim security deposit of the required amount, being approximately 25% of the annual rental charges. The final amount claimed by the petitioner has been shown to be the balance outstanding after adjusting the security furnished by the respondent(s).
7. It is the case of the petitioner that the respondent(s) did not make regular and timely payment of monthly charges. It has been shown that the petitioner/Antrix issued e-mails/letters at regular intervals seeking payment of

the outstanding dues and finally demand letters were also issued, but still the claimed amount remained unpaid. The petitioner has claimed that it has maintained a ledger account of the respondent(s) which depicts the outstanding dues along with interest payable in terms of the agreement for delay in timely payments, after giving credit to payments made by the respondent(s).

8. It has been shown that as per clause 9 (f) of the Exhibit-B to the agreement, in the event of delayed payment, the respondent(s) shall be liable to pay penal interest at the "Prime Lending Rate" (PLR) as published on quarterly basis by RBI + 3%. However, from April 2014, the above stipulation for interest was reduced and replaced by "Base Lending Rate" (BLR) charged by SBI. The petitioner has brought on record the figures of interest chargeable as per stipulation from time to time and also statement of account depicting the amount claimed from the respondent(s).

9. The arrears claimed in B. P. No. 39 of 2018 are within the period of three years at the time the petition was filed and hence, the issue of limitation does not arise in this case. Some part of claim made in B.P. No. 163 of 2018 which was filed in April 2018 is definitely beyond three years. On the issue of limitation in respect of this petition, learned counsel for the petitioner has made

a submission that the relevant Article would be Article 112 of the Limitation Act, 1963 because the petitioner is Union of India and the agreement in question was signed in the name of President of India. He has also placed reliance upon a judgement of the Hon'ble Supreme Court reported in (2004) 13 SCC 14 {Accountant General (A&E) and Anr. Vs. V. Sethumadhavan Nair. The plea of the petitioner on the issue of limitation deserves to be accepted and only yesterday (on 13.1.2020) a similar plea on the issue of limitation has been accepted while allowing B.P. No. 98 of 2018 (UOI Vs Seashore Securities Ltd.)

10. So far as the amounts claimed by the petitioner in these two petitions are concerned, there is an important issue which needs to be addressed because the petitioner has not only claimed the outstanding dues as per rates given in the agreement but has admittedly also claimed further amount of Rs. 16,84,354.00 in B.P. No. 39 of 2018 and Rs. 15,06,607.00 in B.P.No. 163 of 2018. These amounts have been claimed later as differential amount because of revision in rates effected through a revised price list issued by the petitioner on 7.8.2017 (Annexure P-22). The issue which arises is on account of Para-4 in this letter which makes the revised price-list effective from April 1, 2016. In case of respondent(s), the revised price is higher by about 20% and is being charged

from a date earlier to the date of issue of the revised price list of 7.8.2017. The issue whether this amounts to retrospective revision of price and, therefore, is against the provisions of law and the agreement, has been raised by some of the service providers either by filing an independent Petition/Writ Petition or by way of defence. A Writ Petition bearing no.WP(C) 3072 of 2019 filed by Tata Sky Ltd. Vs. Union of India & Ors is said to be pending in Hon'ble Delhi High Court. In this Tribunal also, the issue is pending in various Telecom Petitions bearing Nos. 224, 225, 226, 227 of 2018, and 62 of 2019. The issue is also involved in B P No.637 of 2018. It appears that in some of the concerned petitions pending in this Tribunal, the revised price for the period prior to 7.8.2017 has not been given effect. The same issue arises in these two petitions also but since these two petitions are being heard *ex-parte* and are undefended, it would not be proper at present to decide such an important issue more so when the matter is also pending in the High Court. Hence, the claim in these two petitions for the differential amount of Rs. 16,84,354.00 (B P No. 39 of 2018) and Rs. 15,06,607.00 in B.P. No. 163 of 2018 is left undecided with liberty to the petitioner to revive this claim unaffected by limitation by filing an appropriate petition within six months of the issue being decided in a way which gives it the right to claim such a differential amount. With this

clarification and liberty the claim for the differential amounts noted above is closed for the time being so far as these petitions are concerned.

11. In respect of balance claims made in both the petitions, it is found that the various letters and also statement of account and the charts of the calculation furnished during the course of hearing fully support the claim. The petitioner has supported the claim as well as correctness of the documents through averments in the affidavit and also by annexing a certificate in terms of Section 65B of the Indian Evidence Act. As against this, the respondent(s) has not filed any reply and has chosen not to contest the claim. It can be safely concluded that the respondent(s) has implicitly admitted the claims. In fact, Annexure P-17 enclosed with B. P. No. 39 of 2018 contains a record of meeting between the parties held on 11.11.2016 in which, a major part of the amount claimed in this petition, then outstanding, stands admitted.

12. The discussions made above show that the petitions are not barred by law of limitation. No other legal infirmity affecting maintainability of the petitions can be discerned from the materials on record. Hence, the amounts claimed in both the petitions after deducting the differential amount demanded due to price revision as discussed earlier, are allowed. For the purpose of clarity, it is

indicated that an amount of Rs. 1,14,56,399.00 is being allowed in B P No. 39 of 2018. In B.P.No.163 of 2018, the amount being allowed is Rs. 7,38,38,068.00. In the latter petition the relief claimed in respect of TDS deducted by the respondent is also found justified and, hence, the same is disposed of by directing the respondent(s) to either produce a certificate from the Income Tax Authorities within 8 weeks to show that the deducted amount has been deposited or else the said amount shall also be payable to the petitioner to compensate it for such loss.

13. So far as the claim for interest @ 18% p.a. is concerned, following several other judgements and orders of this Tribunal in similar matters, the *pendente lite* and future interest is allowed but only @ 9% p.a. This interest shall be payable from the month of March 2018 in B.P. No. 39 of 2018 and from May 2018 in B.P.No.163 of 2018. The rate of interest allowed shall be payable by the respondent(s) till the date the decretal amount is paid to the petitioner. Since the respondent(s) has not appeared and contested the petitions, there shall be no order as to costs.

14. The decretal amount including the interest shall be payable by the respondent(s) within 8 weeks from the date of this judgement failing which the

petitioner will be at liberty to realize the same through an appropriate execution proceeding. The Registry is directed to prepare a decree in terms of this judgement at an early date, preferably within four weeks.

15. Both the petitions are allowed and disposed of accordingly.

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(S.K. Singh, J)
Chairperson

/SC/

