

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL
NEW DELHI

Dated 13th January, 2020

Broadcasting Petition No.98 of 2018

Union of India

Versus

Seashore Securities Ltd.

... Petitioner

... Respondent

BEFORE:

HON'BLE MR. JUSTICE SHIVA KIRTI SINGH, CHAIRPERSON

For Petitioner

: Mr. Ankur Singh, Advocate
Mr. Kaustav Som, Advocate

For Respondent

: None

JUDGEMENT (ORAL)

This petition has been heard *ex parte* because despite service of notice even through paper publication, the respondent chose not to appear and contest. It is clarified that no reply has been filed on behalf of the respondent.

2. The petition has been filed for a money decree for an amount of Rs. 1,81,81,517/- and also for *pendente lite* and future interest with effect from Financial Year 2014-15 along with certain further claims which require consideration of foreign exchange fluctuations. The said amount has been

claimed for recovery of dues/outstanding dues in relation to an agreement between the petitioner and the respondent dated 10.08.2011 whereunder respondent was provided 3 MHz of Ku-band Space Segment Capacity on INSAT – Asiasat 5 Satellite System.

3. The petitioner, Government of India, has preferred this petition as a service provider and the respondent, a broadcast licensee, is also a service provider. The respondent has been shown to be a “licensee” within the meaning of the term under the TRAI Act, 1997 (the Act). The petition is thus claimed to be covered within the ambit of Section 14 of the Act.

4. From the agreement, particularly Clause (10) of the 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. Clause 10 of Exhibit-B further shows that Antrix is a 100% owned company of Department of Space, Government of India.

5. Petitioner has pleaded that in order to provide services to the respondent, it took capacity of Asiasat 5 Satellite from a foreign service provider. Article 4 of the agreement specifies the charges payable by the respondent as more

particularly described in Exhibit – B to the agreement. The annual liability was at the rate of US\$ 46,741.00 per MHz per annum payable monthly at beginning of every month.

6. The respondent was required to, and it furnished, an interim security deposit of Rs. 33,65,352/-, being approximately 50% of the annual charges. In the petition the final amount claimed by the petitioner has been shown to be the balance outstanding after adjusting the security furnished by the respondent.

7. It is the case of the petitioner that the respondent did not make regular and timely payment of monthly charges. The petitioner/Antrix is shown to have issued emails/letters at regular intervals starting from 13.4.2012, till the last demand letter dated 17.10.2014. It is relevant to note that the agreement between the parties expired on 30.06.2013 and was not renewed because the respondent failed to clear its dues which were a requirement for renewal. The petitioner has claimed that it has maintained a ledger account of the respondent which depicts the outstanding dues of the respondent along with interest payable in terms of the agreement for delay in timely payments, also giving credit to payments made by the respondent.

8. It has been shown as per Clause (8) of Exhibit-B to the agreement that in the event of delayed payment the respondent was liable to pay penal interest at the "Prime Lending Rate" (PLR) as published on quarterly basis by RBI + 3%. A tabular chart showing the PLR has been brought on record as an annexure. The total liability of the respondent is said to be the amount claimed which has already been noted. The same is reflected by accounts in a chart/table which is also an annexure.

9. This petition was filed on 13.03.2018. While admitting the petition on 22.03.2018, the Tribunal flagged the issue of limitation and, hence, learned counsel for the petitioner, in spite of no opposition by the respondent, has first addressed the issue of limitation. According to him, the agreement shows that the parties are the President of India, through the Secretary of Space, Government of India and the respondent. Hence, the petition is rightly filed on behalf of the Union of India. In such a situation, limitation would be governed by Article 112 of the Limitation Act, 1963. As per the said Article, a suite of the present nature by or on behalf of the Central Government or any State government would have 30 years as the period of limitation whereas for a private person, the limitation in such a matter would have been only of three years. This

view is supported by a judgment of the Hon'ble Supreme Court reported in (2004) 13 SCC 14 {Accountant General (A&E) and Anr. Vs. V. Sethumadhavan Nair}.

10. The plea of the petitioner on the issue of limitation is found to have merits and, hence, the petition is held to be within time and not barred by the law of Limitation. No other legal defect so as to affect the maintainability of the petition can be discerned from the materials on record.

11. So far as the money claimed by the petitioner is concerned, the terms of the agreements and the statement of accounts, which also reveal the invoice numbers, support the case of the petitioner. The various letters, including that of 17.10.2014 also support the claim in respect of outstanding amount. All the relevant materials and claims are supported by affidavit filed with the petition. A certificate under Section 65B of the Indian Evidence Act duly supported by an affidavit is also available on record to support the documents some of which are print-outs from computers.

12. As against the above materials, the respondent has not filed any reply and has chosen not to contest the claim. This amounts to admitting the claim. Hence, there is no difficulty in allowing the petition. The same is allowed by granting to the petitioner a judgment and decree for the amount of Rs. 1,81,81,517/-. So far

as the claim for interest @18% p.a. is concerned, following several other judgments and orders of this Tribunal in similar matters, the interest for the period claimed is allowed but only @ 9% p.a. This shall be from 01.04.2014 in the light of pleadings made in the petition and shall be calculated till the date of realisation at the rate indicated above. The claim for foreign exchange variation is also allowed but its calculation will depend upon the date of payment or realisation of the decretal amount. Hence, it is left to be calculated on the basis of reliable materials to show the rate at the relevant time which may be furnished by the petitioner at the relevant time. Since the respondent has chosen not to contest the petition, there shall be no order as to costs.

13. The respondent is directed to pay the decretal amount along with interest within 8 weeks from today failing which the petitioner will be entitled to realise 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.


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(S.K. Singh, J)
Chairperson

/NS/


12/1/2020