

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL  
NEW DELHI

Dated 3<sup>rd</sup> March, 2020

Broadcasting Petition No. 420 of 2017

Union of India

...Petitioner

Versus

Broadcast Initiatives Ltd.

...Respondent

**BEFORE:**

**HON'BLE MR. JUSTICE SHIVA KIRTI SINGH, CHAIRPERSON**

For Petitioner : Mr. Sumit Srivastava, Advocate

For Respondent : None

**JUDGEMENT (ORAL)**

1. Heard learned counsel for the petitioner. Even after valid service of notice, the respondent chose not to appear and contest the petitioner's claim. Therefore, the petition has been heard ex-parte. The respondent has not appeared ever and has not filed any reply.
2. At the outset, it is deemed useful to record that besides the two agreements both dated 1.4.2012 between the parties which are covered by present petition, the petitioner and a sister concern of the respondent namely, Mi Marathi Media Ltd. also had a similar agreement with the petitioner. Some of correspondences available on record support the aforesaid fact and disclose common meetings on the issue of outstanding dues.

3. Against Mi Marathi Media Ltd, almost in similar factual situation, petitioner had preferred BP No. 39 of 2018 for claiming an amount of Rs. 1.31 crores approximately. After considering all the relevant issues, that broadcasting petition alongwith BP No. 163 of 2018 was heard ex-parte and substantially allowed by a recent judgment and order of this Tribunal dated 14.1.2020. Learned counsel for the petitioner has placed strong reliance upon that judgment more so because this petition is also against the sister concern of MI Marathi Media having almost identical factual background and is also being heard ex-parte. This petition has been filed for a money decree for an amount of Rs. 2,46,20,606/- and for pendente lite and future interest @ 18% p.a.

4. The petitioner is Union of India in the capacity of a service provider. The respondent, who is a broadcaster 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 petition is, therefore, claimed to be covered within the ambit of Section 14 of the TRAI Act.

5. As noted above, the petition relates to two agreements dated 1.4.2012. The 1st agreement (Annexure P/1) is for provision of 4.5 MHz qualifying units of C Band capacity in the INSAT 4A satellite in favour of the respondent whereas the 2nd agreement (Annexure P/2) is for providing 6 MHz qualifying units of KU Band capacity in the INSAT 4 CR satellite for fees and charges specified in the agreements. Amendments were made to both the agreements in 2013, 2014, 2015 and 2016 so as to extend the terms of the agreement till 31.3.2017. Clause 25 of the agreements show that Antrix Corporation Ltd. (Antrix) was appointed as the Contract Administrator 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 Company fully owned by Department of Space, Government of India.

6. Petitioner has pleaded that for the purpose of meeting their business requirements, the respondent executed the agreements with the petitioner (in the name of President of India) which have been amended/extended from time to time and covered the entire period for which the dues have been claimed. Article 8 of the agreement specifies the charges payable by the respondent, as more particularly described in Exhibit B to the agreement. Respondent was 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.

7. It is the case of the petitioner that the respondent 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 which depicts the outstanding dues alongwith interest payable in terms of the agreement for delay in timely payments, after giving credit to payments made by the respondent.

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 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.

9. The arrears claimed in this petition are within the period of three years from the time the petition was filed and hence, the issue of limitation does not arise in this case.

10. So far as the amounts claimed by the petitioner in this petition 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 in the agreements but has admittedly also claimed further amount of Rs. 16,84,354.00 for Agreement no. I and Rs. 22,64,523.00 for Agreement No. II. These amounts have been claimed later as differential amount because of revision in rates effected through a revised price issued by the petitioner on 7.8.2017 (Annexure P-27). 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, the revised price is higher by about 20% and is being charged from a date earlier to the date of issue of the revised pricelist 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 this petition also but since this petition is being heard ex-parte and is 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 this petition for the differential amounts of Rs. 16,84,354.00 for Agreement No. I and Rs. 22,64,523.00 for Agreement No. II 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 this petition is concerned.

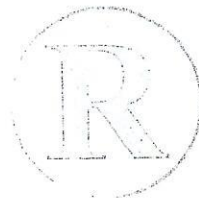
11. In respect of balance claims made in the petition, it is found that the various letters and also statement of account and the charts of the calculation furnished during the course of hearing fully support of claim. The petitioner has supported the claim as well as correctness of the documents through 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 has not filed any reply and has chosen not to contest the claim. It can be safely concluded that the respondent has implicitly admitted the claims. In fact, Annexure P-19 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. This annexure also discloses the dues against Mi Marathi.

12. The discussions made above show that the petition is not barred by law of limitation. No other legal infirmity affecting maintainability of the petition can be discerned from the materials on record. Hence, the amount claimed in the petition after deducting the differential amounts demanded due to price revision as discussed earlier, is allowed. For the purpose of clarity, it is indicated that only an amount of Rs. 2,06,71,728.00 is being allowed.

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 November 2017 (since after filing of the petition). The rate of interest allowed shall be payable by the respondent till date the decretal amount is paid to the petitioner. Since the respondent has not appeared and contested the petition, there shall be no order as to costs.

14. The decretal amount including the interest shall be payable by the respondent 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. The petition is allowed and disposed of accordingly.



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(S.K. Singh, J)  
Chairperson

/NC/