

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

**Dated: 9<sup>th</sup> August, 2021**

**BROADCASTING PETITION/615/2020**

Multireach Media Pvt Ltd	.....Petitioner
Versus	
Zee Entertainment Enterprises Ltd.	.....Respondent

Along with

**BROADCASTING PETITION/103/2019**

**With**

**M.A. Nos. 211, 162 and 228/2019**

**and**

**M.A.Nos.2, 51,52 and 58/2020**

Multi Reach Media Pvt Ltd	....Petitioner
Versus	
Zee Entertainment Enterprise Ltd	....Respondent

**For Petitioners**

Mr Vineet Bhagat, Advocate  
Mr Diggaj Pathak, Advocate,  
Ms Shweta Sharma, Advocate  
Mr Naved Ahmed, Advocate

**For Respondents**

Mr Kunal Tandon, Advocate for ZEEL  
Mr Rajeev Sharma, Sr Advocate with  
Mr Rajat Krishna, Advocate and  
Mr Prateek Katoch (Manager) For BECIL

**ORDER**

**By S.K. Singh, Chairperson** -The petitioner (Multireach Media Pvt Ltd.) preferred BP.No.615/2020 on 30.9.2020 against the notice of disconnection dated 14.9.2020 given by the respondent(ZEEL). In this notice an outstanding of Rs.3.99

crores was shown payable by the petitioner. This was the alleged dues till July, 2020. As against this in its letter / email dated 25.9.2020 by way of reply to the disconnection notice the petitioner disputed the demand on various grounds and as per the said reply the liability appeared to be only of Rs.1.26 crore till July, 2020. No dispute was raised against liability for August, 2020, so it would also be payable.

2. On 6.10.2020 the petition was admitted and after hearing learned counsel for both the parties and in the light of an order of this Tribunal dated 25.2.2020 passed in an earlier litigation between the parties preferred by the petitioner vide B.P.No.103 of 2019, an interim arrangement was made after noticing the stand of the parties on various issues / items of demand and counter-claim by the petitioner. It was noted that there was a serious dispute with regard to the debit notes for the period December, 2019 to April, 2020 amounting to Rs.1.51 crores (approx.). This Tribunal observed that till the matter is considered further on the basis of materials and pleadings, the above said amount of Rs.1.51 crores shall not be claimed by the petitioner. Against balance demand of appx. Rs.2.48 crores indicated in the notice, it was noted that some more adjustment in favour of the petitioner may be required in view of claims for incentives and promotional scheme and hence, the petitioner was directed to pay on account, an

amount of Rs.2 crores within a fixed time and on such payment the impugned notice of disconnection would not be given effect to until further orders.

**3.** Time for completion of pleadings was indicated along with observation to the respondent to take an early decision in respect of incentives claimed by the petitioner. Parties were required to interact for reconciliation of accounts and the current invoices including that for the month of August, 2020 were also directed to be paid by the petitioner.

**4.** An application bearing M.A.No.209 of 2020 preferred by the petitioner was dismissed with the observation that the Tribunal was not inclined to indulge in virtual review of an interim order passed on 6.10.2020. On 20.11.2020 it was noticed that the issue raised in this petition has a relation to the issue involved between the parties in the pending petition bearing B.P.No.103 of 2019. This Tribunal had permitted an audit by BECIL with a view to find out whether petitioner's system had been set right and was now compliant with Schedule III of the Interconnect Regulations framed by TRAI or not. The petitioner claims that it is entitled to relief from June, 2019 onwards in view of BECIL's report. Learned counsel for ZEEL sought permission to file a response / objection to the BECIL's

report. Permission was granted for filing objections and also a response to the same by the petitioner. The pleadings were completed.

5. On 2.2.2021 on behalf of Multireach Media it was submitted that the issues involved will require a detailed hearing and hence, the matter may be fixed for hearing on the relevant issues on a convenient date. Parties were permitted to file written notes of arguments. The issues of demand based on audit reports were the subject matter of hearing on 17.2.2021 when it was noticed that much will depend on the audit report of BECIL dated 5.6.2020 which was in respect of petitioner's system. The Tribunal observed that an authorized Expert from BECIL should render technical assistance in understanding the report and also the objections raised against the said report by the respondent which have been detailed in paragraph-6 of the additional affidavit of the respondent filed on 20.11.2020 in B.P.No.103 of 2019. Those objections in paragraph-6 onwards of the additional affidavit were made available to BECIL along with the petitioner's response to the said objections filed on 20.1.2021 in B.P.No.103 of 2019. BECIL was directed to communicate its written response to the objections etc. to both the parties. On 8.3.2021 BECIL's written comments on affidavit of the respondent was brought on record. BECIL was represented by its official, Mr. Prateek Katoch.

The respondent was given an opportunity to file further response to the point-wise written comments offered by BECIL and the matter was heard further on 23<sup>rd</sup>, 25<sup>th</sup>, 26<sup>th</sup> March, 2021 and on 6<sup>th</sup>, 8<sup>th</sup> and 9<sup>th</sup> April, 2021. On that date the hearing of parties in respect of requirements of making further interim arrangement, particularly in the light of audit report of BECIL, was concluded. That order notes that on behalf of BECIL, Mr. Prateek Katoch and learned senior counsel Mr. Rajeev Sharma rendered valuable help almost on all dates in addition to the assistance received from learned counsels for the parties. Order was reserved and the same is being delivered now.

6. As noted earlier, the main dispute is with regard to the debit notes for the period December, 2019 to April, 2020 amounting to Rs.1.51 crores. Petitioner - Multireach Media has challenged this demand in B.P.No.615 of 2020. But the dispute is persisting from an earlier period, being the subject matter of B.P.No.103 of 2019 that has also been filed by Multireach Media against a disconnection notice dated 18.4.2019 issued by the respondent ZEEL. The order passed in B.P.No.103 of 2019 on 24.1.2020 discloses the nature of dispute as well as the interim arrangement made in that case in respect of liabilities from February, 2019 to November, 2019. Initially, provisional bills were permitted to

be raised on the basis of subscriber reports of the petitioner but after the Audit Report of KPMG was brought on record, the stand of the petitioner that its system had become compliant with the technical requirements of the relevant Regulations after June, 2019 was not found acceptable, as appears from paragraph 5 of the order dated 24.1.2020, in view of several shortcomings found in the technical audits held by them. There had been no commercial audit by that date. Paragraph 7 of that order found the petitioner responsible for the lapses in its system and permitted the respondent to issue invoices for the months of February, 2019 to November, 2019 on the basis of a methodology decided in the order and such invoices had to be paid by the petitioner within a fixed time.

**7.** There is a controversy as to the intent of this Tribunal in respect of observation made in paragraph 8 of order dated 24.1.2020. In that paragraph the Tribunal observed that “So far as liability for the months after November, 2019 is concerned, the existing arrangement will continue and the petitioner will have to satisfy that it has taken care of the drawbacks in its system pointed out in the audit and the system is now reliable both technically as well as commercially.” According to the petitioner, after November, 2019 the interim arrangement existing prior to passing of order on 24.1.2020 would continue and the bills could

be raised only on the subscriber reports submitted by the petitioner. The respondent has taken the stand that the existing arrangement would mean only the arrangement whereunder revised invoices were permitted to be issued for the period February to November, 2019 as per directions and findings in the order of 24.1.2020.

**8.** The intent of the Tribunal could not have been to restore discarded arrangement based upon the subscriber reports of the petitioner when revision of invoices from February to November, 2019 was permitted on a fresh basis as per arrangement ordered on 24.1.2020. It is also clear that the responsibility was put on the petitioner to show that its system had now become reliable both technically as well as commercially i.e., after November, 2019. To enable the petitioner to do so, its prayer for an audit by BECIL was considered and in paragraph 9 of that order this Tribunal directed that BECIL shall hold and complete a comprehensive audit at an early date preferably within two weeks.

**9.** This Tribunal on 24.2.2020 rejected R.A.No.2/2020 preferred by the petitioner against the order of 24.1.2020. The petitioner wanted that the payments as per order dated 24.1.2020 should be treated as payments “on account” subject to any error in the claim of the respondent and subject to the

outcome of comprehensive audit by BECIL as ordered by this Tribunal on 24.1.2020. This Tribunal found the contentions of the petitioner to be meritless.

The last two paragraphs of that order are useful and are extracted herein below:

“In the fact of the case, the aforesaid contentions are found to be meritless. The system of the applicant/petitioner has already been subjected to audit in which substantial non-compliance with Regulations has been noted. The applicant is under a wrong impression that those audits are subject to further audit by BECIL as per orders of this Tribunal. The audit by BECIL to be held as per orders of this Tribunal, has a definite purpose to find out the exact period since when the petitioner’s system can be treated to be totally compliant with the Regulations and, therefore, its reports submitted to the broadcasters may safely be relied upon for the purpose of raising invoices. The interim arrangement of calculating the dues on estimation like that by a best judgment assessment cannot be continued indefinitely. If, in case, BECIL’s comprehensive audit reveals some facts favourable to the petitioner, how far that will affect the earlier transactions may be required to be seen in future if the petitioner feels the necessity of moving this Tribunal on the basis of BECIL’s report.

However, the proceeding held so far and orders passed on the basis of audit already held and other relevant materials for which sufficient opportunity was given to the parties, cannot be reviewed only on the ground that there may be some errors in the accounts. Such errors are always subject to reconciliation and can be a subject matter of appropriate petition. With this clarification, the

Review Application is rejected.”

**10.** Earlier orders passed in B.P.No.103 of 2019 on 24.1.2020 and 24.2.2020 are not interim in nature and have attained finality. The inter se rights between the parties stands concluded at least till November, 2019. Interim arrangement of calculating the dues on estimation like that by a best judgment assessment had to continue even for the period after November, 2019 but that should not have been indefinite and therefore, this Tribunal directed and BECIL was entrusted with a comprehensive audit. The petitioner now has a limited right of showing that it is entitled to reliefs in respect of interim invoices / debit notes of December, 2019 onwards in the light of BECIL’s Audit Report dated 05.06.2020. For this purpose both the parties have been heard in detail.

**11.** Before considering the submissions in respect of BECIL’s Audit Report, certain basic facts and legal parameters must be kept in mind. In exercise of Statutory Powers under the Telecom Regulatory Authority of India (TRAI) Act, 1997, TRAI has made Regulation No.1 of 2017 bearing the title – The Telecommunication (Broadcasting and Cable) Services Interconnection (Addressable Systems) Regulations, 2017 (hereinafter referred to as the relevant

Regulations). These Regulations cover commercial and technical arrangements, among service providers for interconnection for broadcasting services relating to television provided through addressable systems within the territory of India. Both, broadcaster such as ZEEL and distributor of television channels (MSOs) like the petitioner are covered by the term “Service Provider”. Under relevant Regulations, Interconnection Agreement is mandatory and the revenue of the parties is materially dependent upon monthly subscription reports which are required to be in a prescribed format. Complete and accurate monthly subscription reports of channels and bouquets of pay channels must be supplied by every distributor of television channels to the broadcasters within a time schedule. Failure has adverse consequences. In the new regime, to ensure complete and accurate monthly subscription report, Audit has assumed greater significance. Both, subscription report and Audit are included in Chapter V. Regulation 15 deals with Audit. It is as follows:

“15. Audit – (1) Every distributor of television channels shall, once in a calendar year, cause audit of its subscriber management system, conditional access system and other related systems by an auditor to verify that the monthly subscription reports made available by the distributor to the broadcasters are complete, true and correct, and issue an audit report to this effect to each broadcaster with whom it has entered into an interconnection agreement:

Provided that the Authority may empanel auditors for the purpose of such audit and it shall be mandatory for every distributor of television channels to cause audit, under this sub-regulation, from anyone of such empanelled auditors:

Provided further that any variation, due to audit, resulting in less than zero point five per cent of the billed amount shall not require any revision of the invoices already issued and paid.

(2) In cases, where a broadcaster is not satisfied with the audit report received under sub-regulation (1) or, if in the opinion of the broadcaster the addressable system being used by the distributor does not meet requirements specified in the Schedule III, it shall be permissible to the broadcaster, after communicating the reasons in writing to the distributor, to audit the subscriber management system, conditional access system and other related systems of the distributor of television channels, not more than once a calendar year:

Provided that the Authority may empanel auditors for the purpose of such audit and it shall be mandatory for every distributor to cause audit, under this sub-regulation, from anyone of such empanelled auditors:

Provided further that if such audit reveals that additional amount is payable to the broadcaster, the distributor shall pay such amount, along with the interest at the rate specified by the broadcaster in the interconnection agreement, within ten days and if such amount including interest due for any period exceed the amount reported by the distributor to be due for such period by two percent or more, the distributor shall bear the audit expenses, and take necessary actions to avoid occurrence of such errors in the future:

Provided also that it shall be permissible to the broadcaster to disconnect signals of television channels, after giving written notice of three weeks to the distributor, if such audit reveals that

the addressable system being used by the distributor does not meet the requirements specified in the Schedule III.

(3) Every distributor of television channels shall offer necessary assistance to auditors so that audits can be completed in a time bound manner.”

**12.** It is clear from Regulation 15(1) that a responsibility rests on every distributor of television channels to cause Audit of its systems, once in every calendar year with the purpose to verify that the monthly subscription reports supplied to the broadcasters are complete, true and correct. The Auditor has to be one from the Panel of Auditors to be provided by TRAI. Any variation of 0.5 percent or more of the billed amount, if found due on account of Audit, will justify revision of the invoices already issued and paid.

**13.** As per Regulation 15(2) a broadcaster can also require an Audit if it is not satisfied with the Audit Report received under 15(1) and also in case the broadcaster is of the opinion that the addressable system of the distributor does not meet the requirements specified in Schedule III. Such Audit under 15(2) cannot be more than once in a calendar year and it must be by an empanelled Auditor. If additional amount becomes payable to the broadcaster on the basis of such Audit, the distributor has to pay the same along with interest at the

agreed rate. The broadcaster can disconnect signals after giving three weeks' notice, if Audit reveals that the system used by the distributor does not comply with the requirements of Schedule III. Distributors of channels have to render necessary assistance to Auditors so that Audits may be completed in a time bound manner.

**14.** Schedule III finds mention in Regulation 10 which requires a written Interconnection Agreement between the broadcaster and distributor of television channels. Regulation 10 (6) requires every distributor to ensure, before requesting signals of television channels from a broadcaster, that its addressable system meets the requirements specified in Schedule III. Regulation 10(7) touches the issue of Audit, hence it is useful to notice it carefully. It provides as follows:

“10. (7) If a broadcaster, before providing signals of television channels, is of the opinion that the addressable system, being used by the distributor for distribution of television channels, does not meet the requirements specified in the Schedule III, it may, without prejudice to the time limit specified in sub-regulation (2) of the regulation 3, cause audit of the addressable system of the distributor by M/s. Broadcast Engineering Consultants Page 17 of 110 India Limited, or any other auditor empanelled by the Authority for conducting such audit and provide a copy of the report prepared by the auditor to the distributor:

Provided that unless the configuration or the version of the addressable system of the distributor has been changed after issuance of the report by the auditor, the broadcaster, before providing signals of television channel shall not cause audit of the addressable system of the distributor if the addressable system of such distributor has been audited during the last one year by M/s. Broadcast Engineering Consultants India Limited, or any other auditor empanelled by the Authority and the distributor produces a copy of such report as a proof of conformance to the requirements specified in the Schedule III.

**15.** Regulatory provisions extracted from relevant Regulations of 2017 clearly convey the significance of monthly subscription reports and also of Audit which has to see / ensure that the reports are true and correct. If the system is compliant with Schedule III, any underreporting due to shortcomings in the system or due to sabotage or fraud should ordinarily be capable of detection by a competent and trained Auditor. The compliance with Schedule III alone cannot take care of possible fraudulent activities of a distributor of television channels. But the work of detection of past underreporting through various means will require an in-depth study of materials from the field and analysis of data extracted from the system. A comprehensive Audit is therefore understood to include both, technical as well as commercial Audit. Every Audit may not take care of commercial wrong doings because sometimes the Audit is confined to technical aspects only to find out compliance with Schedule III.

**16.** In the present matter the direction to BECIL for holding a comprehensive Audit at the earliest and preferably within two weeks, was given with some relevant observations vide paragraph 9 of order passed on 24.1.2020 in B.P. No. 103 of 2019. On the basis of that paragraph BECIL has claimed that it was required to hold an Audit for the period beginning February, 2019 till date. This inference of BECIL is not justified and not acceptable. A reading of the earlier paragraphs of that order discloses that in paragraph 3 the claim of the petitioner that its system is working in compliance with the technical requirements since at least June, 2019 has been recorded along with the rival stand of the respondent that it should be permitted to raise revised invoices for the period February, 2019 till November, 2019 on a reasonable basis. In paragraph 5 it is noted that the petitioner wanted subscriber numbers to be as per figures available in its system as soon as it may be found compliant with the technical requirements of the relevant Regulations in Audit conducted after June, 2019. In the last part of the paragraph 5 this Tribunal held that the “Stand of the petitioner is not acceptable at least for the months in question for several shortcomings found in the technical Audits held so far. There has been no commercial Audit so far.” Thereafter in paragraph 6 a methodology was found out as a practical way to work out the past liabilities from February, 2019 to November, 2019. Consequential directions for

raising invoices for the said period were made in paragraph 7. In paragraph 8 it was observed that the arrangement for the period post November, 2019 will continue as indicated by the Tribunal (existing arrangement) with a rider that the petitioner will have to satisfy that it has taken care of drawbacks in its system pointed out in the Audit and the system is 'now' (emphasis added) reliable both technically as well as commercially. Thereafter came the directions in paragraph 9 for a comprehensive audit by BECIL. It was not for a rescrutiny of shortcomings found in the earlier Audit and noted in the order of 24.01.2020.

**17.** The Audit Report of BECIL dated 5.6.2020 mentions under the heading 'Methodology' that Audit was carried out from 10.2.2019 to 17.2.2019. The figure '2019' is clearly a typographical error for the figure '2020'. The data extraction to reconcile between the unique active subscriber count between SMS and CAS was done on 14.2.2020 but the Subscription Audit Report discloses that the subscription Audit was carried out for the period February, 2019 to January, 2020. BECIL should not have held the Audit for the period prior to November, 2019 in view of this Tribunal having firmly determined the state of affairs then existing and determined the methodology for raising invoices till November, 2019. On account of orders passed by this Tribunal on various dates in

B.P.No.103 of 2019 the respondent got permission on 10.5.2019 to get the system of the petitioner audited by an independent Auditor such as KPMG or Ernst & Young. KPGM began the Audit on 22.5.2019 but even after 60 days, as noted in the order of 23.7.2019 the Auditor did not get the desired data (baseline data) from the petitioner. Petitioner, during Audit on 6.6.2019 split the SMS database in 13 data bases. Directions for supply of some informations for use in the Audit were made by this Tribunal on 13.8.2019 and even later in September, 2019 it was found that the petitioner was not extending cooperation to the Auditor for which the Auditor had made grievances. The Audit Report of KPMG was ultimately brought on record on 11.10.2019 and after considering response / objections to the said Audit Report, the parties were heard on several dates and then the order of 24.1.2020 was passed. The final Audit Report of KPMG dated 4.10.2019 records at the beginning in para 1(5) that the final report is based on information, documents and data made available until 25.9.2019. In summary (para 3, 3.1 and 3.2) various shortcomings even upto August and September, 2019 are recorded. Inter-alia, it is recorded that even the data provided by the petitioner on 2.9.2019 in compliance of Tribunal's order of 13.8.2019 does not have various critical data points from SMS, such as (i) activation and deactivation logs (ii) package modification logs from November,2018 to May, 2019 and

historical package compositions from November,2018 to May, 2019. It was concluded that due to such shortcomings, the count of subscribers and respondent's channels cannot be computed for the Audit period of November, 2018 to 24.5.2019. It was after considering the above and other relevant materials available in the earlier Audit Report of KPMG that the period till November, 2019 was accepted to be the period till which the system of the petitioner had not been rectified and made compliant with the Regulations. Such a claim was made by the petitioner but was not found acceptable.

**18.** In the aforesaid background and considering the provisions in Regulation 10 & 15 relating to holding of Audit, it is noticed that there is no concept of having a subsequent Audit at the instance of distributor of channels by way of an Appellate Audit so as to dilute or impeach earlier Audit held as per Regulations by an empanelled Auditor. No doubt, M/s. Broadcast Engineering Consultants India Limited (BECIL) finds a place in Regulation 10(7), but the scope of that provision is limited to a situation when a broadcaster is approached for providing signals of television channels and he is of the opinion that the system of the distributor is non-compliant with Schedule III. Then the broadcaster can cause Audit of addressable system of the distributor by BECIL or any other empanelled Auditor.

The result of such technical Audit is to be treated as valid for one year under the proviso of Regulation 10(7), unless the configuration or the version of the addressable system has been changed after the Audit Report. The use of BECIL is thus, primarily envisaged for a technical Audit to find out whether the distributor's system is compliant with Schedule III or not. In any case, even when this Tribunal has directed BECIL to hold a comprehensive Audit, the certificate of BECIL can be used for showing technical compliance with Schedule III for the subsequent period after November, 2019 only because a Court ordered Audit will have a limited role as indicated in the Court's / Tribunal's order. In this case there was no direction to BECIL to cover period of earlier Audit and treat the arrangement till November, 2019 as tentative and available for rescrutiny. Any Audit Report of later period cannot have any adverse affect on an earlier Audit Report unless the Tribunal or a Court specifically directs for rescrutiny for collecting Expert evidence through such additional or subsequent Audit when the earlier Audit report is impeached and the situation requires such a course of action because of serious issues arising on facts. There was no such order in this case and hence the Audit Report of BECIL is found acceptable only from December, 2019. If BECIL had any doubt, then before extending the Audit to

period prior to November, 2019, it ought to have sought guidance from the Tribunal which was not done.

**19.** The report of BECIL for post November, 2019 cannot be doubted for any good reason and its benefit is thus, found extendable from December, 2019. But in respect of earlier period, the materials on record including various charts supplied by BECIL itself during the course of arguments leave a lot of scope for doubting the report on commercial aspect. There is a lack of full analysis of the data and proper inferences have not been drawn for the past periods, particularly with regard to the integration of CAS and SMS as also evident from Notes and Charts filed by the respondent on 06.04.2021. Hence, the report of BECIL is found not acceptable for the period prior to December, 2019 on account of reasons indicated above in brief and due to finality of directions in the order passed by this Tribunal on 24.01.2020 and rejection of review petition.

**20.** As a result of findings given above in respect of Audit Report of BECIL and its acceptance only from December, 2019 onwards and in the light of clarification given in respect of scope of order dated 24.1.2020 and the meaning of the words – “Existing arrangement”, the parties are directed to ensure that the payments are made by the petitioner, for the period upto November, 2019 as per invoices

raised by the respondent in accordance with the directions contained in the order dated 24.1.2020.

**21.** For the period from December, 2019 onwards, monthly subscribers report of the petitioner shall be the basis for raising / revising the invoices for the concerned months. The respondent shall revise the Debit Notes / invoices for this period accordingly and shall issue revised invoices. The payments already made by the petitioner shall be adjusted against the revised invoices. In respect of balance dues, if any, the liability and rights of the parties shall be as per the revised invoices. Dues if any for the past period since December, 2019 shall be recalculated and paid on the basis of revised invoices expeditiously and preferably within one month.

**22.** The respondent cannot refuse to give incentives to the petitioner for the period from December, 2019 onwards whenever it is payable as per the agreement. This issue must be reworked on the basis of revised invoices in terms of this order, without undue delay preferably within two months.

**23.** This order virtually takes care of all the issues relevant at this stage. The parties shall act on the basis of this order till subsequent events alter the legal relationship and rights.

Post the matter under the same head on 22.10.2021 for deciding any relevant issue if left undecided.

**Sd/-**  
.....J  
**( S. K Singh )**  
**Chairperson**