

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

Dated 22nd October, 2021

Broadcasting Petition No.87 of 2021

ACN Digital Pvt. Ltd.

....Petitioner

Versus

ZEE Entertainment Ltd.

....Respondent

BEFORE:

HON'BLE MR. JUSTICE SHIVA KIRTI SINGH, CHAIRPERSON

Petitioner

: Mr. Rajneesh Chuni, Advocate

Respondent

: Mr. Kunal Tandon, Advocate
Mr. Shashank Shekhar, Advocate

ORDER

By S.K. Singh, Chairperson – Both the parties have been heard on the issue of an appropriate interim arrangement in respect of a demand of Rs.13.21 crores from the petitioner on account of an audit held at the instance of the respondent.

2. This petition was filed in January 2021 against disconnection notice dated 07.01.2021 issued by the respondent mainly for three reasons. At the initial stage, by the very first order passed on 28.01.2021, this Tribunal issued interim directions in respect of other reasons/issues and in respect of a major issue relating to demand of additional licence fee of Rs.13.21 crores, it was made clear that this demand will remain in abeyance but shall be reconsidered after the respondent files its reply. In that order it was noted that the impugned disconnection notice (**Annexure P-2**) indicates that the demand for additional licence fee of Rs.13.21 crores(approx.) is on account of facts emerging from the audit report of M/s Deloitte Touche Tohmatsu India LLP (Deloitte) in terms of Regulation 15(2) of the Interconnection Regulations. **Annexure P-2(colly.)** contains the said audit report in 42 pages.

3. The audit commenced on 21.10.2020 and the period of review was December 2018 till 6th November, 2020. **Annexure P-3(colly.)** shows that prior to

disconnection notice, on 22.12.2020 the respondent had issued a demand notice for additional subscription fee in terms of the audit whose report was shared with the petitioner on 29.12.2020. That letter also refers to auditor's reply to the comments received from the petitioner on 11th and 15th December, 2020 and all related communications from the respondent. The summary of discrepancies found by the audit and given in nutshell in the letter of 22.12.2020 are as follows:

- “1. Under report of subscribers due to un-disclosed network equipment and/or headend.
2. Inconsistencies in data received from the Gospell CAS
3. Inconsistencies in data received from the Reliable Soft SMS.
4. Variance noted between ground samples and data shared by you.
5. Variance in channel and bouquet wise subscriber count compared between CAS, SMS, Extracted Broadcaster Report and Submitted Broadcaster Report.
6. Difference in subscriber count noted between Conditional Access System and Subscriber Management System.
7. Difference in active subscriber count reconstructed using package activation-deactivation logs and the active subscriber count as per day wise subscriber reports extracted from CAS and SMS.
8. Non-Compliance of TRAI guidelines for all CAS, SMS and related digital addressable systems.”

4. It was indicated in **Annexure P-3** that additional demand of Licence Fees of Rs.13.21 crores was for the period February, 2019 to October, 2020 falling within the period of review. It was explained that no demand was made till January 2019 because that period was covered by an earlier Memorandum of Understanding between the parties. On the basis of the above discrepancies the calculations have been given at the end of letter dated 22.12.2020 (**Annexure P-3**) at Pg.100 of the brief. The total active subscribers in CAS based upon the audit is said to be 325293. This is as per point no.(10) of the audit report and also observation noted as point nos.(1) to (4). The Subscriber Base for at least channels of ZEE Family Pack SD found activated as per audit report's point no.(10) has been shown as 281866. That is the basis for finding the percentage of penetration of the channels to be 90%. The subscriber base of ZEE TV activated on *al la carte* basis was small, of only 11472. The net demand of Rs.13.21 crores exclusive of GST is shown to have been arrived after giving deductions of 20% distribution fee and the revenue already booked.

5. Petitioner desired for keeping the demand notice in abeyance pending report of an audit initiated by petitioner under Section 15(1) of the Interconnection Regulations 2017. On 20.01.2021 petitioner gave a pointwise reply to the stand of respondent in respect of discrepancies found in the audit and denied the findings of

the audit. According to petitioner, there was no under-reporting; there were no Gospell CAS data differences and the inconsistencies in data of Reliance Soft SMS needed to be checked further.

6. The reply of the respondent is exhaustive. After annexing the Subscription Agreement dated 25.07.2019 and extension letter of 29.01.2021, the respondent has also annexed its letter of 04.02.2020 wherein it was pointed out that a request for audit was made by the respondent through letter dated 25.04.2019 which elicited no positive response; the report of DPO caused audit as on 2019 was not shared and the respondent requested for an audit under Clause 15(2) of the Interconnection Regulations because it was of the opinion that petitioner's systems are not compliant to Schedule III of Interconnection Regulations. The auditors appointed by the respondent conducted audit on 21.10.2020 for the period December 2018 to 6th November 2020. The audit report was shared with parties on 09.12.2020. Respondent has explained that on the figure of subscribers found by the auditors and keeping in view the various discrepancies found, the impugned demand of Rs.13.21 crores (approx.) was made as being justified by the audit report. The large number of discrepancies found in the audit are summarized in the reply under (viii) heads at Pgs.245 to 250. The audit report also disclosed non-compliance with requirements of Schedule III of TRAI Regulations. In Para 10 of the reply the respondent has given details to support its stand that petitioner used

its obligation to hold yearly audit as a tool to cause unusual delay. The said audit under Regulation 15(1) was not completed in 2019 for reasons best known to the petitioner. Instead of December 2019 the report was withheld till January 2021. Permission to hold audit under Regulation 15(2) was given only after a disconnection notice dated 10.07.2020.

7. The allegations raised by the petitioner against the audit by M/s Deloitte have been answered by the respondent in Para 10 under (viii) heads and it has been asserted by the respondent that the audit was conducted in terms of the TRAI Audit Manual by a TRAI empanelled auditor. According to respondent all the allegations against the audit was an afterthought only to avoid the liability to pay the additional fee claimed by the respondent. The calculations and working out the impugned demand has been explained in Para 12 in the form of a table.

8. Having heard learned counsel for both the parties and on going through the relevant materials, at present stage only a *prima facie* finding is recorded that petitioner has at best raised some doubts as to the manner of calculating and arriving at the impugned demand of Rs.13.21 crores(approx.) which has been demanded as additional licence fee. On the basis of audit under Regulation 15(1) held at the instance of the petitioner, it is difficult to discredit the audit held under Regulation 15(2). At this stage it will not be feasible or proper to go through both

the audit reports and find out whether the differences can be reconciled or not or whether one will affect the other and to what extent. Such exercise may have to be undertaken at the stage of final hearing. But *prima facie* no reasons are found to discredit audit report submitted by M/s Deloitte. This report being a result of audit under Regulation 15(2) of the Interconnection Regulations can be made the basis for raising additional demands which should be reasonable and transparent. Audit for 2019 under Regulation 15(1) cannot over-ride the Audit held later under Regulation 15(2).

9. Considering the interest of justice and the aforesaid discussions and finding, the petitioner at this stage is granted limited relief of stay of only half of the additional licence fee which has been challenged in this petition. On the touchstone of fairness and probabilities, it will be in the equal interest of both the parties that 50% of the impugned demand of Rs.13.21 crores(approx.) shall be paid by the petitioner to the respondent within three months in three equal monthly installments. In case of failure to pay any of the installments the respondent would be entitled to give effect to the disconnection notice and take suitable steps in accordance with law to realize the unpaid installments. It goes without saying that the payment shall be on account and subject to final result of this petition.

10. Post the matter before the Registrar's Court on 23.11.2021 for passing necessary orders and directions to make the petition ready for hearing.

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

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