

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL

NEW DELHI

Dated 6th January 2023

Broadcasting Petition No. 17 of 2018

Union of India

...Petitioner

Vs.

Satish Sugars Ltd.

...Respondent

BEFORE:

HON'BLE MR. JUSTICE RAM KRISHNA GAUTAM, MEMBER

For Petitioner

:

Mr. Ankur Singh, Advocate

Mr. Abhijeet Singh, Advocate

For Respondent

:

Mr. Saurabh Agarwal, Advocate

Ms. Komal Mundhra, Advocate

JUDGMENT

1. This petition, under section 14 and 14 A of Telecom Regulatory Authority of India Act (TRAI) Act (hereinafter referred to as "the Act"), has been filed by the petitioner – Union of India through Secretary, Department of Space, Government of India, Antariksh Bhavan, Near New BEL Road, Bengaluru 560231,

Karnataka against Satish Sugars Limited with a prayer for an order / decree in favour of the Petitioner and against the Respondent for an amount of Rs. 77,64,431/- (Rupees Seventy seven lakh sixty four thousand four hundred and thirty one), in addition to applicable Foreign Exchange Variation Cost and interest, as well as pendente lite and future interest, till the time of realization of principal amount mentioned in prayer by the Petitioner at a rate of 18% per annum alongwith reliefs, which this Tribunal may deem fit and proper, in the facts and circumstances of the case.

2. In brief, the contention of the petitioner is that the petitioner is a service provider. An Agreement No. INSAT-Lease-4G-Ku Band-23-2010 dated 01.06.2010 and Agreement No. INSAT4A/C/TV/34A/2012 dated 01.04.2012, between the Petitioner and the Respondent, who is inter-alia, in the business of running and operating of a television channel, called 'SAMAYA TV', was entered in between and it was amended from time to time.

3. Under clause 9 of Exhibit B of Agreement No. ANTX-Lease-4G-Ku Band-23-2010 dated 01.06.2010, Antrix Corporation Ltd. ("Antrix") was appointed as the 'Contract Manager' and vested with all powers on behalf of the Claimant,

including initiation of legal proceedings. Agreement No. INSAT-Lease-4G-Ku Band-23-2010 dated 01.06.2010 was annexed as Annexure P-1 with the petition.

4. In the same way, under Article 25 of the Agreement No. INSAT4A/C/TV/34A/2012 dated 01.04.2012, Antrix was appointed as the 'Contract Administrator' and vested with all powers on behalf of the Claimant, including initiation of legal proceedings. Agreement No. INSAT4A/C/TV/34A/2012 dated 01.04.2012 was annexed as Annexure P-2 with the petition.

5. Shri M.S. Krishnan, Sr. Head (Legal) had been authorized by the Board of Directors of M/s Antrix Corporation Ltd. to take all necessary steps to institute the present proceedings before this Tribunal.

6. This Tribunal had jurisdiction to decide the present petition, under Section 14 of the Telecom Regulatory Authority of India Act, 1997, because TDSAT has been conferred with exclusive jurisdiction to decide in respect of disputes between :

(a) a licensee and licensor;

(b) two service providers; and

(c) a service provider and a group of consumers.

7. "Broadcasting services" have been included within the purview of the Tribunal's jurisdiction by S.O. 44(E) dt. 29.01.2004, issued by Ministry of Communication & IT (Department. of Telecommunications). As per the Telecommunication (Broadcasting & Cable Services) Interconnection Regulations 2004, 'Broadcasting Service' has been defined to mean "dissemination of any form of communication ... by transmission of electromagnetic waves through space ... intended to be received by the general public either directly or indirectly ...".

8. UOI - the Petitioner is a service provider and the Respondent being a broadcaster, is licensee and a service provider. Both the Petitioner and the Respondent are covered by the definition of a "service provider" in terms of Section 2 (j) of the Act. Further, the Respondent is a "licensee" within the meaning of section 2(1)(e) of the Act. The present dispute is wholly covered within the ambit of Section 14 of the Act and in view of the bar, contained in section 15 of the TRAI Act, as well as various decisions of this Tribunal, no other court or Tribunal is having jurisdiction to adjudicate the present dispute.

9. The Respondent requested the Petitioner (i.e. Department of Space) to provide transponder capacity on its satellite for the purpose of meeting its broadcasting requirements i.e. up-linking of its satellite television channel.

10. On 04.12.2008, the Petitioner and the Respondent entered into a "Pre-MIB Approval Reservation Agreement" No. INSAT-Lease-4G-Ku Band-[23]-2008, for reservation of 3 MHz capacity on INSAT 3B initially and thereafter, 4 MHz capacity on Petitioner's proposed INSAT 4G satellite, subject to availability of the said capacity. This "Pre-MIB Approval Reservation Agreement" was annexed as Annexure P-4 of the petition.

11. Pursuant to the Approval Reservation Agreement, the Petitioner and the Respondent entered into Agreement No. INSAT-Lease-4G-Ku Band-23-2010 dated 01.06.2010 for 2 MHz capacity on the NSS-12 satellite, operated by M/s SES World Skies, based on a back-to-back agreement between Antrix and SES World Skies, as per the terms and conditions specified therein. Agreement No. I INSAT-Lease-4G-Ku Band-23-2010 dated 01.06.2010 has already been annexed herewith as Annexure P-1 to the petition.

12. Under the Payment Schedule to the Agreement dated 01.06.2010 (Exhibit B), the Respondent was required to pay USD 36,667 per MHz per annum, apart from taxes and other charges. Further, the Respondent was required to deposit

Rs. 8,43,341/- being interest free security deposit, to be adjusted against the invoices of the last three months. Invoices were to be raised monthly in advance.

13. In addition to the above, the Petitioner was providing the Respondent with 1.5 MHz of C-Band capacity under Agreement No. INSAT-LEASE-4A-34-2006 dated 19.01.2006. The term of the said agreement was from 01.07.2007 to 30.06.2010. A renewal agreement was signed being Agreement No. INSAT-LEASE-4A-34A-2010 dated 12.05.2010 for renewal up to 30.06.2013 and this was annexed as Annexure P-6 of the petition.

14. This Agreement No. INSAT-LEASE-4A-34A-2010 dated 12.05.2010 at Annexure P-6 was superseded and replaced with Agreement No. INSAT4A/C/TV/34A/2012 dated 01.04.2012 (i.e. Annexure P-2) wherein, transponder capacity of 4.5 MHz was provided by the Petitioner to the Respondent on the petitioner's INSAT 4A satellite.

15. Under the payment schedule to the Agreement dated 01.04.2012 (Exhibit B to the Contract), the Respondent was liable to pay Rs. 75,00,000/- per annum (i.e. Rs. 6,25,000/- per month) for 4.5MHz of transponder capacity (calculation based on the contractual rate of Rs. 6,00,00,000/- per transponder i.e. 36 MHz of capacity per annum), apart from applicable taxes.

16. Further, the Respondent was also liable to deposit a 'caution deposit' of Rs. 18,75,000/- representing 25% of the annual charges for the transponder capacity, which was interest free, and refundable upon final reconciliation of accounts and remittance of all dues.

17. Invoices were to be raised in advance, payable on quarterly basis. In case of default or delayed payment, interest was chargeable at 3% over and above the Prime Lending Rate (PLR) of State Bank of India.

18. Under Article 8(c), the Petitioner was authorized to revise the prices, and the Respondent agreed to abide by the revised charges, as and when the same became applicable.

19. Agreement dated 01.06.2010 (2 MHz on NSS-12 satellite) was initially valid upto 28.02.2013 but by Amendment No. 1 dated 01.03.2013, it was extended till 31.03.2014. Thereafter, the Respondent continued to utilize the services of the Petitioner, even though it did not formally sign any further amendments for extension of the Agreement dated 01.06.2010 beyond 31.03.2014, despite such amendments being sent to it for execution. Copy of Amendment No. 1 dated 01.03.2013 was Annexure P-7 to the petition.

20. Agreement dated 01.04.2012 (4.5 MHz on INSAT 4A satellite) was initially valid till 31.03.2013. But vide amendment No. 1 dated 01.04.2013, the said

Agreement was extended till 31.03.2014. Thereafter, the Respondent continued to utilize the services of the Petitioner, even though it did not formally sign any further amendments for extension of the Agreement dated 1.04.2012 beyond 31.03.2014, despite such amendments being sent to it for execution. This Amendment No. 1 dated 01.04.2013 was Annexure P-8 to the petition.

21. Although the Respondent was availing the services of the Petitioner, and was required to make payments in advance in accordance with the Agreements, it failed to make regular payment for charges, payable for use of transponder capacity on the NSS-12 and INSAT 4A satellites. As on 16.07.2012, the dues of the Respondent were to the tune of Rs. 84,07,768/-. A true copy of letter of demand of this amount dated 16.07.2012, sent by Antrix, was annexed as Annexure P-9 to the petition. A reminder was issued on 15.04.2013 for payment of long pending outstanding dues to the tune of Rs. 1,52,62,926/-, which was Annexure P-10. On 09.09.2014, the dues of the Respondent raised to Rs. 3,73,02,457/-. A copy of letter dated 09.09.2014, sent by Antrix to the Respondent, was Annexure P-11 to the petition.

22. On 19.01.2015, the Respondent confirmed its intention to continue to avail services on the NSS-12 satellite with a lock-in period of three years. A true copy of signed request for extension of Ku Band capacity on NSS-12 dated 19.01.2015 was annexed as Annexure P-12. Thereafter, the Petitioner made

some part payments towards outstanding dues i.e. approximately Rs. 50 lakh was paid in the month of December 2014, Rs. 2 crores in mid-January 2015 and Rs. 80 lakhs in end-January 2015. Hence, payment of outstanding dues came down to Rs. 21,06,750/- for INSAT-4A satellite and Rs. 39,71,522/- for NSS-12 satellite, as on 10.03.2015, for which, a letter dated 11.03.2015 was sent by Antrix to the Respondent, which was Annexure P-13 (colly) to the petition.

23. The Respondent once again began to default and failed to make payments towards space segment charges to the Petitioner. On 23.04.2015, a letter was written by the Respondent, acknowledging its liability to the tune of Rs. 60,78,272/-, with a prayer for time, for making the payment till 30.4.2015. This letter dated 23.04.2015, sent by the Respondent to Antrix, was annexed as Annexure P-14 to the petition.

24. On 18.05.2015, Antrix wrote an email to the Respondent communicating the position of outstanding dues. On 19.05.2015, it was replied by the Respondent with a scanned copy of alleged letter dated 05.05.2015, stated to be written for disconnection/termination of services. These two emails were Annexure P-15.

25. These letters, dated 30.10.2014 or 5.5.2015, were never received by the Petitioner. In both of those letters, there have been no denial of liability. Rather,

inability to clear the dues was expressed as a reason for seeking termination. These letters dated 30.10.2014 were never issued nor received by the petitioner. It was merely a fabricated and forged one, to back-date the Respondent's request for disconnection. Again the Respondent, reiterating its request in letter dated 24.06.2015 for termination of services, for the first time mentioned that one Shri Jagdish Totad, who had been corresponding on behalf of the Respondent, was no longer in the services of the Respondent and was not authorized to communicate on behalf of the Respondent. This letter was Annexure P-17 to the petition.

26. Considering all these facts and circumstances, and non-payment of dues, Agreements dated 01.06.2010 as well as 01.04.2012 were got terminated by the petitioner with effect from 15.07.2015. Even though services provided to the respondent were disconnected w.e.f. 15.7.2015, the respondent continued to be in arrears in respect of dues already accrued till above date. Hence, demand letters dated 21.09.2015, 02.06.2016 and 29.06.2016 were sent by Antrix to the Respondent. True copies of these letters were annexed as Annexure P-18 (colly).

27. On 30.09.2016, in a meeting held in between the petitioner and one Shri Sachin Narayan, Director of M/s Hassan Hotels Pvt. Ltd, the erstwhile director of Suvarna Karnataka Broadcasting Ltd, a company, which was in the process of getting demerged from the Respondent company, Shri Sachin Narayan assured

the Petitioner for making persuasion to the Respondent, for clearing all its dues.

The minutes of meeting dated 30.09.2016 was Annexure P-19 to petition.

28. In response to letter dated 29.06.2016, a legal notice for and on behalf of respondent, with regard to outstanding dues of Rs. 1,02,41,999/- dated 17.10.2016 through its Advocate was received by the petitioner and the same was Annexure P-20 to petition.

29. M/s Hassan Hotels Pvt. Ltd, for and on behalf of the Respondent, made a payment of Rs. 26,44,000/- against dues on 03.11.2016. But again there was failure to make the payment of rest of the amount by the Respondent. Although, the Respondent had never disputed its liability and obligation towards the Petitioner, rather, acknowledged the same, but failed to honour its legal obligations and making payments towards outstanding dues to the Petitioner, for the services provided by the petitioner to the Respondent.

30. Piece-meal payments were made by the Respondent from time to time, and they have been given due credit in the ledger account maintained by Antrix. The security deposit/caution money, given by the Respondent to the tune of Rs. 19,14,442/-, has been appropriated and adjusted towards the outstanding liabilities.

31. Although a Writ Petition (W.P. (C) 201 of 2017 (GM-RES)), was filed by Respondent in the Hon'ble High Court of Karnataka, inter-alia, seeking quashing of letter dated 29.06.2016 and issuance of Writ of Mandamus directing the Respondent so as not to extend the services of space segment capacity for its TV channel 'SAMAYA', wherein notice had been issued and the same has yet not been decided, and is still pending.

32. The Respondent is liable to make payment of space segment charges for use of transponders on the Petitioner's INSAT-4A satellite as well as for the services provided in respect of the NSS-12 satellite. Under the Agreements dated 01.06.2010 and 01.04.2012, the Respondent is liable to pay charges in terms of Exhibit B to the Agreement. But it failed to make its obligations fulfilled, causing this cause of action.

33. As per Article 7(d) of the Agreement dated 01.06.2012 and Article 10(e) of the Agreement dated 01.04.2012, the rate of interest, in case of delayed payment was 3% above to the 'Prime Lending Rate' of SBI and for remedial interest it ought to be 18% p.a.

34. The liability was never disputed. Rather it was acknowledged. Hence, in terms of section 18 of the Limitation Act 1963, this petition is under limitation.

Hence, this Petition with above prayers.

35. In the written statement, a preliminary objection, with regard to maintainability of this petition, was raised with this fact that matter under lis is one and common with the matter for adjudication in Writ Petition, WP(C) No. 201 of 2017 (GM-RES), which is pending before the Hon'ble High Court of Karnataka, at Bengaluru, with the prayer to quash the demand raised by way of letter dated 29.06.2016, issued by M/s Antrix Corporation. The Petitioner knowingly, after receiving notice in the above writ petition, has filed this Broadcasting Petition for the same cause of action, which is not maintainable.

36. The Petitioner, in a wholly unilateral and arbitrary manner, had illegally extended the services to the Respondent, despite the expiry of the Agreements and letters requesting termination. The Respondent, vide letter dated 30.10.2014, addressed to 'The Program Director, INSAT, New BEL Road, Bangalore', had requested the Petitioner to terminate the services under both agreements, w.e.f. 01.12.2014. Despite due service & acknowledgement of the letter dated 30.10.2014, the Petitioner, willingly, attempted to suppress the contents of the said letter and had claimed non-receipt of the same.

37. As per the Agreements dated 01.06.2010 and 01.04.2012, the Petitioner was required to raise invoices in advance for the services provided, subsequent to which, the payments were to be made by the Respondent, but it failed to carry out its obligations.

38. The Respondent, vide its letter dated 30.10.2014, informed the Petitioner of its inability to continue to make payments to the Petitioner, and clearly stated its wish to terminate the services under Agreements dated 01.06.2010 and 01.04.2012. Despite due receipt of the same, the Petitioner completely ignored the request of the Respondent, and illegally sought to extend the Agreements.

39. Mr. Jagdish Totad was not employed by the Respondent Company, and the said request by him on 19.1.2015, was made un-authorizedly, without seeking approval from the Respondent company. At the relevant point of time, Mr. Jagdish Totad did not have authority to enter into any communication, so as to bind the respondent company. Vide letter dated 15.05.2015 (Annexure P-16 to the petition), the Respondent had informed the Petitioner that certain persons, claiming to be the representatives of the Respondent company, had been approaching the Petitioner, and that the Petitioner should not accept any representation made by such person, who is not duly authorized by the Respondent company. The Respondent was not liable to pay any further dues or payments to the Petitioner, beyond the termination of both of those agreements. Rather, the Respondent is only liable for the dues arising out of the period, when the Agreements were in force.

40. Vide letter dated 05.05.2015, the Respondent was merely reiterating the request made by it in its letter dated 30.10.2014, but termination was not there. The letter dated 30.10.2014 was duly served upon the Petitioner.

41. Both of the Agreements were terminated by the petitioner only on 15.7.2015. The levy of dues for the period from 01.12.2014 to 15.07.2015 is wholly illegal and contrary to law, as the Respondent had already requested termination of the Agreements from 01.12.2014, in case of its inability to pay the dues by 30.11.2014. Hence, the said demands for the months of January-March, 2015, is wholly illegal and arbitrary.

42. In Replication /rejoinder, the same reiteration of the contents of the petition and denial of all the contents of the reply / Written Statement was made.

43. On the basis of the pleadings of both the sides, Registrar's Court of this Tribunal, vide order dated 31st July 2018, framed the following issues : -

“After hearing Ld. Counsel for the two sides, following issues are framed in agreement of the two counsel:

- 1) Whether the present petition is maintainable, in view of the writ petition No.201 of 2017 (GM-RES) being pending before the Hon'ble High court of Karnataka at Bengaluru, involving the same issue/dispute?

- 2) Whether the present petition is maintainable in the light of the Arbitration clauses in the Agreements dated 12.5.2010 and 1.6.2010?
- 3) Whether the petitioner is entitled for an amount alongwith applicable foreign exchange variation rates/cost, if any, with interest as claimed in the petition?
- 4) Whether the agreements between the petitioner and the respondent dated 01.06.2010 and 01.04.2012 stood terminated in the light of respondent's communication dated 30.10.2014? If so, the effective date of such termination?"

44. In evidence, petitioner filed the testimony of its witness Smt. Sonali Nanda, by way of its affidavit and respondent filed evidence of Mr. Siddharth Wadennavar, by way of affidavit.

45. Heard learned counsel for both the sides and gone through the materials placed on record.

46. While hearing, an order dated 4.11.2022 of this Tribunal was passed, which is as below :

"Heard learned counsel for both sides at length. Learned counsel for respondent vehemently argued that dues and interest upto 31.3.2014 is with no dispute. Payment made as 'part payment' with regard to above period was shown in the statement by petitioner. But it was adjusted towards penal interest etc. Hence, a calculation of the amount due as well

as towards interest is to be got obtained by a meticulous calculation and same is to be brought on record before this Tribunal for coming to a correct arithmetic calculation.

The main dispute is with regard to period from 1.4.2014 to 15.7.2015. Although the minutes of meeting filed on record is with this admission that respondent is intending and ready to make the payment of principal amount and the interest, which has been claimed as penal interest, is to be dispensed with, though the extension of agreement is being disputed and the agreement of year 2010 was with no mention of the person who had requested for extension of period. A communication was made with above authority, which ought to be made with authority, given as customer in the above agreement. Even then, respondent is ready for making payment.

As the amount being admitted to be paid voluntarily, and interest is to be specified after calculation by the respondent. Let calculation of amount of dues towards principal for undisputed period as well as for disputed period be got filed by respondent. The interest intended to be paid be also calculated and given with specific mention of interest @ 9% p.a, which have oftenly been awarded by this Tribunal in previously decided cases.

This calculation of amount is also to be served to learned counsel for petitioner for its checking and verification alongwith objection, if any, by UOI.

This calculation of amount may also be filed with calculation sheet, said to be dues towards principal and interest as per UOI.

Both sides are directed to file positively it by 22.11.2022.

List the matter under the same head on above date."

47. In compliance, same affidavit, by both sides, have been filed.

48. **Issue No. 1**

Para 4 of the petition is with regard to the jurisdiction of this Tribunal for the petition in hand, as given under the TRAI Act, 1997 and in para-wise reply, the said contention has not been replied. Rather filing of above WP before Hon'ble Karnataka High Court and pendency of the same has been pleaded. Whereas section 14 of the TRAI Act, provides as under :

"14. Establishment of Appellate Tribunal - The Central Government shall, by notification, establish an Appellate Tribunal to be known as the Telecom Disputes Settlement and Appellate Tribunal to -

(a) adjudicate any dispute –

- (i) between a licensor and a licensee;
- (ii) between two or more service providers;
- (iii) between a service provider and a group of consumer;

Provided that nothing in this clause shall apply in respect of matters relating to –

- (A) the monopolistic trade practice, restrictive trade practice and unfair trade practice which are subject to the jurisdiction of the Monopolies and Restrictive

Trade Practices Commission established under sub-section (1) of section 5 of the Monopolies and Restrictive Trade Practices Act, 1969;

(B) the complaint of an individual consumer maintainable before a Consumer Disputes Redressal Forum or a Consumer Disputes Redressal Commission or the National Consumer Redressal Commission established under section 9 of the Consumer Protection Act, 1986 (68 of 1986)

(C) dispute between telegraph authority and any other person referred to in sub-section (1) of section 7B of the Indian Telegraph Act, 1885; (13 of 1885)

(b) hear and dispose of appeal against any direction, decision or order of the Authority under this Act.

(c) exercise jurisdiction, powers and authority conferred on –

- (i) the Appellate Tribunal under the Information Technology Qualifications, Act, 2000 (21 of 2000); and
- (ii) the Appellate Tribunal under the Airports Economic Regulatory Authority of India Act, 2008 (27 of 2008)

14A. Application for settlement of disputes and appeals to Appellate Tribunal -

- (1) The Central Government or a State Government or a local authority or any person may make an application to the Appellate Tribunal for adjudication of any dispute referred to in clause (a) of section 14.
- (2) The Central Government or a State Government or a local authority or any person aggrieved by any direction, decision or order made by the Authority may prefer an appeal to the Appellate Tribunal.

- (3) Every appeal under sub-section (2) shall be preferred within a period of thirty days from the date on which a copy of the direction or order or decision made by the Authority is received by the Central Government or the State Government or the local authority or the aggrieved person and it shall be in such form, verified in such manner and be accompanied by such fee as may be prescribed:

Provided that the Appellate Tribunal may entertain any appeal after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing it within that period.

- (4) On receipt of an application under sub-section (1) or an appeal under subsection (2), the Appellate Tribunal may, after giving the parties to the dispute or the appeal an opportunity of being heard, pass such orders thereon as it thinks fit.
- (5) The Appellate Tribunal shall send a copy of every order made by it to the parties to the dispute or the appeal and to the Authority, as the case may be.
- (6) The application made under sub-section (1) or the appeal preferred under sub-section (2) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the application or appeal finally within ninety days from the date of receipt of application or appeal, as the case may be:

Provided that where any such application or appeal could not be disposed of within the said period of ninety days, the Appellate Tribunal shall record its reasons in writing for not disposing of the application or appeal within that period.

- (7) The Appellate Tribunal may, for the purpose of examining the legality or propriety or correctness of any dispute made in any application

under sub-section (1) or of any direction or order or decision of the Authority referred to in the appeal preferred under sub-section (2), on its own motion or otherwise, call for the records relevant to disposing of such application or appeal and make such orders as it thinks fit.”

49. Para 5 of the pleadings provides for the definition of ‘Broadcasting Services’ with specific mention that both parties are service providers and respondent is licensee, coming within the purview of disputes in between falling under the category of section 14 of TRAI Act, written as above.

50. Para 7 of the petition provides with regard to bar, contained under section 15 of the TRAI Act “no other Court or Tribunal has jurisdiction to adjudicate the present dispute” and in light of that, present petition has been filed. This paragraph has been denied in reply but nothing has been said with regard to bar. Rather, the denial is only on the basis of pendency of above Writ Petition.

51. In the arguments also, no such objection with regard to bar or with regard to capacity has been taken. More so, in reply its liability till 30.11.2014 has been admitted in para 29 of the written statement, written as below:

“ 29. The contents of para 28 are denied. The request was made as far back as 30.10.2014, however, despite the same the Agreements were only terminated by the Petitioner on 15.07.2015. The levy of dues for the period

from 01.12.2014 to 15.07.2015 is wholly illegal and contrary to law, as the Respondent had requested termination of the Agreements from 01.12.2014, if it was unavailable to pay the dues by 30.11.2014. “

Meaning thereby, the liability till 30.11.2014 is being admitted. Hence, this petition is for dues accrued till 15.7.2015, wherein the previous dues are also claimed, for which there is no denial. The dispute is with regard to period from 1.12.2014 to 15.7.2015 only.

52. Hence, the very denial with regard to maintainability of this broadcasting petition is not with regard to jurisdiction of this Tribunal. Rather the pendency of above Writ Petition before Hon'ble Karnataka High Court at Bengaluru. Whereas specific bar to any Court or Tribunal with regard to disposal of disputes of various categories given under section 14. It is there only in this special Act. However, the Writ jurisdiction which is a prerogative jurisdiction, given to Hon'ble High Courts under Article 226 / 227 of the Constitution of India as well as under Article 32 to the Hon'ble Apex Court of India of the Writ Jurisdiction and admittedly, in the present case in hand, there is no stay order of above Hon'ble High Court of Karnataka in the above previously instituted Writ Petition. The fact sheet in above Writ Petition, as is perceivable from the petition filed, as annexure to this petition, is apparent that the facts mentioned therein are entirely against the fact admitted in this petition. The agreement dated 1.6.2010

(Annexure P-1) and agreement dated 1.4.2012 (Annexure P-2) were admittedly, extended by mere agreement till 31.3.2014 and for this Amendment No. 1 dated 1.3.2013, was Annexure P-7 and Amendment No. 1 dated 1.4.2013 with regard to agreement dated 1.4.2012, was Annexure P-8.

Meaning thereby, both of these two agreements were got extended till 31.3.2014, whereas in Writ Petition, this has wrongly been written before Hon'ble Karnataka High Court that both arguments were never extended.

53. Para 2 in page No. 153 to reply of respondent, reads as below :

"2. The Petitioner after expiry of the lease period has not requested with the Respondent either orally or in writing so as to extend the lease period for providing its space segment for its TV Channel SAMAYA. However, the Respondent unilaterally is extending the services without setting out the terms and conditions and also fixing charges payable by the Petitioner for availing services provided by Respondent."

54. It is blatantly lie. Vide amendment No. 1 of both of the agreements written as above, annexed with this petition, there is agreed fact that both of the agreements dated 1.6.2010 as well as 1.4.2012 were extended till 31.3.2014. Hence, the very statement before the Writ Court is against the fact on record. Hence, what was said before Hon'ble High Court of Karnataka in above Writ

Petition is entirely against the fact, what has been admitted before this Tribunal. Now, it is upto the Hon'ble High Court to consider as to whether initiation of proceeding should be taken for this perjury or not. But for this Tribunal, it is apparent that in above Writ Petition, adjudication with regard to present fact of case in hand, is not pending. Hence, as there is no stay order and no bar of jurisdiction of this Tribunal nor any legal infirmity in proceeding with this adjudication is there, the very contention of non – maintainability of this BP is of no force.

Hence, this issue is being decided negatively.

55. **Issue No. 2**

The issue of maintainability of petitions for dispute between service providers under TRAI Act in light of Arbitration clauses has been settled by this Tribunal in judgement dated 06.01.2005 in the matter of Aircel Digilink India Ltd. v. Union of India, (2005) 3 CompLJ 461 (TDSAT). It was held that the special law, i.e., TRAI Act will prevail over the general law, i.e., the Arbitration and Conciliation Act, 1996 and therefore, this Tribunal has the exclusive jurisdiction to adjudicate upon all the disputes that arise between the parties and are covered under the TRAI Act.

56. This has further been held by this Tribunal in its order dated 24.04.2018 in Digicable Network India Ltd. v. Disha Media Pvt. Ltd., BP No. 548 of 2017 that amendment to Section 8(1) of the Arbitration Act, 1996 will in no way affect the exclusive and special jurisdiction of this Hon'ble Tribunal and does not create any obligation to refer the parties to arbitration in terms of any arbitration agreement that may exist between the parties.

57. In BP No. 577 of 2017 (Union of India v. Monica Broadcasting), this Tribunal vide its order dated 02.05.2018 as well as in the matter Union of India v. Rahul Springs Pvt. Ltd., BP No.477 of 2018 dated 06.02.2019, after referring to the aforesaid judgements and orders, had observed that this issue had already been settled by this Hon'ble Tribunal.

58. Hence, the bar with regard to Arbitration clause is of no avail. More so, learned counsel for the respondent, while making arguments, had conceded over this point that this point had already been settled by judgment of this Tribunal as well as by Apex Court and Arbitration clause is of no use in cases before TDSAT.

Accordingly, this issue is being decided negatively.

59. **Burden of proof:**

Hon'ble Apex Court in Anil Rishi Vs. Gurbaksh Singh – AIR 2006 SC 1971 has propounded that onus to prove a fact is on the person who asserts it. Under Section 102 of The Indian Evidence Act, initial onus is always on the plaintiff to prove his case and if he discharges, the onus shifts to defendant. It has further been propounded in Premlata Vs. Arhant Kumar Jain- AIR 1976 SC 626 that where both parties have already produced whatever evidence they had, the question of burden of proof ceases to have any importance. But while appreciating the question of burden of proof and misplacing the burden of proof on a particular party and recording of findings in a particular way will definitely vitiate the judgment. The old principle propounded by Privy Council in Lakshman Vs. Venkateswarloo – AIR 1949 PC 278 still holds good that burden of proof on the pleadings never shifts, it always remains constant. Factually proving of a case in his favour is cost upon plaintiff when he fulfils, onus shifts over defendants to adduce rebutting evidence to meet the case made out by plaintiff. Onus may again shift to plaintiff. Hon'ble Apex Court in State of J& K Vs Hindustan Forest Co. (2006) 12 SCC 198 has propounded that the plaintiff cannot obviously take advantage of the weakness of defendant. The plaintiff must stand upon evidence adduced by him. Though unlike a criminal case, in civil cases there is no mandate for proving fact beyond reasonable doubt, but even preponderance

of probabilities may serve as a good basis of decision, as was propounded in M Krishnan Vs Vijay Singh- 2001 CrLJ 4705. Hon'ble Apex Court in Raghvamma Vs. A Cherry Chamma – AIR 1964 SC 136 has propounded that burden and onus of proof are two different things. Burden of proof lies upon a person who has to prove the facts and it never shifts. Onus of proof shifts. Such shifting of onus is a continuous process in evaluation of evidence.

60. **Issue No. 4**

In Civil cases, preponderance of probabilities is the touchstone to adjudicate the fact pleaded, if denied, is to be proved by party, who pleads it.

61. In written submission, execution of both of the agreements dated 1.6.2010 as well as 1.4.2012, liabilities and rights written in between, availing both of the services provided by the petitioner, availed by the respondent, the statement of accounts/ledger maintained by the petitioner showing the alleged payments made by the respondent, are undisputed fact.

62. The operation and execution of both of agreements till 31.3.2014 are undisputed fact. Liabilities with regard to above period is not being disputed. The main dispute narrowed down is to what was date of termination of both of agreements? Admittedly, both of the agreements were terminated on

15.7.2015, whereas it ought to be terminated on 1.12.2014, when a request was said to be made by the respondent for terminating the same since 1.12.2014, in case of non-payment of entire remaining dues. The liability upto 1.12.2014 is not being disputed.

63. In para 29 of the written statement, written as above, the dispute has been narrowed down that "The levy of dues for the period from 01.12.2014 to 15.07.2015 is wholly illegal and contrary to law, as the Respondent had requested termination of the Agreements from 01.12.2014, if it was unable to pay the dues by 30.11.2014."

64. Meaning thereby, this letter, by which a request was made, for termination of the agreement from 1.12.2014, was a conditional letter. It was not a clear cut communication for making termination of the agreement from 1.12.2014. Rather it was a contingent on a condition of failure to making of whole of the payment. Whereas, in between, piece-meal payment had been made and a subsequent letter is being said to have been written to the petitioner for making termination of both of the contracts. Whereas these letters have been specifically denied by the petitioner and the burden of proof of issuing these letters and received by the petitioner was there upon the respondent. But no specific burden could be borne by the respondent. More so, it has been admitted in the subsequent letter that Mr. Jagdish Totad, who was

making the request of amendment of the contract is no more employee of the respondent company and he was having no authority to make the request for and on behalf of respondent company. Whereas while entering into an agreement and the said agreement being in operation i.e. admittedly till 30.11.2014, Mr. Jagdish Totad was with authority to act for and on behalf of respondent company. Agreement dated 1.6.2010 was valid till 28.2.2013 and by amendment validity was extended upto 31.3.2014. Thereafter, respondent company utilised the services of the petitioner despite non-signing of any further agreement for extension of the agreement. Whereas letter sent by the respondent to the petitioner by letter dated 30.10.2014 could not be treated as request for termination of agreement, because of being a conditional request, based on occurrence of future event of contingency i.e. termination of contract w.e.f. 1.12.2014 was for failure to clear all dues accumulated since April 2012 to the above date till 31.11.2014.

65. Clause 12 of the agreement dated 1.6.2010 and 1.4.2012 mandated a condition precedent of issue of three months' notice for and on behalf of customer for termination of agreement by the respondent. Whereas in agreement dated 1.6.2010, clause 5 is of this effect that customer will have no option to terminate during lock-in period without specified cause, written in agreement itself. Once, Mr. Jagdish Totad, employee and authorised person of

respondent company, had made a written request on 19.1.2015 for continuing and availing of the service on the NSS-12 satellite with a lock-in period of three years, as was written in letter dated 19.1.2015 at page no. 103 of the petition. Mr. Jagdish Totad was a name written to be competent person to make correspondences for and on behalf of respondent under Article 21 of the agreement of the year 2012. Hence, any change or non-existence of Mr. Jagdish Totad, as authority of the respondent company, ought to be communicated to the petitioner, well in advance, by the respondent company. Otherwise it was an internal management in its company's management making company liable for act of Mr. Jagdish Totad and any 3rd person acted in good faith for and on its behalf.

66. Doctrine of Indoor Management as was propounded by Hon'ble Apex Court in MRF Ltd v. Manohar Parrikar, (2010) 11 SCC 374, Para 111, will become effective. More so, availing of services till 15.7.2015 is not disputed and termination on 15.7.2015 is admitted one. The communication of 30.10.2014 could not be proved by the respondent. Hence, both the contracts remained valid till 15.7.2015. Hence, liability till 15.7.2015, is fully established.

This issue is being decided accordingly in favour of the petitioner-UOI.

67. **Issue No. 3**

The agreement at Annexure P-1 and Annexure P-2 are with specific mention of this fact that “both the parties agree that timely payment is essence of the contract. DOS shall have the right to terminate the contract if customer has failed to meet its payment obligations, in spite of two reminders. The judgment of DOS shall be final regarding the decision to terminate. Such termination shall not absolve customer from the liabilities already incurred to pay under the Agreement.”

68. Timely payment is essence of contract. Pleadings as well as statement of account reveals that no schedule of payment has been obeyed by the respondent. There is a strict condition that if the invoices were not received by the respondent in time, the customer shall pay within the due date, as it was previously paid in terms of agreement, to be paid by the respondent, subject to adjustment, in subsequent payment. Hence, time was essence in both of the agreement. But respondent failed to obey it. Whereas statement of account, filed by the petitioner, reveals that very first payment was made by the respondent with huge delay and the payment had never been regular or on

scheduled time. Rather a lump-sum payment with all exclusive have been made by the respondent.

69. This Tribunal, at the time of hearing of arguments, had directed for making the calculations and give the exact quantum as per ledger and accounts. The same has been filed. Annexure A (Colly) to the affidavit has been filed by petitioner on 8.12.2022. Accordingly, the claim has been shown till the date of petition.

70. In response, to above written arguments, a rebuttal argument has been filed by the respondent. But admittedly, its calculations are wrong. It is evasive calculation with no ledger account. Whereas calculations filed by UOI is well in accordance with law and filed by the petitioner itself.

Accordingly, till filing of the petition, dues were as per annexure, filed by the petitioner with written submissions, summarised as below :

Revise Penal Interest for INSAT 4A			
FY	Original	Revised	Remarks
2014-15	15,67,584	14,10,825	Amount reduced due to change in Penal interest rate from 10% to 9%

2015-16	3,13,846	2,27,792	Amount reduced due to change in Penal interest rate from 12.40% to 9%
2016-17	1,66,432	1,51,242	Amount reduced due to change in Penal interest rate from 9.90% to 9%
	20,47,862	17,89,859	

Revise Penal Interest for NSS-12			
FY	Original	Revised	Remarks
2012-13	2,68,824	2,68,824	No change
2013-14	4,00,066	4,00,066	No change
2014-15	2,58,244	2,32,420	Amount reduced due to change in Penal interest rate from 10% to 9%
2015-16	1,27,195	1,21,782	Amount reduced due to change in Penal interest rate from 9.40% to 9%
	10,54,330	10,23,092	

71. And after filing of this petition, till actual payment, an interest of 9% p.a., as has been previously awarded by this Tribunal in many cases, is payable, over and above of this amount by the respondent to the petitioner.

Hence, this issue is decided in favour of the petitioner. Petition is liable to be allowed accordingly.

ORDER

Petition is being allowed.

The respondent is being directed to make payment in favour of petitioner by way of depositing in Tribunal amount of Rs. 74,31,616/- (Rupees Seventy Four Lakhs Thirty One Thousand Six Hundred Sixteen Only) (Revised claim amount towards space segment charges) with a Simple Interest @ 9% p.a. from the date of filing of this petition, till actual payment, within two months from the date of judgement.

Formal order/decreed be got prepared by office accordingly.

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(Justice Ram Krishna Gautam)
Member

/NC/

