TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL

NEW DELHI

Dated 12th January 2023

Broadcasting Petition No. 333 of 2017

IndusInd Media and Communication Limited …Petitioner

Vs.

Sahara India TV Network …Respondent

BEFORE:

HON'BLE MR. JUSTICE RAM KRISHNA GAUTAM, MEMBER

For Petitioner : Ms. Vandana Jai Singh, Advocate
Ms. Kanupriya Gupta, Advocate

For Respondent : Mr. Mahabir Singh, Sr. Advocate
Mr. Gautam Talukdar, Advocate
Mr. Vijay Kumar, Advocate

JUDGMENT

1. This petition, under section 14 A (1) read with section 14 of Telecom Regulatory Authority of India Act (TRAI) Act (hereinafter referred to as "TRAI Act"), has been filed by the petitioner - IndusInd Media and

Communication Limited against respondent - Sahara India TV Network with a prayer for award of recovery of its outstanding dues amounting to Rs. 4,96,61,313/- (Rupees Four Crores Ninety Six Lacs Sixty One Thousand Three Hundred Thirteen only), including principal outstanding amount of Rs. 3,21,10,948/- (Rupees Three Crores Twenty one Lacs Ten Thousand Nine Hundred Forty Eight only) as on 23.02.2015, and interest accrued thereupon amounting to Rs. 1,75,50,365/- (One Crore Seventy Five Lacs Fifty Thousand Three Hundred Sixty Five Only), calculated till 17.07.2017, with further prayer for pendentilite and future interest @ 18% p.a., compounded per month, till actual realization.

2. In brief, the contention of the Petition is that Petitioner is a company, registered under the Companies Act, and carries on business including receiving of signal from broadcasters of various television channels, whether such television channel broadcast by satellite or terrestrial means, free to air (FTA) or encrypted, and diffusing or redistributing such channel by means of co-axial cable and / or optical fibre cable and associated equipment to its affiliated/ controlled / franchise cable networks for reception by multiple subscribers.

3. Petitioner is a Multi System Operator (MSO), operating PAN India. Mr. Devender Singh Thakur had been authorized to file the present

petition as representative of the Petitioner, vide Board Resolution dated 12.5.2017, annexed with petition as Annexure P-1.

4. Respondent, engaged in the business of distribution of television channels had exclusive right to market and distribute TV channels, in particular the television channel being 'Sahara Samay National' throughout the global territory. Respondent had executed a Channel Carriage Agreement (CCA), dated July 3, 2013, with petitioner, for carrying their channel, namely, 'Sahara Samay National' on DAS and non-DAS networks of the Petitioner, for carriage fee amount of Rs. 2,25,00,000/- (Rupees Two crores Twenty Five Lakhs only) plus taxes for a period from 01.07.2013 to 30.06.2014 in DAS areas of Mumbai, Nashik, Nagpur, Ahmedabad, Baroda, Surat and Non- DAS areas of Baramati and Ahmednagar. This agreement was Annexure P-2 to the petition.

5. Petitioner had been carrying the said channel of the Respondent on their network on the agreed frequencies in the above areas, mentioned in the agreement. But, Respondent defaulted in making the payments for the same.

6. After expiry of the aforesaid agreement, an intimation, vide e-mail dated July 23, 2014, from respondent was received by petitioner, regarding agreement renewal that due to taking some time for renewal, request was for raising the invoices, based on the previous agreement itself. This e-mail, dated July 23, 2014, was Annexure P-3 to the petition.

7. Again on October 9, 2014 intimation by respondent to the Petitioner was made that they are unable to renew any of the carriage deals across India for 2014-15, due to their National Budget's pending approval, hence, a request to the Petitioner was made to wait till October 28, 2014. This e-mail dated October 9, 2014 was Annexure P-4 to the petition.

8. Petitioner waited till October 28, 2014 and then after forwarded an agreement for FY 2014-15 by courier to the Respondent for their execution. This was duly executed by the authorized signatory of the Petitioner. But, Respondent did not return the same after its due execution by their side. This 'would be' agreement was Annexure P-5 to the petition. Since the Respondent did not return the executed copy of the agreement to the Petitioner, the Petitioner since November 2014 onwards raised the proforma invoices in accordance with the request of the Respondent. But, despite receiving the invoices and several requests

for making the payment, the Respondent failed to make the payment of carriage fees, resulting in default in making the payments. Petitioner was compelled to deactivate the signals of the channels of the Respondent from its network on 24.02.2015. Proforma invoices were annexed with the petition as Annexure P-6.

9. A Demand Notice, dated 19.07.2017, requesting the Respondent to make the payment of total outstanding dues of Rs. 4,96,61,313/- (Rupees Four Crores Ninety Six Lacs Sixty One Thousand Three Hundred Thirteen only), inclusive of interest as on 17.07.2017, was issued. A future interest @ 18% p.a., compoundable per month, till actual realization, within seven days of the receipt of the notice, was made. This Demand Notice, dated 19.07.2017, was Annexure P-7 to the petition.

10. Respondent, despite service of this Demand Notice, failed to clear the outstanding dues. The statement of account mentioning the outstanding dues of Rs. 4,96,61,313/- (Rupees Four Crores Ninety Six Lacs Sixty One Thousand Three Hundred Thirteen only) inclusive of interest till 17.7.2017 was Annexure P-8 to the petition. But no payment was made. Hence, cause of action had arisen. This was within limitation period of three years from the demand date to request made vide email

dated 9.10.2014. Hence, this petition with above prayers before this Tribunal, having jurisdiction to adjudicate this lis had been filed.

11. Respondent, in its written statement, raised a preliminary objection that petition was not maintainable, because of non-existence of interconnect agreement.

12. Regulation 4A of the Telecommunication (Broadcasting and Cable Services) Interconnection Regulation, 2004 was issued by TRAI vide its notification dated 10.12.2004, to cover arrangements for interconnection and revenue sharing among service providers in the broadcasting sector.

Regulation 4A.2 makes it abundantly clear that no broadcaster of any pay channel or distributer of TV channel such as the MSO, in the present case, shall make available signals of TV channels to any distributor of TV channels, namely, in the present case, the answering Respondent herein, without entering into a written interconnection agreement.

Regulation 4A.4 also envisages that such written agreement shall be handed over by Multi System Operator (MSO) to the cable operator and also to obtain acknowledgment within 15 days of signing of the agreement.

Regulation 8 also prescribes for time for renewal of existing agreements, which is three months, from the date of expiry of the original agreement.

13. This Tribunal had interpreted clause 4A of the Telecommunication (Broadcasting and Cable Services) Interconnection Regulation, 2004, and clause 5(17) and 5(20) of the Regulations as a prohibition against supply of TV signals for distribution in the absence of an interconnect agreement between the parties.

14. This Tribunal itself had held that in the absence of an agreement in writing between the parties, no claim for recovery of dues would be maintainable, because the supply of signals, without any agreement in writing, is illegal and prohibited by law. Oral arrangements between the parties, without a written agreement, will have no sanctity in the eyes of law.

15. In Vodafone Essar Ltd. & Anr. Vs. Mahanagar Telecom Nigam Ltd. in Execution Application No. 37 of 2012 in Telecom Petition No. 397 of 2012, vide order dated 10.05.2016, this Tribunal summarized the legal position from the amendment and regulations to the effect that no signals can be supplied by the MSO in absence of an agreement in writing or beyond the date of expiry

of existing agreement unless a fresh agreement is entered in between the parties.

Further this Tribunal had held that model interconnection agreement leaves some scope for negotiations between the parties and standard interconnection agreement, statutorily fixed, is of both the sharing of revenue and respective service, to be rendered by both the parties.

16. Hence, in the absence of written interconnect agreement, after expiry of previous agreement dated 3.7.2013, which was valid and effective for 1.7.2013 to 30.6.2014, this petition is not maintainable. Since there is no subsisting agreement between the petitioner – MSO and answering respondent-broadcaster after 30.6.2014, a question for realizing dues from answering respondent company for a period beyond 30.6.2014, does not arise.

17. However, under similar circumstances, this Tribunal had held that at the most, the claimant may be entitled to recover dues upto three months from the date of expiry of agreement, that too, provided that the claimant is able to establish that such signals were supplied beyond that period owing to negotiations entered into by the parties in that regard.

18. Even in cases where it is established that the parties entered into negotiations even after expiry of the agreement, still any claim for recovery beyond the point of three months would not be maintainable. Hence, petitioner relying on email communication dated 23.4.2014 has no legs to stand. It is admitted fact, written in paras 6, 7 and 8 of petition, that agreement dated 3.7.2013 could not be renewed. Hence, no cause of action had ever arisen, as renewal of agreement was not there. Hence, invoice dated 31.3.2015 as well as demand notice dated 19.7.2017, was a futile.

19. In para-wise reply, Channel Carriage Agreement dated 3.7.2013 was admitted to be executed between the parties for the period from 1.7.2013 to 30.6.2014 and this agreement expired on 30.6.2014, which was never renewed. Hence, recovery for the period from 1.2.2015 to 23.2.2015 was of no existence because of no interconnection agreement in between. Email dated 23.7.2014 and acting upon by petitioner, on the above email was not disputed, but this was with no interconnect agreement. Agreement dated 3.7.2013 expired on 30.6.2014. Hence, limitation period of three years may operate till 30.6.2017 and this petition was filed on 4.8.2017. No cause of action had ever arisen. Hence, this petition is to be dismissed with costs.

20. Replication / rejoinder was filed by the petitioner, reiterating contents of petition with denial of contents of written statement.

21. On the basis of pleadings of both sides, Court of Registrar of this Tribunal, vide order dated 18.12.2017, framed following issues :

1) Whether this Petition is maintainable in the present form seeking recovery of dues by Petitioner from Respondent in the absence of inter-connect agreement, between the parties, beyond 30.06.2014?
2) Whether the Petitioner is entitled for amount alongwith interest from the Respondent, as claimed in the Petition?
3) Whether the recovery of dues from the Respondent beyond the period of three months is permitted in the wake of Regulation 4A and Regulation 8 of the Telecommunication (Broadcasting and Cable Services) Interconnections Regulations, 2004 dated 10.12.2004?

22. Besides documentary evidence, petitioner filed evidence of Mr. Tharun S Rai(PW-1) and respondent filed affidavit of Mr. Ramit Kundu(DW-1). Learned counsel for respondent had filed their written arguments.

23. Heard learned counsel for both sides and gone through the records.

24. **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 seizes 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.

25. In all civil cases, required degree of proof is preponderance of probabilities.

26. The admitted fact is that :

(a) Sahara Samay is a Hindi language 24 x 7 News Television channel, owned by Sahara India Pariwar and this is a free-to-air (FTA) and was launched on 28th March 2003, which was available across all major cable and DTH platforms as well as online as Sahara Samay i.e. it was a FTA channel.

(b) The grant of news distribution to IndusInd Media and Communication Limited under Rule 11C of the Cable Television Network Rules, 1994 as Multi System Operator (MSO), was vide Ministry of Information and Broadcasting's

communication F.No. 9/46/2012 – BP&L Dated 18th July 2012, for operating in the areas notified under section 4A of the Cable Television Networks (Regulation) Act, 1995, i.e. petitioner is registered company having license of being MSO.

(c) Annexure P-2 to petition i.e. agreement dated 3.7.2013 was entered in between and terms and conditions of same are undisputed. This was valid and effective from 1.7.2013 to 30.6.2014. Email dated 23.7.2017 as well as email dated 9.10.2014 are Annexures P-3 and P-4 and were send by the petitioner to the respondent. Annexure P-5 is copy of agreement for its renewal and after its execution by authorized signatory of petitioner, was sent to respondent for financial year 2014-2015. But it was retained by respondent and was not signed and returned back by authorized signatory of the respondent. Annexure P-6 is proforma invoice and Annexure P-7 is demand notice dated 19.7.2015, dispatched by the petitioner and received by the respondent. Annexure P-8 is the statement of account duly prepared in the ordinary course of business by the petitioner company.

27. **Issue No. 1**

This issue was directly an issue in previously decided case in UCN Cable Network Pvt Ltd Versus Pearls Broadcasting Corporation Ltd. in BP No. 394 of 2014, decided by this Tribunal on 13.11.2018. Paras 8 to 10 and 12 to 14 of the above judgment are relevant and reproduced below :

8. *"Civil claims are decided on the touchstone of preponderance of probability. On that test, we have to decide the claim of the petitioner for the alleged outstanding which can be divided into two parts for the sake of convenience. An outstanding of Rs. 12.80 Lakhs for the period up to 31.03.2013 which is covered by the second agreement noticed earlier, stands admitted in the email of the respondent dated 24.12.2013 which is part of Annexure P-4. The email further mentions that the respondent will pay the said amount by the month end. The other part of the claim is for a period of 18 months beginning from 01.04.2013 till 30.09.2014. This period of 18 months is not covered by any specific written agreement and hence, petitioner had to meet an objection in law as to whether it is entitled to claim any placement charges for this period in absence of a written agreement. This objection or burden came upon the petitioner largely on account of a judgment of this Tribunal dated 10.5.2016 in B.P. No. 611 of 2015 and another analogous petition (UCN Cable Network India Pvt. Ltd. Vs. Raj Cable Network and Anr.). In both the petitions covered by this judgment, the petitioner was an MSO which had claimed outstanding dues from the respondents who were local cable operators. Interalia, this Tribunal considered regulation 4 A of Interconnect Regulations,*

2004 which applied to non DAS regime and provided that it shall be mandatory for all broadcasters of pay channels and distributors of TV channels to reduce the terms and conditions to all their interconnection agreements to writing. Along with other relevant regulations, regulation 5 is also noticed which provided that it shall be mandatory for the MSO to reduce the terms and conditions of the interconnect agreement into writing. There was a clear prohibition also that no MSO shall make available signals of TV channels to any linked LCO without entering into written interconnection agreements. On the basis of such relevant provisions, this Tribunal held that since the regulations mandated for a written agreement for supply of TV signals by the MSO to the LCO, claims based on oral arrangements without any written agreement could not be considered lawful and could not be allowed by this Tribunal.

9. *It was on account of aforesaid legal issue and apparent bar to the claim of the petitioner for the period of 18 months that we sought assistance from the learned amicus. He took us through aforesaid judgment in the case of UCN Cable and pointed out that regulation 4A.1 which related to broadcaster, made it mandatory for the broadcaster of pay channels only to have a written agreement whereas as Free-to-Air (FTA) channels were not required to be covered by such written agreement between the broadcaster and the MSO. For the present matter, it has been explained by learned Amicus that no subscription or fees is required for carrying a free to air channel and for this reason, these were not even encrypted, at least under the Analogue regime. Another aspect of this issue was elaborated with the help of Explanatory Memorandum*

of 2009 Amendment to the Interconnection Regulations, 2004. Para-36 of the aforesaid Explanatory Memorandum reads as under: -

> *"The "placement fee "is paid by the broadcasters to the distributors of TV channels for placing their channel(s) at the desired frequency/tier/package for maximizing viewership and revenue of their channel(s). The placement fee is different from "carriage fee "and the said aspect has been explicitly recognized by the Authority by defining these two terms separately in the definition clause. The amendment seeks to address the issues of carriage fee only and not the placement fee, which is governed by the market forces and mutual negotiations between the broadcaster(s) and distributor(s) of TV channel."*

10. We find merit in the submission of Mr. Sampath that placement fee is not the subject matter of the amendment and it is clearly recognized that placement fee has been left to be governed by the market forces under the principle of forbearance. We have been further shown that the situation continues to be the same in the DAS regime even under the relevant Regulations of 2012.

12. In the present case, the channel of the respondent is a FTA channel and the claim of the petitioner is for placement fee under the non DAS regime. Hence on both accounts, there was no obligation created by any regulation to have a written interconnection agreement for placement of such FTA channels. This clearly distinguishes the case of the petitioner from the cases covered by the judgment of this Tribunal

dated 10.05.2016. In that case, as already noticed, the petitioner was an MSO and in order to recover any money from the respondent LCO, it was found to be under an obligation to have written interconnection agreement. The provisions in the regulations are not similar in respect of placement fee and further the FTA channels stand on an entirely different footing as they did not require any subscription fee or agreement under the relevant Regulations.

13. Since the petitioner's claim for 18 months, as noted earlier, cannot be dismissed simply on the ground that there was no formal written agreement, it requires further consideration as to whether it can be allowed as per provisions of the Contract Act, particularly section 70 and the general law of the land.

14. This legal issue of petitioner's right under S.70 of the Contract Act need not detain us for long because this issue stands answered in its favour because of our finding given above that the transactions at hand does not violate the Regulations applicable to claim for placement fee for FTA channels under the non-DAS regime because these did not mandate for any written subscription agreement between Broadcaster of a FTA channel and the MSO for placement fees. In such a situation, all the 3 conditions necessary to attract Section 70, as pointed out in para 14 of the Supreme Court judgment in the case of State of West Bengal Vs. B.K. Mondal & Sons, AIR 1962 SC 779 clearly stand satisfied. This law has been followed in many cases by the Hon'ble Supreme Court- AIR1966 S.C. 1034 - V.R. Subramanyam Vs. B. Thayappa & Others, AIR1968 SC1218 - Mulamchand Vs. State of Madhya

Pradesh and 2007 (13) SCC 544 - Food Corporation of India & Ors. Vs. Vikas Majdoor Kamdar Sahkari Mandli Limited."

28. Meaning thereby, like present case in hand, the FTA channel was the subject in the above mentioned case and in case of FTA channel situation, the mandatory finding with regard to Regulation 4A of Interconnection Regulation 2004 alongwith other relevant regulation, was not applicable. Hence, this very issue had already been previously decided by this Tribunal above.

29. Learned counsel for the respondent had vehemently argued that the judgment of BP No. 394 of 2014 is "per incuriam", because claim of dues raised and had been filed by the petitioner company, for which an interconnect agreement, made in writing, after observing above regulations, is must. Whereas for respondent that is not necessary, because it was a FTA channel and as per Regulation 4A.1, interconnect agreement, it shall be mandatory for broadcaster of pay channels and distributors to reduce the terms and conditions of all their interconnect agreements to writing. 4A.2 provides that no broadcaster of pay channels or distributor of TV channels, such as multi system operator or head/end in the sky operator, shall make available signals of TV channels to any distributor of TV channels without

entering into a written interconnection agreement. 4A. 3 provides that nothing contained in Regulation 4A.l or 4A.2 shall apply to any supply of signals or continuance of supply of signals of TV channels by a broadcaster or distributor of TV channels, such as multi system operator or head/end in the sky operator, in pursuance of or in compliance with any order or direction or judgment of any court or Tribunal, including any order or direction or judgment of any court or Tribunal on any proceeding pending before such court or Tribunal. 4A. 4 provides that it shall be the responsibility of every broadcaster of pay channels, who enters into an interconnection agreement with a distributor of TV channels to hand over a copy a signed interconnection agreement to such distributor of TV channels and obtain an acknowledgement in this regard within a period of 15 days from the date of execution of the agreement and, similarly, it shall be the responsibility of every multi system operator or head/end in the sky operator, as the case may be, who enters into an interconnection agreement with a cable operator to hand over a copy of signed interconnection agreement to such cable operator and obtain an acknowledgement in this regard within a period of 15 days from the date of execution of the agreement.

30. This Tribunal in Vodafone Essar Ltd. & Anr. Vs. Mahanagar Telecom Nigam Ltd. in Execution Application No. 37 of 2012 in Broadcasting Petition

No. 397 of 2012, vide its order dated 10.5.2016, has held that no signals can be supplied by the MSO in absence of an agreement in writing or beyond the date of expiry of existing agreement, unless a fresh agreement is entered in between the parties.

31. The same was the principle laid down by this Tribunal in Technomobile Systems Pvt. Ltd. Vs Trimurti International Network & Ors. in Broadcasting Petition No.119 of 2018, wherein judgment of UCN Cable (supra) was taken into consideration. Hence, this petition was not maintainable.

32. While going through the judgement of UCN Cable Network India Pvt. Ltd. & Ors. Vs. Raj Cable Network & Ors. in Broadcasting Petition No. 611 of 2015 (with M.A. Nos. 429 of 2015 and 71 of 2016) and BP No. 176 of 2015 decided on 10.5.2016, it is apparent that proceeding for recovery of money due for supply of TV signals, is not maintainable under section 14 A of TRAI Act, 1997, in the absence of written interconnect agreement between the parties. The matter was from an area under the DAS regime and was, therefore, governed by the provisions of the DAS Interconnect Regulations, 2012. In Para 10 of the judgment, it was held that "------ Both the Interconnect Regulations 2004 and the Das Interconnect Regulations

2012 contain almost identical provisions prohibiting distribution of TV signals for re-transmission without entering into an agreement in writing. Mindful of the above provisions in the Regulations governing interconnection, the Tribunal, in a number of cases, has taken the view that a distributor of TV channels acting in blatant disregard and deliberate disobedience of the regulations framed by TRAI in exercise of its powers under the Telecom Regulatory Authority of India Act, 1997 cannot seek, for recovery of its dues, the aid of the Tribunal set up under the same Act.-----"

33. The judgment rendered by Apex Court in State of West Bengal Vs. B.K. Mondal & sons MANU/SC/0114/1961; AIR 1962 SC 779 as well as judgment rendered by this Tribunal in BP No. 611 of 2015 as well of decision of the Andhra Pradesh High Court in Rakurti Manikyam Vs. Medidi Satyanarayana, MANU/AP/0074/1972; AIR 1972 AP 367 were taken into consideration and after giving reasons, in para 45 of this judgment, has held as follows :

"45. In light of the discussions made above, we confirm the view taken in the earlier cases and answer the question framed at the beginning of the judgement in the negative. Resultantly both the

applications are liable to be dismissed as not maintainable. These two petitions are accordingly dismissed."

34. But while deciding BP No. 394 of 2014, UCN Cable Network Pvt Ltd Versus Pearls Broadcasting Corporation Ltd. decided on 13.11.2018, Division Bench of this Tribunal had an opportunity to hear both sides qua above legal issue as well as law propounded, mentioned as above and after hearing in detail, it was held that in case of FTA channels, the case stand on an entirely different footing as they did not require any subscription fee or agreement under the relevant Regulations.

35. Hence, the very judgments, which are being pressed by learned counsel for the respondent, were raised, considered and applied in judgment given by this Tribunal in BP No. 394 of 2014. Hence, the very contention that this judgment is "per incuriam", not tenable and with regard to present FTA dispute, this petition is very well maintainable.

Hence, this issue is decided in favour of the petitioner.

36. **Issue nos. 2 and 3**. Both the issues are related to each other and are being decided together.

On one hand, learned counsel for the respondent mentioned that petition is not maintainable. On the other hand, he argued that for 3 months, dues may be realised. The written interconnect agreement was admitted to be effective upto 30.6.2014. A request by email for its extension and raising of invoice was made by the respondent. The same is not disputed. Decision of Issue no. 1 had held that in case of FTA channel, need of extension of written agreement is not condition precedent. Statement of Account has been duly verified and filed alongwith affidavit by Petitioner. In counter claim, no statement of account has been filed nor the same has been disputed by the respondent. Hence, burden by petitioner has been discharged. Submission of account by PW at page no. 62, is reproduced below:

Posting	Document No	Assign-ment	Text	Collection	Billing	Oustand-ing
17.10.2013	1300000723	SAHARA SAMAY	CPC-SAHARA SAMAY NATIONAL-JULY 13	-	2106750	2106750
17.10.2013	1300000724	SAHARA SAMAY	CPC-SAHARA SAMAY NATIONAL-AUGUST 2013	-	2106750	4213500
17.10.2013	1300000725	SAHARA SAMAY	CPC-SAHARA SAMAY NATIONAL-SEP. 2013	-	2106750	6320250
17.10.2013	1300000726	SAHARA SAMAY	CPC-SAHARA SAMAY NATIONAL-OCT. 2013	-	2106750	8427000
04.11.2013	1300000823	SAHARA SAMAY NATIO	CPC-SAHARA INDIA-SAHARA SAMAY	-	2106750	10533750

			NATIONAL-NOCV. 2013			
21.11.2013	1400000341	23061	PAY. RECED.-SAHARA INDIA TV-JULY 13 TO SEPT. 13	63,20,250		4213500
21.11.2013	1400000341	F.Y.2013-14	TDS RECEIVABLES (JULY 13 TO SEPT. 13)	-	632025	4845525
06.12.2013	1300000923	SAHARA SAMAY NATIO	CPC-SAHARA INDIA-SAHARA SAMAY NATIONAL-DEC. 2013	-	2106750	6952275
08.01.2014	1300001032	SAHARA SAMAY NATIO	CPC-SAHARA SAMAY NATIONAL-JANUARY 2014	-	2106750	9059025
06.02.2014	1300001191	SAHARA SAMAY NATIO	CPC-SAHARA SAMAY NATIONAL-FEBRUARY 2014	-	2106750	11165775
24.02.2014	1400000468	24357	PAYMENT RECD.-SAHARA INDIA	3792150		7373625
06.03.2014	1300001298	SAHARA SAMAY NATIO	CPC-SAHARA SAMAY NATIONAL-MARCH 2014		2106750	9480375
10.04.2014	1300000012	SAHARA SAMAY NATIO	CPC-SAHARA SAMAY NATIONAL-APRIL 2014		2106750	11587125
05.05.2014	1300000059	SAHARA SAMAY NATIO	CPC-SAHARA SAMAY NATIONAL-MAY 2014		2106750	13693875
07.06.2014	1300000217	SAHARA SAMAY NATIO	CPC-SAHARA SAMAY NATIONAL-JUNE 2014		2106750	15800625
19.11.2014	IMCL/2014-15/203	SAHARA SAMAY NATIO	CPC-SAHARA SAMAY NATIONAL-JULY 2014		2106750	17907375
19.11.2014	IMCL/2014-15/204	SAHARA SAMAY NATIO	CPC-SAHARA SAMAY NATIONAL-AUG 2014		2106750	20014125

19.11.2014	IMCL/2014-15/205	SAHARA SAMAY NATIO	CPC-SAHARA SAMAY NATIONAL-SEPT 2014		2106750	22120875
19.11.2014	IMCL/2014-15/206	SAHARA SAMAY NATIO	CPC-SAHARA SAMAY NATIONAL-OCT 2014		2106750	24227625
19.11.2014	IMCL/2014-15/207	SAHARA SAMAY NATIO	CPC-SAHARA SAMAY NATIONAL-NOV 2014		2106750	26334375
31.12.2014	IMCL/2014-15/208	SAHARA SAMAY NATIO	CPC-SAHARA SAMAY NATIONAL-DEC 2014		2106750	28441125
28.01.2015	IMCL/2014-15/209	SAHARA SAMAY NATIO	CPC-SAHARA SAMAY NATIONAL-JAN 2015		2106750	30547875
31.03.2015	IMCL/2014-15/220	SAHARA SAMAY NATIO	CPC-SAHARA SAMAY NATIONAL-01.02.15-23.02.15		1563073	32110948
			CLOSING BALANCE	101,12,400	42223348	32110948
				Interest upto 17.07.2017		17550365
				TOTAL RECEIVABLES		49661313

Interest	18%
Days	interest
0	-
0	-
0	-
18	74804
17	88310
0	-
15	35844
33	113141
29	129556
18	99115
10	36363
35	163634
25	142855
33	222854
165	1285695
0	-

0	-
0	-
0	-
42	545446
28	392721
62	934012
839	13286015
	17550365

37. Hence, it is very well proved that Rs. 3,21,10,948/- as principal and Rs. 1,75,50,365/- as interest, in total Rs. 4,96,61,313/- was due and payable till 17.7.2017 and petitioner is entitled for recovery of same. So far as pendentilite and future interest is concerned, this Tribunal very often has awarded simple interest @ 9% p.a. till actual realisation of outstanding dues. Hence, since 17.7.2017 upto actual payment, simple interest of 9% p.a. will also be payable in favour of petitioner against the respondent.

Accordingly, these two issues are decided in favour of the petitioner.

Upon decisions of these issues, petition merits its allow.

ORDER

Accordingly, petition is being allowed for amount of Rs. 4,96,61,313/- (Rupees Four Crores Ninety Six Lacs Sixty One Thousand Three Hundred Thirteen only) plus simple interest of 9% p.a from date of filing of petition, till

actual date of realisation. Respondent is being ordered to make deposit of above awarded amount in Tribunal within two months from judgment for making payments to petitioner.

Formal order/decree be got prepared by office accordingly.

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(Justice Ram Krishna Gautam)
Member

/NC/