

**TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL****NEW DELHI****Dated 26<sup>th</sup> August 2025****Broadcasting Petition No. 284 of 2019**

Royal Digital Cable &amp; Communication Pvt. Ltd.

...Petitioner

Vs.

Zee Entertainment Enterprises Ltd.

...Respondent

**BEFORE:****HON'BLE MR. JUSTICE RAM KRISHNA GAUTAM, MEMBER**For Petitioner : Mr.Himanshu Dhawan, Mr. Abhay Dev Sharma,  
AdvocatesFor Respondent : Ms. Aanchal Tandon, Ms. Niharika Sharma,  
Advocates**JUDGMENT**

1. This Petition, under Section 14, read with Section 14A, of the Telecom Regulatory Authority of India Act, 1997 (hereinafter said to be 'the Act') has been filed by Petitioner-Royal Digital Cable & Communication Pvt. Ltd., Vs Zee Entertainment Enterprises Ltd., with a prayer to set aside the demand to the tune of Rs. 70,20,143/- (Rupees Seventy Lakhs

Twenty Thousand One Hundred Forty-Three Only) made by Respondent, in its letter dated 01.10.2019 and 10.10.2019, with a further prayer for any other order, as deem fit, in favour of Petitioner, in the interest of justice.

2. In brief, the Petition contends that Petitioner is a new & small Multi-System Operator (MSO), having its office at Block No. 33, Plot No.09, Shanwara, New Bus Stand, Burhanpur, Madhya Pradesh – 450331, having registration, by Ministry of Information and Broadcasting, on 15.07.2016, and is engaged in the business of providing cable television services, by way of supplying signals of Free-to-Air, as well as pay channels, including supply of programmes, packages etc., to the Cable Operators. Hence, by way of this Petition, original jurisdiction of this Tribunal, vested under Section 14, and 14A, of TRAI Act, 1997, has been invoked. The present Petition, has been filed by one of the Director of Petitioner Company, namely, Mr Deepak Patidar, who is also the authorized Signatory of the Petitioner. The certificate of registration, issued by Ministry of Information and Broadcasting, dated 15.07.2016, is Annexure P/1 to the Petition.
3. The Respondent is a Company, registered under the provisions of Companies Act, 1956, and is the Broadcaster, telecasting the pay

channels, in the name and style of Zee Entertainment Enterprises Ltd. The Petitioner had executed one Interconnection Agreement, dated 24.01.2019, with the Respondent, on RIO basis. This is Annexure P/2 to Petition. This agreement defines certain area of Madhya Pradesh, as the Territory of the Agreement. Since this Agreement, Petitioner has been validly carrying on its business in the said areas of Madhya Pradesh. The Interconnection Agreement, dated 24.01.2019, is Annexure P/2 to Petition. Since the Petitioner wanted to expand its area of operation, it followed up the representatives of the Respondent since February, 2019, with a request to execute Interconnect Agreement, for certain areas of Maharashtra and Madhya Pradesh. But Respondent started pressurizing Petitioner, for execution of a fixed fee Agreement, with unreasonable conditions, and ultimately, was denying the legitimate request of Petitioner of area expansion. Petitioner, merely for testing purposes, had activated test signals in the city of Bhikangaon, on 27.03.2019, and had written an email dated 28.03.2019, with a request to Respondent to execute Interconnection Agreement for that additional territories. This email dated 28.03.2019, is Annexure P/3 to Petition. This was not conceded by Respondent. Petitioner had received one email, dated 10.07.2019, having the false

and frivolous allegations, pertaining to unauthorised transmission of signals of the Respondent. This email is Annexure P/4 to Petition. Since, the Respondent was not giving any heed to the legitimate request of Petitioner, Petitioner was again constrained to write one email, dated 22.07.2019, wherein Petitioner again expressed its willingness to start its business in certain areas of Maharashtra. Hence, request was there, for executing an Interconnection Agreement, for the said cities. This email, dated 22.07.2019, is Annexure P/5.

4. In order to deny the request of Petitioner, for expansion of the areas, the Respondent, with a malafide and malicious intention, issued one Disconnection Notice, dated 29.07.2019, wherein false and frivolous allegations, pertaining to unauthorised transmission, was levelled. Respondent, in the said email, further raised the issue of audit of the system of the Petitioner and non-submission of reports, in terms of Agreement. This Disconnection Notice, dated 29.07.2019, issued by Respondent to Petitioner, is Annexure P/6 to the Petition. Petitioner, vide its email, dated 13.08.2019, replied the said Disconnection Notice, wherein allegations of unauthorized transmissions were denied and a request to Respondent was to give any proposed date for the purpose of audit of the system of Petitioner. The response to notice, dated

13.08.2019, Respondent sent one letter dated 14.08.2019, with the same contention, as well as with some video recording, which were manipulated one. These notices and reply are Annexure P/7 (Colly) to Petition.

5. Petitioner, vide its letter dated 18.08.2019, requested Respondent for amicable resolution of the disputes/differences between the parties, with a proposal for audit of the system of Petitioner, on 23.08.2019. This email dated 18.08.2019 is Annexure P/8. This was replied by email dated 19.08.2019, and this was with same manipulation and contention. Audit of system of Petitioner was got conducted on 27.08.2019. This email dated 19.08.2019, is mentioned as Annexure P/9 to Petition. This audit of the system of Petitioner was carried on 27.08.2019, by M/s Deloittee Touche Tohmatsu India LLP, in an unfair and biased manner, because the said Auditor had been doing Audit for the Respondent Company, prior to its empanelment as an Auditor by TRAI, and on the basis of said biased Audit Report, a Legal cum Demand Notice, dated 01.10.2019, was issued by Respondent, wherein a demand of Rs. 70,20,143/- (Rupees Seventy Lakhs Twenty Thousand One Hundred Forty-Three Only) were raised. This Audit Report is

Annexure P/10 and Legal cum Demand Notice, Dated 01.10.2019, is Annexure P/11 to Petition.

6. This Demand of revenue to the tune of Rs. 70,20,143/- (Rupees Seventy Lakhs Twenty Thousand One Hundred Forty-Three Only), was said to be for excess number of subscribers, since February 2019. Wherein, unreasonable and unfair manner was applied, whereby multiplication of the alleged number of subscribers, with the price of bouquet, namely, 'Zee Family Pack Hindi (SD)' was made. Whereas, Petitioner does not have that number of subscribers, for which additional revenue has been claimed.
7. Star India Private Limited, has also conducted audit of the system of Petitioner through one Auditor, namely, MGB & Company LLP, which is also an empanelled Auditor of TRAI, wherein number of subscribers were given. Hence, the Audit Report and the Legal Cum Demand Notice, Dated 01.10.2019, based upon this report, is apparently higher than the number of subscribers, mentioned in the Audit Report of MGB & Company LLP. This Audit Report, conducted by MGB & Company LLP, is Annexure P/12 to the Petition. It is apparent that there is a grave difference between the Audit Reports of the two empanelled Auditors, written as above, and the report shared with Petitioner, was with a

considerable delay of 33 days, which was apparently manipulative. Hence, Petitioner, vide its Letter, dated 07.10.2019, sent via email, raised its grievance with the Audit process, and made a request to Respondent that Petitioner is inviting only empanelled Auditor, at its own cost and in order to ensure transparency. The Petitioner further suggested the Respondent to send its representatives to observe and to oversee the process of Audit, by the said empanelled Auditor. This request letter, Dated 07.10.2019, is Annexure-P/13 to Petition. This was replied by Respondent, vide its Letter, dated 10.10.2019, with the previous contention and demand, with a threat to disconnect its signals. Thereafter, Petitioner, vide its email, Dated 29.10.2019, had requested the Respondent to nominate any Four empanelled Auditors, to enable the Petitioner, to get its system audited through any one of them. These Letters are Annexure P/14 and Annexure P/15 respectively.

8. The cause of action had arisen within the territorial jurisdiction of this Tribunal. Hence, this Petition, impugning the Demand made by Respondent to the tune of Rs. 70,20,143/- (Rupees Seventy Lakhs Twenty Thousand One Hundred Forty-Three Only), with a further prayer for seeking permission to conduct a self-Audit of the system of

Petitioner, in the presence of representative of Respondent, and a direction against the Respondent to execute Interconnection Agreements, for the areas pointed out, vide email dated 22.07.2019, and to restrain Respondent, from the disconnecting the signals of the Petitioner.

9. On the basis of false contentions, Respondent had also lodged one FIR, dated 28.07.2019, bearing FIR No. 0258, at Police Station District Jalgaon against Petitioner. Hence, this Petition with above prayer, along with Interim prayer as above.
10. This Petition was contested from the first day of its filing, by immediate presence of Respondent and counter over the Interim relief. A Reply and a rejoinder were filed. Wherein, the contention of Petition was not disputed on fact, but disputed to this effect that Audit was got conducted in right perspective and on the basis of Audit Report, the Demand Cum Legal Notice, was rightly issued.
11. This dispute, with regard to interim measure, was heard and decided by this Tribunal, wherein, an amount of 50 percent of the claim, was ordered to be deposited, subject to final adjudication of this Petition, by order, Dated 22.03.2021, “ .....*By law of averages, the Petitioner should be, at this stage, directed to pay, without prejudice to its rights,*



*only 50% of the demand made by the Zee. Hence, for interim arrangement, the Petitioner is directed to make a payment of Rs. 35 Lakhs only against the additional demand of Rs. 70 Lakhs and odd raised on the basis of audit report. Such payment should be made within six weeks. Half of the amount should be paid within four weeks and balance in 2 weeks thereafter. If this amount is paid within the time indicated, the interim protection given to the Petitioner against audit based demand shall continue until further orders.*

*Post the matter before the Court of Registrar on 12.4.2021 for passing further orders and directions to make the petition ready for hearing.”*

and before the Court of Registrar, following issues in this Petition were made:-

- (i) Whether the demand raised by the Respondent for an amount Rs. 70,20,143/- (Seventy Lakhs Twenty Thousand One Hundred Forty-Three Only) is liable to be set aside being based on faulty calculations of audited demand?
- (ii) To what other relief/ reliefs the Petitioner is entitled to?

12. One thing is to be noted that Petition No. 752/2020 (Royal Digital Cable & Communication Pvt. Ltd. Vs Zee Entertainment Enterprise Ltd.), was also connected with this Petition, on that day also when issues were framed. But, the same was with regard to other period in existence.

Subsequently, other Petition was also connected with this Petition, and it was BP No. 184/2022, with a request for deciding all these three Petitions together, and it was taken in common. But, subsequently, it was found, vide order, dated 10.01.2025 :

*"1. Case taken up. Learned Counsel for both side are present.*

*2. Three Petitions have been clubbed together, wherein, in two Petitions, reply then replication, then evidences are there. In one Petition, which is the leading Petition, reply is not there. Rather, evidence have been filed and the issues framed was on the basis of contention of Petition itself.*

*3. But, in all these three Petitions, the bone of contention, is the calculation based on Audit Reports of three different periods, with no allegation, regarding the validity of these Audit Reports, except calculation raised on that basis and in subsequent two Petitions, allegations raised are against Audit Reports therein.*

*4. Hence, argument is to be heard at length with regard to each period and each specific calculation and claim.*

*5. Hence, adjourned for 20.03.2025 "for final arguments".*"

13. On 20.03.2025, these three Petitions were being heard together, and it was found that BP No. 284/2019, along with two other petitions, clubbed together wherein, Petition No. 284/2019, was shown to be a leading Petition. But the record reveals that in this Petition, filed with

prayer written in it, there was no reply in form of pleading by Respondent. Interim applications and Interim prayers were heard and adjudged, subject to final adjudication of these Petitions, on merit. And while hearing the final arguments, it came to notice that issues were framed, evidences had been led, written submissions have been filed, but reply, required as pleading, by the defendant/Respondent, in leading Petition, is not there. Hence, all these Petitions, though clubbed together, are with different matter, to be heard and decided differently, though to be decided at a time, but they are required to heard separately.

14. Hence, argument in this Petition No. 284/2019, was heard and this was reserved for judgment on 21.05.2025. Hence, the reply in form of pleading by Respondent is not there. But the contention of plaint/petition has been denied in the reply of interim prayer. The same is with consonance with contention written in the Petition, except with difference that Audit Report submitted by empanelled Auditor, was without any basis of bias, and calculation made on the basis of it for additional revenue, is correct and proved. Hence, the only issue framed was with regard to above demand and alleged audit calculation, written as above.

15. Evidence by way of affidavit of Mr Deepak Bansilal Patidar, for and on behalf of Petitioner Company, by Petitioner and affidavit of Mr Niraj Singla, RW-1 for Respondent, has been filed.
16. Written Submissions by both side have been filed.
17. Heard Learned Counsel for both side and gone through materials placed on record.
18. 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 Premalata 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.

19. This Petition, before this Tribunal, is a civil proceeding and in civil proceeding, the preponderance of probabilities, is the touchstone for making a decision, as against strict burden of proof, required in criminal proceeding.

**20. Issue No. 1**

In a Civil Proceeding Plaintiff/ Petitioner is to stand on its own leg. It had filed its Petition, has made its contention in the Plaint/ Petition, and

proof of its Preponderance of probabilities in favour of Plaintiff/ Petitioner, is to be established, by way of proof of fact and discharge of burden of proof, lying upon the parties to a litigation. In present Petition, undisputed facts are that both Petitioner and Respondent are 'service provider'. Both are Multi System Operator and Broadcaster respectively, duly licensed by Ministry of Information and Broadcasting. License of Petitioner is Annexure P/1 to the Petition. Both of them had entered into an Interconnect Agreement, dated 24.01.2019, which is Annexure P/2 to the Petition. Services were availed. The area of operation given in this Interconnect Agreement is of no dispute. The extension for area in Maharashtra and Madhya Pradesh, was repeatedly requested, but it was not conceded i.e., no extended Interconnect Agreement, was got executed. But, it has been admitted by Petitioner in Para 4 of the Petition itself, that it activated its signal in the city of Bhikangaon, on 27.03.2019, for which, admittedly, there was no Interconnect Agreement, but it was being acted upon, without any authority. A legitimate request was said to be made for extension of area of operation, but it was not accepted by Respondent. But, the area was extended, without any consent of the Respondent. Disconnection notice, dated 29.07.2019 was issued. Audit was got made of the

system of the Petitioner. It was by M/s Deloittee Touche Tohmatsu India LLP, carried on, 27.08.2019, and it was an empanelled Auditor. This Audit Report is Annexure P/10 to the Petition, filed by Petitioner itself. It has been said to be a biased and fabricated report, but this Tribunal itself, vide Order dated 13.11.2019 has categorically held as below :—

*“The report at the instance of Star contains at least ten instances of technical non- compliance and also a comment that certain required CAS reports and Logs were not provided to that auditor also.*

*In the facts noted above, the ground for challenge to the report are found to be without any substance. The audit report at the instance of the respondent dated 28.8.2019 cannot be faulted for the reasons appearing on the record. The ground urged against the report are either too vague or do not get support from the facts mentioned in the audit report itself.*

*The objections raised on behalf of the petitioner to the audit report are, therefore, found to have no merits. Those are accordingly rejected.”*

21.Hence, this Audit Report and challenge over it, has been confirmed, and not accepted by this Tribunal. This order has not been challenged at any forum. This has been passed after hearing both side and is final. Though

it has been passed at the Interim stage, and the finding is subject to final adjudication of this Petition. But specific proof against this had to be given by Petitioner, whereas, no such evidence, except oral testimony of PW-1 is there. And this has been denied by oral testimony, on oath by Respondent No.1. The calculation, made by Respondent, on the basis of said Audit Report, was challenged and this Tribunal in the same order has held that “..... However, the Petitioner has not cared to furnish its own claims on the basis figures of subscribers appearing from the audit report. On the other hand, learned counsel for the respondent has placed reliance upon the contents of demand notice dated 1.10.2019, which contains table showing demands for the months of February 2019 to August 2019. As per that table, the amounts already paid have been deducted and the balance demand has been calculated appearing to be on the basis of monthly average .....”.

22. Though, the Tribunal had given opportunity to file evidence and calculation by Petitioner, and after this all exercise, the Tribunal had not accepted the calculation given by Petitioner. Rather, the calculation of Respondent with regard to alleged claimed amount Rs. 70 plus odd Lakhs, only 50% i.e., Rs. 35 Lakhs was directed to be deposited.



Hence, this specifically impose heavy burden over Petitioner to prove its case with all preponderance of probabilities, and for discharging this onus, the evidence of Petitioner, by way of affidavit is there. This affidavit, at its Page 14, reveals that neither the date of its verification over the place of verification, nor the signature of Deponent over this verification clause is there. Rather, the signature of Notary without the signature of Deponent is there. In all other pages too, neither the signature of Deponent, nor of Notary is there, except the seal of Notary. Meaning thereby, this affidavit itself, which is the only piece of evidence, is not, as per required degree, for saying to be an affidavit. Neither, it is with verification by the Deponent, nor of his signature on it, either of Deponent, or Notary, at each page, nor is in accordance with form of affidavit. Whereas, the evidence, filed by RW-1, with reiteration of contention of Respondent, is on record and this is with proper verification and contention. Hence, literally, there is no evidence of Petitioner on record. The Petitioner had utterly failed to prove its contention by way of discharging onus on it. Hence, this Issue No.1 is being decided in negative i.e., against the Petitioner.

**23. Issue No.2**

In view of the discussions made in discussion of Issue No.1, this Issue is being decided against Petitioner.

24. On the basis of discussions made above, this Petition merits its dismissal with cost.

**ORDER**

Petition is being dismissed with cost. Interim Order, if any, in this Petition, got vacated.

Formal decree/order be got prepared by office, accordingly.

.....  
(Justice Ram Krishna Gautam)  
Member

26.8.2025  
/NC/