(2021) 02 TDSAT CK 0015

In the Telecom Disputes Settlement And Appellate Tribunal

Case No : Telecom Petition 10 Of 2019 With Misc Application 296 Of 2020

Power Grid Corporation Of India Ltd APPELLANT

Vs

Gbps Networks Pvt Ltd RESPONDENT

Date of Decision : 10-02-2021

Acts Referred:
Indian Telegraph Act, 1885 — Section 4

Citation : (2021) 02 TDSAT CK 0015

Hon'ble Judges : Shiva Kirti Singh, CP

Bench : Single Bench

Advocate : Ankur Singh, Arjun Krishnan

Final Decision : Allowed/Disposed Of

Judgement

1. Heard learned counsel for the petitioner. Nobody appears for the respondent.

2. The matter is being heard ex-parte because the respondent even afterÂ valid service of notice has chosen not to appear since the very beginning

of the proceedings. It has not filed any reply or affidavit of evidence.

3. The Petitioner has pleaded that it is a service provider by virtue of license granted by the Department of Telecommunications, Government of India

under section 4 of the Indian Telegraph Act, 1885. The respondent is also a companyÂ having ISP licenseÂ and authorised to provide internet

services.Â On pleadings it is clear that this Tribunal has jurisdiction over theÂ matter.

4. Initially petitioner had claimed a money decree for Rs. 8,51,580/- alongwith pendentilite and future interest and also relief on account of non

furnishing of TDS certificates by the respondent for the financial year 2017-18.Â Subsequently, by filing an additional affidavit on 4.7.2019,Â petitioner has reduced its claim to Rs. 7,99,373/-.Â The statement of account as well as details of receipts including an amount of Rs. One lakh

received during the pendency of the petition have been furnished through Annexure 'B'.Â The same also contains calculation of interest amounting to

Rs. 64,161/-Â @ 10% per annum against each pending invoice from due date till 15.2.2019.Â Another amount of Rs. 47,793/-Â has been claimed

because respondent did not furnish TDS certificates for that amount.Â To these figures,Â petitioner hasÂ added Rs. 6,87,419/- as the principal dues

arising from invoices for the months of May, June and July (part), 2018.Â Â The total of the principal amount, the interest and the TDS amount has

been claimed as the final outstanding indicated in the additional affidavit. It is falling for consideration whether the aforesaid claim should be allowed or

not. The materials on record show that parties had entered into business relationship through a Capacity Agreement dated 12.12.2015 (Annx. P/1).Â

Earlier the Purchase Order was for a lesser capacity but through its Purchase Order dated 15.3.2017,Â the respondentÂ became entitled to avail

service of three GBPSÂ Point to Point lease-line capacity against annual recurring charges of Rs. 33 lakhs.Â The Purchase Order is Annexure P-2.

5. The correspondences between the parties have also been annexed to support the pleadings that the respondent failed to perform its payment

obligations for which reminder and telephone calls were issued.Â In respect of the then outstanding, the respondent sent an email on 9.7.2018 to pay

the dues which were, in terms of the agreement, payable quarterly in advance, within 10 days from the date of the invoice. However, as per Purchase

Order,Â it was payable in advance but monthly.Â The case of the petitioner is that on the request of the respondent, the service was withdrawn and

the link was looped back on 18.7.2018. Since dues remained unpaid, the capacity allocated to the respondent under the agreement was brought to an

end on 3.8.2018 on the request of the respondent itself.Â After various reminders for the dues as contained inÂ Annx. P-9 (colly), a legal notice was

issued on 9.1.2019Â Â and the present petition was ultimately filed on 27.2.2019.

6. In the additional affidavit filed on 4.7.2019, an e-mail received from competent authority of the respondentÂ dated 15.4.2019 has been annexed as

Annx. 'A' to show that as per subject of the email, the respondent for some reasons was unable to appear before this Tribunal in April 2019, but in the context of legal notice, the respondent accepted the amount demanded by the petitioner and sought time to repay the same.

7. Considering all the materials on record of this petition, and also the additional affidavit,Â there is no difficulty in holding that the petitioner is entitled

to the amount claimed by it as dues lawfully realisable from the respondent in terms of the agreement and Purchase Order.Â Hence, the amount of

Rs. 7,99,373/- is decreed in favour of the petitioner.

8. The petitioner has also claimed for pendentilite and future interest. No doubt from March 2019 onwards, the petitionerÂ is entitled for interest

overÂ the amountÂ decreed above, but its claim of interest @ 18% per annum is unacceptable.Â Following several recent judgments of this

Tribunal rendered in similar money claims, theÂ prayer for interest from March 2019 onward is allowed but only at the rate of 9% p.a.Â The claim

on account of TDS certificate not being furnished has already been included in theÂ principal claim allowed above and hence, no separate order is

required in respect of the same.Â Since the respondent has chosen not to contest the claim, no order shall be made as to costs.

9. The petition is allowed to the aforesaid extent and disposed of alongwith pending M.A., if any.Â Â The respondent is directed to pay the decretal

amount including the interest as allowed within six weeks.Â The Registry is directed to prepare a decree on the basis of this judgmentÂ at an early

date, preferably within four weeks.Â Â In case, theÂ respondent fails to pay the decretal amount including interest within the time granted,Â the

petitioner would be at liberty to realise the same by preferring an Execution Application in accordance with law.Â Â Â