

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

**DATED 12<sup>th</sup> SEPTEMBER, 2013**

**PETITION NO.166(C) OF 2013**

Noida Software Technology Park Ltd. ....Petitioner

Versus

Union of India & Ors. ....Respondents

**BEFORE:**

**HON'BLE MR. JUSTICE AFTAB ALAM, CHAIRPERSON  
HON'BLE MR.KULDIP SINGH, MEMBER**

For Petitioner : Mr. Ramji Srinivasan, Sr. Advocate  
Mr. Vivek Chib, Advocate  
Ms. Ruchira Goel, Advocate  
Mr. Asif Ahmed, Advocate

For Respondent No.1 : Mr.Ruchir Mishra, Advocate

For Respondent No.2 : Mr. Maninder Singh, Sr. Advocate  
Mrs. Prathiba M. Singh, Advocate  
Mr. Tejveer Singh Bhatia, Advocate  
Mr. Upender Thakur, Advocate

**By Aftab Alam, Chairperson** – M/s. NOIDA Software Technology Park Limited (the petitioner) is aggrieved by the refusal of M/S. Media Pro Enterprises India Private Limited (respondent No.2) to enter into an Interconnect Agreement with it and the consequent denial to the petitioner of around seventy channels under its control. It has, therefore, filed this petition under sections 14 and 14A of the Telecom Regulatory Authority of India Act, 1997 seeking directions to the second respondent to enter into the Interconnect Agreement with it on mutually agreed terms or in case the two sides are unable to come to any mutually agreed terms, as per the respondent's Reference Interconnect Offer(RIO)and to provide to it the contents/TV channels under the latter's control.

The petitioner is a headend in the sky (HITS) operator and as of date it is the only HITS operator in the country. The HITS system goes a long way parallel with the Direct to Home (DTH) system in that in both systems the transmission of TV signals takes place in digitized and encrypted mode mainly through space but in HITS, unlike the DTH, for the "last mile" the signals are to be carried through optic fibre cables.

The DTH system is completely wire-less. In the DTH system the operator, by using multiple antennae, downlinks the TV signals beamed up in digital and encrypted mode by the different broadcasters to their respective satellites. The DTH operator gets those TV signals decrypted by means of the Integrated Receiver and Decoder (IRD) boxes supplied by the respective broadcasters. At the DTH platform the decrypted signals received from the broadcasters are once again converted into digital and encrypted mode with the aid of Conditional Access System (CAS). Coupled with CAS, Subscriber Management System (SMS) is used to manage the subscribers' details and to control the supply of contents to the subscribers. All the signals from the different broadcasters are then up-linked in a jumbled up single beam to the designated transponders/satellite of the DTH operator for transmission in *Ku* band. The signals beamed up from the DTH platform are received back on the earth by the dish antennae installed at the subscribers' premises and are decrypted or decoded by the set-top boxes and the viewing cards inside those boxes supplied by the DTH operator to the subscriber. The set top box is, needless to say, are configured or "paired" with the SMS/CAS at the head-end of the DTH operator.

The HITS system is same as the DTH system upto the stage the signals received from the broadcasters are uplinked to the satellite of the

HITS operator except that the in the HITS system transmissions may be made in *Ku* or *C* bands. The licence granted to the petitioner allows it the use the *C* band which is more effective and has a wider coverage than the *Ku* band available to the DTH operator.

However, from the stage the signals are uplinked to the satellite of the DTH operator or the HITS operator, as the case may be, the two systems operate completely differently. In the DTH system, as noted above the signals from the space are received back on the earth by the dish antennae installed at the subscribers' premises and are decrypted or decoded by the set-top boxes and the viewing cards inside the set top boxes supplied by the DTH operator to the subscribers. But in the HITS system, the statute does not permit the Digital Video Broadcast-*Satellite* to go directly to the viewers' TV set. The HITS operator is, therefore, obliged to have an intermediary, a Multi System Operator (MSO) or Local Cable Operator (LCO), between itself and the viewer, [unless of course it sets up its own cable network and takes the signals to the subscribers of its cable network through Quadrature Amplitude Modulation (QAM) set top boxes, after first downlinking the signals to its terrestrial receiving station. The present petitioner though has no intent to set up its own cable network and it would operate though MSOs and LCOs as intermediaries.]

The signals from the satellite of the HITS operator are received at the platform of either a MSO or LCO that has a trans-modulator supplied by the HITS operator. The trans-modulator converts the signals from Digital Video Broadcast-*Satellite* (DVBS) to Digital Video Broadcast-*Cable*(DVBC) mode for onward transmission through optic fibres. However, the signals leaving the MSO/LCO platform continue to remain encrypted and thus un-viewable. The cables carry the signals to the individual viewer's home where the signals are decrypted or decoded for viewing by the set-top boxes and the viewing card inside the set top boxes supplied to the subscriber by the HITS operators through the intermediary MSO/LCO. The set top box supplied to subscriber, like the DTH system are configured or paired with the SMS/CAS at the HITS head-end. The petitioner claims that it also has some control over the trans-modulator supplied by it to the MSO/LCO.

The nature of the two systems, DTH and HITS will be further clarified if after this rather long introduction we take a look at their statutory definitions. "direct to home operator" is defined in clause 2 (k) and "head end in the sky operator" or "HITS operator" in clause 2 (l) of the Telecommunication (Broadcasting and Cable Services) Interconnection Regulations, 2004 ("The Regulations" hereinafter). The aforesaid two clauses are as under:-

“(k) **“direct to home operator”** means an operator licensed by the central government to distribute multi-channel TV programmes by using a satellite system directly to subscriber’s premises without passing through intermediary such as cable operator or any other distributor of TV channels;

(l) **“head end in the sky operator” or “HITS operator”** means any person permitted by the Central Government to -----

(a) distribute multi-channel TV programmes in C band or Ku band ----

(i) by using a satellite system, to intermediaries like cable operators and not directly to subscribers; and

(ii) by using its own cable network, if any, to the subscribers of such cable network through Quadrature Amplitude Modulation (QAM) set top boxes, after first downlinking the signals at its terrestrial receiving station; and

(b) provide passive infrastructure facilities like transponder space on satellite, earth station facilities, etc. to one or more multi system operators or to any consortium of multi system operators or cable operators, for distribution of multi-channel TV programmes, in C band or Ku band through QAM set top boxes, using such infrastructure facilities.

The second respondent, M/S Media Pro Enterprises India Private Limited can be described within the statutory framework only as an Agent or Intermediary which expressions are defined in clause 2 (b) of the Regulations as under:-

(b) “**agent or intermediary**” means any person including an individual, group of persons, public or body corporate, firm or any organization or body authorised by a broadcaster/multi system operator to make available TV channel(s), to a distributor of TV channel.”

But the respondent’s description as “agent or intermediary” does not do justice to its real position (*and strength!*) in the commercial world of TV transmissions where it is commonly called as “the Content Aggregator”. The respondent is in arrangement with primary broadcasters of around 70 TV programmes to represent them collectively (and/or separately) and to enter into agreements on their behalf with other “Service providers”, broadcasters, MSOs, LCOs. Mr. Srinivasan, learned counsel for the petitioner aptly described the respondent as “the commercial limb” of the broadcasters.

It is easy to imagine that being represented in a collective, the broadcasters get bargaining power far greater than they would have otherwise wielded on their own.

A good description of the “Content Aggregator” is given by the Telecom Regulatory authority of India (TRAI) in the Explanatory Memorandum to the draft of the Register of Interconnect Agreements (Broadcasting And Cable Services) (Fifth Amendment) Regulations, 2013 which is as under:-

“11. As on date there are around 233 pay channels (including HD and advertisement-free channels) offered by 59 pay broadcasters. These channels are distributed by 30 broadcasters/aggregators/agents of broadcasters. **Of these, the four main aggregators and the number of TV channels they distribute are: Media Pro Enterprise India Private Limited – around 75 channels, IndiaCast UTV Media Distribution Pvt. Limited – around 35 channels, M/s Sun Distribution Services Private Limited – around 30 channels and MSM Discovery Private Limited – around 30 channels.**

12. One of the prime drivers for the emergence of authorized distribution agencies of broadcasters could be the fact that the analog Cable TV distribution market is too fragmented with the presence of a very large number of MSOs and LCOs thereby, posing practical difficulties for the broadcasters to deal with them individually. However, the trend observed in this market is the entry of big broadcasting houses into the business of aggregation by forming joint venture companies.....

13. .... This together with the misuse of market dominance by the aggregators has led to aberrations in the market. With time, consolidation has taken place in the aggregators’ business and now the top four aggregators control around 73% of the total pay TV channel market and wield substantial negotiating power which can be, and is often misused.”

(Emphasis added)

Having thus taken note of the legal and commercial personalities of the petitioner and respondent no.2 we now proceed to examine the relevant facts of the case which are brief and undisputed.

In the year 2003 the petitioner obtained from the Ministry of Information & Broadcasting the licence to establish, install, operate and

maintain “head end in the sky” system to provide digital cable services in India. Apparently, the licence was granted even before provisions were made for accommodation of the HITS operator in the regulatory framework. After suitable provisions were made in the Regulations to accommodate the HITS operator, but even before the petitioner was able to technologically install the “head end in the sky” platform, it approached the respondent by its letter of March 21, 2012 declaring its interest in signing an Interconnect Agreement with the latter so as to be able to offer its channels as part of the petitioner’s HITS bouquet. In the letter a request was made to the respondent to send its commercial offer to initiate the discussion and finalise the details of the Interconnect Agreement for execution by the two sides. The respondent gave its response by email dated March 29, 2012 asking the petitioner to submit its HITS licence and WRD permission to take up the matter further. The exchange of correspondence between the two went on for several months in which the petitioner appears to be anxious to finalise the commercial details with the respondent, even while its “head end in the sky” platform was in the process of being set-up technologically but the response of the respondent appears to be lukewarm and temporizing.

By email dated September 9, 2012 the petitioner sent the details regarding its (technology) partners stating further that while its partners were

setting-up the technology, they (petitioner and the respondent) might move ahead on the financial aspects of the deal that may be given effect to after the technology of the petitioner's system was audited by the respondent's team to its complete satisfaction. This email was followed by another email on September 10, 2012 in which the petitioner provided more details regarding its technology partners and once again requested the respondent to agree upon the financial aspects of the arrangement between the two sides subject to the technical audit/inspection by its technical team. On September 25, 2012 even without receiving any response to its earlier emails, the petitioner sent another email requesting the respondent to send their financial offer and assuring that they were committed to furnish any information/details sought by the respondent. The respondent finally responded by email of September 27, 2012 only to say that they would revert in a couple of days, indicating the "way forward requirements" and the financial offer. On October 19, 2012 the petitioner once again sent an email to the respondent giving several options for structuring the deal between them and stating that the same may be treated as the starting point of discussion and requesting respondent No.2 to propose their standpoint on structuring the deal. On October 22, 2012 the respondent finally replied to the petitionersaying that none of the various proposals made by the

petitioner made a viable business case for the respondent. However, though turning down the proposals made by the petitioner, the respondent, in its turn, offered certain options for confirmation by the petitioner. After some more discussions had taken place, the respondent by its email of November 11, 2012 told the petitioner that they could give any response to the petitioner's queries only after getting the feedback from their legal team. On January 4, 2013 the petitioner once again sent an email to the respondent offering to give further information if so required by the respondent.

Failing to get a positive response from the respondent, the petitioner lodged a complaint with the Telecom Regulatory Authority of India (TRAI) on February 20, 2013 and on the following day (February 21, 2013) respondent No.2 wrote a letter to the petitioner informing that they required a technical audit to be conducted before entering into a Subscription Agreement with the petitioner. The petitioner replied by its letter of February 28, 2013 asking the respondent to share its proposed test schedule so that the technical audit of the petitioner's facility may be conducted at the earliest. Getting no response to its letter, the petitioner sent a reminder on March 15, 2013. The respondent by its letter of March 26, 2013 told the petitioner that it would be convenient (for it) to conduct the technical audit

either on April 12 or 16, 2013. This letter has some relevance for future discussions and, therefore, in so far as relevant, it is being reproduced here:

“As requested by you, we have attached herewith the test schedule. Please note that as conveyed to you earlier **we will be inspecting your systems to check compliance of the parameters specified in Schedule IV of the Telecommunication (Broadcasting And Cable Services) Interconnection (Fifth Amendment) Regulations, 2009 No.4 of 2009 dated 17<sup>th</sup> March, 2009** as per the test schedule attached herewith. We will also be understanding in detail the working of your system and the business model.”

(Emphasis added)

On April 10, 2013 the installation of the petitioner’s headend facility was completed with the help of the technology provided by M/S Beijing Novel-Super Digital TV Technology Company Limited and the latter in its certificate approved the petitioner’s HITS facility and certified that the system set-up by the petitioner is totally capable of providing content protection to broadcasters and is fit for all other purposes (a copy of the certificate is enclosed as Annexure – P/3 and may be seen at Page 58 of the Brief). On April 15, 2013 the petitioner had its head end facility installed with the help of the technology provided by M/s Motorola Mobility and the latter in its certificate approved the petitioner’s HITS facility and certified that the system set-up by the petitioner is totally capable of providing

content protection to broadcaster and is fit for all other purposes (a copy of the certificate by M/s Motorola is part of Annexure-P/3 and may be seen at Page 57 of the Brief). Petitioner also entered into a commercial arrangement with Intelsat, a commercial satellite service provider for providing the necessary transponder space for its HITS project.

It needs to be noted here that the establishment of the head end facility by the petitioner brought about a fundamental change in the nature of the negotiations between the two sides. Prior to the establishment of the head end facility the requests by the petitioner to respondent no.2 for settling the financial details might be seen as purely commercial proposals but after the installation of the head end facility the negotiations acquired a statutory character. As the petitioner became fully equipped to work as a HITS operator its request to respondent no.2 for providing its TV channels attracted the “must provide” directive in clause 3.2 and the time limit prescribed by clause 3.5 of the Regulations which is as under:

“3.5 Any broadcaster, multi system operator or HITS operator, as the case may be or any agent/any other intermediary of the broadcaster, multi system operator or HITS operator, as the case may be to whom a request for providing TV channel signals is made, should either provide the signals on mutually agreed terms to the distributor of TV channels who is seeking signals, or specify the terms and conditions on which they are willing to provide TV channel signals, in a reasonable

time period but not exceeding sixty days from the date of the request. In case, the broadcaster, multi system operator or HITS operator as the case may] or any agent/any other intermediary or the [broadcaster, multi system operator or HITS operator, as the case may be] to whom a request for providing TV channel signals is made, turns down the request for TV channel signals, the reasons for such refusal must also be conveyed within sixty days from the date of the request for providing TV channel signals so as to enable the distributor of TV channels to agitate the matter at the appropriate forum.

*Explanation* – The time limit of sixty days shall also include time taken by the broadcaster to refer the distributor of TV channels, who has made a request for signals, to its agent or intermediary and *vice versa*.”

On April 16 and 24, 2013 the respondent held a technical audit at the petitioner’s terrestrial receiving station at Surajpur Industrial Area, Greater NOIDA, following which it made a technical audit report vide its email dated April 29, 2013 raising certain queries and objections. The petitioner by its letter of May 22, 2013 gave its reply to the respondent’s queries and objections.

Between the two test visits by the respondent at the petitioner’s Surajpur station, the petitioner on April 18, 2013 made a representation to M/s Broadcast Engineering Consultant India Ltd. (BECIL, respondent no.3 in this petition) to visit the petitioner’s HITS platform for inspection and to

conduct a technical audit. At the petitioner's request BECIL visited the petitioner's station at Surajpur and held a preliminary inspection on May 3 and May 23, 2013. According to the petitioner, it was forced to approach BECIL for technical audit of its HITS system to check its compliance with schedule IV of the Regulations on account of dilatory tactics employed by respondent no.2 in providing its TV channels to the petitioner.

On May 24, 2013 the petitioner withdrew its complaint submitted before TRAI but at the same time, apparently losing all hope of arriving at any arrangement with respondent no.2 through mutual negotiations, finally took recourse to legal proceedings. On May 29, 2013 while this Tribunal was not sitting, the petitioner approached the Delhi High Court in a Writ Petition being WP(C) No.3713/2013 impleading respondent no.2 and BECIL as respondents 2 and 3 respectively. On that date, the High Court issued notice in the writ petition and after hearing Counsel for respondent no.2 passed the following order:

“After some arguments, the learned counsel for the petitioner and respondent no.2, who appear before me, **agree** that, for the moment, the following directions can be issued by the court:

- (i) the petitioner shall respond to the communication dated 29.04.2013 in the course of the day;

- (ii) the representatives of the petitioner and respondent no.2 shall meet and deliberate upon the issues raised in the said communication and all other issues concerning them at a meeting, which would be held at respondent no.2's office at Noida on 03.06.2013 at 11.00 a.m. The meeting shall be minuted and the minutes of the meeting will be filed in court;
  
- (iii) in case the petitioner and respondent no.2 are not able to resolve the issues, on a request being made to respondent no.3 by the petitioner, a technical audit will be carried out by the said respondent. Respondent no.2 while carrying out the audit will take into account the concern of respondent no.2. Respondent no.3 shall place its report before the court.**

Needless to say, the technical audit, if necessary, will be carried out by respondent no.3 **in accordance with the extant regulations and that this exercise will be without prejudice to rights and contentions of the parties.**”

(Emphasis added)

The differences between the two sides were evidently not resolved through bipartite discussion and consequently BECIL was called in for a technical audit of the petitioner's system. Following the High Court order, BECIL on June 8, 2013 wrote to respondent no.2 asking to submit its queries and doubts in regard to the petitioner's HITS platform/facility. Respondent no.2 by its email dated June 10, 2013 submitted to BECIL its technical concerns in respect of the petitioner's HITS facility. On June 13,

2013 the technical team of respondent no.2 also gave a presentation before BECIL explaining its concerns before the technical audit was undertaken as directed by the High Court order. BECIL finally held the technical audit of the petitioner's HITS platform/facility on June 14 and June 20, 2013 and gave its technical audit report to the petitioner. Based on its audit report BECIL certificate testifies that the Conditional Access System & Subscriber Management System installed at the petitioner's station at Surajpur satisfied the stipulated criteria.

On July 1, 2013, the petitioner, greatly fortified by the BECIL report and certificate in its favour renewed its prayer before the Delhi High Court for a direction to respondent no.2 to enter into an Interconnection Agreement with it for providing its TV channels to the petitioner. However, as on the same date this Tribunal had commenced functioning, the High Court disposed of the Writ Petition sending the matter to the Tribunal.

Those are the brief facts and the background in which the matter has come to this Tribunal.

At this stage it will be apposite to turn back and recall that earlier the same matter had come before the Tribunal in which another HITS Operator

had claimed identical reliefs against some other broadcasters and “ContentProviders”

It may be noted that in the year 2003, apart from the present petitioner one Dish TV India Limited (Dish TV)<sup>1</sup> had also obtained from the Government of India the licence to set-up the head end in the sky platform. Dish TV had come to the Tribunal in Petition Nos.114(C) and 115(C) of 2008 impleading a total of 4 broadcasters (2 in each of the petitions) as respondents seeking a direction to them to forthwith make available to it activated decoders/viewing cards for receiving the channels available with those respondents on “non-discriminatory” basis for distribution on its HITS platform. The two petitions filed by Dish TV failed and were dismissed by the judgment and order dated August 13, 2008 but it will be instructive and helpful to refer to the earlier judgment of the Tribunal in some details.

In that case, the Tribunal noticed clause 3.2 of the Regulation which had already been amended to include head end in the sky operators. The Tribunal also noticed the recommendations of the TRAI on the issue of allowing the HITS permission holders (who were two at that time) to operate

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<sup>1</sup> As a matter of fact, Dish TV India Ltd. was the first to get the HITS licence followed by the present petitioner.

under the new licensing framework. The Tribunal extracted certain parts from the TRAI recommendations for quoting in its judgment as under:

“1. M/s ASC Enterprises (at present M/s Dish TV) and M/s Noida Software Technology Park Ltd. (M/s NSTPL) were granted permission in 2003 for HITS operations using teleport facility. M/s Dish TV had reportedly launched its HITS service in August, 2003. Later, because implementation of CAS was deferred, M/s Dish TV reportedly surrendered the satellite transponder capacity. M/s NSTPL had received the permission for HITS service in 2003 but reportedly did not start the HITS.

2. ....these permission holders are presently having valid permission to run HITS service over their teleport and neither of them is at present operating HITS service. M/s Dish TV claims to be in a state of readiness to start operations and has sought permission from the Government for change of satellite to start HITS operation.

3. **To ensure digitization and addressability in the cable sector and to ensure greater competition it is desirable that these permission holders should be allowed to provide the HITS operation on the existing guidelines terms and conditions, till at least such time that the terms and conditions of HITS license are notified by the Government of India. Thereafter, the two existing permission holders should be encouraged to migrate to the new licensing regime of HITS within a specified time frame. Therefore, the Authority recommends as follows:**

(i) .....

(ii) However, the existing HITS permission holders will be allowed to commence the HITS operation on the basis of their existing HITS

permission provided they given an undertaking to the effect that they shall migrate to the new HITS licensing regime within a period of three months from the date of notification of the new HITS licensing framework by fulfilling of the terms and conditions of the new license and that in the event of their failure to do so after having given such an undertaking their existing HITS permission shall be liable to be cancelled.”

(Emphasis added)

The Tribunal also noted the contents of the letter of TRAI dated February 15, 2008 in reply to the letter of the Ministry of Information & Broadcasting dated January 21, 2008 inquiring from TRAI as to whether Dish TV could be allowed to start operations or not. The reply of TRAI was as under:

“As regards the issue of existing HITS permission holders, the Authority is of the opinion that for faster roll out of digitalization and Conditional Access System in cable sector **it is essential to have a framework for these permission holders to operate and to migrate to the new licensing regime of HITS, as and when these are notified by the Government.** The recommendations of the Authority in this regard are enclosed at Annexure to this letter.”

(Emphasis added)

Yet the petitions failed for want of suitable amendment in clause 5.6 of the policy guidelines formulated by the Government of India, Ministry of Information & Broadcasting (Broadcasting Wing) vide its notification dated

November 11, 2005. It was contended on behalf of the broadcasters, respondents in those petitions that the Government of India, Ministry of Information & Broadcasting (Broadcasting Wing) vide its notification No.F.No.13/2/2002-BP&L/BC-IV dated November 11, 2005 had formulated guidelines for downlinking satellite television channels downlinked/received/ transmitted and re-transmitted in India for public viewing. Clause 5.6 of those guidelines stipulated that a broadcaster would provide satellite TV channel signals, reception decoders **only to** registered MSOs/Cable Operators or registered DTH Operators. Clause 5.6 of the Government policy guidelines then in existence was quoted in the earlier of the judgment as under:

“5.6 The applicant company shall provide Satellite TV channel signal reception decoders only to MSOs/Cable operators registered under the Cable Television Networks (Regulation) Act 1995 or to a DTH operator registered under the DTH guidelines issued by Government of India.”

(Emphasis in the original)

The Tribunal considered the rival contentions based on clause 5.6 of the Government guidelines and in that regard examined the circular letter issued by the Ministry of Information & Broadcasting on July 7, 2008 and heavily relied upon by the petitioner Dish TV. On a consideration of the

rival submissions the Tribunal upheld the objection raised by the respondents broadcasters and came to find and hold as under:

“The petitioners have tried to meet this objection by annexing with their rejoinder a copy of letter dated 7<sup>th</sup> June, 2008 written by petitioner No.1 to respondent No.1. In the said letter it is stated that policy framework being relied upon by Star was only in respect of future HITS licensees to be granted after HITS policy framework is laid down by the Government. It is further stated in the said letter that for existing HITS licensees there was no impediment. Further it is explained that the Dish TV would enter into an agreement with Star Den for downlinking and turnaround of various TV channels which would be re-transmitted through HITS platform to WWIL (MSO) and other independent cable operators/MSOs who are desirous of obtaining the digital signals from them for onward transmission to the subscribers through the cable network. This explanation to my mind does not meet the point raised by the respondents. **The policy Guidelines of 2005 clearly state that broadcaster can provide signals only to the registered MSOs or cable operators or to a DTH operator registered under the DTH guidelines issued by the Government of India. The use of word “only” has to be appreciated and not ignored. What follows from this is that petitioners may be ready to roll out HITS platform, but the Ministry of Information & Broadcasting is not ready to give permission to broadcasters to provide content to HITS licensees.**”

(Emphasis added)

Even while denying the relief claimed by the Dish TV, the Tribunal acknowledged the advantages of the HITS system for distribution of TV

channels and in the concluding portion of the judgment, the Tribunal observed as under:

“I cannot help observing that neither party disputes the advantages under the HITS system. It is also not disputed that this will be beneficial to the consumers as it will reduce the costs to the consumer while the MSOs and broadcasters will have the benefit of an addressable system. If every player stands to benefit from the system, I fail to understand why the Government is dithering on issuing clear Guidelines to allay the apprehensions of the broadcasters. The broadcasters today apprehend that in view of the existing guidelines if they provide signals/content to the HITS platform, they will be violating the existing Guidelines because the existing Guidelines permit supply of signals/content only to registered MSOs and cable operators and to the DTH platform.”

Having examined the circumstances in which the previous petition on behalf of another HITS operator failed we can now take a look at the relevant statutory provisions as they stand today after amendments, subsequent to the decision of the Tribunal in the case of Dish TV on August 13, 2008.

Clause 3 of the Regulations prohibits any understanding or arrangement between a broadcaster of a TV channel and any distributor of TV channel to the exclusion of other distributors of TV channels.

Clause 3.2 contains the “must provide” directive. As it stands to-day, and in so far as relevant for this case, it is as under:

“Every broadcaster shall provide on request signals of its TV channels on non-discriminatory terms to all distributors of TV channels, which may include, but be not limited to a cable operator, direct to home operator, multi-system operator, **head ends in sky operator**; [HITS operators and multi system operators shall also, on request, re-transmit signals received from a broadcaster, on a non-discriminatory basis to cable operators:]

(Emphasis added)

Provided.....

Provided further that any imposition of terms which was unreasonable shall be deemed to constitute a denial of request:

[Provided also.....]

[Explanation 1].....

[Explanation 2].....”

It may be noted here that the HITS operator was already included in the “must provide” provision as was noted in the Dish TV case; the latter portion of the provision within [] by which the “must provide” obligation, in turn, is cast upon the distributor, including the HITS operator to supply signals to a MSO or LCO was inserted with effect from March 17, 2009. But for the present case it is of no relevance.

Clause 3.5 of the Regulations (which is already extracted above) prescribes the period (of 60 days) within which the request for Interconnect Agreement must either materialise or be rejected giving reasons for not acceding to the request.

Clause 13 of the Regulations casts an obligation to submit Reference Interconnect Offers for non-addressable systems. Clause 13.2A deals with Reference Interconnect Offers for direct-to-home service and Clause 13.2B, inserted by notification dated March 17, 2009 with effect from the same date, deals with Reference Interconnect Offers for addressable systems other than direct-to-home service: Clause 13.2B in so far as relevant for this case is as under:

**“13.2B.1** Every broadcaster, providing broadcasting services before the date of commencement of [the Telecommunication (Broadcasting and Cable Services) Interconnection (Sixth Amendment) Regulation, 2010 (4 of 2010)] and continues to provide such services after such commencement shall, within thirty days from the date of such commencement, submit its Reference Interconnect Offer specifying, inter alia, the technical and commercial terms and conditions including those listed in Schedule III for interconnection with addressable systems other than –

- (a) cable service in areas notified by the Central Government under sub-section (1) of Section 4A of the Cable Television Networks (Regulation) Act, 1995 (7 of 1995);

(b) the direct to home service, to the Authority.

**13.2B.2**.....

**13.2B.3** The provisions of Regulations 13.2A.1, 13.2A.2, 13.2A.4, 13.2A.5, 13.2A.6, 3.2A.7, 13.2A.8, 13.2A.9, 13.2A.10, 13.2A.11, 13.2A.12 and 13.2A.13, relating to Reference Interconnect Offers for direct to home service, shall apply, mutatis mutandis, to such a Reference Interconnect Offer for interconnection with addressable systems other than cable service in areas notified by the Central Government under sub-section (1) of Section 4-A of the Cable Television Networks (Regulation) Act, 1995 (7 of 1995) and the direct to home service:

Provided that a broadcaster may have different Reference Interconnect Offers for different types of addressable systems.

**13.2B.4** Any distributor of TV channels using an addressable system for distribution for TV channels seeking interconnection with a broadcaster in terms of the Reference Interconnect Offer referred to in Regulation 13.2B.1 or 13.2B.2, as the case may be, **shall ensure that the addressable system being used for distribution of TV channels satisfies the minimum specifications for addressable systems as specified in Schedule IV to these regulations:**

**Provided that in cases where a broadcaster is of the opinion that the addressable system being used for distribution of TV channels does not satisfy the minimum specifications for addressable systems as**

**specified in Schedule IV to these regulations, upon being informed of such opinion by the broadcaster, the distributor of TV channels shall get the addressable system audited by M/s Broadcast Engineering Consultants India Ltd., or any other agency as may be notified by the Authority from time to time for the purpose of such audit and obtain a certificate to the effect that the addressable system being used for distribution of TV channels satisfied the minimum specifications for addressable systems as specified in Schedule IV to these regulations:**

**Provided further that the finding of M/s Broadcast Engineering Consultants India Ltd., or any other agency notified by the Authority in this regard, as the case may be, based on such audit as referred to in the first proviso, about the addressable system being used for distribution of TV channels satisfying or not satisfying the minimum specifications for addressable systems as specified in Schedule IV to these regulations, shall be final.”**

(Emphasis added)

Schedule IV was added to the Regulations along with clause 13.2B by notification dated March 17, 2009 with effect from the same date. It lays down the specifications for Set-Top boxes (STBs), Conditional Access System (CAS) and Subscriber Management System (SMS) for implementation of Digital Addressable System.

The proviso to 13.2B.4 and the specifications provided under schedule IV are especially relevant and important for this case. As noted above, since

the differences between the parties over the technical aspects of the system set up by the petitioner were not resolved through mutual negotiations, a technical audit of the petitioner's platform, as directed by the Delhi High Court, was held by BECIL to verify whether the petitioner's addressable system conformed to the specifications laid down in schedule IV of the Regulations and BECIL gave a positive certificate to the petitioner on the basis of its audit report. To this aspect of the matter, however, we shall advert to in greater detail later on in the judgment.

Coming now to the downlinking guidelines issued by the Government of India, it may be recalled that the case of Dish TV had failed because there was no mention of the HITS operator in clause 6.5 of the guidelines. In this regard it is to be noted that after the judgment of the Tribunal in the Dish TV case, the Ministry of Information & Broadcasting modified the relevant clause of the downlinking guidelines on December 15, 2009 which after modification reads as under:

“5.6 The applicant company shall provide Satellite TV channel signal reception decoders only to MSOs/Cable operators registered under the Cable Television Networks (Regulation) Act 1995 or to **a DTH operator registered under the DTH guidelines issued by Government of India** or to an Internet Protocol Television (IPTV) Service Provider duly permitted under their existing Telecom License or authorized by Department of Telecommunications or to a HITS operator duly

permitted under the policy guidelines for HITS operators issued by Ministry of Information and Broadcasting, Government of India to provide such service.”

(Emphasis added)

The omission or the lacuna due to which the case of Dish TV had earlier failed thus stands filled up and corrected with the amendment in clause 5.6 of the guidelines. However, Mr. Maninder Singh, senior advocate appearing for respondent No.2 stoutly defended its action in refusing to provide signals of its TV channels to the petitioner. Learned counsel contended that there was a clear risk of piracy of the signals of respondent no.2 and raised the issues of breach of the provisions of Copyright Act and the agreement between respondent no.2 and the primary broadcasters. Mr. Singh submitted that in terms of its agreement with the primary broadcasters, respondent no.2 was only authorized to provide signals within the geographical bounds of India, Nepal and Bhutan but the petitioner has a huge “footprint” in that the signals beamed down from the petitioner’s satellite and its transponder cover a very vast area on the earth, going far beyond the three countries and falling in many other countries. Mr. Singh submitted that all that was required for an illegal and unauthorized viewing of the TV channels of respondent no.2 in far-off lands beyond India was a

trans-modulator which, according to him, is generally available in the market and one of the petitioner's set-top boxes from India that could be smuggled out and carried to wherever the signals were available outside India.

The pleadings in this regard are inter alia contained in paragraphs 7, 16 and 17 of the reply where it is stated as under:

“7. That after the technical inspection of the petitioner's head-end on 16.4.2013 and 24.4.2013, the Respondent had found various shortcomings in the system of the petitioner. Thus, shortcomings were duly pointed out vide communication dated 29<sup>th</sup> April 2013. It was further explained that the footprint of petitioner's HITS platform is very huge which not only covers the Indian sub-continent but reaches Japan in the East and Australia in the South. It covers number of countries like Thailand, Malaysia, Indonesia, China for which Media Pro does not have any licence from the broadcasters to supply signals. In order to meet the 'Must Provide' Clause as also to protect interest, Media Pro had requested the petitioner to get some anti-piracy measures as part of their HITS platform to enable the Media Pro to have confidence in the system and working of HITS platform of the petitioner and whereby Media Pro can also protect the copyright of the broadcasters.

16. It is respectfully submitted that the signals supplied by the petitioner will be available for the entire footprint and the same could be converted in a format which could be transferred through a cable network by using a Trans-Modulator which is generally available in the market. In such a situation, a person desirous of infringing the right of the broadcaster would be required only to carry one set top box of the petitioner from India and supply the

signals converted by Trans-Modulators to the said set top box which would de-encrypt the signals of the petitioner and the channels of the broadcasters will be available. Copy of the chart showing substantial footprints of the HITS platform of the petitioner is annexed herewith as **ANNEXURE R-2/3**.

17. After de-encryption, the said signals could be combined into a single analog feed by a small apparatus viz. a mixture and could be distributed by the said infringer through a cable network on an analog mode to the entire city. It is thus, submitted that since the avenues of infringement of the broadcasters' right in a HITS platform are easy and abundantly available, the respondent had asked the petitioner to comply with certain requirements to have an extra protection of signals to avoid piracy."

The allegation concerning the risk of piracy is strongly controverted by the petitioner and in paragraph 7 of its rejoinder it is averred as under:

"7. That it is submitted that the allegation of the Respondent No.2 in para 7 of the Reply, concerning the alleged "huge" footprint of the Petitioner Company herein, is completely frivolous..... The same is clear from the fact that the footprint of other broadcasters and distributors (Dish TV, TATA Sky, SUN TV, Videocon etc.) is similar to that of the Petitioner Company herein and in certain cases goes much beyond that, but no such unnecessary issues have been raised qua the said entities.

A list of the countries covered by these broadcasters and distributors along with graphs of the footprints of their signals is attached herewith and marked as **Annexure P-2(Colly)**.

Furthermore, it is also submitted that the primary broadcaster like Zee, Star, Sony Group etc. use satellites that are similar to the ones that are used by the Petitioner Company herein. True copy of the satellite footprints of primary broadcasters like Zee, Star, Sony Group etc. are marked and annexed herewith as **Annexure P-3(Colly)**.

The Petitioner Company herein specifically by way of the instant Rejoinder, calls upon the Respondent No.2 Company herein to declare before this Hon'ble Appellate Tribunal whether it has subjected all other distributors who have sought its TV Channel signals to the same stringent and uncalled-for technical requirements/stipulations which are beyond the ambit of the regulatory framework, as it has from the Petitioner Company herein.”

Mr. Singh, however, contended that the spill-over in the HITS system set-up by the petitioner is far greater than in DTH or other modes of transmission. He further submitted that in HITS, unlike DTH, there is no privity between the HITS operator and the ultimate viewer as a MSO or a LCO is an inseparable intermediary in the HITS system. He further submitted that in DTH there is no possibility of any conversion of digital signal to analogue mode as there is no third party intermediary between the service provider and the viewer.

We are quite unimpressed by the submissions made on behalf of respondent no.2 and we find that the submissions are untenable both on facts and in law. It is plain and clear that the range of the beams coming down

would depend upon the position of the satellite in the space and the angle of the transponder. It is equally clear that it is nearly impossible to have a satellite transmission in which the down-beam of the signals may be limited strictly to the geographical boundaries of any one country. It is also undeniable that the signals from the satellites used by the primary broadcasters and many DTH operators fall on to a number of countries beyond India. In view of these unquestionable facts we find it difficult to appreciate Mr. Singh's contentions based on the HITS spill-over being allegedly larger than the spill-over in the DTH system or the absence of any direct relationship between the HITS operator and the individual subscriber or the absence of any intermediary in the DTH system. Even if it is accepted that the spill-over from in the petitioner's system is larger than the primary broadcasters and the other DTH operators, that would make no difference because applying Mr. Singh's submission the risk of piracy beyond India would be equally in case of transmissions by the primary broadcasters as well as the DTH operators. In paragraph 16 of its reply, the respondent has stated that in the case of the petitioner's system piracy was possible by using a trans-modulator which is generally available in the market and carrying one set-top box of the petitioner from India to any other places wherever the signals were available.

Here it needs to be clarified that according to the petitioner its trans-modulators are not freely available in the market. The trans-modulator that it supplies to its affiliate MSOs/LCO is an expensive equipment, especially designed and made to order. Further, the trans-modulator with the MSO merely converts the signals from Digital Video Broadcast-*Satellite* (DVBS) to Digital Video Broadcast-*Cable* (DVBC) mode for onward transmission through optic fibre but the signals leaving the MSO/LCO platform continue to remain encrypted and thus un-viewable. There is no contra plea or evidence not to accept the petitioner's case.

Coming back to the respondent's contention that on account of the very large footprint of the petitioner, the respondent's channels can be viewed in countries beyond India by procuring a trans-modulator and stealthily carrying out an activated set top box of the petitioner, it does not require much imagination to see that the same would apply in the case of the DTH operator as well as the primary broadcaster. In case of a DTH operator even a trans-modulator would not be needed and signals could be converted into viewable images by simply carrying out of the country the set-top box and the viewing card of the concerned DTH operator. The same is again true in the case of the primary broadcaster in which case only an integrated

receiver and decoder box of the broadcaster needs to be carried to wherever the signal is to be viewed.

The allegation of piracy can be made against a distributor if he is actually indulging or colluding in the act. But the way in which piracy may be possible as contended on behalf of respondent no. 2 involves stealing a set top box of the petitioner, smuggling it out of the country and using it unauthorisedly in a different part of the world where the signals may be available. In such a case the petitioner would be itself the victim of an offence and in such eventuality we fail to see how the apprehended risk of piracy can be cited to deny signals to the petitioner as mandated by the Regulations.

Coming now to the legal side of the objection raised on behalf of respondent no.2, it is seen above that BECIL has given a positive certificate to the petitioner and clause 13.2B.4 gives finality to the findings of BECIL. In this regard it is to be noted that respondent no.2 has indeed assailed the audit report and the certificate of BECIL but significantly the correctness of audit report is not disputed. The report is criticized for being confined to the specifications provided under schedule IV of the Regulations and for not addressing the concerns of respondent no.2 that admittedly extend beyond the specifications under schedule IV of the Regulations. Respondent no.2

has enumerated, in paragraph 23 of the reply, the concerns that it had submitted to BECIL under six different heads and then in paragraphs 26 and 28 of the reply it is stated as under:

“26. It is respectfully submitted that out of the above discrepancies, BECIL has not checked/ verified and resolved most of the above requirements merely on the ground that the same is not required in terms of Schedule-IV to the Interconnection Regulations. It is respectfully reiterated that the said regulations are merely providing for bare minimum requirements.

28. It is respectfully submitted that the certificate granted by BECIL is limited to the requirements of Schedule-4 of Telecommunication Broadcasting Services Interconnection (5<sup>th</sup> amendment) Regulation 2009. It is respectfully submitted that Schedule-4 appended to 2009 regulations only lays down the minimum standards. It is respectfully submitted that for newer technologies and newer platforms, additional requirements can be prescribed by the broadcasters in order to preserve their commercial interest.”

Mr. Maninder Singh strongly submitted that the Interconnect Agreement envisaged under the Regulations was not an agreement that the parties entered into by their own volition but it was an agreement which was statutorily forced upon one of the parties on pain of penalty. It was, therefore, incumbent upon the Tribunal to balance the equities, adequately safeguard the interests of the unwilling party and to direct the party seeking signals of the TV channels to take sufficient measures to protect the other

side from coming to any harm. In this connection, he further contended that Schedule-IV of the Regulations only provided the “**minimum** specifications for addressable systems” and the use of the word minimum in Regulation 13.2B.4 made it clear that in an appropriate case the Tribunal could require the party seeking TV channels to provide higher technical safeguards than those specified in Schedule IV. In support of the submission, Mr. Singh relied upon the orders of this Tribunal dated July 25, 2012 in Petition No.427(C) of 2010(hereinafter referred to as the case of “Ortel Communications Ltd.”) and the order dated April 9, 2011 in Petition No.15(C) of 2011(hereinafter referred to as the case of “Nalanda Cable TV Network”).

In this regard, Mr. Singh further referred to the Explanatory Memorandum to the Telecommunication (Broadcasting and Cable Services) Interconnection (Fifth Amendment) Regulations, 2009 (No.4 of 2009) where in paragraph 37 it is stated as under:

“37. The Ministry of Information & Broadcasting has not issued licensing policy for HITS platforms as yet. In such a scenario, the Authority did not deem it fit to come out with any regulations relating to HITS operators at present. Accordingly, the issues relating to HITS have not been addressed in the amendment regulation.”

Inferring from the above that the specifications under schedule IV of the Regulations were framed not keeping in mind the HITS system. Mr. Singh submitted that the specifications would have been far more stringent if those were framed having regard to the HITS system and according to him, that was another good reason to prescribe a standard much higher than the schedule IV specifications for the HITS system set up by the petitioner. He referred to his reply where 12 shortcomings in the head end of the petitioner are enumerated under the heading “Summary of Correspondence and Deficiencies Pointed Out”. In course of the submissions however, Mr. Singh submitted that respondent no.2 was willing to give up in regard to 8 out of the 12 but must insist for the correction of the deficiencies stated at serial numbers 1, 5, 8 and 12 which are as under:

“1. The Covert FP was on basic level. It was explained that the same has to be implemented on different field and frame dynamically.

5. Visible water marking i.e. Company logo must be on Video layer instead of STB OSB layer.

8. Geo-fencing not there. In other words, there were no capability in terms of restricting illegal box migration from one LCO or other countries with third party Trans-Modulator because NSTPL’s STB do not have pairing mechanism with NSTPL’s Trans-Modulator. Hence it became very much essential to protect illegal box migration for re-distribution of content to any other place or different country within Satellite footprint. Hence it

becomes very important to fulfill requirement in terms of Content protection and illegal re-distribution.

12. The reconciliation process of SMS & CAS database is not available.”

Mr. Singh was unable to deny that the above mentioned alleged deficiencies are beyond the specifications laid down under schedule IV but insisted that it was necessary to address those issues in order to fully protect the interests of respondent no.2 and the primary broadcasters whose interests the respondent represented. Mr. Singh further submitted that earlier in course of discussions the petitioner had actually agreed to rectify some of those shortcomings and in that regard referred to paragraph 8 of the reply which has a reference to emails sent by respondent no.2 on May 28 and 29, 2013. Paragraph 8 of the reply reads as under:

“8. It is respectfully submitted that the present Petitioner has also visited the office of the answering Respondent on 28.05.2013 for the purpose of discussions for availing signals of the answering Respondent on Petitioner’s HITS Platform. After detailed discussions, various shortcomings were pointed out by the answering Respondent in Petitioner’s HITS Platform. The Petitioner inter alia, undertook and further, assured the answering Respondent that the said shortcomings/discrepancies shall be fully cured within four to ten weeks. In addition thereto, the present Petitioner also assented to another meeting on 10.06.2013 at Petitioner’s Sarojini Nagar office for taking the discussion forward. In furtherance to the foregoing, the

answering Respondent also sent e-mails dated 28.05.2013 and 29.05.2013 inter alia, highlighting commitments and undertakings made by the Petitioner. Copies of the aforesaid emails dated 28.05.2013 and 29.05.2013 are annexed herewith as ANNEXURE R-2/1. However, it is a matter of record that the petitioner has neither shown any inclination to hold a meeting as per its assurances nor the shortcomings/deficiencies pointed out by the answering respondent in the petitioner's HITS platform have been cured till date."

On a careful consideration we find the submissions made by Mr. Singh without any force and quite unacceptable. First, it is necessary to clear the legal issue. Clause 13.2B.4 of the Regulations mandates that any distributor of TV channels using an addressable system for distribution of TV channels seeking interconnection with the broadcaster must ensure that the addressable system being used for distribution of TV channels satisfies the minimum specifications for addressable system as specified in schedule IV to the Regulations. It is thus clear that once the addressable system of a distributor of TV channels is shown to satisfy the minimum specifications as specified in schedule IV to the Regulations and as certified by BECIL, he becomes, as a matter of right entitled to be given by the broadcaster TV signals on a non-discriminatory basis as mandated by the Regulations. Needless to say that the specifications in schedule IV are framed keeping in view the best interests of both the broadcaster and the distributor. It is,

therefore, wrong to contend that the Tribunal should direct the distributor seeking signals from the broadcaster to satisfy higher norms extending beyond the specifications in schedule IV in order to satisfy the broadcaster on a case to case basis. Such an approach would not only lead to highly unpredictable and uncertain state of affairs but would also amount to the Tribunal assuming the legislative function. The insistence to comply with measures that are admittedly beyond the specifications in schedule IV, therefore, cannot be accepted.

We have also gone through the orders relied upon by Mr. Singh. The order in the case of Nalanda Cable TV Network does not appear to have any application to the facts of this case. As regards the case of Ortel Communications Ltd., we have gone through both the interim order passed in the case on January 19, 2012 and the final order dated July 25, 2012, relied upon by Mr. Singh. The Ortel Communications Ltd.'s case was on completely different facts. In that case the Tribunal held that BECIL was called for the inspection of the petitioner's (Ortel) system without complying with the proviso to Clause 13.2B.4. More importantly, in that case the Tribunal found that there was an attempt on the part of the petitioner (Ortel) to tutor the witness from the BECIL while he was coming for his cross-examination in connection with its report regarding the petitioner's facility.

We find it impossible to read the decision of the Tribunal in Ortel Communications Ltd. to lay down that it is open to the Tribunal to direct the distributor to provide higher standards than the specifications laid down in schedule IV of the Regulations to satisfy the broadcaster for the safety of its contents.

On the other hand, in the order in Ortel Communications Ltd. there are certain observations that go a long way to support the case of the present petitioner and in light of which the insistence by the respondent for higher safety measures than Schedule IV specifications appear quite unjustified. In paragraph 31 of the decision in the Ortel Communications Ltd., it was stated as under:

“The contention of the Petitioner would have some force if it had established that at least some broadcasters have been supplying their signals of their channels on digital platform; in which event this Tribunal could have proceeded on the basis that at least a few broadcasters had satisfied themselves about the sufficiency of the legal requirements so far as the capability of the Petitioner to re-transmit channels on the digital mode is concerned.”

Now, in this case the present petitioner has in fact already entered into interconnect agreements with several other broadcasters/TV channels such as Mega TV, Jaya TV, B4U and 9X on the basis of the technical audit

conducted by them and none of those channels raised any objections of the kind being raised by respondent no.2.

The claim made on behalf of respondent no.2 that in course of negotiations the petitioner had earlier agreed to rectify some of the deficiencies pointed out by respondent no.2 also appears to be quite misleading. In response to the statement made in Paragraph 8 of the reply and the reference to the respondent's emails of May 28 and 29, 2013 in the rejoinder filed by the petitioner it is stated as under:

“It is categorical stand of the Petitioner Company herein that the issues raised by the Respondent No.2 are either already addressed by the Petitioner's addressable system, or are irrelevant as they are not part of the requirements under Schedule IV of the 2004 Regulations, and Schedule 1 of the 2012 DAS Regulations. The same was communicated to the Respondent No.2 herein vide email dated 22.05.2013, wherein all the concerns raised by the Respondent No.2 were addressed. True copy of the letter dated 22.05.2013 is annexure herewith and marked as Annexur-P1.”

Further, in regard to the respondent's emails of May, 28 and 29 2013 on the basis of which the claim is made, Mr. Srinivasan pointed out that the May 28 email was sent at 10.36 pm and the May 29 email at 12.22 pm after an advance copy of the writ petition filed by the petitioner in the Delhi High Court was served upon respondent no.2 on May 28, 2013.

It is also to be recalled that in the earlier part of the judgment while dealing with the facts of the case, the letter of second respondent dated March 26, 2013 is quoted where it is stated that the respondent would inspect the petitioner's system to check compliance of the parameters specified in Schedule IV of the Regulations. It is thus clear that at the stage before the dispute between the two sides erupted and led the petitioner to take recourse to legal proceedings, respondent no.2 also wished the petitioner's system to be schedule IV compliant and the insistence for the higher norms started only when the matter came to court.

To us it, therefore, appears to us that the insistence for higher norms than the ones provided in schedule IV is simply a bogey and an afterthought to somehow deny the signals of TV channels to the petitioner.

In light of the discussions made above, we find no merit in the objections raised by respondent no.2 for refusing to provide signals of its TV channels to the petitioner. We accordingly direct respondent no.2 to enter into an Interconnect Agreement with the petitioner as provided under Clause 3.2 of the Interconnect Agreement within three weeks from today and to supply activated decoders and viewing cards to the petitioner for viewing its channels. In order to completely set the apprehensions of respondent no.2 (which are though held to be wholly unfounded) at rest it is clarified that

if it ever comes to light that the channels of respondent no.2 are being illegally viewed in any part of the world beyond the places covered by the agreement it will be open to the respondent to seek its remedies in accordance with law.

In the result, the petition is allowed with costs quantified at Rs.50,000/-.

.....**J**  
**(Aftab Alam)**  
**Chairperson**

.....  
**(Kuldip Singh)**  
**Member**

/sks/