TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL

NEW DELHI

DATED 18th OCTOBER 2012

Petition No.46 (C) of 2012

S.R. Cable TV Pvt. Ltd. …Petitioner

Vs.

Gulabchand Panjre …Respondent

Petition No.47 (C) of 2012

S.R. Cable TV Pvt. Ltd. …Petitioner

Vs.

Pradeep Vyas @ Pramod Vyas …Respondent

BEFORE:

HON'BLE MR. JUSTICE S.B. SINHA, CHAIRPERSON

For Petitioner : Mr. Vineet Bhagat, Advocate
Ms. Neha Jain, Advocate

For Respondent : Ms. Nidhi Parashar, Advocate
Mr. Navin Chawla, Advocate

ORDER

Both these petitions involving common questions of facts and law were taken up for hearing together and are being disposed of by this common judgment.

(The basic fact of the matter are, however, being considered from Petition No. 46 (C) of 2012.)

2. The Petitioner herein is a Multi Service Operator operating in the town of Indore in the State of Madhya Pradesh.

The Respondents herein are said to be its local cable operators.

3. The Petitioner contends that prior to its coming into being SR Cable, a partnership firm, had been engaged in the business of re-transmission of signals to various local cable operators, i.e. amongst others the Respondents herein in the said town. The Petitioner company is said to be successor in interest of the said S.R. Cable.

4. Inter-alia on the premise that the Respondents intended to migrate to the network of another MSO, these petitions were filed on or about 24.1.12, praying inter-alia for the following reliefs:-

"Prayer In Petition No. 46(c) of 2012

(i) Direct the Respondent to pay the Petitioner a sum of Rs.38,76,641/- alongwith an interest @24% per annum

from the date the various amounts became due till realization;

(ii) Direct the Respondent to pay a sum of Rs.41,620/- towards the investment made by the Petitioner in the Respondent Network;

(iii) Direct the Respondent to pay a future Subscription Charges regularly to the Petitioner by entering into a Subscription Agreement with Petitioner;

(iv) Permanently restrain the Respondent to not to migrate to any other MSO without complying with the Regulation and without settling its outstanding dues;

(v) Direct the Respondent to pay damages and compensations amounting to Rs.3,00,000/-(Rupees Three Lakhs Only) to the Petitioner."

So far as Petition No. 47 (C) of 2012 is concerned, the following reliefs were sought for:-

*"**Prayer In Petition No. 47(c) of 2012***

(i) Direct the Respondent to pay the Petitioner a sum of Rs.9,05,810/- alongwith an interest @24% per annum from the date the various amounts became due till realization;

(ii) Direct the Respondent to pay a sum of Rs.20,796/- towards the investment made by the Petitioner in the Respondent's Network;

(iii) Direct the Respondent to pay a future Subscription Charges regularly to the Petitioner by entering into a Subscription Agreement with Petitioner;

(iv) Permanently restrain the Respondent to not to migrate to any other MSO without complying with the Regulation and without settling its outstanding dues;

(v) Direct the Respondent to pay damages and compensations amounting to Rs.3,00,000/-(Rupees Three Lakhs Only) to the Petitioner."

5. According to the Petitioner, in terms of oral agreements entered into by and between the parties hereto, a subscription amount of Rs. 1,50,345/- was payable by Gulabchand Panjre, the Respondent in the case of Petition No. 46 (C) of 2012 and a sum of Rs.35,515/- by Pradeep Vyas @ Pramod Vyas.

On the premise that the Respondents herein have not paid the due amount(s) of the subscription fee for the period Jan, 2009 onwards, Petition No. 46 (C) of 2012 has been filed for recovery of a sum of Rs.38,76,641/- and Petition No. 47 (C) of 2012 has been filed for recovery of a sum of Rs.9,00,5810/-.

The Petitioner has also claimed by way of expenses allegedly incurred by it towards investment for the purpose of digitalization of the Respondent's network wherefor it claimed a decree for a sum of

Rs.41,620/- in Petition No. 46 of 2012 and a sum of Rs.20.796/- in the case of Petition No. 47 (C) of 2012.

6. In support of its aforementioned case, the Petitioner has relied upon a large number of documents including the invoices raised against the Respondents herein, the Statement of Accounts, the details of STBs issued and other expenses alleged to have been incurred by it.

7. The Respondent in their replies inter-alia raised the following contentions:-

(i) The Petitioner disconnected supply of signals to the Respondent's network in November, 2011 / December, 2011.

(ii) They have issued notices on the Petitioner purported to be under clause 4.2 of the Telecommunications (Broadcasting and Cable Services) Interconnection Regulations 2004 as amended from time to time (The Regulations) and a public notice as envisaged under clause 4.3 thereof on 14th /15th February, 2012.

(iii) Their liabilities to pay the subscription amount being Rs.40,000/-/Rs.10,000/- per month respectively which was increased to Rs.47,000/-/Rs.12,000/- per month up to April,

2010 and as from the statement of accounts filed by the Petitioner itself, it would appear that excess payments have been made by them, the question of any amount being due and payable by them does not and cannot arise.

(iv) On and from 10th March, 2012, the Respondent had been taking supply of signals from another MSO, known as RED TV.

8. The Petitioner in support of its case has examined one Mr. Manikandan Pillai; whereas Respondents have examined one Mr. Vijay Kumar Panjre and one Mr. Pradeep Vyas.

9. Mr. Pillai had been working with the finance department of the Petitioner. The said witness stated that the agreements in writing are entered into on behalf of the Petitioner by its legal department; whereas oral agreements are entered into by its operation department.

In his cross-examination, the said witness has accepted that the Petitioner had been paying regularly a sum of Rs.40,000/- **/** Rs. 10,000/- upto May, 2010 and thereafter @Rs.47,000/- **/** Rs. 12,000/- per month towards subscription fees.

The said witness, however, denied and disputed the receipt of the notices issued by the Respondents under Clause 4.2 of the Regulations.

10. The witnesses examined on behalf of the Respondent, on the other hand, in their depositions inter-alia contended that the Petitioner itself has switched off supply of its signals from November /December, 2011.

11. Ms. Nidhi Parashar, learned counsel appearing on behalf of the Respondent has raised a preliminary question with regard to the maintainability of the Petitions, namely, (i) having regard to the provisions contained in Clause 4A of the Regulations, an agreement in writing was required to be entered into, and thus, the purported oral agreements being void *ab- initio,* no effect thereto can be given; and (ii) in terms of the Explanation appended to Clause 3.3 of the Regulations, the broadcaster and/or distributor of the TV channels being bound to serve invoices on the LCOs, which having been not proved this petition should be dismissed.

Clause 4A of the Regulations, which was introduced on and from 17.3.2009, reads as under:-

"4A. Interconnection Agreements to be in writing.

4A.1 It shall be mandatory for the broadcasters of pay channels and distributors of TV channels to reduce the terms and conditions of all their interconnection agreements to writing.

4A.2 No broadcaster of pay channels or distributor of TV channels, such as multi system operator or headend 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 Nothing contained in regulations 4A.1 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 headend 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 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 of 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 headend 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."

12. It has been held in a number of decisions that although an agreement in writing is required to be entered into from March, 2009 in terms of clause 4A which was inserted by Telecommunication (Broadcasting and Cable Services) Interconnection (5th Amendment Regulations 2009), having not laid down any consequences, therefor, the local cable operators are bound to pay a reasonable amount to the distributors of the TV channel having regard to the provisions contained in Section 65 and Section 70 of the Indian Contract Act as supply of signals was not made gratuitously. In a case like this nature, the doctrine of restitution shall also come into play.

13. Moreover, in this case the fact that Petitioner has been supplying signals to the Respondent from January, 2009 is not in dispute.

That being the factual position, the 2009 Amendment to the Regulations would have no application in the instant case.

14. Furthermore, having accepted the supply of signals without any demur whatsoever, and keeping in view the fact that the Respondents have been making payments to the Petitioner therefor, without any

demur whatsoever (only the quantum of subscription fee being in dispute) the Respondents cannot be permitted unjustly enrich themselves.

15. Section 65 and Section 70 of the Indian Contract Act reads as under:-

> *"65. Obligation of person who has received advantage under void agreement, or contract that becomes void.- When an agreement is discovered to be void, or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it to the person from whom he received it.*
>
> *70. Obligation of person enjoying benefit of non-gratuitous act.- Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered."*

16. The said provisions were inserted by the Parliament in the aforementioned Act for the purpose of restitution of the benefits derived by one of the parties to an arrangement.

In this case what is necessary for this Tribunal is to ascertain the terms of the contract.

Payments have been made as per the terms of the contract. Once the term of the contract are ascertained, only because the Respondent has raised a plea that Clause 4A mandates an agreement in writing by and between a distributor of a TV channel and a local cable operator, the same would not mean that the Respondent would not be liable to restitute the benefit obtained by it by way of supply of signals of the channels in respect whereof the Petitioner was the distributor.

In ESPN Software India Pvt. Ltd. Vs. Fastway Transmission Pvt. Ltd. being Petition No.435 (C) of 2010, disposed of on 03.6.2011, this Tribunal held:-

> ***"Effect of Clause A of the Regulations***
>
> *Mr.Chawla would urge that at least since 17.3.2009, the Regulator having inserted Clause 4 A to reduce the terms and conditions of all interconnection agreements to writing it must be held to be an Act of illegality if the parties in the garb of Clause 8.1 continue to give and take supply of signals from the broadcasters to the network of the MSOs.*
>
> *The respondent has not pleaded the effect of the oral arrangement, if any.*
>
> *It is not, in our opinion, a case where the parties deliberately took recourse to evasion of an imperative statutory provision.*

Such contingency is contemplated under the Statute. Clause 4A of the Regulations has to be read in the light of the second proviso appended to Clause 8.1.

What is meant by an agreement is a full fledged agreement but what is contemplated in terms of Clause 8.1 is renewal of terms. Variations in the commercial terms may be done even by way of a short agreement. It may even be by way of exchange of letters.
It is difficult to accept the submissions of Mr.Chawla that in the event Clause 8.1 is construed to convey a meaning that the parties may continue to give and take supply of signals for an indefinite period, the same would be wholly illegal.

Regulation did not contemplate such a situation. It is wholly unlikely that both the parties to a contract and in particular, the Broadcasters, would not like to implement the terms of the contract other than the commercial terms ad infinitum.

Section 23 of the Contract Act and/or the doctrine of Ex Turpi Causa Non Oritur Actio would apply when an illegally affects public policy.

The Regulations speak of another public policy i.e. the public should not be deprived of viewing a channel without a reasonable notice; the period of such notice being at least 21 days.

The second proviso appended to Clause 8.1 must, therefore, be read having been made keeping in view the public interest and not in derogation thereof. The said provision must be construed in the light of the 'Preamble' of the Act.

Supply of a signal by a Broadcaster itself is a Fundamental Right as contemplated under Article 19 (1) (a) of the Constitution of India.

So far as Clause 4A of the Regulations is concerned, as at present advised, I am of the opinion the same may be construed for the purpose of enforcement of the provisions of the Regulation and for the enforcement of the terms of the contract which in law can also be an oral one.

Regulations having been made by a Statutory Authority cannot otherwise supersede a Parliamentary Act, namely, the Indian Contract Act.

The Regulations must be subservient to a Parliamentary Act.

Clause 4 A of the Regulations, therefore, does not render all contracts void and illegal.

A contract may be void but may be legal. Such a void contract would not attract the principles of Section 23 of the Contract Act or the general principles of Ex Turpi Causa Non-Oritur Actio vis-à-vis Section 23 of the Contract Act.

It has been noticed heretobefore that the Calcutta High Court in the case of British and Shipping Co. (supra) has held that even in such a situation Section 70 of the Contract Act shall be applicable".

It was furthermore observed:-

"It is one thing to say that the provisions of Section 70 of the Contract Act as also the doctrine of 'Restitution' were required to be considered for the purpose of applying the correct principles of interpretation of statute, but it is another thing to say that the provisions of Section 70 or the doctrine of restitution has to be considered not in terms of the second proviso appended to Clause 8.1 of the Regulations but on the basis of the materials brought on record for the purpose of calculating the amount of reasonable damages.

Mr. Chawla himself has relied upon a decision of the Supreme Court of India in Panna Lal vs. Deputy Commissioner, Bhandara and Anr. (1973) 1 SCC 639 wherein it was held:-

"5. But even apart from contract we have no hesitation in holding that in all the three cases liability under Section 70 of the Contract Act clearly arises. We do not understand why the High Court thinks that the Dispensary Fund Committees cannot be regarded as the owners or beneficiaries of the buildings of the hospitals. And more curiously the High Court has said that it is the public that are the beneficiaries. The buildings on construction belong to the Dispensary Fund Committee and the Municipal Committee and they have received benefit in so far as they are the owners.

7. It is true, as the learned Judges of the High Court pointed out that real basis for a claim under Section 70 is not the terms of the contract but the quantum of the benefit actually derived. In the absence of any other material the contract between the parties provides a useful basis for calculating that benefit. It has not been

alleged on behalf of the defendants that the rates agreed upon and later enhanced were not fair rates or that anybody else would have undertaken the work cheaper. The only reasonable way of arriving at the value of the benefit derived by the Government is on the basis of the rates agreed upon (including future increases in rates by PWD) and that would be a fair indication of the value of the work. We may in this connection refer to the decision of this Court in Piloo Sidhwa v. Municipal Corp. where the market price was taken as a proper indication of compensation under Section 70 and interest also was awarded."

(Underlining is mine for emphasis)

Applying the aforementioned principles laid down by the Supreme Court of India, in the opinion of this Tribunal, there cannot be any doubt or dispute whatsoever that the rate which has been agreed upon as also the enhancement contemplated under the agreement would be the fair rates in absence of any evidence to show that any other supplier would have supplied the same cheaper.

We may also in this connection notice a decision of the Calcutta High Court in Great Easter Shipping Co. Ltd. vs. UOI reported in AIR 1971 Calcutta 150, wherein Section 70 of the Contract Act was invoked despite a finding that the contract between the parties thereto was void being hit by the Article 299 of the Constitution of India.

The learned Judge construed Section 70 in the light of the third para of Section 73 of the Contract Act which is

based on the doctrine of restitution to opine that nobody can unjustly enrich itself."

The first preliminary objection raised by Ms. Parashar is, therefore, rejected.

17. So far as the second preliminary submission of Ms. Parashar is concerned, the Regulations do not provide that a claim which is otherwise maintainable in terms of the provisions of the Indian Contract Act would be denied to a Petitioner only because service of invoices has not been proved. However, the effect thereof for the purpose of appreciation of evidence would be considered a little later.

The matter would be different if this Tribunal finds that the term of the contract has not otherwise been proved or even otherwise the 'distributor of a TV channel' is not entitled to the benefit of the provisions of the Indian Contract Act and/or the doctrine of unjust enrichment would be attracted.

The said preliminary objection is also rejected.

18. The claim of the Petitioner, therefore, is required to be considered on merit of the matter.

19. The core question which arises for consideration is to whether the terms and conditions of the oral agreement has been proved.

Except the statement of accounts, no other material/document has been placed before this Tribunal so as to enable it to arrive at a conclusion that the subscription amount payable per month by the Respondent herein was a sum of Rs.1,50,345/- or Rs.34,5015/- per month respectively. Certain basic facts as regards the terms of the contract is not in dispute.

What is in dispute is the quantum in the monthly subscription fees.

20. Mr. Bhagat would urge that having regard to the fact that the Petitioner in para 8 of the petition has referred to the raising of invoice and having annexed three of its invoices, the correctness whereof having not been denied and disputed, the Petitioner must be held to have proved its case as therein the amount of subscription fee payable by the Respondent as also the arrears payable by them have clearly been stated.

It has been pointed out that although the Respondent has denied and disputed the other documents annexed to the petition as for example, CAF and statement of account, it has not denied and disputed the correctness or otherwise of the invoices.

21. From the statements made in para 8 of the petition, para 8 of the reply and para 8 of the rejoinder, it appears that the Petitioner did not make any averment that the invoices were served upon the Respondent.

The question of denial of the contents of the invoices by the Respondent would have arisen only in the event, an averment have been made to the effect that the said invoices have been served upon the Petitioner.

The Respondents raised the said issue in the affidavit of the RW-1.

The relevant statements made by the Respondents in that regard are as under:-

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> *"16. I state that the Petitioner has never given Respondent Network any invoice and the invoices filed are false and fabricated. In any case, the same have never been handed over to the Respondent. I further state that the Statement of account details of investment filed by the Petitioner are false and fabricated and CAFs are also wrong and denied."*

> *"10. State that the Petitioner has never given me any invoices and the invoices filed along with the paperbook (at pages 22-24) are false and fabricated. In any case, the same have never been handed over to me. I further state that the Statement of account (Pages 25-27 of the Paper book) and details of investment (Pages 18-21 of the Paper book) field by the Petitioner are false and fabricated."*

22. The duty of a distributor of a TV channel to serve the invoices arises not only for the purpose of proving its case, but also in terms of the 'Explanation' appended to clause 3.3 of the Regulations. The requirements to serve the last invoice also became essential having regard to the fact that this Tribunal in its order dated 25.1.2012 directed that before migrating to the network of any other MSO, the Respondent shall produce before it the last invoice received by it.

23. The contention of the Respondent is that it entered into an agreement in writing with another MSO known as RED TV on or about 10.3.2012.

If the Petitioner has not served the invoices on the Respondents after filing of these petitions, the question of an obligation on the part of the Respondent to fulfill the order of this Tribunal would not arise.

That is more a reason why the Petitioner ought to have proved the service of invoices upon the Respondent.

24. In absence of a proof adduced by the Petitioner with regard to the correct amount of the subscription fees per month, this Tribunal has no other option but to consider only the statement of account. It may, however, be pointed out that the statement of account is being considered not for the purpose of applying the principles contained in Section 34 of the Indian Evidence Act but only for the purpose of showing that the amounts paid by the Respondents to the Petitioner stand admitted.

25. Before, however, noticing the said statement of account, it may further be pointed out that the same by itself is not admissible in evidence in terms of Section 34 of the Evidence Act.

What is relevant and/or admissible in terms of the said provisions is the books of account kept in regular course of the business. Such books of accounts must be filed by the Petitioner.

It is well settled that the statement of account is not a basic document. From a perusal of the statement of accounts filed in each of these matters, it would appear that even the exhibit numbers have been mentioned therein, which clearly goes to show that the same is not a computer generated document.

26. According to PW-1, the statement of accounts was prepared from one master sheet. The Petitioner has also not proved the master sheet.

For the said purpose, the Petitioner was also required to bring on record a certificate as is necessary in terms of the Section 65B of the Indian Evidence Act, the invoices being a computer generated one.

27. From the pattern of payments made by the Respondent, it would appear that the same have been made by the Respondents in each of the case per month, as for e.g. although the Petitioner started paying at the rate of 40,000/- from the month of February, 2009 in the month of March, 2009, it had paid a sum of Rs.60,000/-.

The same amount has not been made for the month of April, 2009. In the month of April, 2010, the Petitioner has paid a sum of Rs.50,000/-. Similar amount has been paid also for the month of May, 2010.

In July, 2010, the Petitioner paid a sum of Rs. 47,000/-. However, in the month of September, 2010, it has paid a sum of Rs.40,000/- only. From the month of October, 2010 onwards, however, it has been making payments of Rs.47,000/- till December, 2011 except for the month of July, when a sum of Rs. 25,000/- has been paid.

The payments made by the Respondent is not of the same amount therefore, it cannot be stated that on the basis of such past payments alone, a case has been made out for arriving at conclusion as to exactly what amount, the Petitioner had been paying by way of subscription fee.

However, the payments made by the Respondent during the last few months, it would be evident, that they had been paying the monthly subscription fee @ Rs.47,000/-**/** Rs.12,000/- per month which had been accepted by the Petitioner without any demur whatsoever.

28. The Respondent has not served any notice under Clause 4.2 of the Regulations on 25.2.2012 (which cannot be treated to be a notice under Clause 4.2 of the Regulations). A public notice under Clause 4.3 on 14/15.2.2012, has also been published.

The Petitioner, however, denies and disputes the receipt of same.

The Respondents in support of their cases, have brought on record the courier receipt from a perusal whereof it would appear that the Petitioner accepted the same.

Apart from making a suggestion that the said courier receipts have been forged for the purpose of these cases, the Petitioner has not been able to show by bringing on record any evidence that the same had not been received. It could have filed the inward register which admittedly is being maintained.

The receipts produced by the Respondent contained the seal of the Petitioner's company.

29. We may notice the following statements made by PW-1:-

> *"Q.9: Is this the stamp of your company?*
> *A: It appears to be.*
> *Again said I am not sure.*
>
> *Q.24: Was Mr. Sadaram Jalkhare a part of your operations team?*
> *A: Yes, he was.*
> *I do not recognize his signatures.*
> *The stamp on the letter seems to be of the Petitioner. I am not sure.*
> *I can't say whether Mr. Sadaram Jalkhare has written letter dated 30.4.2010.*
> *I am seeing this letter for the first time and I am hearing about this letter for the first time.*
>
> *Vol: However, I see that the said letter contains some figures and should go through the Finance Department.*
>
> *Q.26: Have you received the said notice?*
> *A: No.*

Vol: Witness turns to page 42 and points out that the Docket No. mentioned in the courier receipt at page 42 was received sometimes in February through Blue sky courier. I have checked this from my Inward Register and the said consignment received from Blue Sky, Mumbai contained Calendars from Bombay Exhibition Centre."

30. The relevant part of the deposition of RW-1, may also be noticed:-

"*Q.22: Who told you about the signals of Red TV?*

A: Whoever starts a new network in Indore, they themselves come for marketing of their signals.

Q.23: Who approached you from Red TV?

A: One Mr. Pukhraj came to me on behalf of Red TV.

Q.24: What did he tell you?

A: He told me that a new network by the name of Red TV is starting in Indore and you may connect their signals and that they will provide me with profitable deals.

I keep meeting with Mr. Pukhraj of Red TV. I do not know his designation in Red TV.

Q.40: I put it to you that the rubber seal affixed on the courier receipt at page 42 is a forged seal?

A: It is original.

Q.41: I put it to you that the petitioner company does not have any such rubber seal?

A: I do not know.

I had gone to the newspaper office for publication of the public notice.

Q.45: I put it to you that you have defaulted in making payment of your subscription dues to the petitioner?

A: It is incorrect.

Vol.: The petitioner would not wait for payment by me, even when my wife was critical only on that time they had given me a leverage of one month.

Q.57: I put it to you that you are deposing falsely because in your own affidavit you have said in para 3 that you were personally present at the time of negotiations with the petitioner?

A: There were no negotiations. It was all oral."

31. The Respondent having issued notice under Clause 4.2 of the Regulations followed by a public notice, it is difficult to accept the contention of Mr. Bhagat that the Petitioner did not receive the same, as the receipt of the said notices contained the seal of the Petitioner's company.

Despite the same, it may be placed on record that the learned counsel appearing on behalf of the Petitioner gave suggestions to RW-1 in each of these cases that the said seal is not a genuine one. Had it been so, PW-1 would have made a positive assertion with regard thereto.

32. I, therefore, am of the opinion that the Petitioner is entitled to a decree for the subscription fees for the months of December, 2011 to

March, 2012 @ Rs.47,000/- and Rs12,000/- per month respectively. I have arrived at the aforementioned conclusion keeping in view the fact that had the contention of the Respondent been correct that in the month of November, the Petitioner has disconnected the supply of signal to its network, it would have specifically stated so in their notices under clause 4.2 of the Regulations.

33. Such being not the conduct of the Respondent, this Tribunal is of the opinion that interest of justice would be sub-served if the said direction is issued.

34. So far as the purported investments made by the Petitioner is concerned, its prayer therefor cannot be allowed in view of the fact that apart from absence of any document in writing, it is difficult to conceive as to how four or five STBs could lead to digitalization of the network in as much as it appears from the materials on record Petitioner itself asserted that the subscriber base of the Respondent is 177; whereas according to the Respondent, it is 179.

In Petition No. 47 (C) of 2012, RW-1 in his evidence stated:-

"Q.26: How many subscribers do you have?

A: 179"

35. The Petitioner, it must also be held has not been able to establish its case for grant of a decree for permanent injunction nor

has brought any material on record to show that it has suffered any damages.

36. These petitions are allowed in part and to the extent mentioned hereinbefore with no order as to costs.

.....
(S.B. Sinha)
Chairperson

HKC/