

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL
NEW DELHI

Dated 26 April, 2017

Broadcasting Petition No. 256 of 2014

Siti Cable Network Ltd., New Delhi ... Petitioner

Versus

M/s. Jai Durga Cable Network ... Respondent

BEFORE:

HON'BLE MR. JUSTICE SHIVA KIRTI SINGH, CHAIRPERSON
HON'BLE MR. B.B. SRIVASTAVA, MEMBER
HON'BLE MR. A.K. BHARGAVA, MEMBER

For Petitioner : Mr. Upender Thakur, Advocate
Mr. Kunal Vats, Advocate

For Respondent : None

ORDER

By S.K. Singh, Chairperson – This petition is under Section 14 read with Section 14A of the Telecom Regulatory Authority of India Act, 1997. The Petitioner is a company registered under the Companies Act, 1956. It is a Multi-System Operator (MSO) and is engaged in the business of transmission of various Free-to-Air as well as Pay channels signals of several broadcasters to

the households/subscribers through local cable operators affiliated to it.

Respondent No.1(hereinafter referred to as "Respondent Cable Operator") is a cable operator in the DAS notified areas of Delhi. Respondent No.2 (hereinafter referred to as "Respondent MSO") is another MSO operating in the DAS notified areas of Delhi.

Petitioner's grievance is that the Respondent Cable Operator violated a subsisting Agreement with the Petitioner and within a short period of about two months, migrated to the network of Respondent MSO without paying dues of subscription and without returning the equipments/hardware given by the Petitioner which were required to be returned in terms of Agreement. According to Petitioner, dues of Rs.2,13,111/- (Rupees Two Lakhs Thirteen Thousand One Hundred and Eleven only) have not been paid by the Respondent Cable Operator to the Petitioner till date although Petitioner claims to have honoured its part of the Agreement by providing continuous signals of different broadcasters' channels which were availed by the Respondent Cable Operator. According to Petitioner, the Respondent Cable Operator migrated to another MSO (Respondent MSO) without giving statutory notice required under the DAS Interconnect Regulations. On the basis of several alleged illegalities and irregularities, the Petitioner has prayed for the following prayers:

- (a) Order in favour of the petitioner and against the respondent declaring the action of the respondent in migrating to the network of the competing MSO of the petitioner as illegal and in violation of the Agreement as well as the TRAI's Interconnect Regulations.

- (b) Order / decree in favour of the petitioner and against respondent for an amount of Rs.2,13,111/-(Rupees Two Lacs Thirteen Thousand One Hundred and Eleven Only) being the outstanding amount due from the respondent as on 31.1.2012 for the digital cable services received by the Respondent from the Petitioner in terms of the duly executed Agreement.
- (c) Order directing the Respondent to return 518 STBs and VC's provided by the Petitioner to the Respondent in proper working condition;
- (d) In the alternative, order / decree in favour of the Petitioner and against the Respondent for an amount of Rs.8,28,800/- being the value of the 1300 STBs and VC's supplied by the Petitioner to the Respondent for further transmission of the signals to the end subscribers; or in alternative;
- (e) An order awarding interest @ 18% in favour of the petitioner on the aforesaid payment of Rs.2,13,111/-(Rupees Two Lacs Thirteen Thousand One Hundred and Eleven only) from the date said payment became due and payable until the actual payment.
- (f) An order awarding interest @18% in favour of the Petitioner on the aforesaid payment of Rs.8,28,800/- towards value of STBs and VC's from the date said payment became due and payable until the actual payment;
- (g) Pass an order awarding costs to the Petitioners."

Initially, the Respondent Cable Operator appeared before this Tribunal and attended the proceedings before the Mediation Centre but ever since the matter could not be settled and came back from the Mediation Centre on 14.01.2015, nobody appeared on behalf of the Respondent Cable Operator before this Tribunal. An order for proceeding *ex parte* in the matter was passed long back on 13.04.2015.

The Petitioner filed its evidence on affidavit. Its evidence was closed on 27.07.2016. Nobody appeared on behalf of the Respondent Cable Operator even at the final hearing stage and hence the matter has been heard *ex parte*.

Learned Counsel for the Petitioner has taken us through the evidence by

way of affidavit of one V. Suresh Kumar and submitted that in view of such evidence on behalf of the Petitioner, which has remained unchallenged because of failure of the Respondent Cable Operator to cross-examine the witness, the entire claim and all the prayers of the Petitioner deserve to be allowed along with costs.

We have carefully gone through the evidence led on behalf of the Petitioner. No doubt, the witness has not been cross-examined and therefore, has to be relied upon but such reliance will be limited only to the extent he has supported the facts and claims made by the Petitioner in the petition. The evidence is of a capable witness because he has claimed to be working as Assistant General Manager–Legal in the Petitioner Company. He has supported that there was an Agreement dated 01.10.2012 between the Petitioner and the Respondent Cable Operator and the said Agreement has been exhibited. The witness has further deposed that although agreement was for issue of upto 1500 Set Top Boxes (STBs) and Viewing Cards (VCs) to be issued by the Petitioner to the Respondent Cable Operator, the Petitioner had supplied 518 STBs and VCs at the discounted rate of Rs.699/- per piece although the cost should have been Rs.1600/- per piece. The witness has also supported the claim that Respondent Cable Operator violated the Agreement leading to migration to another MSO without clearing the outstanding subscription dues of Rs.2,13,111/- and without returning the 518 STBs and VCs.

On going through the pleadings and evidence, we have no hesitation in

accepting the prayer for a decree in favour of the Petitioner for Rs.2,13,111/-, it being the outstanding amount due from the Respondent Cable Operator as on 31.12.2012 for the digital cable services received by the Respondent Cable Operator from the Petitioner in terms of the duly executed Agreement. Hence, a decree for the said amount is passed in favour of the Petitioner.

It is not practicable to direct the Respondent Cable Operator to return 518 STBs and VCs supplied by the Petitioner, in proper working condition after such a lapse of time. As compensation for 518 STBs and VCs, the Petitioner has claimed a decree for Rs.8,28,800/- (Rupees Eight Lakhs Twenty Eight Thousand Eight Hundred only). The amount claimed cannot be accepted in view of the evidence available on record which shows that 518 STBs and VCs were supplied at the rate of Rs.699/- per STB and VC. The actual cost cannot be accepted as Rs.1600/- when admittedly the supply was made only at the rate of Rs.699/- per piece. On calculating the cost of 518 STBs and VCs at the rate of Rs.699/- per piece, the amount comes to Rs.3,62,082/- (Rupees Three Lakhs Sixty Two Thousand and Eighty Two only). Hence, we grant the alternative prayer in part by allowing a decree in favour of the Petitioner for a further amount of Rs.3,62,082/- (Rupees Three Lakhs Sixty Two Thousand and Eighty Two only).

So far as claim for interest is concerned, both the amounts i.e. of Rs.2,13,111/- and Rs.3,62,082/- are accepted to be outstanding amounts due from the Respondent Cable Operator as on 31.12.2012 and hence, interest is

allowed but @ 8% per annum from 01.01.2013 until the amount is actually paid.

We also allow a consolidated cost of Rs.50,000/- payable by the Respondent Cable Operator to the Petitioner.

The petition stands allowed to the aforesaid extent.

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(S.K. Singh, J)
Chairperson

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(B.B. Srivastava)
Member

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(A.K. Bhargava)
Member