

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL
NEW DELHI

Dated 03rd November, 2017

Broadcasting Petition No. 172 of 2013

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

Vs.

Laxman Singh Raikwar, M.P. ...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. Rohan Swarup, Advocate
Mr. Kunal Vats, Advocate

For Respondent : None

ORDER

By S.K. Singh, Chairperson – The petition under Section 14 read with Section 14A of the Telecom Regulatory Authority of India Act 1997 has been filed by the petitioner company in the capacity of a Multi-System Operator (MSO) engaged in the business of retransmission of various Free-to-Air and Pay Channels' signals of various broadcasters to the households/subscribers through local cable operators affiliated to it.

The respondent is a local cable operator representing two firms in the name and style of M/s Unity Cable Network and M/s Unity Internet Services. The respondent runs its cable TV business operations under both the names from the same address in Bhopal, Madhya Pradesh, as a sole proprietor of both the firms.

The petition was filed on 11.07.2013 for the following reliefs:

- (a) Order/decreed in favour of the petitioner and against respondent for an amount of Rs.3,66,095/- (Rupees Three Lakhs Sixty Six Thousand and Ninety Five Only) being the outstanding dues recoverable from the respondent towards unpaid subscription charges from 1/4/2013 till 31/7/2013.
- (b) an order awarding interest @ 18% on the above mentioned outstanding subscription charges till the date of payment by the Respondent.
- (c) an order directing the Respondent to immediately hand over 1718 Set Top Boxes and Viewing Cards to the Petitioner; Or
- (d) an order directing the Respondent to deposit/pay a sum of Rs.27,90,527/- (Rupees Twenty Seven Lakhs Ninety Thousand and Five Hundred Twenty Seven Only) towards value of Set Top Boxes and Viewing Cards as per books/records of the petitioner as on date.
- (e) an order awarding interest @ 18% on the above mentioned assets value till the date of payment by the Respondent
- (f) Pass such other or further order or orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

It is further case of the petitioner that the interim prayer of the petitioner to direct the respondent not to migrate from the network of the petitioner without notice and without clearing the outstanding dues was considered on 24.07.2013 when nobody appeared on behalf of the respondent in spite of service of notice. The Tribunal granted relief to the petitioner by issuing the interim direction. It is further case of the petitioner that in spite of interim direction, the respondent violated the same and migrated to another MSO. The petitioner sent a letter dated 31.07.2013 to this effect to the respondent and subsequently also filed an application for action against the respondent under Section 20 of the TRAI Act. With this MA No.320 of 2013 also the petitioner has annexed legible copies of invoices for the months of April, May, June and July 2013 along with a copy of Statement of Accounts in supports of its plea that the respondent did not pay anything and the entire amount covered by the four invoices totalling to Rs.2,22,271/- and few paise remained outstanding as on 30.07.2013. These invoices and Statement of Accounts relate to M/s Unity Internet Services. Similar claim has also been made for dues against the firm M/s Unity Cable Network leading to total claim of Rs.3,66,095/- as dues recoverable from the respondent towards subscription charges that remained unpaid from 01.04.2013 till 31.07.2013.

The respondent appeared at the initial stage in the month of October 2013 and filed reply to the MA. Respondent also filed reply to the main petition. It set-up a rival story that before the interim order, on 26.05.2013, the petitioner

disconnected its signals and thus forced the respondent to take signals from another MSO. It claimed that it had paid all the dues till the date of disconnection i.e. 26.05.2013 but was granted no receipt for the payments made. In Para 11 of the reply, the respondent accepted to have received 1718 Set Top Boxes (STBs) with Viewing Cards(VCs). It took the stand that those Set Top Boxes shall be returned if the petitioner pays back to the respondent the purchase price of Rs.1,000/- per Set Top Box amounting to Rs.17,18,000/-.

When the issues were framed on 23.04.2014, nobody appeared for the respondent but subsequently the counsel for the respondent again appeared. PW-1, Mr.V. Suresh Kumar, tendered his affidavit in evidence and was cross-examined on behalf of the respondent on 14.08.2014. The evidence affidavit of PW-2, Mr.Rajesh Soni, Sr.Manager(Sales & Operations) of the petitioner was filed and tendered in evidence but counsel for the respondent did not appear to cross-examine him. Even on subsequent notice when nobody appeared for the respondent, on 22.03.2017, the Tribunal passed an order for *ex parte* hearing and hence, PW-2 was discharged without any cross-examination. In such circumstances the matter has been heard *ex parte* for final disposal.

As will appear from the records, PW-2 has not been cross-examined nor the respondent or any other person has come forward to depose in support of defence of the respondent.

The dues claimed by the petitioner are subsequent to Agreement dated 30.03.2013 effective from 01.04.2013. The claim is of the year 2013 and this

recovery petition was filed in the same year and is not at all affected by the law of limitation.

A perusal of the evidence led on behalf of the petitioner discloses that claim of the petitioner has been fully supported by both the witnesses in respect of subscription dues. Accordingly, the claim on this count for Rs.3,66,095/- is allowed.

The plea as to non-return of the 1718 STBs has also been supported and proved, moreso, when the PW-2 has not been cross-examined at all although he has supported by stating that petitioner has supplied STBs to the subscribers through the LCOs like the respondent on a promotional scheme even without receiving the cost of such STBs from either the cable operators or from subscribers. The witness has further stated that on termination of Agreement it was duty of the local cable operators to return all these STBs/Viewing Cards/assets to the petitioner. It has also been claimed by the witness that along with letter dated 31.07.2013 the petitioner has sent to the respondent copies of invoices along with the Statement of Accounts etc. but the respondent migrated without clearing the dues and without handing back the STBs and VCs numbering 1718, belonging to the petitioner.

The second claim of the petitioner that 1718 STBs and VCs were illegally kept by the respondent and not returned is found proved by the pleadings and evidence on record. However, the claim of the petitioner that it was entitled to Rs.27,90,527/- towards value of STBs and VCs has not been fully substantiated

by the evidence of the witnesses. The aforesaid amount has been calculated on the basis of a cost of Rs.1600/- per STB whereas in the evidence there is ambiguity regarding the cost and the witnesses have themselves stated that STBs were supplied under a promotional scheme. The terms and conditions including the discounts under such promotional scheme have not been proved by bringing on record the relevant materials.

In the above situation, we have looked into a judgment rendered by this Tribunal in the case of **Siti Cable Network Ltd., New Delhi Vs. M/s Jai Durga Cable Network (B.P. No.256 of 2014)** on 26.04.2017. In that case, petitioner had entered into Agreement with the LCO in October 2012 and as per evidence in that case, it had made available a number of STBs along with VCs at a discounted rate of Rs.699/- per piece although the cost in that case was also claimed to be Rs.1600/- per piece. This Tribunal, in that case, accepted the claim of the petitioner for price of STBs only at the rate of Rs.699/- per STB and VC. In the present case, the Agreement is of March 2013 leading to supply of STBs under a promotional scheme. In such circumstances, we are not persuaded to allow the claim of the petitioner for STBs @ Rs.1600/- per piece. We, however, allow the claim of the petitioner for a total number of 1718 STBs at the cost of Rs.699/- per STB and VC only. Calculated at that rate, the claim against the STBs comes to Rs.12,00,882/-. As held in the case of M/s Jai Durga Cable Network, in this case also we hold that it is not practicable to direct the respondent cable operator to return the 1718 STBs and VCs supplied

by the petitioner in proper working condition after a lapse of such a long time. As compensation for the aforesaid number of STBs and VCs, as against the claim amount of Rs.27,90,527/-, we allow only Rs.12,00,882/- on the basis of discounted rate then prevailing in transactions to which petitioner was party.

So far as claim for interest is concerned, both the amount i.e. of Rs.3,66,095/- (dues of subscription charges) and Rs.12,00,882/- (cost of STBs and VCs) are accepted to be outstanding amounts payable by the respondent cable operator as on 31.07.2013 and hence interest is allowed from that date but at the rate of 8% per annum only until the due amounts are actually realised/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.

.....
(S.K. Singh, J)
Chairperson

.....
(B.B. Srivastava)
Member

.....
(A.K. Bhargava)
Member