TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL
NEW DELHI

Dated 25th June, 2018

Broadcasting Petition No.85 of 2017
(With M.A. No. 487 of 2017)

Times Global Broadcasting Company Ltd. &Anr. …Petitioners
Vs.
VXL Digital Pvt. Ltd and Anr. …Respondents

Broadcasting Petition No.475 of 2016
(withM.A. No.488 of 2017)

Sony Pictures Networks India Distribution Pvt. Ltd. … Petitioner
Vs.
VXL Digital Pvt Ltd &Anr. … Respondents

BEFORE:
HON'BLE MR. JUSTICE SHIVA KIRTI SINGH, CHAIRPERSON
HON'BLE MR. A.K. BHARGAVA, MEMBER

For Petitioners	:	Mr. Kunal Tandon, Advocate Mr. Shashank Shekhar, Advocate
For Respondent No.1(BP No. 475/16)	:	Ms.Radhika Gupta, Advocate
For Respondent No.2	:	Mr. Upendra Thakur, Advocate Mr. Kunal Vats, Advocate Ms. Nikita Khetrapal, Advocate Mr. Sarthak Khanna, Advocate

ORDER

By S.K. Singh, Chairperson – Parties have been heard in respect of M.As. Nos.487 and 488 of 2017. Both the applications have been preferred by the petitioners in each of the Broadcasting Petitions i.e. in B.P. No.85 of 2017

and B.P. No.475 of 2016 respectively, under Sections 19 and 20 of the Telecom Regulatory Authority of India Act, 1997 (TRAI Act). The petitioners have prayed for holding the respondents guilty of disobedience of interim orders passed by this Tribunal in these petitions and to impose penalty on both the respondent i.e. VXL Digital Pvt. Ltd.(VXL) and Indian Cable Net Co. Ltd. (ICNCL). The other two prayers are: (i) for a direction to respondent ICNCL to pay a specific amount of money in both the matters claimed as a sum towards signals being supplied by ICNCL to the subscribers of VXL in an illegal manner since 19.09.2016 (calculated till November 2017) and; (ii) to pass an order restraining the respondent VXL from taking the feed of the channels of the petitioner from the respondent ICNCL or any other MSO and from supplying signals to LCOs, using the headend, CAS, SMS servers of VXL, Set Top Boxes used and deployed by VXL in the houses of the subscribers of the respondent No.1 and further to immediately and forthwith restrain respondent ICNCL from supplying signals to the respondent VXL in compliance of the direction issued by this Tribunal vide order dated 19.09.2016.

2. Learned counsel for the petitioner/applicant has first taken us through the facts of B.P. No.475 of 2016 and MA No.488 of 2017. He has shown that the first interim order was passed on 22.08.2016 whereby the respondent was directed to file a reply on the issue whether it was in talks with another MSO in the region and intended to join/merge with such MSO for taking feed of the

channels of the petitioner from such other MSO in the area. This Tribunal directed the respondent to inform the Tribunal about its intentions in this regard before taking any final decision. On 08.09.2016 notice was accepted on behalf of ICNCL of MAs Nos. 331 and 332 of 2016 filed on behalf of petitioner for impleading ICNCL as respondent No.2 and for action against the respondents for alleged violation of interim order dated 22.08.2016. On 19.09.2016, while directing for continuance of interim order passed on 22.08.2016, further interim order was passed to restrain ICNCL or any other MSO from supplying signals to the petitioner or using their headends or set top boxes for transmission of signals. This Tribunal noted that in B.P. No.406 of 2016 VXL had stated on affidavit the names of its 11 LCOs who were subsequently receiving signals, under some arrangements, from respondent No.2 (ICNCL). Respondent were directed to inform the Tribunal about the documents executed amongst them and the consideration received by respondent No.1.

3. Ultimately vide order passed on 12.07.2017, this Tribunal allowed the impleadment of ICNCL as respondent No.2 and considered relevant facts in detail in the context of MA No.332 of 2016 and found that VXL had knowingly withheld the relevant information and violated the directions contained in the interim order dated 22.08.2016. For such disobedience, in exercise of power under Section 20 of the TRAI Act, the Tribunal imposed a penalty of Rs.1 lakh to be paid within two weeks. The said order of 12.07.2017 has been heavily

relied upon by learned counsel for the petitioner to highlight the basic facts as well as the conduct of the respondents as noticed by this Tribunal. It has been shown that petitioner had an interconnection agreement with VXL valid upto 30.09.2016. For continuing the agreement VXL had to clear huge arrears which according to petitioner amounted to Rs.4.31 crores approximately. Instead of acting as per law, VXL, according to petitioner, decided to indulge in fraud and wrote to the petitioner on 10.08.2016 that it had decided to shut-down its business. The petitioner was requested to deactivate the decoders with immediate effect. Immediately the petitioner filed this petition for recovery of money. Interim orders passed on 22.08.2016 and 19.09.2016 have already been noted. Thereafter, VXL took the stand that all its LCOs have migrated to other MSOs and it had legally assigned its CAS and SMS to ICNCL on the request of LCOs to lessen the cost burden of new set top boxes. It disclosed that it had received a consideration of Rs.44,81,500/- from ICNCL. It was also disclosed that CAS and SMS of VXL is now running from the premises of ICNCL. This Tribunal examined the facts with reference to relevant dates and held VXL guilty of knowingly withholding the information from this Tribunal in violation of order dated 22.08.2016.

4. While both the petitions for recovery of money from respondent VXL and also from ICNCL remained pending for being heard together because of similarity of issues, and steps were being taken for realisation of penalty of Rs.1

lakhs from VXL (which amount was ultimately paid by respondent ICNCL in January 2018), the present applications were filed. Notices were issued on 11.12.2017 and after completion of pleadings both the applications were heard in detail. According to learned counsel for the petitioner/applicant the respondent No.1 VXL has already been found to have violated the interim order dated 22.08.2016 and for the present the issue is whether both the respondents have also violated subsequent interim orders passed on 19.09.2016, 12.07.2017 and 19.08.2017. The order of 19.09.2016 has already been noticed. The final directions contained in the order of 12.07.2017 have also been noticed. But it is relevant to notice the main submissions of the parties considered in that order in the context of MAs Nos.331 and 332 of 2016. Submissions of the parties were recorded as follows:

> "With regard to the MA 331 and MA 332, main submissions of the petitioner are that (a) the logo of VXL is still appearing along with ICNCL, while VXL claims to have shut down its business. VXL is in fact indulging unauthorized transmission of signals (b) VXL assigned its CAS and SMS to ICNCL but did not bring it to the notice of Tribunal as well as the petitioner (c) the LCOs of VXL have migrated to ICNCL and all subscribers of VXL are being supplied signals by ICNCL. (d) VXL was dishonest in its dealing since it collected the subscription amount from LCOs but did not pay to the petitioner leading to an arear of about 4 Cr (e) VXL has also sold its shares to ICNCL in August. This fact also came to light only after the respondent has filed its reply dated 6-10-2016 to the petition (f) ICNCL thus controls the VXL as 91.2% shareholder and as per information filed with the Registrar of Companies, two of their directors have also joined the board of VXL (on 28/7/2016 and 5/8/2016). (g) If corporate veil is lifted, it is clear that VXL and ICNCL are one and the same and therefore ICNCL is proper and necessary party.

> The submissions of the VXL mainly are that (a) STBs showing logo of VXL are the absolute property of the subscribers as all the STBs were sold to the LCOs who in turn sold them to their subscribers, (b) it has been under severe financial distress. It has shut down its head-end and even surrendered its license (c) It legally assigned its CAS and SMS for a consideration of Rs. 44,81,500/- (d) Its shareholders have on their own transferred their shares to ICNCL at a nominal value of Rs. one per share.
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> Submissions of the ICNCL essentially are that (a) it is a recovery petition between the two parties and ICNCL is not in the picture. It is not responsible for the past liabilities of VXL. (b) there is no prayer against ICNCL in the original petition and no relief has been sought against it. (c) even the schedule of account filed with the petition is in the name of VXL and not ICNL. ICNCL has no privity in this case (d) the LCOs of VXL approached ICNCL and it entered into an agreement with them only after they submitted NOC from VXL. (e) ICNCL is thus not a proper and necessary party in the case."

In the concluding part of that order Tribunal has held thus:

> "From the above discussion it is apparent that ICNCL has acquired CAS & SMS from VXL and also entered into an agreement with the LCOs of VXL, taking all their subscribers in its fold. It is also noted that shareholders of the respondent had transferred their shares to ICNCL to the tune of 91.2% at a rate of Rs. 1 per share on 5-8-2016 and 2 of their directors joined the board of VXL. The respondent has also submitted that as CAS & SMS of both Respondent and ICNCL are different, the actual subscriber numbers can be manipulated. While we do not comment on the legality or validity of these actions, these facts make ICNCL a proper and necessary party in this case. Accordingly, we allow MA 331 and direct ICNCL to be impleaded as Responded No. 2."

5. By order dated 09.08.2017, only further time was granted to VXL to pay the penalty imposed by order of 12.07.2017.

6. In B.P. No.85 of 2017 which is also for recovery of money from VXL, an interim order was passed on 29.03.2017 restraining ICNCL from supplying

signals to VXL through the headend of VXL or through its own headend or to the local cable operators previously attached to respondent No.1 directly or through its local cable operators using the STBs or CAS/SMS of VXL.

7. Learned counsel for the respondents have opposed the prayers in the applications under consideration on the ground that these applications have been filed only to harass the respondents and the issue of disobedience of interim order has already been considered and penalty imposed upon VXL vide order dated 12.07.2017. Hence, according to respondents, same or similar issue of disobedience should not be permitted to be raised again and again. It has also been submitted that interim order dated 19.09.2016 was passed more than a year ago and therefore, the present applications under Section 20 of TRAI Act filed on 07.12.2017 are barred by limitation of one year as provided under the Contempt of Courts Act 1971.

8. In reply, learned counsel for the petitioner has submitted that M.A. No.331 of 2016 was filed on 07.09.2016 when the subsequent interim order dated 19.09.2016 had not been passed as yet and therefore, issue of its violation was neither urged nor considered at the time of passing of order on 12.07.2017. By that order only VXL was held guilty of violating the interim order of 22.08.2016. There was no prayer for action against ICNCL in MA No.331 of 2016. Therefore, there is no question of same issue being raised again and again or causing an undue harassment to the respondents. Learned counsel for the

petitioner further submitted that Section 20 of the TRAI Act does not use the term contempt nor it refers to the Contempt of Courts Act 1971. The two jurisdictions are different and the TRAI Act does not prescribe limitation of one year for taking action under Section 20. In the alternative, it was submitted that even in matters governed by limitation of one year under the Contempt of Courts Act, a number of judgments have clarified the law that limitation is not attracted if the offence of contempt is a continuing one. For this purpose, reliance has been placed upon a judgment of Delhi High Court in the case of **Caravan Commercial Co. Ltd. Vs. Yashashwi Aggarwal & Ors, (2017) 238 DLT 643** (*see Para 36 of the judgment*). For the same purpose, reliance has also been placed upon judgment of Delhi High Court in **Santosh Kapoor Vs. Apex Computers Pvt. Ltd., ILR (2009) III DELHI 628**.

9. On going through the averments of the parties and the arguments, it is found that respondents are admittedly using the STBs and headends of VXL for transmission of signals. This is clearly in teeth of interim order dated 19.09.2016. In such a situation, there is no option but to uphold the rule of law by holding the respondents VXL and also ICNCL guilty of deliberate disobedience of interim order passed by this Tribunal on 19.09.2016 in B.P. No.475 of 2016 and of interim order dated 29.03.2017 passed in B.P. No.85 of 2017. Since VXL has already been subjected to penalty for violation of order dated 22.08.2016, it is treated to be in repeated disobedience of interim orders

of this Tribunal and held liable for enhanced penalty of Rs.2 lakhs. This must be paid within one month either by VXL or its virtual successor-in-interest, ICNCL. The latter is also held liable to pay a penalty of Rs.1 lakh within the same time.

10. The law of injunction has been very succinctly discussed in the background of a large number of judgments of the Apex Court and different High Courts in a recent judgment of Allahabad High Court in the case of **Cantonment Exec. Officer, Cantonment Board & Anr. Vs. Pushpa Devi & Ors., 2014 AIR CC 2178**. Paragraphs 72 to 78 contain a detailed discussion of the principle that actions of parties in disobedience of orders of court do not merit any sanctity in law even if they involve rights of third parties. A party bound by an injunction must disclose to all concerned the effect of such injunction and its successors-in-interest are also bound by the orders of injunction. In the present case, ICNCL has stepped into the shoes of VXL in respect of its headend, set top boxes etc. and also the LCOs affiliated to VXL. This has been done for consideration, in disregard of the interim orders passed on 22.08.2016 and 19.09.2016 in B.P. No.475 of 2016. The redistribution of signals through the headends of VXL is also against the interim order dated 29.03.2017 in B.P. No.85 of 2017. The prayers made in these M.As. directing ICNCL to pay specific sums of money deserve to be considered with due regard to pleadings and evidence for ascertaining the amount. Hence, that prayer shall

be considered along with the main prayer made in both the petitions for recovery of money from the concerned respondents. But so far as the direction to restrain the respondent ICNCL or other MSO from supplying signals to LCOs using the headend CAS, SMS, servers of VXL etc. is concerned, the same needs to be reiterated and enforced forthwith. The respondents are directed to comply with the direction as per prayer (b) in the M.As. and stop acting in violation of interim order dated 19.09.2016 within one week from today. In case of continued violation of that order, the petitioner will be at liberty to file further application for passing suitable orders for enhanced penalty etc. as per provisions of the TRAI Act.

11. With the aforesaid observations and directions, the first two prayers in both the M.As. stand disposed of. The third prayer relating to monetary compensation shall be considered at the appropriate stage as observed earlier.

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(S.K. Singh, J)
Chairperson

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(A.K. Bhargava)
Member

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