

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

Dated 3rd May, 2018

M.A. No. 39 of 2018

in

Broadcasting Petition No. 413 of 2017

Siti Cable Network Ltd.

... Petitioner

Versus

V4U Cable & Anr.

... Respondents

M.A. No. 40 of 2018

in

Broadcasting Petition No. 414 of 2017

Siti Cable Network Ltd.

... Petitioner

Versus

Global Networks & Anr.

... Respondents

M.A. No. 47 of 2018

in

Broadcasting Petition No. 415 of 2017

Siti Cable Network Ltd.

... Petitioner

Versus

Galaxy Entertainment & Anr.

... Respondents

M.A. No. 41 of 2018

in

Broadcasting Petition No. 416 of 2017

Siti Cable Network Ltd.

... Petitioner

Versus

Galaxy Entertainers & Anr.

... Respondents

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 : Ms. Ritwika Nanda, Advocate
For Respondent No. 1 : Mr. Saket Singh, Advocate
Mr. Varun Mathur, Advocate
For Respondent No. 2 : Mr. G. S. Oberoi, Advocate
Mr. Anurup Narula, Advocate

ORDER

By **S.K. Singh, Chairperson** – These four broadcasting petitions have been pressed and heard together since the very beginning because the petitioner is common and the grievances and the issues are also quite similar. The main prayer of the petitioner is for recovery of different sums of money from the respondents/local cable operators (LCOs) and to injunct them from migrating without complying with Interconnect Regulations.

2. After considering the grievance of the petitioner, notices were issued and it was indicated that interim prayer shall be considered on the next date. Accordingly, interim order was passed on 17.10.2017 and respondent No.1 was restrained from disconnecting STBs of the petitioner in all these cases and also from taking signals from any other MSO by swapping of STBs, without clearing the dues of the petitioner and complying with the requirement of notice as required under the Regulations. This interim order has continued since then. Pleadings were completed and the matter was posted on 13.02.2018 again for considering the issue of interim relief. But before that date, M.As.Nos.39, 40,

47 and 41 of 2018 were filed respectively in these four petitions. These miscellaneous applications filed under Section 20 of the TRAI Act contain similar allegations by the petitioner that respondent No.1 has violated the interim order passed on 17.10.2017. Time was granted for filing reply and rejoinder in respect of these M.As. and they were heard in detail on 11.04.2018.

3. Since, the facts in all the M.As. are of similar nature, for the sake of convenience, M.A. No.39 of 2018 has been taken as the lead matter and unless indicated otherwise, the illustrative facts are from the file of this M.A. only. In paragraph 5 of the M.A., petitioner has stated that at the time of filing of petition, respondent No.1 was gradually swapping the set top boxes of the petitioner and therefore, in paragraph 18 of the petition a chart had already been depicted showing the total number of set top boxes, which in this case was 302 and how their numbers which was 230 on 25.09.2017 had come down to only 200 set top boxes on 02.10.2017.

After referring to the aforesaid figures from the main petition, the petitioner has depicted another chart in paragraph 5 of the M.A. which shows that the total number of active set top boxes remained 200 till 15.01.2018 i.e. till more than two months after passing of the interim order and then it got reduced to 'zero' on 18.01.2018. On that basis the petitioner alleged that after the interim order whereby respondent No.1 was restrained from swapping the

set top boxes of the petitioner with that of any other entity, respondent No.1 disconnected all the set top boxes.

4. On the basis of reply filed by respondent No.2 in January 2018, it was further pointed out by the petitioner that respondent No.2 had been admittedly retransmitting digital cable TV signals to respondent No.1. On that basis as well as details extracted from log reports which indicated that there were no active STBs of the petitioner any further, it has been alleged that respondent No.1 has completed the swapping after knowing the interim order of this Tribunal passed on 17.10.2017 and has acted in total disregard of that order. It is further alleged that as on 30.01.2018, respondent No.1 had outstanding dues payable to the petitioner (in this case Rs.4,03,226/-) and the respondent No.1 had also failed to comply with requirement of notice which includes obligation to give public notice.

5. Against the charge of wilful disobedience of the interim order of this Tribunal, respondent No.1 had filed a reply where a stand has been taken in paragraph 3 that signals to respondent No.1 were disconnected by the petitioner much before filing of the present petition and respondent No.1 cannot answer the gradual disconnection of the set top boxes because the software for the same was with the petitioner and had been deactivated much earlier. In other words, the defence of respondent No.1 is that the petition has been filed after the petitioner disconnected the supply of signals to this respondent and therefore,

evidence of the petitioner must be based upon forgery etc. Respondent No.1 pointed out that it was admittedly taking signals from respondent No.2 but that did not violate the interim order of this Tribunal.

6. It is also relevant to note that in its reply to the main petition, respondent No.1 claimed that it has cleared all of its dues and the petitioner had falsely created an outstanding against it. In paragraph 12 of the petition, the petitioner had stated that it gave full access of its system to respondent No.1 as well as to OYC Portal which allowed to generate, view and print the individual invoices to be supplied to the subscribers as well as the monthly billing payable by respondent No.1. A vague reply to that is contained in paragraph 6 of the reply alleging that on several occasions the petitioner used to block the OYC and therefore, it could not alter the actual number of subscribers and was forced to pay as per the subscriber base for the past several months. It is remarkable that the chart depicting the total number of set top boxes as well as the reduced figure of 200 STBs by 02.10.2017 finds mention in paragraph 18 of the petition along with allegation of swapping and illegal migration. The parawise reply of respondent No.1 to the main petition does not answer the averments in paragraph 18. In fact, the parawise answer stops at reply to paragraph No.14.

7. It is also worth noticing that in paragraph 9 of the reply to the main petition, respondent No.1 has alleged that its email dated 29.03.2017 (**Annexure R-1**) was the 21 days' notice for migration and since respondent

No.1 could not shift the entire subscriber base, it continued taking feed from other MSO but also continued raising invoices and making payments to petitioner as per previous billings. In paragraph 10 also respondent No.1 has admitted that it continued making monthly payments to the petitioner.

8. In the facts and circumstances noted above, it has to be held that respondent No.1 has acted in gross violation of the interim order of this Tribunal dated 17.10.2017. It waited for few months and made payments against invoices raised for this period and ultimately completed the swapping without seeking modification or vacation of the interim order. It did not give any public notice before migration and the earlier notice to the petitioner contained in **Annexure R-1** was clearly not acted upon because admittedly even after expiry of 21 days mentioned in that notice of 29.03.2017, respondent No.1 continued to take signals from the petitioner, raise invoices and make payments. Although, it has denied the outstanding dues claimed by the petitioner but the denial is half-hearted and not based upon statement of accounts maintained in usual course of the business. Hence, it is held that the migration now completed illegally by respondent No.1 is in violation of the interim order of this Tribunal and also against the provisions of the Regulations as well.

9. In view of finding on violation of interim order given above, the next issue is to determine the appropriate penalty as provided under Section 20 of the TRAI Act. The punishment or penalty for wilful failure to comply with the

orders of this Tribunal can extend to Rs.1 lakh and only in case of a second or subsequent offence it can extend to Rs.2 lakhs and further amounts if the contravention is a continuing one. In the present case, the maximum penalty can be Rs.1 lakh. The facts leave no manner of doubt that respondent No.1 has wilfully violated the interim order of this Tribunal and has taken defences which tend to aggravate the misdeed. If deterrent penalty is not imposed in such matters, it will lead to undesirable litigations and encourage conflict between MSOs and LCOs. Migration without complying with the requirement of Regulations causes or tends to cause not only loss of dues, even if temporary, to the MSOs but inconvenience to the public if no notice is issued in time. Hence to send a proper signal, it is deemed just and proper to impose a penalty of Rs.50,000/- on respondent No.1 in each of these four cases. The penalty must be deposited with the Drawing & Disbursing Officer, TDSAT within four weeks from today failing which it shall be recovered as per law and *suo moto* proceeding for further penalty under Section 20 of the TRAI Act shall be initiated and the default may be taken to be a second or subsequent offence.

10. Since swapping of STBs seems to be complete in these petitions, the petitioner is given liberty to reconsider its prayers in these petitions and if so advised, it may file M.As. for amendment of the petitions within four weeks. The main petitions shall be considered in the light of such M.As., if filed.

11. M.As. Nos.39, 40, 47 and 41 of 2018 stand disposed of accordingly.
Post the main petitions for directions on 31.05.2018.

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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

sks


3/5/12