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

Dated 28th March, 2019

E.A.No.30 of 2016

in

Broadcasting Petition No. 176 of 2015

(M.A. No. 313 of 2016 & 232 and 294 of 2017)

Manthan Broadband Services Pvt. Ltd. ... Petitioner

Versus

Rajarhat Cable Broadband Services & Anr. ... Respondents

BEFORE:

HON'BLE MR. JUSTICE SHIVA KIRTI SINGH, CHAIRPERSON

HON'BLE MR. A.K. BHARGAVA, MEMBER

For Petitioner : Mr. Sarad K. Sunny, Advocate

For Respondents Nos. 1 & 2 : Mr. Diggaj Pathak, Advocate
Ms. Shewta Sharma, Advocate
Mr. Qasim Ali Khan, Advocate

ORDER

By S.K. Singh, Chairperson – Both the parties have been heard in respect of the Execution Application under consideration for the purpose of final disposal.

2. The petitioner of Petition No.176(C) of 2015, Manthan Broadband Services Pvt. Ltd. (Manthan) had preferred the above noted petition in April 2015 to claim



outstanding subscription charges and also Rs.3,35,96,000/- towards cost of approximately 16000 STBs issued by Manthan to the respondent, Rajarhat Cable Braodband Services Ltd. (Rajarhat). As recorded in the order passed on 15.05.2015, the respondent (Rajarhat) had admittedly migrated to another MSO and therefore, petitioner's STBs were of no use to Rajarhat. It offered to return the STBs to Manthan. Under the orders of this Tribunal the handing over of STBs was completed and the same was supervised by learned Local Commissioner appointed for the purpose. Rajarhat returned 14676 STBs to Manthan without any issue or checks as to their workability. The counting was only of STBs and not of accessories. In a rejoinder filed by Manthan on 17.12.2015, it was mentioned that 1078 STBs were defective. No sur-rejoinder was filed to controvert this fact.

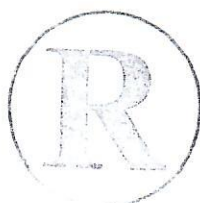
3. The petition was finally heard and dismissed by judgment dated 10.05.2016 on a finding that in absence of any written agreement, neither any claim for recovery of money nor any claim for return of STBs would be maintainable. It was also held that since the petition was not maintainable, the petitioner must restore the position with respect to possession over the STBs and accordingly it was directed to return the STBs which it had received from Rajarhat under the earlier order.

4. Armed with the aforesaid judgment dated 10.05.2016 Rajarhat (Respondent No.1) has preferred the Execution Application under consideration so that Manthan



may be compelled to return back the STBs in compliance of judgment dated 10.05.2016. Again this Tribunal appointed a Local Commissioner to oversee the return of STBs from Manthan to Rajarhat. The issues which arose in respect of return of STBs were noted by the learned Local Commissioner in a supplementary report. Manthan filed its response to these issues, followed by rejoinder of Rajarhat. On 25.05.2018, this Tribunal granted opportunity to the parties to place on record material or evidence in respect of value of the remaining claim, through documentary evidence. Manthan has filed its evidence on which reliance has been placed upon the year of purchase of the STBs to submit that all the STBs under the valuation system laid down in the Regulations have lost all their value because of wear-tear and passage of time. Respondent has not filed any evidence by way of affidavit on the valuation but has relied on documents of Manthan to point out the price at which purchase of STBs had been initially made.

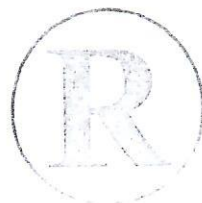
5. Learned counsel for the applicant, Rajarhat, has summarized the remaining claims of the applicant under four heads. According to him, the judgment required Manthan to return 14676 STBs and although the claim is that the same number has been returned, the applicant has objected to 1078 STBs on the ground that they were defective. In respect of 1070 STBs the applicant recorded its refusal to accept because they were manufactured prior to 2013. 1915 STBs were also manufactured prior to 2013 but these were accepted under protest. By adding the



aforesaid three sets of figures, the applicant claims that Manthan has failed to return in total 4063 STBs in proper condition and of required make and hence, Rajarhat should be granted adequate compensation for the same.

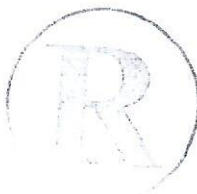
6. In respect of aforesaid claims, on behalf of Manthan it has been highlighted that these STBs were handed over to Manthan by the applicant, Rajarhat, only by counting, without any quality test and the fact that 1078 STBs were defective was pointed out by Manthan in the earlier round. On considering the nature of the claim noted above and the defence supported by earlier order and rejoinder on record of the petition, we find that Rajarhat has raised a claim of 4063 STBs without any valid basis. The claim is without merits and is accordingly not accepted.

7. The other issue raised by the applicant, Rajarhat is that Viewing Cards(VCs) which were supplied by Manthan along with STBS should also have been returned along with STBs and since that has not been done, the applicant Rajarhat should be paid adequate compensation for the same. In reply, learned counsel for Manthan has submitted that VCs are admittedly of Manthan and compatible only with encrypted signals transmitted by it through its headends. It is not in dispute that Rajarhat is no more associated with Manthan and does not receive any supply of signals from it. There is no direction in the judgment requiring Manthan to supply signals to Rajarhat and therefore, VCs can have absolutely no value for Rajarhat.



This technical defence about the utility of VCs being associated and dependent only with the supply of signals from Manthan's headend is not in dispute. Therefore, the direction to return the STBs, in our considered view, would not warrant return of VCs by Manthan to Rajarhat.

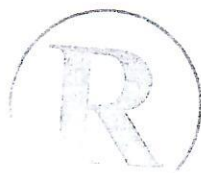
8. The next issue raised by learned counsel for the applicant, Rajarhat, is of accessories. According to him, in the earlier round, Rajarhat had returned 4037 audio-video cords but out of that only 1470 cords have been given back by Manthan. Similarly against 7674 adopters, the number returned back by Manthan is only 2400. Out of 13704 remotes, only 1936 remotes have been handed back. Thus, for the shortfall of 11768 remotes, 2567 AV cords and 5274 adopters, applicant Rajarhat has claimed compensation. Since it has not led any evidence, documentary or otherwise, on the value of these accessories, learned counsel has referred to an invoice at Pg.188 of the main petition. That invoice dated 15.05.2012 shows Manthan Broadband as the lessee under a Lease & Finance Agreement of the date noted above and the total lending cost including customs duty for 1152 STBs. It is submitted that cost of the STBs from that document appears to be around Rs.1600/- whereas Manthan has mentioned in Para 9 of the main petition, the cost of Rs.2000/- per STB. Therefore, it should be presumed that Rs.400/- is the cost of other accessories such as remote, AV cords and adopters etc.



9. In reply, learned counsel for Manthan has submitted that accessories suffer from defects and need replacements from time to time and therefore, Manthan had not raised any objection when in the earlier round there was a substantial shortfall in the number of accessories when compared to the number of STBs which was 14676. The same approach needs to be maintained at this stage, moreso, when several years have passed since the accessories were purchased.

10. On the issue of valuation, the stand of learned counsel for Manthan is that there is no monetary value of STBs or the accessories for the reason that there is 33% depreciation (year to year basis) in the value of each STB (along with accessories) and hence, after a period of three years, in view of provision in the Telecommunication (Broadcasting and Cable Services Fifth Digital Addressable Cable TV System) Tariff Order 2013, the STBs loose all their value. He has relied upon invoices to support the stand that STBs which Manthan had purchased and handed over to respondent were purchased in May 2012 and therefore, these STBs and their accessories have no monetary value. He has also referred to the order dated 15.05.2015 wherein it is noted that as per Rajarhat, the STBs are of no value to it and therefore it sought permission to return the same to Manthan.

11. The facts available on record show that at the initial stage in 2015, Rajarhat admitted that STBs supplied to it by Manthan were of no value to Rajarhat and it accordingly offered to return the same under permission of this Tribunal. No



doubt on a technical plea, Manthan was not permitted to recover its monetary claims either for subscription dues or for the STBs, rather the returned STBs were required to be given back to Rajarhat. This judgment stands complied with return of 14676 STBs. For the shortfall in the accessories with passage of so much of time and considering the facts noted above as well as provisions in the Regulations noted above, it is found that the shortfall in the accessories does not entitle Rajarhat to any monetary claim because the accessories along with the STBs had lost all their monetary value because these were supplied by Manthan to Rajarhat by making purchases in the year 2012. Hence, the claim of the applicant, Rajarhat to recover further amount of money from Manthan for satisfaction of the judgment of this Tribunal dated 10.05.2016 is found to have no merits. For all practical purposes, the judgment stands satisfied. The Execution Application is accordingly disposed of finally by ordering for closure of the execution proceedings. There shall be no order as to costs.



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(S.K. Singh, J)
Chairperson

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(A.K. Bhargava)
Member

