

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

Dated 9th November, 2021

**Broadcasting Petition No.107 of 2021
With
MA No.76 of 2021 & MA No.99 of 2021**

Siti Network Ltd.

....Petitioner

Versus

Roshan Cable Network & Anr.

....Respondents

BEFORE:

**HON'BLE MR. JUSTICE SHIVA KIRTI SINGH, CHAIRPERSON
HON'BLE MR. SUBODH KUMAR GUPTA, MEMBER**

Petitioner

: Mr. Jayant K. Mehta, Sr. Advocate
Ms. Ritwika Nanda, Advocate

Respondent No.1

: None.

Respondent No.2

: Mr. Vibhav Srivastava, Advocate

ORDER

Heard learned senior counsel for the petitioner/non-applicant and learned counsel for respondent No.2/applicant in respect of MA No.76/2021.

2. The MA has been filed by respondent No.2 seeking an order to delete him from the array of parties on the ground that he is being unnecessarily dragged in this litigation because of being an MSO like the petitioner and a competitor. According the applicant/petitioner wants to maintain his monopoly and exclusive presence in the concerned area which is contrary to the provisions in the Interconnect Regulations. It has also been pleaded and there is no dispute that there is no business or contractual relationship between the petitioner and respondent No.2. In the MA there is a further pleading that respondent No.2 is not supplying signals to respondent No.1 and it undertakes that it will provide signals to respondent No.1, if approached, only in accordance with law.

3. Learned counsel for the applicant has submitted that a perusal of the petition and prayers made therein disclose that petitioner has made allegations against respondent No.1, an LCO that it is illegally migrating from the network of the petitioner MSO without giving notice etc. as required by the interconnection

agreement and the Regulations. Petitioner has also prayed for a direction to respondent No.1 to reconnect the STBs of the petitioner and/or return the STBs to the petitioner. The main argument in support of the MA is that only allegation that respondent No.2 is unlawfully forcing respondent No.1 to migrate from the network of the petitioner and/or aiding or abetting such migration is not sufficient to maintain a petition *qua* respondent No.2, a rival MSO. It has been stressed that respondent No.2 is obliged under the Interconnection Regulations to provide signals to LCOs, if approached and such supply of signals by any MSO is always non-exclusive. No LCO can be deprived of signals by an MSO unless disqualified on account of a contract or any provision having force of law such as the Interconnect Regulations. Learned counsel for the applicant has relied heavily upon two recent orders of this Tribunal dated 17.12.2020 in B.P. No.211 of 2020 and 05.08.2021 in B.P. 122 of 2020. The order dated 05.08.2021 allowed a similar prayer of respondent No.2 in that case by distinguishing an earlier order of 17.07.2017 passed in B.P. No.274 of 2016 and chose to follow the order dated 17.12.2020 in which the Tribunal had noted the legal obligations upon an MSO under Interconnect Regulations.

4. On the other hand, learned counsel for the petitioner/non-applicant has tried to persuade this Tribunal to follow the earlier order of 17.07.2017 passed in B.P.

No.274 of 2016 and another order dated 05.04.2019 passed in B.P. No.594 of 2018. As noted earlier the order of 17.07.2017 did not notice the provisions in the Regulations and prayer of respondent No.2 for deletion was declined at the stage of that case when the parties were about to lead oral evidence which was then the normal practice before this Tribunal. All these aspects were considered while passing the order dated 05.08.2021. The other order dated 05.04.2019 was also passed in an old petition of 2018 where the parties had to lead evidence and hence, without considering the legal provisions, the application was kept pending with an observation that it could not be disposed of at that stage and would be considered later, if required.

5. Learned counsel for the petitioner/non-applicant has placed reliance upon Section 14 of the Telecom Regulatory Authority of India Act, 1997 (TRAI Act) to submit that this Tribunal has wide jurisdiction to decide all types of disputes/any dispute between service providers and hence a dispute between two MSOs as raised in the present petition, alleging that respondent No.2 is aiding and abetting respondent No.1 in an illegal manner to migrate from the network of the petitioner must also be decided in presence of respondent No.2 and therefore, MA seeking deletion needs to be dismissed. He also pointed out that prayer No.(vi) is to restrain respondent No.2 from providing signals to respondent No.1 unless

respondent No.1 follows the due process of law and prayer No.(x) is to direct respondents Nos. 1 and 2 to jointly pay the business losses from the date of migration. In support of such prayer, pleadings have also been referred to. Learned counsel has also placed reliance upon judgment and order dated 18.06.2012 in the case of **Solan Sat TV Vs. Star DEN Media** [Petition No.258(C)) of 2011] and connected matters to submit that this Tribunal has exercised jurisdiction where there was allegation of connivance between some broadcasters and a rival MSO whereby the broadcasters acted against the interests of the petitioners who had interconnect agreements with them and encouraged rivals MSO in redistributing signals without there being any agreement for that purpose. Such act of broadcasters was deprecated by this Tribunal. But it has been rightly submitted on behalf of the applicant that the facts were quite different and there was no prayer for deletion of any of the respondents in that case.

6. Learned counsel for the petitioner/non-applicant has placed reliance also upon **(2017) 2 SCC 456: Sita Ram Vs. Balbir alias Bali** to emphasize that respondent No.2 can be held guilty for violation of interim order of this Tribunal passed on 01.02.2021, although the said interim order restrained only respondent No.1 from further migrating to any other MSO without due compliance with the Regulations and the interconnect agreement. The aforesaid judgment of the Apex

Court holds that any third person can also be held guilty for committing contempt of court if he directly aids and abets violation of a direction issued by the court. Reliance has also been placed on Para 33 of a judgment of the Hon'ble Delhi High Court in the case of **Krishna Gupta Vs. Sh.Narendra Nath : (2017) SCC Online DEL 10990**. In this case the words of Order XXXIX, Rule 2A of the CPC were noted to hold that punishment can be meted to "a person guilty of disobedience or breach of injunction order". The aforesaid judgments relating to contempt jurisdiction of the Apex Court or the provisions for injunction in Civil Procedure Code, are not attracted because this Tribunal has to exercise powers only under the provisions of the TRAI Act. The provisions of CPC are not applicable to this Tribunal. Section 20 of the TRAI Act permits the Tribunal to punish a person who willfully fails to comply with the order of the Tribunal. The word 'compliance' clearly creates an obligation to act as per the order of this Tribunal or in other words to follow the order of the Tribunal and in case of willful failure the person bound to show compliance can be inflicted with penalty. It is the order which must show that the concerned person is required to show compliance. In the present case, the interim order passed on 01.02.2021 was confined to respondent No.1 and although respondent No.2 was a party against whom some reliefs were claimed, no interim liability was imposed upon respondent No.2. Hence, even the allegation of non-compliance of the interim order by respondent No.1 as well as respondent

No.2 made in an application filed by the petitioner under Section 20 of the TRAI Act cannot be used to justify the continued impleadment of respondent No.2 as a party respondent by rejecting the prayer for his deletion.

7. Learned counsel for the petitioner/non-applicant has referred to and relied upon the judgment of the Hon'ble Supreme Court in the case of **Mumbai International Airport Pvt. Ltd. Vs. Regency Convention Centre & Hotels Pvt. Ltd. – (2010) 7 SCC 417**. No doubt Paras 13 to 15 of that judgment deal with impleadment of parties and highlight that the plaintiff in a suit is *dominus litis* and therefore, he may choose the person to be impleaded and cannot be compelled to sue a person against whom he does not seek a relief. But it does not help the petitioner. The court has proceeded to take note of relevant provisions in the CPC relating to power of the court to strike-out or add parties. The court has also emphasized as to who is a necessary party and who is a proper party though not a necessary party.

8. Considering all the facts and circumstances of the case including the provisions of Section 14 of the TRAI Act and the provisions in the Interconnect Regulations, it is found that even if the entire averments of the plaintiff is accepted on its face value, the plaintiff has failed to show any right arising in its favour

against respondent No.2, a rival MSO either on the basis of any legal provision including the Regulations or on the basis of any agreement or contract. Admittedly, there is no contract between the petitioner and respondent No.2. The Regulations require respondent No.2 to provide signals to LCOs on a non-exclusive basis only and they do not empower or require an MSO to enquire whether the LCO has duly carried out its contractual or other obligations, if any, *qua* another MSO, much less to deny an agreement for supply of signals on the basis of any such deemed failure on the part of the LCO.

9. In view of the aforesaid legal aspects, the present proceedings under the TRAI Act cannot be permitted to continue against respondent No.2 when he is not shown to be in violation of any obligation, legal or contractual vis-à-vis the petitioner. As a consequence, there can be no difficulty in holding that in the present matter respondent No.2 is neither a necessary nor a proper party. Allowing the proceeding against respondent No.2 in the given facts of the case would amount to his undue harassment and therefore, following the earlier judgments of this Tribunal discussed above dated 17.12.2020 and 05.08.2021, the prayer made in MA No.76 of 2021 is allowed and respondent No.2 is deleted from the array of respondents.

10. The Registry shall make a note of the same and petitioner shall file an amended Memo of Parties within two weeks from today.

11. MA No.76 of 2021 stands allowed and disposed of.

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

.....
(Subodh Kumar Gupta)
Member

sks