

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL

NEW DELHI

Dated 1st August 2023

Broadcasting Petition No. 180 of 2016

M/s Siti Cable Network Limited ...Petitioner

Vs.

M/s Show Time Cable Network & Anr. ...Respondents

BEFORE:

HON'BLE MR. JUSTICE RAM KRISHNA GAUTAM, MEMBER

For Petitioner : Ms. Ritwika Nanda, Advocate
Mr. Saurabh Bansal, Advocate

For Respondent No. 2 : Mr. Nasir Husain, Advocate

JUDGMENT

1. This Petition, under section 14 read with section 14 (A) of the Telecom Regulatory Authority Act India act 1997, (hereinafter referred as 'TRAI Act') has been filed by Petitioner-Siti Cable Network Ltd., against Show Time Cable Network & M/s Hathway Cable and Datacom Ltd., with a prayer for an order/ decree in favour

of Petitioner, against respondents, jointly and severally, for an amount of Rs.3,57,696/- (Rupees Three Lakh Fifty Seven Thousand Six Hundred Ninety Six only), towards the outstanding subscription dues, along with Rs.3,91,958/- (Rupees Three lakhs Ninety One Thousand Nine Hundred and Fifty Eight only), towards business losses, with a further grant of interest @ 18% p.a. on above amount.

A mandatory injunction, directing respondents, to immediately hand over 437 STBs along with VCs to Petitioner, or make the payment of Rs.7,56,884/- (Rupees Seven Lakhs Fifty Six Thousand Eight Hundred Eighty Four only) for those 437 STBs to Petitioner, was also claimed.

2. In brief, Petitioner contended that Siti Cable Network Ltd. is a company, registered under Companies Act, 1956, having its registered office at 135, Continental Building, Dr. Annie Besant Road, Worli, Mumbai- 400018, with its regional office at B-10 Lawrence, Road, Industrial Area, Delhi. It is a leading Multi System Operator (MSO), having its cable TV operation in various areas, PAN India, and Mr. V. Suresh Kumar is the authorized signatory of the Petitioner company, who is competent to file present petition, for

and on behalf of Petitioner company, as per Board Resolution dated 18.07.2014, **Annexure P-1** to petition.

3. Petitioner, as a Multi System Operator, has established control rooms/ head-ends and network operations for re-transmission of various Free to Air (herein after referred to as "FTA") as well as pay channels of various broadcasters to the households/ subscribers, directly or through affiliated Local Cable Operators, across the country, including DAS notified areas of Delhi.
4. Respondent No. 1-Show Time Cable Network, is a Local Cable Operator, operating in the DAS notified areas of Delhi, and is running its cable TV business from 8050, Gali Tyre Wali, Bada Hindu Rao, New Delhi, as a Sole proprietorship firm, owned by Md. Imran.
5. Respondent No. 2, M/s Hathway Cable and Datacom Ltd. is also a Multi System Operator, operating PAN India basis and involved in business of re-transmitting signals of TV channels of various broadcasters in analogue areas, as well as in DAS notified areas, including Delhi/ New Delhi areas. Petitioner, being a MSO, subscribed various pay channels from broadcasters for

retransmissions of TV channel signals from its head-end with the help of State of the Art equipment, the signals of all the channels are merged into a single feed, which is then retransmitted to the subscribers, either directly or through Local Cable Operators.

6. Respondent No.1, a Local Cable Operator in the city of Delhi, was taking feed signals of TV channels from the Petitioner, for retransmitting the same to the subscribers in the New Delhi areas, for which an Interconnect Agreement, dated 12.03.2013, was executed, in between, Petitioner and Respondent No.1. The same is **Annexure P-2** to Petition. Respondent No.1 is distributing the cable TV signals in areas falling in DAS notified territory. Hence, signals of petitioner were being supplied in an encrypted digital addressable mode, in which subscribers were required to install a Set Top Boxes including Viewing Cards, at its premises. Petitioner had invested huge amount for purchasing Set Top Boxes and this was given to various affiliated LCOs, including Respondent No. 1, for installation at subscribers' premises, for and on behalf of petitioner, to avail digital TV services, from the petitioner. 437 Set Top Boxes, along with Viewing Cards, were supplied to Respondent No. 1 in compliance of inter connect agreement and these were being

utilised by Respondent No. 1 by installing at subscribers' premises. These boxes were without any security. But ownership always remained of petitioner. As per agreement, Respondent No. 1 was under obligation to take proper care of Set Top Boxes and Viewing Cards issued to Respondent No. 1, to be supplied, to subscribers and after the termination or expiry of above agreement, he was under duty to return Set Top Boxes along with the Viewing Cards and hardware to the Petitioner, after complying with provisions of Interconnect Regulations, issued by TRAI. The statement showing details of STBs along with VCs, (No. 437), issued by Petitioner to Respondent No. 1 was **Annexure P-3** (colly), with Petition.

7. Respondent No. 1 continued to receive un- interpreted supply of digital cable Tv signals from Petitioner, till he unilaterally migrated to the competing network of Petitioner i.e. Respondent No. 2, without clearing the outstanding dues and returning the STBs along with other hardware, to Petitioner. Even without complying with the mandatory legal requirements, prescribed under the Interconnect Regulations. Respondent No. 1 was at all times having access to the Own Your Customer (OYC) portal of the Petitioner, which allows the LCOs to generate, view and print the individual

invoices that have to be supplied to the subscribers, as well as the monthly statement of Account, reflecting all payments made by Respondent No. 1 and all remaining payments, due to be paid to Petitioner on month to month basis. But Respondent No. 1 without returning the Set Top Boxes, Viewing Cards and other ancillary hardware as well as without clearing the outstanding subscription charges of the Petitioner, had migrated to competing MSO- Respondent No. 2 illegally.

8. A legal notice dated 05.02.2016 was issued by Petitioner to Respondent No. 1, but of no avail. The said notice is **Annexure P-4** to Petition. Respondent No. 2 as per pre-plan with respondent no. 1 had started supply of TV channel signals to Respondent No. 1 network even without obtaining no dues certificate from Petitioner. The above illegal migration by Respondent No. 1 to Respondent No. 2 are contrary to Regulations clause 6(4) and 6(5) of the Telecommunication (Broadcasting and Cable Services) Interconnect (Digital Addressable System Regulation) Regulation 2012. Though, the Tribunal in many other cases with the like fact had directed the defaulting LCOs, not to unilaterally migrate to other competitive

network, without complying with the mandate of Interconnect Regulations. Even reconnection was directed in few of cases.

9. Respondent No. 1 was having Rs.3,57,696/-, towards subscription charges, as on 29.12.2015, and statement of account reflecting this figure was **Annexure P-9** to petition. 437 STBs along with VCs, valued approx. for Rs.7,56,884/-, calculated @ Rs. 1732/- per STB. A huge loss of business was suffered, owing to this arbitrary, unilaterally illegal migration of Respondent No. 1 to Respondent No. 2, for which Rs. 3,91,958/- has been claimed.
10. The cause of action had arisen, within the jurisdiction of this Tribunal, within the period of limitation, hence, this petition with above prayer.
11. Even after sufficient service of notice and mention of same in order dated 04.07.2017, none appeared for Respondent No. 1, against whom proceeding for ex-parte, was ordered.
12. Respondent No. 2 appeared and filed its reply with preliminary submission regarding the maintainability of this petition. No cause of action had ever arisen against Respondent No. 2, because of it being neither proper nor necessary party in present proceeding.

There is no privity of contract between Petitioner and Respondent No. 2. Hence, no relief against Respondent No. 2 may be granted. Respondent No. 1 had an agreement with answering Respondent No. 2. As an interconnect agreement and Respondent No. 2, being MSO, had been providing services to Respondent No. 1 since analogue period. The Respondent No. 1 has been availing dual feed, as it has also been availing signals from the Petitioner. For any default of Respondent No. 1, respondent No. 2 may not be liable. There having no contract between petitioner and Respondent No. 2, no question of any breach ever arisen.

13. The TRAI's Interconnect Regulations had not confer any such right on the Petitioner for claiming a relief against Respondent No. 2. The contention of petitioner, so far as it relates to Respondent No. 2, was denied, except a previous agreement with Respondent No. 2 and Respondent No. 1 and supply of signals from Respondent No. 2 to Respondent No. 1.
14. On the basis of pleadings of both sides, following issues were framed by Court of Registrar :

- [1] Whether Respondent No.1 has illegally migrated from the network of the Petitioner to the network of Respondent No.2 without clearing the outstanding subscription fee and without returning the petitioner's STBs in contravention of TRAI Regulations, if so, its effect?
- [2] Whether in the absence of any Subscription Agreement, Respondent No.2 is not a necessary party and whether the present petition suffers from the defects of misjoinder of parties?
- [3] Whether no cause of action has arisen against Respondent No.2 and the present petition is not maintainable against it, as is alleged in the reply?
- [4] Whether the Respondents are liable to return 437 STBs in good working condition to the Petitioner or in the alternative, make payment of Rs.7,56,884/- towards the cost of STBs?
- [5] Whether Respondent No.1 has failed to comply with the terms of duly adjudicated agreement and Clause Nos. 6(40 and 6(5) of Inter-connect regulations, if so, its effect?
- [6] Whether the Respondents are jointly and severally and solely liable to pay the outstanding dues amounting to Rs.3,57,696/- as the Subscription Fee, as has been prayed in the petition?
- [7] To what relief, if any, the Petitioner is entitled for?

15. Even after sufficient opportunity, no evidence, by Respondent - 1, either oral or documentary, got filed. Petitioner filed its evidence by way of affidavit of Mr. V Suresh Kumar, for and on behalf of Petitioner Company, saying himself as authorized representative of Petitioner Company, duly authorized by Board Resolution dated 18.07.2014 and Board Resolution dated 29.01.2019. This affidavit was exhibit PW 1/4.
16. The evidence filed by Respondent No. 2, is an affidavit of Mr Deepak Lakhani and was for and on behalf of Respondent No.2.
17. Written submission by Petitioner had been filed and taken on record.
18. Heard arguments of Learned Counsel for Petitioner as well as Respondent No.2 and perused the record.
19. The proceeding before this Tribunal is a civil proceeding, as has been given in the TRAI Act, itself. In a civil proceeding, the preponderance of probabilities, is the touchstone for making a

decision, as against strict burden of proof, required in criminal proceeding.

20. Hon'ble Apex Court in Anil Rishi Vs. Gurbaksh Singh – AIR 2006 SC 1971 has propounded that onus to prove a fact is on the person who asserts it. Under Section 102 of The Indian Evidence Act, initial onus is always on the plaintiff to prove his case and if he discharges, the onus shifts to defendant. It has further been propounded in Premlata Vs. Arhant Kumar Jain- AIR 1976 SC 626 that where both parties have already produced whatever evidence they had, the question of burden of proof ceases to have any importance. But while appreciating the question of burden of proof and misplacing the burden of proof on a particular party and recording of findings in a particular way will definitely vitiate the judgment. The old principle propounded by Privy Council in Lakshman Vs. Venkateswarloo – AIR 1949 PC 278 still holds good that burden of proof on the pleadings never shifts, it always remains constant. Factually proving of a case in his favour is cost upon plaintiff when he fulfils, onus shifts over defendants to adduce rebutting evidence to meet the case made out by

plaintiff. Onus may again shift to plaintiff. Hon'ble Apex Court in State of J& K Vs Hindustan Forest Co. (2006) 12 SCC 198 has propounded that the plaintiff cannot obviously take advantage of the weakness of defendant. The plaintiff must stand upon evidence adduced by him. Though unlike a criminal case, in civil cases there is no mandate for proving fact beyond reasonable doubt, but even preponderance of probabilities may serve as a good basis of decision, as was propounded in M Krishnan Vs Vijay Singh- 2001 CrLJ 4705. Hon'ble Apex Court in Raghvamma Vs. A Cherry Chamma – AIR 1964 SC 136 has propounded that burden and onus of proof are two different things. Burden of proof lies upon a person who has to prove the facts and it never shifts. Onus of proof shifts. Such shifting of onus is a continuous process in evaluation of evidence.

21. Issue Nos.2 and 3

Both of these issues are related with each other and they require a common discussion. At the very outset, Learned Counsel for Petitioner argued that as per law settled by this Tribunal that there being no Privity of Contract, in between, Petitioner and competitive MSO, no

interconnect agreement, in between, no relief may be claimed, for any defiance made by Respondent No.1. The relief against Respondent No.2 is not being claimed. Respondent No.2 is a competitive MSO and in Petition itself this was written that under the garb of pre-agreement, entered in between, Respondent No.1 and Respondent No.2, the migration by Respondent No.1 was made to Respondent No.2. Hence, Respondent No. 2, in its evidence, filed by way of affidavit, had categorically stated on oath, that there had been an agreement in between Respondent No.2 and Respondent No.1, prior to said accusation by Petitioner company and Respondent No.1 was enjoying double feed. There is no contract, in between, Petitioner and Respondent No.2 nor there is any violation of any Interconnect Regulations by Respondent No.2. Hence, it is not responsible for misconduct of Respondent No. 1. Hence, under above admitted facts and proposition made by this Tribunal, in previously decided cases, there is no Privity of Contract, in between, Respondent no. 2, a competing MSO with Petitioner Company, another MSO and the unilateral migration, without observing Interconnect Regulations, 2012 is assailed against Respondent No.1, LCO. The relief is being claimed against Respondent No.1 only, as has been argued before this Tribunal.

Hence, the Petition is of this defect that Respondent No.2 is not a necessary party. There is misjoinder of parties.

Hence, both these two issues are being decided in favour of Respondent No.2.

22. Issue No.5

Petition specifically contends that there was illegal migration by LCO Respondent No.1, to MSO -Respondent No.2, without observing the Interconnect Agreement, as well as Interconnect Regulation with regard to it, of TRAI under its Clauses 6(4) and 6(5). This contention was reiterated and corroborated by way of affidavit, of Mr. V. Suresh Kumar, PW 1, filed on record and this was un-rebutted by Respondent No.1. It is an uncontroverted affidavit, proving the contention of Petition. Hence, nothing is in rebuttal of this cogent evidence. Hence, this fact is fully proved by Petitioner.

Hence, this issue is being decided in favour of Petitioner.

23. Issue No.1

Issuing of 437 STBs, along with viewing cards, and use of it by Respondent No.1, for acting upon Interconnect Agreement, entered, in

between, has been said by Petitioner in its Petition. The same is there in Annexure P-3 (Colly) to the Petition, which specifically provides issuance of 437 set top boxes along with viewing cards and ancillary hardware. This fact has been said on Oath in its evidence by PW-1. The certified copy of invoices issued, in between, 30.04.2014 to 31.03.2015 is Exhibit P-1/6 to affidavit filed in ex-parte evidence. The certified copy of the Statement of Account, reflecting subscription dues, is Annexure P-1/7, affidavit filed in evidence and these facts are unrebutted and affidavit is uncontroverted. Hence, it fully proves the contention of Petitioner.

As per Regulations clause 6.4 and 6.5, the unilateral migration, without making payment of subscription dues, as well as returning set top boxes, by Respondent No.1, is against TRAI Regulations and it is very well proved as above.

Hence, Issue No.1 is being decided in favour of Petitioner as against Respondent No.1.

24. Issue No. 6

As has been decided in Issue Nos. 2 and 3, Respondent No.2 is not a proper party in this proceeding and as per argument of learned Counsel

for Petitioner, relief against it, has not been claimed. But for dues towards outstanding subscription charges in the tune of Rs 3,57,696/- for the period 30.04.2014 to 31.03.2015 and interest @ rate of 9% per annum, *pendentelite* and future, is to be awarded against Respondent No.1 for this.

This issue is being decided in favour of Petitioner as against Respondent No.1.

25. **Issue No. 4**

As per annexure P-1/9, a copy of certified list of STBs alongwith import cost of each STBs supplied by Petitioner to Respondent No.1, the STBs ought to be returned, in working condition, within two months of judgment, by Respondent No.1 to Petitioner. And in case of its failure an amount of Rs. 7,56,884/- @ Rs. 1732/- per STB, is to be paid by Respondent No.1 to Petitioner and this ought to be with interest @ 9% per annum, *pendentelite* and future.

This issue is being decided in favour of Petitioner against Respondent No.1.

26. Issue No. 7

On the basis of discussions made above, this Petition merits to be allowed with cost, against Respondent No.1, for payment of Rs. 3,57,696/- towards outstanding subscription dues, along with interest, *pendentelite* and future @ 9% per annum. Respondent No.1 is being directed, for making a return of 437 STBs along with viewing cards, and other ancillary hardware, detailed in Annexure P-1/9 of affidavit evidence, within two months of judgment to Petitioner or to make payment for the cost of same in the tune of Rs. 7,56,884/- @ Rs. 1732/- per STB, plus interest @ 9% per annum, *pendentelite* and future, till actual payment.

Order

Petition is being allowed with cost. Respondent No. 1 is being directed to make Rs. 3,57,696/- towards outstanding subscription dues, along with interest, *pendentelite* and future, @ 9% per annum, within two months for making payment to petitioner. Respondent No.1 is also directed, for making a return of 437 STBs, along with viewing cards, and other ancillary hardware, detailed in Annexure P-1/9 of affidavit evidence, within two months of judgment to Petitioner or to make payment for the cost of same in the tune of Rs. 7,56,884/- @ Rs. 1732/- per STB, plus interest @ 9% per annum, *pendentelite* and future, till actual payment.

Formal order/ decree be got prepared by office, accordingly.

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(Justice Ram Krishna Gautam)
Member

01.08.2023
/NC/

