

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL

NEW DELHI

Dated 9th August 2023

Broadcasting Petition No. 330 of 2017

Den Networks Ltd ...Petitioner

Vs.

Ahuja Cable Network and Anr ...Respondent

BEFORE:

HON'BLE MR. JUSTICE RAM KRISHNA GAUTAM, MEMBER

For Petitioner : Mr. Vibhav Srivastava, Advocate
Ms. Aashi Arora, Advocate
Ms. Nitika Kumar, Advocate

For Respondent No.2 : Ms. Ritwika Nanda, Advocate
Ms. Stuti Jain, Advocate

JUDGMENT

1. This Petition, under Sections 14 read with Section 14A, of the Telecom Regulatory Authority of India Act, 1997 (hereinafter referred to as "TRAI Act") has been filed by Petitioner, Den Networks Limited, against Respondent No.1 – Ahuja Cable Network, having Local Cable

Operator (LCO) code LCOSRN004 in the Petitioner's system, in respect of persistent default in making payment of outstanding subscription fee in the tune of Rs. 38,100/- (Rupees Thirty Eight Thousand One Hundred only) as on 30.06.2017 and a direction to Respondent No. 1, to restore the Set Top Boxes of the Petitioner, swapped with Siti Networks Limited (hereinafter referred as Respondent No. 2) i.e., return of 625 Set Top Boxes (STBs) along with accessories, in good working condition, issued to Respondent No. 1, or to make payment in lieu of that @ Rs. 1999/- per Set Top Box, to Petitioner with further payment of interest @ 18 % per annum, for above amount.

2. In brief, The Petition contends that Den Networks Limited is carrying a Multi System Operation business in cable television service, being a service provider, duly registered under the provisions of Section 3 of the Cable Television Networks (Regulation) Act, 1995 (hereinafter referred to as "Cable Television Act"), and Respondent No. 1 i.e., Ahuja Cable Network, is a Local Cable Operator (LCO), as per TRAI Regulations, having received encrypted Cable Signal feeds of television channels, from the addressable system of the Petitioner to retransmit the same through its Cable Television network to the subscribers in

the city of Saharanpur. Interconnect Agreement, dated 23.09.2016, was executed, in between, Petitioner and Respondent No. 1, which is **Annexure P-1** to the Petition.

Respondent No.2, is also engaged in the business of Cable Television Service, under the provisions of Section 3 of the Cable Television Networks (Regulation) Act, 1995 (hereinafter referred to as "Cable Television Act") and is the competitor of the Petitioner.

As per records of Petitioner Company, Respondent No. 1, has taken 625 Set Top Boxes (STBs) along with accessories, exclusively owned by Petitioner. Those were issued to Respondent No. 1 for their deployment at subscribers' house, each of which costed Rs.1999/-. Respondent No. 1 is liable to restore those Set Top Boxes to Petitioner in good working condition, or to make payment for them @ Rs. 1999/- per STB. As per Interconnect Agreement, monthly invoices were raised to Respondent No.1 for making payment of subscription amount. Those are **Annexure P-2**. The Statement of Account (SOA) maintained by Petitioner Company, is **Annexure P-3** to Petition. The outstanding amount for subscription fee was Rs. 38,100/- (Rupees Thirty Eight Thousand One Hundred only) as on 30.06.2017. Various request for making payment was made, but of no heed. Rather, Respondent No. 1

swapped the STBs in connivance with Respondent No.2. A Demand-Cum-Cease and Desist Notice dated 01.06.2017, was issued by Petitioner to Respondent No. 1, which is **Annexure P-4** to Petition, but of no response. Respondent No. 1, a Local Cable Operator, as per TRAI Regulation, migrated with Respondent No. 2, without observing statutory provision of clause 6.4 and 6.5 of Regulations, by way of giving three weeks' notice, or paying whole of subscription amount and return of STBs to Petitioner. Cause of action had arisen within limitation period and jurisdiction of this Tribunal. Hence, this Petition, with above prayer.

3. Respondent No. 2 filed its reply, denying the contention against Respondent No. 2. No cause of action had ever arisen, against Respondent No. 2, nor the Petition was maintainable against Respondent No. 2, nor Respondent No. 2, is a proper and necessary party. There is no contract or Interconnect Regulation between Petitioner and Respondent No. 2. Respondent No. 2 is not liable to pay any subscription dues, existing against Respondent No.1. There is no Privity of Contract, in between, Respondent No. 2 and Petitioner. Hence, Petition against Respondent No. 2 is not maintainable.

4. The Court of Registrar, after perusing the pleadings of both sides, vide order dated 01.02.2018, framed following issues :
- (1) Whether the petitioner is entitled for amount alongwith interest from respondents as claimed in the petition?
 - (2) Whether the petitioner is entitled for return of STBs / amount in lieu of that from the respondent No. 1, as claimed in the petition?
 - (3) Whether R-1 has migrated to the network of R-2? If so, whether such migration is in compliance of TRAI Regulations?
5. The evidence by way of affidavit of Mr. Siddharth Priya Srivastava, for and on behalf of Petitioner Company and Mr. V. Suresh Kumar, for and on behalf of Respondent No. 2, were got filed. Learned Counsel for Respondent No. 1, failed to appear. Hence, proceeding against Respondent No. 1 remained ex-parte.
6. Heard learned Counsel for Petitioner and Respondent No. 2 and gone through the materials placed on record.

7. 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.

8. 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 bonus 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.

9. **Issue No. 1 and Issue No. 2**

Petition is with specific mention of execution of Interconnection Agreement, in between, Petitioner and Respondent No. 1. The same, dated 23.09.2016, is **Annexure P-1** with Petition. This fact has not been disputed by Respondent No. 1, who had not appeared or filed

any reply, or by Respondent No. 2, in its reply. The Petitioner and Respondent No. 1, being party to this agreement, are MSO and LCO, i.e., service providers under TRAI Act and Regulations, made therein. The subscription fee, due till 30.06.2017, Rs. 38,100/- (Rupees Thirty Eight Thousand One Hundred only), has been said in affidavit, filed in support of Petition and which has been taken as evidence, for and on behalf of Petitioner. The same is with no rebuttal. The same is supported with the Statement of Account too. Hence, as this amount of subscription due, is with no rebuttal, rather the statement on oath had proved it. Hence, the same is with full proof. The STBs, being said to be taken for deployment at subscriber's premises, by Respondent No. 1, in continuation of Interconnect Agreement at Annexure P-1 were said to be 625, with a worth of Rs. 12,49,375/-. The worth price @ Rs. 1,999/- was said at the time of its purchase and the agreement was of 2016 and the Petition was of 2017. The depreciation value had not been specified. As there is no evidence or IOTA of evidence, for and on behalf of Respondent No. 1, against the Petitioner with regard to number of STBs and worth of the STBs, written as above, hence, this is to be restored and paid by Respondent No. 1. So far as Respondent No. 2's liability, as jointly or severally, is concerned,

admittedly, there is no Privity of Contract with Respondent No. 2. Hence, it can never be said to be responsible for making payment, which is due against Respondent No. 1. Hence, this issue is being decided in favour of Petitioner, with regard to subscription amount of Rs. 38,100/- (Rupees Thirty Eight Thousand One Hundred only) and the depreciated value @ 15% less than Rs. 1,999/- per STB (Rs. 1699/-), for total 625 STBs, which comes to Rs. 10,61,875/- (Rupees Ten Lakhs Sixty One Thousand Eight Hundred and Seventy Five only). Hence, the Issue No. 1 and Issue No. 2 are being decided in favour of Plaintiff/ Petitioner, against Respondent No. 1.

10. **Issue No. 3**

This has been specifically given in pleading i.e, Petition, as well as affidavit filed, in support as evidence, by Petitioner and there is no rebuttal by Respondent No. 1. Thus, unrebutted and uncontroverted statement of affidavit, is being accepted, as it is. Hence, this issue is being decided against Respondent No. 1.

Order

Petition is being allowed. Respondent No. 1 is being directed to make deposit in the Tribunal, within two months from the date of judgment, Rs. 38,100/- (Rupees Thirty Eight Thousand One Hundred only) along with simple interest 9% per annum, pendente lite and future, till actual date of payment, for making payment to Petitioner. Respondent No. 1 is being further directed to hand over 625 STBs and Viewing cards in the working condition, to Petitioner, within two months of judgment and in case of its failure, to deposit Rs. 10,61,875/- (Rupees Ten Lakhs Sixty One Thousand Eight Hundred Seventy Five only) @ Rs. 1699/- per STB and Viewing card, along with simple interest of 9% per annum, for above amount, in the Tribunal for compensating Petitioner.

Formal order/ decree be got prepared by office, accordingly

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(Justice Ram Krishna Gautam)
Member

09.08.2023
/BN/