

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL

NEW DELHI

Dated 21st February 2023

Broadcasting Petition No. 487 of 2016

Siti Cable Network Limited

...Petitioner

Vs.

The New Time Cable and Anr.

...Respondents

BEFORE:

HON'BLE MR. JUSTICE RAM KRISHNA GAUTAM, MEMBER

For Petitioner

:

Ms. Ritwika Nanda, Advocate

Ms. Richa Deshpande, Advocate

For Respondent

:

Ms. Vandana Jai Singh, Ms. Kanupriya Gupta
Advocates for respondent no. 2

JUDGMENT

1. This Petition, under section 14 read with 14A of Telecom Regulatory Authority Act, 1997 (hereinafter called as 'TRAI Act'), has been filed by Petitioner- Siti Cable Network Limited, MSO against two Respondents – The New Time Cable, LCO through its proprietor and IndusInd Media & Communications Ltd., a competing MSO, with a prayer for issue of direction

to Respondent No. 1, not to retransmit the TV channel signals of respondent no. 2 or any other MSO during the pendency of the petition, direct respondent no. 2 not to provide signals to respondent no. 1 till it complies with the provisions of the regulations. A further prayer for passing a decree in favour of the petitioner and against respondents, jointly or severally for an amount of Rs. 11,80,378/- being the outstanding towards subscription alongwith interest @ 18 % p.a till the date of payment by the respondents. Further an order directing the respondents to immediately handover 1206 STBs and VCs to the petitioner and in the alternative, payment of cost in lieu of STBs, be paid, in accordance with law. Compensation for business loss is also sought by the petitioner.

2. In brief, the contention of the petition is that petitioner –Siti Cable Network Ltd. is a company registered under the Companies Act 1956, having its Registered Office at Madhu Industrial Estate, 4th Floor, P. B. Marg, Worli, Mumbai- 400 013, Maharashtra. Mr. V Suresh Kumar is duly authorized, vide the Board Resolution dated 25.05.2016, for filing this petition, and make sign, and verification over it. A certified copy of the Board Resolution dated 25.05.2016 was annexed as ANNEXURE P-1 to petition. The Petitioner company is a Multi-System Operator (“MSO”) which has established control

rooms / head-ends and network operations for retransmission of various Free To Air (FTA) and pay channels signals of various broadcasters to the households/subscribers directly or through affiliated LCOs across the country including DAS notified areas of Delhi. Hence, Petitioner is a 'service provider' within the meaning of the term under the TRAI Act, 1997.

Respondent No. 1 is a LCO, a sole proprietorship firm owned by Mr. Joginder Singh, operating in the DAS notified area of Delhi.

Respondent No. 2, is a competing Multi System Operator ("MSO"), operating on pan – India basis and re-transmitting signals of TV channels of various broadcasters in analogue areas as well in DAS notified areas, including in Delhi/ New Delhi.

3. Petitioner, as an MSO, had established control rooms/ head-ends and network operations, for retransmission of various Free to Air ("FTA") and Pay channels, signals of various broadcasters' channels to the households/subscribers through affiliated LCOs. The digital cable TV signals of the Petitioner are supplied in an encrypted digital addressable mode. Thus, the subscribers are required to install a Set Top Box (including a Viewing Card), which would de-encrypt the signals at the subscriber's premises, so that the

digital cable TV signals are, in such a form, which is readable by a television set. Therefore, the Petitioner provides the LCOs with hardware devices such as Set Top Boxes (“STBs”), Viewing Cards (“VCs”), and other accessories etc. LCOs are responsible for the installation of the hardware devices at the premises of the subscribers, after filling Subscriber Application Forms (SAF). On the activation of the STBs and the VCs, the digital cable TV signals are re-transmitted to the subscribers by the Petitioner. The LCOs are responsible for collection of monthly subscription charges, activation charges against Set Top Boxes, supplied and installed at subscriber’s premises, alongwith applicable taxes, and other applicable charges, on behalf of the Petitioner, from the various subscribers and/or LCOs.

4. On 30.10.2012, the Petitioner executed an ‘Interconnection Agreement’ with the Respondent No. 1, in terms of the Telecommunication (Broadcasting and Cable Services) Interconnection (Digital Addressable Cable Television System) Regulations, 2012, as notified by TRAI, from time to time. The Interconnection Agreement was ANNEXURE P-2. In terms of Interconnection agreement and on demand of the respondent, petitioner has given directly or through its distributor total 1206 STBs and VCs to the respondent. As per clause 8 of the agreement, the petitioner did not collect

any security amount from respondent no. 1. STBs were under exclusive ownership of Petitioner.

5. Petitioner submitted that Respondent No. 1 at all times had access to the 'Own your Customer' portal which allows the LCO to view, generate and print the individual invoices that have to be supplied to the subscribers as well as the monthly statement of accounts reflecting all payments made by the Respondent No. 1 and all payments still due to be paid to the Petitioner on a month to month. Further, Respondent No. 1 has admitted to having access to the OYC and to collect the subscription charges, activation charges, etc., from the subscribers and forthwith the deposit the same with the MSO /Petitioner. But Respondent No. 1, in contravention to the Interconnection Regulations and the Interconnection Agreement, defaulted in paying the subscription fees. Respondent has unilaterally migrated to the competing network of respondent no. 2 without clearing the outstanding dues and returning the STBs.

6. The legal requirements, prescribed under the Interconnection Regulations and Interconnection Agreement, were also not complied with by

Respondent No. 1. The action of the Respondent No. 1 is contrary to the Regulations issued by TRAI. A legal notice dated 26.03.2016 was sent to the respondent no. 1 demanding payment of outstanding dues towards subscription charges, which was Annexure P-3 to the petition. As on 29.6.2016, outstanding dues was to the tune of Rs. 11,80,378/- (Rupees Eleven lakh eight thousand three hundred and seventy eight only). The Statement of Accounts (SOA), maintained by the Petitioner Company, in the normal course of its business was ANNEXURE P-8.

7. The cause of action arose on 30.10.2012 qua Respondent No. 1, when the Petitioner entered into the Interconnection Agreement with the Respondent No. 1. Hence, this petition is there for adjudication by this Tribunal, having specified jurisdiction under TRAI Act.

8. As an interim prayer, ad-interim injunction and direction to the respondents as per final prayers, as above, in this petition, was also filed.

9. In spite of sufficient service of orders and notice, respondent no. 1 failed to appear and file its written statement. Whereas respondent no. 2 had appeared and filed its reply.

10. At the time of placing arguments, learned counsel for petitioner, Ms. Ritwika Nanda, made a statement before this Tribunal that in many cases decided previously, this Tribunal had ordered that owing to the lack of contract in between petitioner – MSO and competing service provider, no relief against competing service provider may be claimed, because in such broadcasting petitions, there is no privity of contract, in between petitioner and competing service provider.

11. Accordingly, the very claim against respondent no. 2 also have to be dispensed with. No relief against respondent no. 2 is being claimed. Though Ms. Vandana Jai Singh, learned counsel for respondent no. 2, mentioned that she is not opposing the contention of counsel for petitioner on this point and that in the lack of contract in between, respondent no. 2 is not concerned with default stated to be made by respondent no. 1, qua petitioner. The respondent no. 2 was with no contract or interconnect agreement with

petitioner and for lack of it, no relief against competing service provider may be claimed and prospective competing service provider, with whom STBs swapping is being levelled is not a proper party in such broadcasting petitions, because there is no privity of contract in between petitioner and competing service provider. As there had been no privity of contract in between, hence, no relief against respondent no. 2 may be claimed or awarded. But as respondent no. 2 has filed its written statement, hence, it's contentions be also mentioned.

12. On the basis of pleadings of the petitioner and written statement of respondent no. 2, the Court of Registrar, vide order dated 27.04.2018, formulated following issues :

- (1) Whether the respondents are jointly and severally liable to pay the outstanding dues alongwith interest to the petitioner as claimed in these petitions?
- (2) Whether respondent no. 1 has migrated to the network of respondent no. 2 ? If not, whether the petition is maintainable against respondent no. 2 ?

(3) Whether the respondent no. 1 and respondent no. 2 are liable to return the STBs to the petitioner?

(4) Whether the respondent no. 1 has failed to comply with the duly executed agreement?

(5) Whether respondent no. 2 has acted in contravention to the Interconnection Regulations of 2012?

13. Petitioner, in its support, had filed testimony/ affidavit of Mr. V Suresh Kumar PW-1, for and on behalf of petitioner company.

14. Heard learned counsel for both sides and gone through the material placed on record.

15. **Burden of proof:**

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.

16. This Petition, before this Tribunal, is a civil proceeding and in civil proceeding, the preponderance of probabilities, is the touchstone for making a decision, as against strict burden of proof, required in criminal proceeding.

17. **Issue No. 1**

This issue was formulated on the basis of contentions made in written statement filed on behalf of respondent no. 2, wherein it was specifically stated that instant petition is not maintainable against respondent no. 2 for lack of cause of action against respondent no. 2, who is a misjoinder of parties. There is no privity of contract in between respondent no. 2 as well as petitioner. Hence, a relief against respondent, in absence of written interconnect agreement, is not maintainable under Interconnection Regulations of 2012, promulgated by TRAI. As both of the learned counsel have agreed on this legal aspect and claim against respondent no. 2 had been left by the counsel for the petitioner, written as above, hence, this issue is decided accordingly.

18. **Issue no. 2**

The very contention of petition has been vetted by affidavit made by PW-1 of the petitioner and respondent no. 1 had executed an interconnection agreement narrowed down in para 9 i.e. page 4 of the petition. The same has been averred by PW-1 at page 1 by annexure P-2 running from page 16 to page 37. Hence, interconnection agreement between the petitioner and respondent no. 1 is a sacrosanct and the same is in accordance with mandate of interconnection Regulations promulgated by TRAI. Unilateral disconnection and illegal migration has been prohibited.

19. But even after sufficient service, the reply by respondent no. 1 could not be filed. The very contention of petition with regard to mis-deed, by way of swapping and illegal migration, by respondent no. 1, without observing the provisions of issuing notice, etc. have been stated in the petition and reiterated in testimony on oath by the petitioner.

20. Hence, nothing in contrary to petition and testimony is there for respondent no. 1. Hence, the contention of petition is fully proved by the petitioner.

Accordingly, issue no. 2 is being decided in favour of the petitioner.

21. **Issue No. 3**

As per interconnection agreement, ownership of hardware, STBs and VCs as well as other accessories was with MSO and it was said so in petition as well as affidavit filed in testimony. The number of STBs to the tune of 1206 were mentioned in the petition and subscription charges to the tune of Rs. 11,80,378/- (Rupees Eleven lakh eight thousand three hundred and seventy eight only). These STBs alongwith VC are exclusive property of petitioner, which were not returned by respondent no. 1. Respondent no. 1 has not filed any reply.

Hence, petitioner is entitled to have those STBs and hardware and subscription charges to the tune of Rs. 11,80,378/- (Rupees Eleven lakh eight thousand three hundred and seventy eight only) alongwith pendentilite and future interest @ 9%, which have already been granted by this Tribunal in many previous judgments, because of prevailing bank interest scenario and fiscal atmosphere.

Accordingly, this issue is being decided in favour of the petitioner.

22. **Issue No. 4**

As per terms of the agreement, respondent no. 1 was to handover the hardware in good working condition back to the petitioner. Respondent no. 1 has failed to hand over the same to the petitioner. Clearly, respondent no. 1 has failed to comply with the terms of the agreement.

Hence, this issue is decided accordingly.

23. **Issue No. 5**

Petitioner has categorically stated during the argument that claim against respondent no. 2 is dispensed with, and they are not claiming against respondent no. 2. Hence, this issue has become infructuous.

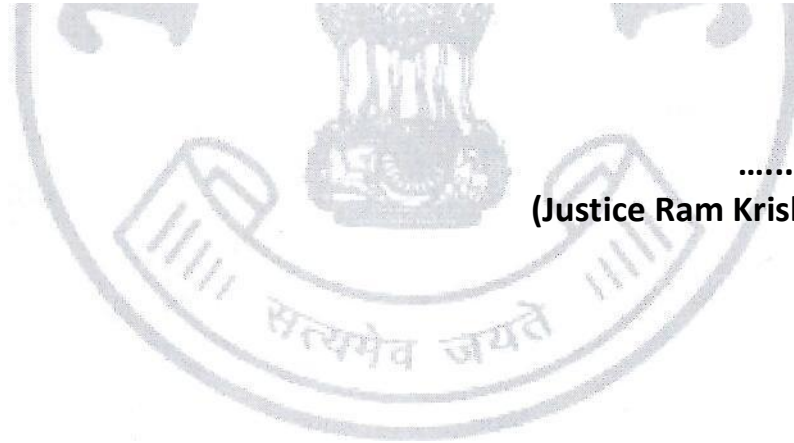
Hence, this is decided accordingly.

On the basis of discussion of issues, written as above, this petition merits to be decreed with cost towards subscription amount arrear for an amount of Rs. 11,80,378/- (Rupees Eleven lakh eight thousand three hundred and seventy eight only) alongwith pendentialite and future interest @ 9%, p.a., alongwith return of STBs and VCs, against respondent no. 1 and in favour of petitioner.

ORDER

Petition is being allowed with cost. Respondent no. 1 is being directed to make deposit within two months, from the date of judgment, Rs. 11,80,378/- (Rupees Eleven lakh eight thousand three hundred and seventy eight only) alongwith pendente lite and future interest @ 9% p.a, for subscription charges, till actual payment, in Tribunal, for making payment towards petitioner. Respondent no. 1 is also directed to return 1206 STBs and VCs to the petitioner.

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



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(Justice Ram Krishna Gautam)
Member

21.02.2023
/NC/