

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL

NEW DELHI

Dated 30th January 2023

Broadcasting Petition No. 776 of 2020

With M.A. No. 158 of 2021

Siti Networks Limited

...Petitioner

Vs.

Shree Om Cable Network and Anr.

...Respondents

BEFORE:

HON'BLE MR. JUSTICE RAM KRISHNA GAUTAM, MEMBER

For Petitioner

:

Ms. Ritwika Nanda, Advocate

Ms. Richa Deshpande, Advocate

For Respondent

:

Mr. Vibhav Srivastava, Advocate

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 Networks Limited,MSO against two Respondents–Shree Om Cable Network LCO through its proprietor and Den Networks Ltd, a competing

MSO, with a prayer for issue of direction to Respondent No. 1, not to migrate from the network of the Petitioner, without first complying with Interconnection Regulations and Model Interconnection Agreements, pending the final determination of the present Petition, not to use equipment of the Petitioner to run/carry digital cable TV signals of any other party. A further injunction, restraining the competing MSOs, including Respondent No.2, from unlawfully forcing the Respondent No.1, from illegally migrating from the network of the Petitioner and mandatory direction to Respondent No. 1 to reconnect the STBs, which have been illegally disconnected, especially without giving due notice, as required under the Interconnection Regulations, with a further order of restraining Respondent No. 1 from swapping all the STBs and VCs of the Petitioner, without complying with all the requirements of the Interconnection Regulations and without handover of all the STBs and VCs, in working condition, or from creating any 3rd party interest without returning STBs for making a payment of outstanding dues from respondent no. 1 to the petitioner with a direction for handing over of STBs from respondent no. 1 to petitioner or payment of amount in lieu thereof, in accordance with law.

2. In brief, the contention of the petition is that petitioner – Siti Networks Ltd. (previously known as Siti Cable Networks Ltd.) is a company registered under the Companies Act 1956, having its Registered Office at Unit No. 38, 1st Floor, A Wing, Madhu Industrial Estate, P. B. Marg, Worli, Mumbai- 400 013, Maharashtra. Mr. V Suresh Kumar is duly authorized, vide the Board Resolution dated 29.01.2019, for filing this petition, and make sign, and verification over it. A certified copy of the Board Resolution dated 29.01.2019 was annexed as ANNEXURE P-2 to petition. The Petitioner company is a Multi-System Operator (“MSO”) within the meaning of the term under Rule 2(c) of the Cable Televisions Network Rules, 1994, and has been granted a license, under Rule 11 C thereof bearing no. 9/50/2012 dated 06.07.2015, which has been licensed to retransmit the digital cable TV signals of various broadcasters, in the territory/area, in which the Respondent operated. Hence, Petitioner is a ‘service provider’ within the meaning of the term under the TRAI Act, 1997. Respondent No. 1 is a LCO, as proprietorship concern of Mr. Om Prakash Samaria. It is registered with the local post office to carry its business as a Local Cable Operator (LCO). Respondent No. 2, is one of the competing Multi System Operator (“MSO”), re-transmitting the digital cable TV signals to the subscribers of various broadcasters in the territory/areas wherein Respondent No.1 operates. Respondent No. 2 was also an LCO of the

Petitioner, but it is indulging in connivance and collusion with the Respondent No. 1, thereby illegally migrating to Respondent No. 2's network(s), in violation of the Interconnection Regulations and Model Interconnection Agreement, executed between Petitioner and Respondent No. 1.

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 23.11.2017 the Petitioner executed an 'Model 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.

On 19.12.2018, the Petitioner executed a 'Model Interconnection Agreement, between Multi System Operator and Local Cable Operator for Provisioning of Cable TV Services through Digital Addressable Systems (DAS)' with the Respondent No. 1, in terms of the Telecommunication (Broadcasting and Cable Services) Interconnection(Addressable Systems) Regulations, 2017 as notified by TRAI. As per the Model Interconnection Agreement, the Petitioner was to provide the hardware such as Set Top Boxes (STBs) and Viewing Cards (VCs), and continuous re-transmission of digital cable TV signals of various broadcasters' channels to the Respondent No. 1 through Trunk Line/ IP Line/ other permissible mode and means for further instant re-transmission by the Respondent No. 1 to the subscribers in the territories/ areas, as per the agreed terms and conditions, specified under the Model Interconnection Agreement. The Model Interconnection Agreement dated 23.11.2017 and Model Interconnection Agreement dated 19.12.2018 were ANNEXURE P-4 (Colly).

This was for the period 23.11.2017 to 05.07.2025, unless terminated by either party, in accordance with conditions of agreement. This was further extended on the terms and conditions, to be mutually agreed, between the parties, and recorded in writing, provided that the extended term does not go beyond the last date of validity of registration of the MSO or the LCO, whichever is earlier. An obligation of respondent no. 1 was written in clause 9 of MIA. The billing condition, renewal, revenue sharing etc. were also provided under this agreement. Under the terms of the Model Interconnection Agreement, the Petitioner gave full access of its system to the Respondent No. 1 in order to fulfil its obligations.

5. But Respondent No. 1, in contravention to the Interconnection Regulations and the Model Interconnection Agreement, failed to submit the SAF forms to the Petitioner. The invoices were raised from time to time by the petitioner and they were duly received and accepted by the Respondent. But as per the Statement of Accounts (SOA), maintained by the Petitioner Company, in the normal course of its business, as on 31.10.2020, a total sum of Rs. -2,423/- (Rupees Two Thousand Four Hundred and Twenty Three only) was on credit with the Petitioner. Invoice dated 31.10.2020 was ANNEXURE P-5 (Colly) and the Statement of Accounts was ANNEXURE P-6. Petitioner had invested huge sums of money to purchase the Set Top Boxes, which were

given to its various affiliated LCOs, including Respondent No. 1 for installation at subscribers' premises. 441 Set Top Boxes, were supplied by the petitioner to Respondent No. 1, for installing at the subscribers' premises, without receiving the complete import cost or security deposit of these Set Top Boxes/Viewing Cards. Whereas on 02.12.2020, only 268 set-top boxes were active, 170 set-top boxes have been deactivated and 3 set-top boxes were in stock by the Respondent No. 1. Whereas as per Model Interconnection Agreement, Hardware, namely, STBs and VCs and other accessories were exclusively owned by the Petitioner. Respondent No. 1 has no right, title or interest for it. Respondent no. 1 was liable to return the hardware to the Petitioner and in case of its failure, was to pay compensation towards it alongwith simple interest @ 2% over and above the base rate of interest of the State Bank of India. Whereas Respondent No. 1 migrated unilaterally without complying with the Interconnection Regulations and as on date, 170 STBs of the Petitioner were migrated to take the signals of Respondent No. 2. A total import cost of the 170 deactivated and 3 in-stock STBs and VCs, which were in the possession of the Respondent No. 1, was sum of Rs. 2,87,827/- (Rupees Two Lakhs Eighty Seven Thousand Eight Hundred and twenty seven only). The detail of STBs was ANNEXURE P-7(Colly). Respondent No. 1 had continuously availed the uninterrupted supply of digital cable TV signals from

the Petitioner, but unilaterally migrated to Respondent No.2's network by swapping the STBs supplied by the Petitioner without returning the STBs and VCs of the Petitioner.

6. The legal requirements, prescribed under the Interconnection Regulations and Model Interconnection Agreements, were also not complied with by Respondent No. 1. The action of the Respondent No. 1 is contrary to the Telecommunication (Broadcasting & Cable Services) Interconnection (Digital Addressable System) Regulation, 2017, as amended from time to time. No legal Notice was ever given to the Petitioner in accordance with Interconnection Regulation, 2017. Respondent No. 2 is unlawfully providing Digital Cable TV Signals to the Respondent No. 1, in spite of being aware of the fact of mis-deed of Respondent No. 1.

7. The cause of action arose on 23.11.2017 qua Respondent No. 1, when the Petitioner entered into the Interconnection Agreement with the Respondent No. 1, as well as on 19.12.2018, when the Petitioner entered into the Model Interconnection Agreements with the Respondent No. 1, as well migration when the 170 STBs/VCs of the Petitioner were swapped with the competing MSO-respondent no. 2, in the period when a continuing agreements were subsisting in between. 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. This Tribunal, confining to the interim prayer, passed an order, restraining respondent no. 1 from swapping and migrating further to any other MSO, without complying with the requirements of Regulations and the Interconnect agreement, on 24.12.2020.

10. 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.

11. M.A., under section 20 of TRAI Act, bearing No. 158 of 2021 in this petition, was filed by the petitioner, against same respondents with a prayer for holding respondent no. 1 and respondent no. 2 guilty of wilful disobedience of order dated 24.12.2020, passed by this Tribunal with deliberate non-adherence for compliance of above order, by both the respondents for reconnection of deactivated STBs by respondent no. 1 and payment of loss in the business. Notice of this MA was issued by this Tribunal, but even after service of same, none appeared for respondent no. 1. This Tribunal, on the contention made by both sides, had ordered for disposal of this MA, alongwith final disposal of this petition.

12. At the time of placing arguments, learned counsel for petitioner, Ms. Ritwika Nanda made a statement before this Tribunal, that by the lapse of time of more than two years, including the period of COVID-19 pandemic, the very purpose of moving this misc. application had become infructuous. Hence, for interim relief and for non-compliance of orders and coercive prayer under section – 20, this intended relief had also become infructuous. She is not pressing this MA. Rather, petitioner requested for disposal of this petition itself, on merits.

13. She further 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.

14. Accordingly, the very claim against respondent no. 2 also have to be dispensed with. No relief against respondent no. 2 is being claimed. Though Mr. Vibhav Srivastava, learned counsel for respondent no. 2, mentioned that he 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 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 as well as written submissions, hence, its contentions be also mentioned.

15. On the basis of written submissions of respondent no. 2 and petitioner, the Court of Registrar, vide order dated 8.10.2021, formulated following issues :

1. Whether Respondent No.1 has breached the terms of the Model Interconnect Agreement and / or violated the TRAI Regulations ?
2. Whether the Petitioner is entitled to outstanding dues towards the subscription charges along with interest thereon from the date it became due till its actual realization ?

3. Whether the Petitioner is entitled for recovery of STBs along with the viewing cards from the Respondents in good working condition or in the alternative to recover the cost of said STBs and viewing cards from the Respondents ?

4. To what other relief / reliefs the Petitioner is entitled for ?

5. Whether the instant petition is maintainable in its present form ?

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

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

18. **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.

19. 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.

20. **Issue No. 1**

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 8 i.e. page 4 of the petition. The same has been averred by PW-1 at page 5 by annexure P-4 running from page 27 to page 45. Whereas MIA, dated 19.12.2018, has been reiterated from page 46 to 69 of PW-1. 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 in various clauses of MIA. As per clause 9(5) of MIA, the LCO shall not replace the STBs of the MSO with the STBs of any other MSO without receiving the requests from the subscribers through application forms for returning the STB of the existing connections and for providing new connections through Customer Application Form. The set top box shall be activated only after entry of the details, as provided in the new Customer Application Form, into the Subscriber Management System of the new MSO.

21. 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.

22. 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. 1 is being decided in favour of the petitioner.

23. **Issue no. 2**

Subscriber charges and arrear of it has been stated in the petition. But amount with regard to it has not been stated, neither in petition nor in affidavit filed in testimony nor it could be averred by learned counsel for the petitioner. Rather it was stated from beginning to the Court that no outstanding subscription amount is due because of these being pre-paid connections.

Hence, this issue is being decided negatively.

24. Issue No. 3

As per interconnection agreement as well as MIA, 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 439 and its cost as on 19.12.2021 filed in para 22 at page 16-17 and Annexure P-1/9 (colly) at pages 281 to 315, was Rs. 6,84,622/- (Rupees Six Lakhs Eighty Four Thousand and Six hundred twenty two only) and these STBs alongwith VC are exclusive property of petitioner, which were not returned by respondent no. 1.

Hence, petitioner is entitled to have those STBs and hardware and in case of its default, Rs. 6,84,622/- alongwith pendente lite 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.

25. Issue No. 4

On the basis of discussion of issues, written as above, this petition merits to be decreed with cost for an amount of Rs. 6,84,622/-, due as on 19.12.2021, alongwith interest @ 9% p.a., against respondent no. 1 and in favour of petitioner.

26. Issue No. 5

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 stands disposed of accordingly.

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. 6,84,622/- (Rupees Six Lakhs Eighty Four Thousand and Six hundred twenty two only), as

cost of STBs, VCs and other hardware of 439 numbers, alongwith pendentilite and future interest @ 9% p.a., till actual payment, in Tribunal, for making payment towards petitioner.

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

.....
(Justice Ram Krishna Gautam)
Member

30.01.2023
/NC/

