

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL

NEW DELHI

Dated 31st July 2023

Broadcasting Petition No. 63 of 2013

Cascam Cable TV Networks ...Petitioner

Vs.

Asianet Satellite Communications Ltd. ...Respondent

BEFORE:

HON'BLE MR. JUSTICE RAM KRISHNA GAUTAM, MEMBER

For Petitioner : Mr.M.A Abdul Hakim, Advocate

For Respondent : Ms. Shirin Khajuria, Advocate
Ms. Oshi Verma, Advocate
Ms. Nayan Gupta, Advocate

JUDGMENT

1. This Petition, under Section 14 of the Telecom Regulatory Authority of India Act, 1997 (hereinafter called to as "TRAI Act") has been filed by, Petitioner, Cascam Cable TV Networks, against Asianet Satellite Communications Ltd., Respondent, with a prayer for a decree in favour of

Petitioner against Respondent, for an amount of Rs. 1,15,64,610/- (Rupees One Crore Fifteen Lakh Sixty Four Thousand Six Hundred Ten only), being outstanding amount due and compensation, in terms of Franchisee Agreement, from the Respondent, as on date, with a further prayer of awarding, *pendentelite* interest, over above accrued amount, @18% p.a. An interim relief with same effect was also prayed in the Petition.

2. Petitioner, had been a Multi System Operator (MSO) and was presently a Local Cable Operator (LCO), operating cable network business by establishing cable network Head-Ends/control room in Manjeri, Malappuram, District of Kerala, having its office at Vaipparpadi, Majeri Post, Malappuram, District Kerala. Respondent was also Multi System Operator (MSO), operating pan Kerala, having its registered office at 2A, 2nd Floor, Leela Infopark, Technopark, Kazhakkootam, Trivandrum.
3. Petitioner entered into a 'Franchisee Agreement' with the Respondent on 01.09.2000, for conversion of the feed on the network of the Petitioner, to the network of Respondent, subject to the stipulations and terms agreed therein. This agreement was agreed to be in force, for an initial period of ten years and it was declared that it may be continued

further by both side. Respondent was under obligation to convert the existing connections of Petitioner to the Respondent's connection and the existing cable TV network of the Petitioner was to be removed immediately thereafter. This was to be adhered within 12 months from the date of signing of above agreement. But the terms of Franchisee Agreement dated 01.09.2000, **Annexure P-1** (colly) with petition, were not complied with. Cable network of Petitioner was still being used which dehors the Franchisee Agreement. Even then payment was coercively received in terms of agreement. Though money sums payable by Petitioner to Respondent had been regularly paid, Having acknowledged the receipt of full payment through minutes of meetings, letters exchanged and/or furthers acts, including pleadings filed, in other proceeding. Respondent failed to remit the shared amount of the Petitioner and it was a clear breach of contractual obligation. Petitioner made repeated request for making full adherence to above agreement and clear lawful dues, liable to be paid, by Respondent to Petitioner. There was no heed by Respondent, resulting in issuing of notice dated 25.01.2010 **Annexure P-5** (colly). Though, vide letter dated 21.08.2010, Respondent expressed its willingness to renew above Franchisee Agreement, but vide letter dated 11.12.2010, unilaterally terminated

agreement, without complying with the mandatory terms stipulated therein. Those letters were **Annexure P-6** and **Annexure P-7** to the petition respectively. Many criminal cases were got lodged by Respondent. A notice, dated 19.03.2012, was issued by Respondent, whereby Rs. 65,41,856/- (Rupees Sixty Five lakh Forty One Thousand Eight Hundred Fifty Six only), was claimed against Petitioner.

4. Petitioner had made regular payment to the Respondent in terms of the agreement, which have been acknowledged by the Petitioner. Petitioner after collecting the subscription fee from the subscribers, has remitted same to the Respondent on regular basis, which stands admitted and acknowledged by Respondent and shown in the books of account, maintained by, for and on behalf of Petitioner. Outstanding dues, liable to be paid by Respondent to the Petitioner, along with amount of compensation, having been accrued, in favour of Petitioner, against Respondent, consequent upon unilateral termination of agreement, by the Respondent, along with the losses sustained by the Petitioner, a total amount of Rs. 1,15,64,610/- (Rupees One Crore Fifteen Lakhs Sixty Four Thousand Six Hundred Ten only), is liable to be paid by Respondent to Petitioner. A cause of action, within territorial jurisdiction of this

Tribunal, within limitation period, had arisen. Hence, this petition with above prayer.

5. A preliminary objection, with regard to maintainability of the Petition, was filed by Respondent, with a specific contention, that Petitioner had deliberately omitted to disclose that clause 20 of Special Franchisee Agreement dated 01.09.2000, entered, in between, the Petitioner and Respondent, which is the basis of present litigation, contains an arbitration clause, whereby any dispute arising out of said agreement shall be referred for arbitration, as per the provision of Arbitration and Conciliation Act, 1996. Since the parties had mutually agreed to refer any disputes arising out of agreement to arbitration, the Petitioner is bound to seek for redressal of any grievance, and alleged grievance, only in terms of Arbitration and Conciliation Act, 1996. Clause 15 of the agreement provides that Courts in Trivandrum, where the agreement was executed, alone shall have the jurisdiction to decide any dispute between the parties, arising out of or consequent upon this agreement. Hence, this Tribunal is having no jurisdiction, in view of the Arbitration clause in the agreement, between the parties and Petitioner being no 'service provider' as well as the agreement being 'Franchisee Agreement'. More so, Petitioner himself and also the Respondent have

actually resorted to the remedy, available under the Arbitration and Conciliation Act, 1996, in year 2002 and again in year 2009, then year 2012 – much before the present Petition was filed, before this Tribunal and this fact have also been suppressed by Petitioner. During the year 2002, the Petitioner himself invoked the Arbitration clause by filing Arbitration O.P 34 of 2002 under Section 9 of the Arbitration Act, before the District Court at Trivandrum, in respect of disputes arising out of present Agreement. The matter was subsequently settled between the parties. For further disputes, having arisen in between, O.P No. 189 of 2009, was filed by Respondent against Petitioner on 22.09.2009, before the District Court at Trivandrum, invoking jurisdiction under Section 9 of Arbitration and Conciliation Act 1996. This too was compromised. Respondent is already in the process of filing an arbitration request before the High Court of Kerala, praying for an appointment of Sole Arbitrator, to decide the disputes arisen between Petitioner and Respondent. The differences and disputes, pertained to period starting from September 2000, when the 10 years agreement was entered, in between. Hence, this proceeding before this Tribunal is not maintainable.

6. No dispute between the parties within the meaning of Section 14 of TRAI Act 1997, is there. Petitioner is neither a “licensee” within the meaning of Section 2 (e) nor a “service provider” within the meaning of Section 2 (j) of the TRAI Act, 1997. Hence, any dispute between the Petitioner and the Respondent, cannot be adjudicated by this Tribunal, under Section 14 of the Act. Section 2(e) defines “licensee”, which means any person licensed under the sub-section (1) of Section 4 of the Indian Telegraph Act, 1885, for providing specified public telecommunication services. This is not the case with Petitioner. Section 2(j) defines “service provider”. Service Provider means the government as a service provider and includes a licensee. This is also not for benefit of Petitioner.
7. Respondent, being a single largest Cable TV Operator, in the State of Kerala, operated as an MSO, providing signals to local cable operators (LCO), who in turn provide the signals to the final subscriber. It also operates as an LCO, providing last mile connectivity to subscribers of cable TV. Petitioner, being a small cable operator in a portion of municipality, named Manjery, in Malappuram District of the State of Kerala, having about 1330 connections, with ability for providing only around 20 channels to its subscribers was with limited resources. With the entry of Respondent into the market, Petitioner lost its market share.

Hence, approached Respondent for a special Franchisee Agreement and it was got executed on 01.09.2000, which is the base of present contention. The terms and conditions were entered in this agreement and it was effective for 10 years, with a provision for further extension on mutual consensus. Petitioner's franchisee was to convert his entire existing connections in the first year to the Respondents- Asianet's Connection i.e., maximum period of Petitioners network was to exist for one year. After which, he was to remove the entire network and it was the network of Respondent available to all subscribers. After one year Petitioner was only acting as a Collection and Marketing Agent of Respondent for which a commission was payable to it. In case of any complaint from the subscriber, the Petitioner was to correct the problem. But he was having no right or power or source to transmit or with hold the signal, which was in complete control of Respondent. The Head-End of Petitioner was admitted to be closed by Petitioner in the Statement of witness, examined for and on behalf of Petitioner, in its cross-examination. Hence, no question of transmitting or re-transmitting of signal was there in the favour of Petitioner, and Petitioner was never a service provider. Hence, the all narration made by Petitioner in this

Petition was output of Franchisee Agreement, **Annexure P-1**, having an Arbitration clause, ousting jurisdiction of this Tribunal.

8. The maintainability of this petition was vehemently opposed since the very initiation of proceeding and this Tribunal vide order dated 02.09.2013 passed that :

“Mr. Ramji Srinivasnan, learned senior counsel appearing for the respondent raised a preliminary objection with regard to the maintainability of the petition. Mr. Srinivasnan submitted that from the agreement between the parties (which is at annexure P-1) and the petitioner's own pleadings, it would appear that the petitioner was only a collecting agent of the respondent and it was not engaged in any transmission/re-transmission of signals. Thus, the petition does not involve any dispute between the two service providers.

The objection to the maintainability of the petition is based on an issue of fact i.e., the exact nature of the relationship between the parties. Any finding on the issue can be arrived at only after taking into consideration the evidences adduced by the two sides. We, therefore, think it advisable to have the issue of maintainability of the petition as one of the several issues that may arise in the case and consider the

objection raised by the respondent at the stage of final hearing of the petition.....”.

9. After exchange of pleadings Tribunal vide order dated 17.01.2014, framed following issues:

- 1) *Whether the petition filed by the petitioner u/s 14 of the TRAI Act is maintainable in view of the objections raised on behalf of the respondent?*
- 2) *Whether the claims of the petition are barred by time?*
- 3) *Whether the petitioner is entitled to a sum of Rs. 1,15,64,610/- along with interest @ 18% per annum from the respondent in terms of the Franchisee Agreement dated 01.09.2000 between the petitioner and the respondent?*
- 4) *Whether the respondent is in breach of the Franchisee Agreement dated 01.09.2000 duly executed between the petitioner and the respondent?*
- 5) *Whether the respondent is justified in unilateral termination. the Franchisee Agreement dated 01.09.2000 without making of any compensation in terms of clause 19 thereof?*

- 6) *Whether the counter claim filed by the respondent is maintainable?*
- 7) *Whether the respondent is entitled to the amounts as set out in the counter claim?*
- 8) *Whether either party is entitled to interest on the amount found due, if any, and if so, at what rate and since when?"*

10. Evidences by way of affidavit and then after cross-examination of witnesses were taken.

11. Vide Order dated 09.05.2023 this Tribunal ordered:

"1. Learned Counsel for both side are present. Learned Counsel for Petitioner is to file his Vakalatnama afresh, because of his new engagement. Though, he is said to be ready for arguments and he started his arguments, but as per order-sheet, the question of maintainability, was directed to be decided along with final hearing of this Petition. Hence, the first question raised by this Tribunal, was with regard to maintainability. Learned Counsel for Petitioner argued that as per Section 14 a (ii), Petitioner is a 'service provider', but the basis of this cause of action, is the Franchisee Agreement, filed at page no. 16, of

paper book and the same is an agreement, with an Arbitration clause, between a franchisee and a franchiser.

2. Hence, the question was raised as to how a dispute had arisen between a MSO and a LCO, or a dispute arisen because of Interconnect Agreement, with regard to Cable Transmission.

Rather, it appears to be a dispute arising out of a Franchisee Agreement, the basis of this Petition and as per settled law with regard to documentary evidence, the document is to be read, in between, lines and the words written in it. It cannot be added or subtracted by any oral evidence, unless the same is not being disputed. Hence, this Agreement of Franchisee, is an undisputed document. Hence, whatever is written in it, is to be taken.

3. Learned Counsel for Petitioner, to argue with regard to above query made by this Tribunal as to how this dispute pertains with transmission and re-transmission of the cable signal network, in between, MSO and LCO, and how it is not a dispute, arising out of Franchisee Agreement, executed between two MSOs.”

12. Arguing over these issues with regard to maintainability, Learned Counsels for both sides advanced their arguments. Heard and gone through material placed on record.
13. This Tribunal in M/s Tirupati Tele Services V/s ZEE Turner Ltd. (2008) TDSAT 112, had decided that a Petitioner, merely being a collecting agent for a respondent, by way of an agreement which have been filed on record, said to be a dealership agreement, was an agreement of dealership, wherein dealer collects payment from Cable Operators / MSO and not from subscribers. The Petitioner is not service provider. Petitioner being not in the business of transmission or retransmission of signals, rather being collecting agent only, and this money being collected was on account of subscription fee from subscribers from the signals, supplied by other side, such dispute are dispute of civil nature and not being maintainable before this Tribunal. The law laid down by this Tribunal in this decided case is at par with present case in hand. Petitioner who entered in a Franchisee Agreement with respondent and the cause of Action, being said to have accrued is in violation of above Franchisee Agreement. The cable network of Petitioner was to be ended within one year and then after the network of Respondent was to prevail. Grant of Commission in lieu of collection made by

Petitioner from the subscribers was entered in the terms of above agreement. Undisputedly, this agreement was with Arbitration clause in it and in previous, this clause was availed by both side at two times. Hence, the witness of Petitioner in its cross-examination had apparently admitted the end of its Head-End in view of above agreement Annexure P-1 i.e., neither Transmission nor retransmission of signal was being made by Petitioner. Hence, he never falls under definition of service provider nor he is a licensee, within the meaning of licensee given under Section 2 of TRAI Act.

14. In C.H Entertainment Pvt. Ltd. V/s Connect Broadband Services Limited (2007) TDSAT 572, this Tribunal had held that the dispute not being with regard to Telecom services, rather being between the parties about the breach of agreements, were not within the maintainability of Petition before this Tribunal. The same fact is in present case.
15. This Tribunal in Amrita Aneja, sole Proprietor of AACL Enterprises V/s Siti Network Ltd. (2017) SCC online TDSAT (1023) has vehemently and nicely analyzed the provision of section 2(1)(j), of service provider and 2(n) of service provider given under the regulation of 2004, as well as

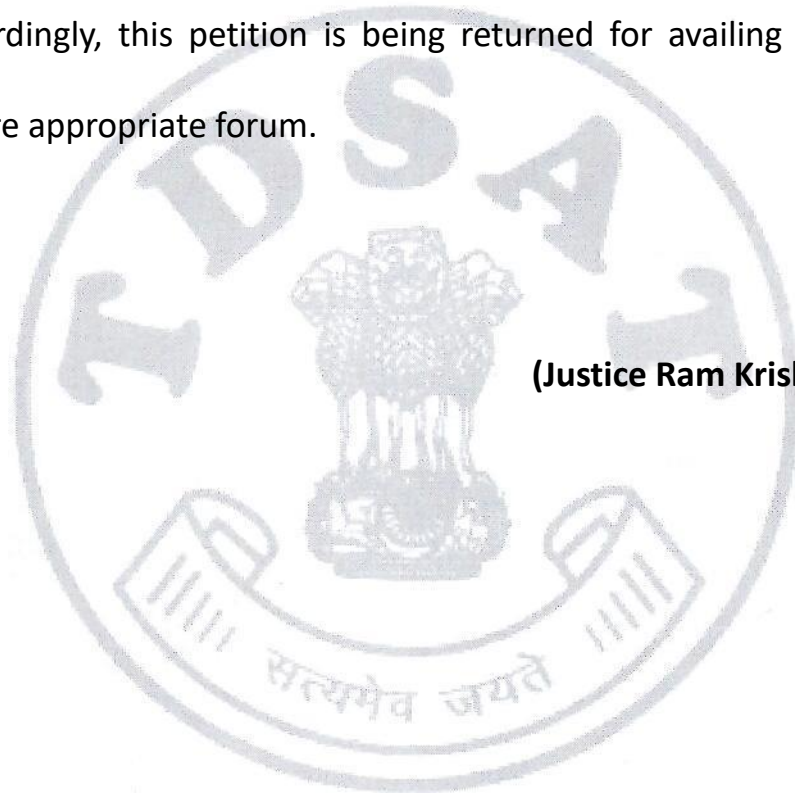
definition of service provider given under section 2 (1)(j) of the Act and it was held by Tribunal in above judgment that Petitioner not having any Cable service of its own nor has been granted registration under Cable TV Network Regulation Act, 1995, as a Multi System Operator (MSO) nor having transmission or retransmission of signals, is not a service provider.

16. In present case, the agreement 'P-1' specifically stipulates that after one year of initial period, the Head-End and the system of network of Petitioner, who had entered in agreement of franchisee shall be ended and then after he was only receiving commission from the amount collected from subscribers. Hence, this agreement of franchisee was never an Interconnect agreement but is a business transaction, i.e., a 'Franchisee Agreement' not bringing Petitioner under the head of 'service provider'. Petitioner not being a licensee, was not a service provider. So is to avail its relief arising out of agreement of Franchisee, from the Court of Civil Forum and as this agreement was with specific clause of Arbitration enumerated in it, which had been previously acted upon at two times by the parties. Hence, the relief is available as per above Civil Court jurisdiction / Arbitration clause and this proceeding before this Tribunal is not maintainable. Hence, this issue

No. 1 which is with regard to maintainability, is being decided in favor of Respondent and against Petitioner.

17. As this petition is not maintainable before this Tribunal, hence, no need for discussing other issues, are there.

18. Accordingly, this petition is being returned for availing relief, if any, before appropriate forum.



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

31.7.2023
/TU/