

**TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL**

**NEW DELHI**

**Dated 3<sup>rd</sup> March 2023**

**Broadcasting Petition No. 324 of 2019**

HATHWAY DIGITAL PRIVATE LIMITED      ...PETITIONER

Versus

TARA MA SATELLITE & ANR      ....RESPONDENTS

**BEFORE:**

**HON'BLE MR. JUSTICE RAM KRISHNA GAUTAM, MEMBER**

For Petitioner      :      Mr. Nasir Husain, Advocate

For Respondent No. 2      :      Mr. Diggaj Pathak, Ms. Shweta Sharma  
Ms. Shubi Pandey Advocates

**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 - Hathway Digital Private Limited, against two Respondents – Tara Ma Satellite, through its proprietor, respondent no. 1 and M/s Multi Reach Media Private Limited, respondent no. 2, with a prayer for direction to

Respondents to return 690 STBs and viewing cards to the Petitioner or in alternate, pay an amount of Rs 11,10,807/- (Rs. Eleven Lacs Ten Thousand Eight hundred and seven Only) @ Rs. 1600/- towards cost of same, alongwith interest for a period of default.

2. In brief, the contention of the petition is that petitioner – Hathway Digital Private Limited, being a subsidiary company, Hathway Cable and Datacom Limited, registered under the Companies Act 1956, is engaged in the re-transmitting the signals of Cable TV to its various operators on PAN India basis and owing to internal restructuring of Petitioner No. 1 company, Hathway Cable and Datacom Limited, the Cable TV business of Hathway Cable and Datacom Limited, has been assigned to Hathway Digital Private Limited w.e.f. 01.04.2017. It is a service provider – MSO.

3. Respondent No.1, namely, Tara Ma Satellite, is a Local Cable Operator (LCO) represented through its proprietor Mr. S K Alam. Respondent No. 2 - M/s Multi Reach Media Private Limited, is a competing MSO of the Petitioner.

4. On the request of the Respondent No.1, Petitioner agreed to provide its signals / services to it for further re-transmission to the subscribers in the

area of Hooghly, for which, both entered in an agreement, i.e. Interconnect Agreement. In compliance of above agreement, 690 STBs, including 387 SD and 3 HD, STBs were issued to respondent no. 1 by the petitioner company. It was for providing Cable TV signals to the subscribers in the area of Howrah. The said Interconnect Agreement was annexed as Annexure P-1 to the petition and it was valid for a period from 01.08.2019 to 31.08.2020. In utter disregard to TRAI Regulations, as well as Interconnect Agreement entered in between, respondent no. 1 swapped those STBs, belonging to the petitioner with respondent no. 2, without observing due process of law, or returning the STBs to the petitioner, which were exclusive property of petitioner, in connivance and collusion with Respondent No.2. Respondent no. 1, in defiance of Interconnect Agreement, as well as statutory Regulations of interconnection, migrated to respondent no. 2 without issuing requisite notice, before disconnecting the services of petitioner.

5. Petitioner suffered huge financial losses and the valuable property of petitioner in the form of STBs/VCs, which are in the illegal custody and possession of Respondents. A notice, dated 14.10.2019, was issued to the Respondents by petitioner, with a direction to return 690 STBs and viewing cards to the Petitioner and desisting from illegal swapping with respondent

no. 2 or for making a payment of Rs 11,10,807/- (Rs. Eleven Lacs Ten Thousand Eight hundred and seven Only) to the Petitioner @ Rs. 1600/- per STB. Notice and proof of dispatch of same, were annexed with the petition as Annexure P-2.

6. In spite of assurance by Respondents, STBs were not returned, resulting a cause of action, within jurisdiction of this Tribunal, hence, this petition with above prayers.

7. Even after sufficient service of notice, and grant of sufficient time to respondents, no written statement by respondent no.1 was filed. More so, none appeared for respondent no. 1. Hence, vide order dated 14.7.2020, ex-parte proceeding was directed against respondent no. 1.

8. However, Respondent no. 2, filed its reply with this contention that respondent no. 2 is of no concern, nor there is any migration by respondent no. 1 to respondent no. 2. Petitioner was to recover STBs from respondent no. 1 and respondent no. 1 should be answerable for interconnect agreement, entered in between, and the liability arisen out of it. The LCO, Tara Ma Satellite having LCO ID 11140 is owned and operated by one Mr. Subrata Charit and the said individual has been receiving signals from answering

respondent since April 2017. A copy of duly executed Interconnect Agreement dated 28-4-2017, between respondent no. 2 and the LCO- Tara Ma Satellite, having Mr. Subrata Charit, its sole proprietor, for supply of STBs, has been annexed as Annexure R-1 to reply. The petitioner mentions that Mr. S. K. Alam is the sole proprietor of respondent no. 1 LCO. Whereas as per records and knowledge of respondent no. 2, Mr. S. K. Alam was operating under the name of Chandrapur Cable Network, having no concern with Tara Ma Satellite – respondent no. 1. In fact, Mr S K Alam had approached respondent no. 2 for supply of signals and STBS in November 2017. Thereafter, answering respondent no. 2, has entered into an interconnect agreement with Chandrapur Cable Network through Mr. S. K. Alam and a copy of duly executed interconnect agreement dated 5.11.2017 was entered in between respondent no. 2 and Chandrapur Cable Network, through Mr S. K. Alam, is annexed as Annexure R-3. The supply by Respondent no. 2 to respondent no. 1, Mr. S K. Alam, Chandrapur Cable Network was after the supply of 250 to 300 STBs to it through another deed, executed in between. The alleged supply of STBs by petitioner to Respondent no. 1, is of no connection with the above STBs supplied by Respondent no. 2 to Chandrapur Cable Network. As per petition, Mr. S.K. Alam is said to have approached petitioner in January 2019 and subsequently migration is being said to have in the month of November

2018. It itself shows that the alleged migration to Respondent no. 2 is having no existence. The responsibility, if any, may be with Respondent no. 1. Petitioner, with no interconnect agreement with Respondent no. 2, is with no privity of contract, hence, no liability of Respondent no. 2 is there. Tara Ma Satellite, LCO, is owned and operated by Mr. Subrata Charit. It is of no concern with Mr. S. K. Alam. There is no swapping or illegal migration by respondent no. 1 to respondent no. 2, nor respondent no. 2 is of any concern with alleged supply and retention of STBs by Mr. S. K. Alam, claimed to be owner of respondent no. 1. Hence, this petition ought to be dismissed.

9. Learned Registrar of this Tribunal, after hearing both side and gone through pleadings, framed following issues on 8<sup>th</sup> of January 2021.

- (1) Whether the Petitioner is entitled to receive the 690 STBs from the Respondents jointly or severally or in the alternate entitled to a sum of Rs. 11,10,807/- at Rs. 1600/- per STB along with interest ?
- (2) Whether the Respondent No.1 has illegally migrated to the Respondent No.2 in violation of Interconnect Regulations and without returning the STBs of the Petitioner?

- (3) Whether the petition is maintainable against Respondent No. 2 in the absence of any agreement between the Petitioner and the Respondent No. 2?
- (4) What is the liability of the Respondent No. 2/rival MSO in the event of migration of the LCO/Respondent No. 1 from the network of the Petitioner to the network of the rival MSO/Respondent No.2 as per the Telecommunications (Broadcasting & Cable Services) Interconnection (DAS) Regulations, 2017?
- (5) Whether any cause of action arises against the Respondent No. 2 when it is admittedly not privy to the contract/ Subscription Agreement between the Petitioner and the Respondent No. 1?
- (6) Whether any liability towards recovery of STBs can arise against the Respondent No. 2 in light of the fact that the Petitioner has failed to place on record any delivery challans/transfer invoices to indicate supply of STBs?

10. Learned Counsel for petitioner filed evidence by way of affidavit, for and on behalf of Petitioner, alongwith certificate provided under Section 65 B

of Indian Evidence Act, of Mr. Kalyan Patra. A copy of Authority Letter dated 27-3-2021 and Board Resolution dated 11-7-2020, authorising petitioner for filling for and on behalf of petitioner, along with Exhibit PW 1/1 was filed. No evidence by respondent No. 1 was filed.

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

12. **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.

13. 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.

14. **Issue Nos. 3, 4, 5 and 6**

Issue Nos. 3, 4, 5 and 6 are one and common, because of being related to the one and same fact, being pleaded and denied. Hence, decision of all of them is to be made together.

The interconnect agreement, annexed with Petition as Annexure P-1, which is the basis of this Petition, reveals that it was entered on 24.01.2019 as Model Interconnect Agreement, between Multi System Operator(MSO) and Local Cable Operator(LCO), for provisioning of Cable TV Services through Digital Addressable Systems (DAS) between Hathway Digital Private Limited, a private limited Company, and wholly owned subsidiary of Hathway Cable & Datacom Limited, incorporated under the Companies Act, 1956, and having its registered office address at 805/ 806, 'Windsor', 8<sup>th</sup> Floor, Off CST Road Kalinga, Santacruz (East), Mumbai – 400098, through its Authorized Signatory, hereinafter, referred to as MSO and Tara Ma Satellite (A/C of S K Alam) – S P, a proprietorship/ Partnership Firm/ company having its office at Hathway through its Authorized Signatory, hereinafter referred to as the LCO. The same was said to be of Mr S.K. Alam and the same is Respondent No.1, to whom the claimed STBs have been said to be delivered, for their installation for retransmitting TV Channels by LCO to Subscribers.

15. The affidavit filed in evidence is with same description and the person, claiming himself to be proprietor of Respondent Partnership firm/ Proprietary firm/ Company had entered in above Interconnection Agreement and the 690 STBs were supplied to itself, which were said to swapped and migrated with Respondent No. 2. Whereas, the Interconnection Agreement said to be entered by Tara Ma Satellite with Respondent No. 2, is of this description that Mr Subrata Charit s/o of Mr. Murari Charit was the owner of Tara Ma Satellite, Uttar Mayra Para, Amta, Howrah, 711401, who as a LCO, entered an Interconnection Agreement with Respondent No. 2 and availed STBs of Respondent No. 2, in consequence and effect of above Interconnect Agreement. Hence, the supply of STBs to Respondent No. 2 was never said nor proved by Petitioner. More so, it is an admitted fact that there is no Privity of Contract between the present Petitioner and Respondent No. 2. The Judgment of this Tribunal in Siti Networks Limited Vs. Saini Cable Networks and Anr. in B.P No. 121/ 2021 along with MA No. 102/2021, reported at 2021 SCC Online TDSAT 1577, Siti Networks Limited Vs. Shri Ragavendra Cable Network and Anr. B.P. No. 593/ 2020, reported in 2022 SCC Online TDSAT 1135 as well Siti Network Limited Vs. Roshan Cable Network and Anr. B.P No. 107/ 2021, reported in 2021 SCC Online TDSAT 229, has propounded that in case of non-absence of any Interconnect Agreement, in between Petitioner

MSO and Competitive MSO, no right against competitive MSO arises, either under Regulations, or on the basis of any agreement or contract, for defiance of Interconnect Agreement, by either MSO or LCO, who were not party to Interconnect Agreement, which is the basis of litigation.

Hence, because of having no privity of contract, nor any Statutory or legal right against Competitive MSO, the claim based on Interconnect Agreement against Competitive MSO doesn't arise. A law propounded by this Tribunal reported at 2022 SCC Online TDSAT 1994, Siti Networks Limited Vs B S Cable and Anr in B.P No. 589 / 2021 with MA No. 81/2022 had been pressed by Learned Counsel for Petitioner. But the law propounded by this Tribunal, in 2021 SCC Online TDSAT 2021 SCC Online TDSAT 229, 2022 SCC Online TDSAT 1135 supra, had neither been discussed, nor differentiated by the Division Bench of this Tribunal, in above pressed citations.

Whereas, consistent proposition of law is of this effect that in case of absence of Privity of Contract between Petitioner and Competitive MSO, no Statutory or Legal right arises against a Competitive MSO in a petition based on Interconnection Agreement, which has been entered in other parties. Hence, under above perspective of law, as well as the facts, involved in the present case, the liability of Respondent No.2 towards Petitioner couldn't be

proved by Petitioner. Hence, all these issues are to be decided against Petitioner. It is decided accordingly.

16. **Issue Nos. 1 and 2**

In spite of sufficient service of notice as well as grant of time for filing Written Statement, as well as furnishing evidence, if any, Respondent No. 1 didn't appear and didn't avail the opportunity of filing Written Statement or Evidence, if any. Whereas the Petitioner, by way of affidavit, filed as of PW-1, has reiterated the contention of Petition, wherein the Interconnection Agreement, Annexure P-1, the terms and conditions of this agreement has been fully reiterated. Issue of 690 STBs for onward installing to local subscribers by LCO Respondent No.1, for retransmitting TV channels of MSO and non-return of same, thereby, swapping and migrating to Respondent No. 2 has been said on uncontroverted affidavit. The same has been fully proved by Petitioner.

As per Statutory Regulation of Model Interconnect Agreement, the ownership of STBs and other hardware like viewing card etc. remains with the MSO, and in case of cessation of Agreement, either by lapse of time or by termination of Agreement, in between, or Statutory disobedience by either side. The hardware, including STBs, are to be returned to the MSO in

accordance with Model Interconnect Agreement as well as Interconnect Agreement entered in between. But, in the present case, it has not been done so. The price in alternate to STBs are to be paid in case of its non-return on the basis of depreciated value of STBs. But neither Respondent No. 1 appeared nor proved otherwise than alleged cost of Rs 1600/- per STB for those 690 STBs supplied by Petitioner to Respondent No. 1. Whereas, in uncontroverted affidavit, the same had been proved by Petitioner. Hence, the contention of Petition has been fully proved as against Respondent No. 1.

17. Hence, this Petition, merits to be allowed with cost against Respondent No. 1 for return of 690 STBs and in case of failure, to pay Rs. 11,10,807/- (Rupees. Eleven Lakh Ten Thousand Eight Hundred and Seven) only along with interest @ 9% p.a. from the date of filing of this Petition, till actual payment of same. These two issues are decided in favour of Petitioner.

**ORDER**

On the basis of discussions made above, this Petition is allowed with cost against Respondent No.1 with a direction for making return of 690 STBs to Petitioner within two months from the date of this Judgment and in case of failure, to make the payment of Rs. 11,10,807/- (Rs. Eleven Lakh Ten

Thousand Eight Hundred and Seven) only @ Rs. 1600/- per STB with a simple interest @ 9% per annum for above amount for pendentelite and future, till actual payment, in the Tribunal for making payment to petitioner.

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

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(Justice Ram Krishna Gautam)  
Member

03.03.2023  
/NC/

