

**TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL  
NEW DELHI**

**Date 17<sup>th</sup> May 2023**

**Broadcasting Petition No. 368 of 2018**

Den Networks Ltd. ...Petitioner  
Vs.  
Lucky World Vision and Anr. ...Respondents

**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  
Mr. Aryan Yashraj, Advocate

**JUDGMENT**

1. This Petition, under Section 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 Company, against Respondent No.1 - Lucky World Vision, having LCO (Local Cable Operator) code LCOGK074 in the Petitioner's system, in respect of persistent default in making payment of outstanding subscription fee in the tune of Rs.2,48,658/- (Rupees Two Lakhs Forty Eight Thousand Six Hundred and Fifty Eight only) as on 30.06.2018 and a direction to Respondent No. 1, to restore the Set Top Boxes of the Petitioner, swapped with

Respondent No.2 i.e. return of 856 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, Petition contends that Petitioner 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 is 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. Interconnect Agreement, dated 01.09.2016, was executed, in between, Petitioner and Respondent No.1, having its effect from 01.01.2016 onwards, 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 working in the area of operation of the Petitioner. As per records of Petitioner Company, Respondent No.1, has taken 856 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** (colly). The Statement of Account (SOA) maintained by Petitioner Company, is **Annexure P-3** to Petition. The outstanding amount for subscription fee was Rs.2,48,658/- (Rupees Two Lacs Forty Eight Thousand Six Hundred and Fifty eight only) as on 30.06.2018. 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 04.07.2018, 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 proper and necessary party. Respondent No.2 is MSO, transmitting its digital Cable Television Signals to Respondent No.1, an LCO, in accordance with Interconnect Agreement, in between, Respondent No.2 and Respondent No.1. 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.

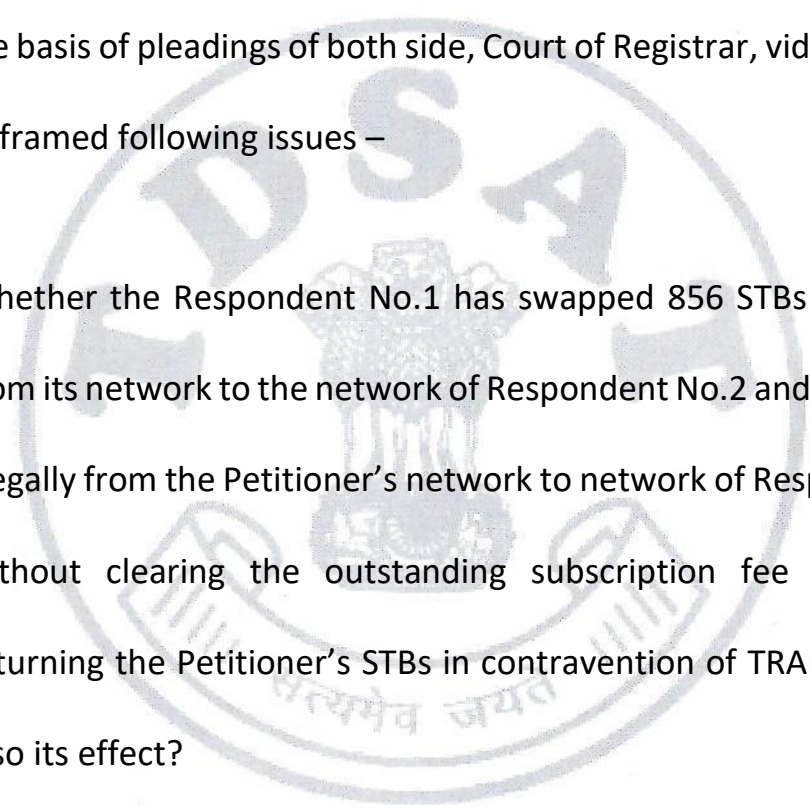
4. The reply of Respondent No.2, was replied by Petitioner, by way of rejoinder, wherein, the contention of Petitioner, is reiterated.

5. Respondent No.1 in its reply, mentioned that Interconnect Agreement filed by Petitioner, is with many 'Blanks' in the Agreement, making this, not a valid agreement, in the eyes of law. Rather, a blank agreement, with signatures of Respondent No.1, was taken by Petitioner, and it was misused by Petitioner. No cause of action had ever arisen, against Respondent No.1. There had been

no valid Interconnect Agreement, in between, the parties. Hence, no relief may be entertained.

6. Rejoinder/ Replication by Petitioner, was with the same reiteration of Petition and denial of contention, of Respondent's reply.

7. On the basis of pleadings of both side, Court of Registrar, vide order dated 22.04.2019, framed following issues –

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- (i) Whether the Respondent No.1 has swapped 856 STBs of Petitioner from its network to the network of Respondent No.2 and has migrated illegally from the Petitioner's network to network of Respondent No.2 without clearing the outstanding subscription fee and without returning the Petitioner's STBs in contravention of TRAI Regulations, if so its effect?
- (ii) Whether in the absence of any Subscription Agreement with the Petitioner, Respondent No.2 is not a necessary party and whether the present petition suffers from the defects of misjoinder of parties?

(iii) Whether the Respondent No.2 has never supplied signals to Respondent No. 1 in violation of Interconnected Regulations, and hence no cause of action has arisen against the Respondent No.2 and the present petition is not maintainable, as is alleged by the Respondent No.2?

(iv) Whether the petitioner has provided 856 STBs to the Respondent No.1 in terms of Interconnected Agreement dated 01.09.2016 and whether the Respondent No.1 is liable to return 856 STBs alongwith accessories in good condition to the petitioner or in alternative the Respondent No.1 is liable to pay the amount of Rs. 1999/- per STB to the petitioner?

(v) Whether the petitioner is entitled to recover a sum of Rs. 2,48,658.00 towards the outstanding dues from the Respondent No.2?

(vi) To what relief, if any, Petitioner is entitled?

8. 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 and Mr. Saroor Ahmad, for and on behalf Respondent No.1,

were got filed. Learned Counsel for Respondent No.1, failed to appear. Hence, proceeding against Respondent No.1 remained ex-parte.

9. Heard learned Counsel for Petitioner and Respondent No.2 and gone through the materials placed on record.

10. 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.

11. 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

vitiating 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.

## **12. Issue No. 2**

Admittedly, there is no Privity of Contract between Petitioner and Respondent No.2, nor Set Top Boxes were issued to Respondent No.2, nor outstanding dues was against Respondent No.2. Rather it was admitted in

pleading itself, that Respondent No.2, is a competitive MSO for the same area, wherein the Petitioner operates. The Interconnect Agreement was said to be executed between Petitioner and Respondent No.1. The Desist Notice, in form of demand, was issued to Respondent No.1. The outstanding dues for subscription amount were said to be against Respondent No.1. Hence, this Tribunal has propounded in many cases previously decided that in the case of lack of Interconnect Agreement, with a competitive MSO and there being no Privity of Contract, between competitive MSO with Petitioner MSO, no relief may be granted for default, said to be made by LCO, against competitive MSO. Hence, this issue is being decided in favour of Respondent No.2.

13. **Issue No.3**

This burden was to be exhausted by Petitioner but there is no proof of this fact that Respondent No.2 had supplied its signal to Respondent No.1, in violation of Interconnect Regulations. Because, admittedly, Respondent No.2, is a competitive MSO, having its own Interconnect Agreement with LCO- Respondent No.1. There is no Privity of Contract, in between, Petitioner and Respondent No.2, both being competitive MSO. Hence, this swapping couldn't be proved by Petitioner. This issue is being decided against the Petitioner.

14. **Issue Nos. 4 and 1**

Both these issues are almost same. It has been specifically written in Para 5 (b) of the Petition that Petitioner is a cable television 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") that the signals were being provided to the Respondent no.1 through Petitioner's subsidiary company, Den Enjoy Cable Networks Private Limited, which is also registered as a Multi-system operator, for providing signals and that the invoices were also raised to Respondent no. 1, by the subsidiary company.

Para 5 (c) provides that Respondent No. 1, is a Local Cable Operator, as per TRAI Regulations. The Interconnect Agreement dated 01.09.2016 between Petitioner and Respondent No.1, was executed, which is **Annexure P-1** to Petition. This Annexure P-1 to the Petition specifically reveals that it was executed between Mr. Saroor Ahmad, for and on behalf of Lucky World Vision and Den Networks Limited, present Petitioner. In reply of Respondent No. 1, this fact was specifically said that there had been no Interconnect Agreement, in between, Petitioner and Respondent No.1, rather some blank agreement was got signed by Petitioner and it was misused by way of this Petition. Hence, signatures over **Exhibit P-1**, is not being disputed. Rather, it is being said to be a blank agreement one, subsequently being misused. This burden comes upon Respondent No.1 to prove that it was blank document at the time of its

execution and subsequently, being misused. But no such evidence is there. Whereas, affidavit filed by Petitioner, in its evidence, has reiterated the contention of Petition. But the affidavit filed by Mr. Saroor Ahmad, as evidence of respondent no. 1, is with deviation that Interconnect Agreement was written and got executed between Petitioner and Respondent No.1, but it was never acted upon. Rather, TV Signals were being taken on the mutual understanding with Den Enjoy Limited and subscription fee was being paid on the basis of mutual understanding. Meaning thereby, receiving of Signals and its re-transmitting as MSO of Den Enjoy Limited, which is a subsidiary company of present Petitioner Company, is not being disputed. Hence, the evidence filed by Respondent No.1 and the reply made in written statement of Respondent No.1, is contrary to each other. Whereas, Petitioner had proved the execution of Interconnect Agreement and issuance of Invoices filed as annexure as well as Statement of Accounts, maintained by Petitioner Company and its subsidiary company filed, as Annexures to Petition. Hence, the very contention of Petition has been proved by Petitioner Company. Whereas, Respondent No.1 failed to prove its contention. Rather, pleadings and evidences are in contrast to each other. Hence, it is very well proved that Interconnect Agreement, **Annexure P-1**, was executed and it was acted upon. Statement of Account reveals the outstanding dues towards subscription amount in the tune of Rs.2,48,658/-

(Rupees Two Lakhs Forty Eight Thousand Six Hundred and Fifty eight only) and issuance of 856 in number of STBs to Respondent No.1. As per Interconnect Regulations, MSOs remain the owner of hardware, including, STBs and viewing cards, and the same is there in Interconnect Agreement too. In case of termination of Interconnect Agreement, either by efflux of time or otherwise, the STBs are to be returned in working order and in case of failure, depreciated value is to be compensated. Hence, 856 STBs, shown in Statement of Account, issued to Respondent No.1, during the course of their commercial arrangement for the purpose of deployment at the premises of subscribers, are given in Statement of Account and invoices issued for making payment of subscription fee. The same are to be restored in its working condition and in case of failure, the depreciated value is to be paid. Cost of Rs.1999/- per STBs has been given in affidavit filed, in evidence by Petitioner. But the depreciated value i.e. at the reduction rate of 15% for the period of installation, till filing of this Petition, the reasonable and just cost, will come to Rs.1200/- per STBs, for which Respondent No.1, will be liable to pay along with simple interest @ 9% per annum, *pendentelite* and future. The issue numbers 4 and 1, are decided, accordingly.

15. **Issue No.5**

As per evidence of Petitioner, exhibit PW-1/3 at page no. 78, as on June 2018, there was an outstanding subscription dues of Rs.2,48,658/- due and

payable by Respondent No.1, to the Petitioner. Oral arrangement and oral payment, as subscription amount, has been said by respondent no. 1, in its evidence, filed by way of affidavit of Mr. Saroor Ahmad. But what was amount to be paid and how much was paid? was to be proved by Mr Saroor Ahmad. But it had failed to prove. Whereas, invoices annexed to Petition, coupled with Statement of Accounts, filed as Annexure to Petition, and affidavit filed in evidence, exhibit P-1/4, had proved above outstanding dues Rs.2,48,658/-, due against Respondent No.1. Hence, above outstanding subscription dues along with simple interest @ 9% per annum, *pendentelite* and future, is to be paid by Respondent No.1 to Petitioner. Hence, this issue is being decided, accordingly.

16. **Issue No.6**

On the basis of discussion made above, Petitioner is entitled for realizing Rs. 2,48,658/- along with simple interest 9% p.a. *pendentelite* and future, till date of actual realization, from Respondent No.1, towards outstanding subscription fee, for restoration/ handing over of 856 STBs, in working order, mandated against Respondent No.1, is to be given and in case if its failure, payment of depreciated worth of STBs @ Rs. 1200/- per STBs, amounting to Rs. 10,27,200/- (Rupees Ten lakhs twenty seven thousand two hundred only) along with simple interest @9% per annum, over it, is to be paid by Respondent No.1 to Petitioner. The Petition is liable to be allowed against Respondent No.1, as

above. So, far as Respondent No.2 is concern, being no Privity of Contract, no relief against Respondent No.2.

**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. 2,48,658/- (Rupees Two lakhs forty eight thousand six hundred and fifty eight only) along with simple interest 9% per annum, *pendentelite* and future, till actual date of payment, for making payment to petitioner. Respondent no. 1 is being further directed to hand over 856 STBs and Viewing cards in the working condition, to petitioner, within two months of judgment and in case of its failure, to deposit Rs.10,27,200/- (Rupees Ten lakhs twenty seven thousand two hundred only) @ Rs. 1200/- 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

17.05.2023  
/NC/