

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL

NEW DELHI

Dated 10th October 2023

Broadcasting Petition No. 171 of 2017

DEN Networks Ltd. ...Petitioner

Vs.

Raju (Glorious) ...Respondent

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 : None

JUDGMENT

1. This Petition, under Section 14, read with Section 14 (A), of the Telecom Regulatory Authority of India Act, 1997 (hereinafter referred to as "TRAI Act") has been filed, by DEN Networks Ltd., petitioner, against Raju (Glorious), respondent with a prayer for a decree of Rs.

3,88,719/- (Rupees Three Lakhs Eighty Eight Thousand Seven Hundred Nineteen only), towards outstanding dues payable by respondent as on 31.03.2016 along with pendentelite and future interest @ 18% p.a. from 01.04.2016 till actual date of payment, with a further direction for return of 786 Set Top Boxes (STBs), issued by petitioner to the respondent, in good and working condition, to be returned by respondent, or for making payment for those Set Top Boxes (STBs) at the cost of Rs. 1999/- per Set Top Boxes (STBs) to petitioner, with a further relief of cost etc.

2. In Brief, Petition contends, that petitioner is Multi System Operator (MSO) providing cable Television services, registered under provision of Section 3 of Cable Television Network (Regulation) Act, 1995. Respondent is a Local Cable Operator (LCO), as per TRAI Regulations, and has been receiving encrypted Cable signal feed of television channels from the addressable system of the petitioner to retransmit the same through its cable television network to the subscribers, in its area of operation, under the name and title of Raju (Glorious).

Respondent has entered into an Interconnect Agreement on 01.08.2015, with petitioner for obtaining cable signal feeds. This agreement is **Annexure P-1**, to petition. Based upon the terms of above agreement, petitioner raised its invoices for the payment of subscription amount, collected from subscribers, by respondent, but he had not paid the said amount to petitioner. A demand notice for the Set Top Boxes (STBs), which were issued, as well as outstanding dues, dues up to 16.02.2016, was issued and this demand notice is **Annexure P-2**, to petition. Beside persistent demand, outstanding dues were not paid and without observing the provisions of TRAI Regulations, the Set Top Boxes (STBs) were swapped with another MSO. Total outstanding dues against respondent under agreement Rs. 3,88,719/- (Rupees Three Lakhs Eighty Eight Thousand Seven Hundred Nineteen only), as on 31.03.2016. The number of Set Top Boxes (STBs), were 786, worth @ Rs. 1999/- per STB, which were to be returned in good and working condition or to be compensated in terms of money, @ Rs. 1999/- per STB. A cause of action, within territorial jurisdiction of this Tribunal, under period of limitation, had arisen. Hence, this petition, with above prayer.

3. Respondent, in its reply, preliminarily objected the maintainability of this petition, because of being devoid of material particulars and merits. Respondent had already returned STBs, supplied by petitioner, to it. But the money collected for it, from the respondent, was not paid back by petitioner. Respondent had taken a total of 730 STBs from some other network, which later became part of "Glorious Cable Network". Money was paid against those STBs and it ought to be returned to the respondent. The respondent has paid total amount of 5,36,500/- (Rupees Five Lakhs Thirty Six Thousand Five Hundred only). But petitioner, being liable to refund that amount, had nor refunded it. Respondent was regularly paying the subscription charges to petitioner month wise, whereas petitioner never send any invoices to the respondent, hence, no such invoices has been placed on record. A statement showing payment of subscription amount is depicted in Annexure R-2.

4. It has been further submitted that respondent has returned some STBs to the petitioner on 15.05.2017, copy of receipt showing return of 940 STBs is Annexure- R3. Respondent was forced to migrate to another network due to poor quality of signals of the petitioner and inability to

redress the grievances of Local Cable operators like respondent. In fact it was the petitioner who blocked the portal of respondent sometime in January 2016, due to which the respondent had left with no option, but to migrate to another network. Petitioner was insisting in the increase of subscription amount, without any improvement in its services, which was refused by the respondent, resulting this discontinuation, made by petitioner. Hence, the contention of petition was denied, with a prayer for dismissal of this petition.

4. Replication cum rejoinder was with denial of the contention of reply and reiteration of contention of petition.

5. Court of Registrar, vide order dated 24.11.2017, framed following issues:-

1. Whether the petitioner is entitled to recover the amount as claimed in the petition alongwith interest at the rate of 18% p.a. from the respondent?

2. Whether the petitioner is entitled to an order for return of 786 STBs as against the respondent?

3. Whether the respondent has migrated to another MSO in violation of TRAI Regulations?

4. Whether the respondent is entitled to any set-off against the subscription dues claimed by the petitioner?

6. Evidence by way of affidavit, for and on behalf of petitioner, as of Mr. Siddharth Priya Srivastava, and for and on behalf of respondent, as of Mr. Tarun Kumar Roy, got filed.
7. Even after sufficient notice, none appeared for respondent to place its argument, Whereas learned counsel for petitioner appeared, filed its written submissions as well as placed its argument. Owing to non-appearance, at the stage of final arguments, the ex-parte argument was heard, though the entire proceeding was in the presence of learned counsels for both sides, except the argument.
8. 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.

9. 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.

10. Issue No. 3

Learned counsel for petitioner has pressed the evidence, filed by witness of respondent, wherein, there is admission in Para 6 that respondent had swapped with other MSO. Para 7 of this evidence affidavit is of this specific mention:

“I say that the Respondent was forced to migrate to another network due to the poor quality of signals of the petitioner and inability to redress the grievance for the Local Cable operators like the respondent. I say that it was the Petitioner who blocked

the portal of the Respondent sometime in January, 2016 due to which the Respondent was left with no option but to migrate to another network.....”

Meaning thereby migration to another MSO is undisputed fact, but this was as per TRAI Regulations, was to be proved by respondent. But no iota of evidence with regard to poor services, or complaint with regard to it, or even compliance of the mandatory provision. Then after, swapping with other MSO has been placed on record by respondent. Hence, very saying with regard to such reason of migration, was not proved, at all, by respondent. Whereas, petitioner by its evidence of PW-1 has proved the migration of respondent to another MSO, without observing the payment, and return of Set Top Boxes (STBs) by respondent. Hence, the respondent, with whom the burden of proving of this fact was there, failed to prove it. Whereas, petitioner had proved migration of respondent to another MSO, in violation of TRAI Regulations. Hence, this issue is being decided in favour of Petitioner.

11. Issue No. 2

Petitioner, by way of its evidence, has categorically proved that 786 Set Top Boxes were given to respondent for deployment at subscriber's premises and this was in continuation of interconnect agreement entered in between. The worth of Set Top Boxes (STBs) was Rs. 1999 per STBs. This agreement was exhibited as PW1/1 with number of Set Top Boxes (STBs), which were issued to respondent, for deploying at subscribers premises, and details of same along with the invoices were filed, by petitioner from Page No. 6 to 19 of Annexure – A (colly) to affidavit dated 7.07.2023 filed, on record along with application under Order 7 Rule 14 (3) read with Section 151 of CPC. Total number of 730 Set Top Boxes was admitted to be received by Respondent, for deployment to subscriber's premises. Hence, the Interconnect Agreement, with standard form of agreement, as well as TRAI Regulations with regard to Set Top Boxes (STBs), are with specific provision of ownership over Set Top Boxes (STBs) with other accessories, to be remained with MSO. Hence, these Set Top Boxes (STBs) belong to MSO petitioner. The very contention that security amounts in the tune of Rs. 5,36,500/- (Rupees Four Lakhs Eighty Six

Thousand only) for these Set Top Boxes (STBs) were paid by respondent and the copy of website of petitioner's Company, said to be exhibit RW 1/1, has been pressed. But this website itself reveals that the security was for the Set Top Boxes (STBs) given on rental basis, meaning thereby the ownership was not transferred, rather it was on rental basis. Hence, the security issues, if any, was to be claimed by Respondent, either in a counter claim or in other proceeding. But the Set Top Boxes (STBs), being of ownership of petitioner, is undisputed, even by copy of above website document. The payment of security amount to petitioner Company was to be proved by Respondent, but neither the payment nor the receipt of same could be placed or proved by Respondent. Hence, this issue is also being decided in favour of Petitioner.

12. Issue No.4

The set off against the subscription dues was to be proved by respondent, whereas the annexure of bank account, showing the payment to DEN Networks Ltd. was with no specification with regard to this particular connection arising out of this particular Interconnect Agreement, under question, whereas the statement of account, being

maintained in ordinary course of business of petitioner company, showing the invoices issued and outstanding subscription dues as on above date, has been filed, along with petition as well as evidence filed in affidavit by petitioner. The same is along with the application filed under Order 7 rule 14 (3) read with section 151 of Code of Civil Procedure (CPC) dated 7.07.2023. Wherein, Annexure- A (colly) is the copy of invoices issued by the petitioner to the respondent. Annexure- D is the copy of the certificate under Section 65 B of the Indian Evidence Act, 1872. Whereas, Annexure- E is the copy of Resolution of Board authorizing Mr. Vikas Rawat, on 22.09.2022 for giving evidence, for and on behalf of petitioner company. Hence, the invoices filed, by the petitioner, proved by the petitioner establishes the outstanding dues arising out of Interconnect Agreement, as on 31.03.2016 amounting to Rs. 3,88,719/- (Rupees Three Lakhs Eighty Eight Thousand Seven Hundred Nineteen only). Hence, petitioner is entitled to recover amount of outstanding dues due till 31.03.2016 along with pendentelite and future interest @ Simple Interest of 9% p.a., which is being awarded by this Tribunal in many previous precedents and which is just and reasonable in the fiscal scenario of the nation. Hence, this issue is being decided, for award of Rs. 3,88,719/- (Rupees Three

Lakhs Eighty Eight Thousand Seven Hundred Nineteen only) as on 31.03.2016 along with pendentelite and future interest as above in favour of petitioner as against respondent.

13. Accordingly, petition merits to be allowed, with cost.

ORDER

Petition is being allowed with cost, respondent, Nandan Cable and Broadband service, is being directed to make deposit of Rs. 3,88,719/- (Rupees Three Lakhs Eighty Eight Thousand Seven Hundred Nineteen only). outstanding dues towards subscription charges till 31.03.2016, along with pendentelite and future interest @ simple interest of 9% p.a. over above principle amount till date of actual payment, within two months, in the Tribunal, for making payment to the petitioner company.

Respondent is being further directed to return in good and working condition 786 Set Top Boxes (STBs), within two months, from the date of judgment, or to make deposit of Rs. 15,71,214/- (Rupees Fifteen Lakhs Seventy One Thousand Two Hundred Fourteen only), @ 1999/-, per Set Top Boxes (STBs), along with pendentelite and future interest, from the date of

judgment, till actual payment, in the Court for making payment to respondent.

Office to draw formal decree/order, accordingly.

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(Justice Ram Krishna Gautam)
Member

10.10.2023
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