

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL

NEW DELHI

Dated 24th January 2024

Broadcasting Petition No. 120 of 2018

Technobile Systems Pvt. Limited

...Petitioner

Vs.

M/s Trimurti Vishawadarshan Network and Anr.

...Respondents

BEFORE:

HON'BLE MR. JUSTICE RAM KRISHNA GAUTAM, MEMBER

For Petitioner

: Mr. Sharath Sampath, Advocate
Ms. Stuti Jain, Advocate

For Respondent No. 1

: Mr. Shivam Mehrotra, Advocate

JUDGMENT

1. This petition, under Section 14, read with Section 14A, of Telecom Regulatory Authority of India Act, 1997 (hereinafter referred to as 'the Act') has been filed by M/s. Technobile Systems Pvt. Ltd., Petitioner, against M/s. Trimurti Vishwardarshan Network and another, with a prayer, for order of restrain, against Respondent No. 1, from taking signals from Respondent

No.2, or any other MSO, without complying with the Interconnect Regulations, 2012, that is, payment of subscription dues to the petitioner and return of STBs, along with other accessories, in good and working condition, or payment of cost of such STBs by Respondent No. 1 to petitioner, with a mandatory direction for making payment, in the tune of Rs. 3,20,731/-, as on 1.4.2018, along with interest, at the rate of 18% per annum, for the outstanding subscription charges, due against Respondent No. 1, with a further direction for return of STBs in the tune of 2755, in good working condition, along with all its accessories, or in lieu a payment of cost for them, with interest of 18% per annum over it.

2. In brief, the petition contends that petitioner is a company registered under Indian Companies Act, 1956 and is a Multi System Operator(MSO), distributing signals of various broadcasters to the Local Cable Operators (LCOs) and to its consumers, in various parts of Uttar Pradesh, particularly, in DAS notified areas of Lucknow. It has established its infrastructure and network to facilitate smooth service delivery to Local Cable Operators/ Subscribers/Customers. Mr. Mayank Jain, is the authorized representative of petitioner company, by the Board Resolution, dated 28.3.2018, **Annexure P-1**, to file this petition, for and on behalf of petitioner.

3. Respondent No. 1, M/s. Trimurti Vishwardarshan Network, is a Local Cable Operator, affiliated to the network of the petitioner in the area of Lucknow for retransmitting its signals to its consumers.

4. Respondent No. 2 is a company registered under Indian Companies Act, 1956, and is a PAN India MSO. To the knowledge of petitioner company, it is not authorized to re-transmit the signals of various pay channels, in the areas of Lucknow. Petitioner and Respondent No. 1 had an Interconnect agreement dated 1.12.2017, for retransmitting the pay channels and FTA channels, provided by petitioner to its customers, by way of Set Top Boxes, to be installed in the premises of customers. This Interconnect Agreement dated 1.12.2017, is **Annexure P-2** to petition. In continuation of above Interconnect Agreement- **Annexure P-2**, petitioner had provided Respondent No. 1, 2755 STBs for deployment /installation at customers' premises. All the Material Outgoing Challans, evidencing the provisioning of the STBs, to Respondent No. 1, is there. True copies are **Annexure P-3(colly)**. Most of these STBs, which were exclusive property of the petitioner, were provided to Respondent No. 1, free of cost, by way of one time non-refundable activation charges, for each of them. But this activation charge was with no concern regarding the ownership of those

STBs. Respondent No. 1 had defaulted in meeting its obligation, under above Interconnect Agreement, by defaulting in making payments, towards the monthly subscription charges. Whereas, petitioner had fulfilled its obligation under above agreement, by way of ensuring, uninterrupted supply of signals to the Respondent No. 1. Respondent No. 1 had failed to comply with the obligations, by illegally withholding the payment, due to the petitioner, as well as indulging in illegal swapping of petitioner's STBs, with respondent No. 2. There was every apprehension for migration by Respondent No. 1 to Respondent No. 2, by way of swapping, without complying with the Interconnect Regulations 2012, as well as making payment of outstanding subscription charges, due against Respondent No. 1. Petitioner had duly raised invoices on month to month basis, as per agreement, but Respondent No. 1 was always in a habit of making short payments towards the same. Copies of invoices sent to the Respondent No. 1, during the period January 2018 to April 2018, are **Annexure P-4 (Colly)** to the petition and true copy of Statement of Account, maintained by petitioner, qua the respondent, towards subscription dues, is **Annexure P-5**, to the petition. As on date, the outstanding amount existed was Rs. 3,20,731/-, to be payable by Respondent No. 1 to petitioner, towards subscription charges. Repeated request by petitioner to Respondent No. 1,

for immediate payment of those outstanding subscription charges and not to swap with Respondent No. 2 was made, but of no avail.

5. A cease and desist notice dated 29.3.2018, calling upon Respondent No. 1, was issued by petitioner, with a direction to immediately cease and desist from indulging in illegal swapping of STBs/Migration to any other MSO. This notice is **Annexure P-6** to petition. No response to notice, dated 29.3.2018, was there.

6. Hence, a cause of action had arisen, in favour of petitioner, within a period of limitation, as well as jurisdiction of this Tribunal, hence, this petition, with a prayer for making payment of outstanding subscription charges, in the tune of Rs. 3,20,731/-, as well as return of STBs in tune of 2755, along with all accessories , in good and working condition, and not to receive any signal from any other MSO, without making compliance of Interconnection Regulation of 2012, and in case of failure, to return STBs, a payment of Standard Definition STB cost at the rate of Rs. 1399/- per piece as well as High Definition STB @ of Rs. 1799/- per piece, was directed to be ordered.

7. A reply by Respondent No. 1, was with this fact that :
- (a) the Respondent No. 1 was not a cable operator since 3.4.2018.
 - (b) Interconnect Agreement dated 1.12.2017, in between, was not valid after 2.4.2018.
 - (c) There is no agreement between Respondent No. 1 and Respondent No. 2.
 - (d) Respondent No. 1 is not a part of broadcasting industry since 3.4.2018 and nor itself seeding the STBs of Respondent No. 2 till date.
 - (e) It has already given notice of three weeks' disconnection to petitioner vide letter dated 19.4.2018 and Public Notice dated 23.4.2018.
8. It was vehemently denied that the petitioner had delivered 2755 STBs to the Respondent No. 1 for installment at the costumers' premises. Rather, it was petitioner who used to install and maintain the STBs at the subscriber's end directly. Respondent No. 1 was having no role to play for the same. Respondent No. 1 only used to collect the amount from the subscriber and give it to petitioner. Petitioner never used to raise the invoices as per agreement. However, it is stated that the Respondent No. 1 is ready and willing to sit together with the petitioner for reconciliation of account, so as to decide, what amount is to be paid by either party to each

other?, if any. It has no privity of contract with Respondent No. 2. Hence, there is no question of swapping of STBs of petitioner with Respondent No. 2 arise.

9. Respondent No. 2 filed its reply denying the contention of petition. Mr. V. Suresh Kumar is authorized signatory, for filing reply for and on behalf of Respondent No. 2 company. Though respondent no. 2 is not transmitting Cable TV signals to Respondent No. 1, no such interconnect agreement with Respondent no. 1, is there. This petition qua Respondent No. 2 is not maintainable, in as much as that Respondent No. 2 is neither a necessary nor a proper party to the instant petition, as no cause of action had ever arisen against Respondent No. 2. Respondent No. 2 is of no concern with regard to Interconnect Agreement entered, in between the petitioner and Respondent No. 1. No relief of outstanding subscription dues in the tune of Rs. 3,20,731/- is against Respondent No. 2. Hence, petition against Respondent No. 2 is to be dismissed.

10. Rejoinder-cum-replication was filed by petitioner reiterating the contention of petition and denying the contention of reply of Respondent No. 1.

11. On the basis of pleadings of both side, following issues were framed :

- (1) Whether the Respondent No. 1 has illegally attempted to migrate or has in fact migrated from the network of the petitioner to the network of Respondent No. 2 without clearing the outstanding subscription fee and without returning the STBs supplied by the petitioner, in violation of the TRAI Interconnect Regulations 2012?
- (2) Whether the Petitioner is entitled to recover the amounts, as has been finally claimed in para 13 of the Rejoinder towards subscription fee, from the Respondents jointly and severally?
- (3) Whether the petitioner is also entitled to interest? If so, at what rate?
- (4) To what relief, if any, the petitioner is entitled?

12. Evidence by way of affidavit, for and on behalf of petitioner was filed of Mr. Mayank Jain. Affidavit of Ms. Beena Tandon, for and on behalf of Respondent No. 1 was filed.

13. Though owing to failure to appear and failure to move application under Order IX Rule 7, for recall of order to proceed ex-parte, even after giving opportunity for same, the proceeding against Respondent No. 1, remained ex-parte, but counsel Shri Shivam Mehrotra, against whom proceeding was ex-parte, had appeared and participated in arguments raised by petitioner.

14. Heard arguments of Learned counsel for both side and gone through the material placed on record.

15. 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 PremlataVs. 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.

16. In all civil cases, required degree of proof is preponderance of probabilities.

17. This Tribunal, vide its judgment dated 7.5.2019, passed in this Broadcasting Petition No. 119/2018, by way of connecting BP. No. 120/2018, BP. No. 121/2018, BP No. 122/2018, BP No. 123/2018, has separated the disputes into two heads, that is, dispute with regard to return of STBs 13152 by Respondent No. 1 to petitioner or in lieu of same for making payment of the cost, to be calculated per STB, as well as accessories for the above STBs and the dispute with regard to outstanding subscription charges, as was pleaded to be due and denied to be not due.

18. On the basis of reasons given on the order-sheet, as well as in the judgment, the first issue was decided and return of all those STBs and in case of failure, making of payment for them, were decreed and it was specifically written that the dispute will persist and be adjudged with regard to

outstanding subscription charge, and interest, if any. Hence, now this petition is limited to that aspect only.

Hence, all those issues i.e, issue No. 1, had already been decided and decreed.

19. The only issue given in issue Nos. 2, 3 and 4, remained for adjudication and this is one and common, as is being decided as below.

20. The un-disputed facts, on the basis of bare perusal of pleadings, of both side, are as below :

- (i) Petitioner is a company registered under Indian Companies Act, 1956, and is a Multi System Operator, distributing signals of various broadcasters to the cable operators and its customers in various parts of Uttar Pradesh, including the present one, DAS notified area of Lucknow.
- (ii) Shri Mayank Jain, who has filed its affidavit in evidence, is the authorized representative of the petitioner company, by way of Board Resolution dated 28.3.2018, that is, **Annexure P-1**, to the petition.

- (iii) Respondent No. 1, M/s Trimurti Vishwadarshan Network, was a Local Cable Operator affiliated to the network of the petitioner in the area of Lucknow, for retransmitting its signals to its customers till 3.4.2018.
- (iv) Respondent No. 2 is a Company registered under Indian Companies Act, 1956, as an MSO.
- (v) Interconnect Agreement dated 1.12.2017, **Annexure P-2** to petition, was entered in between, petitioner and Respondent No. 1, for DAS area Lucknow for retransmitting signals to be supplied by petitioner MSO to its customers as LCO.
- (vi) The terms and conditions, enumerated in above Interconnect Agreement, were as per Interconnect Regulations 2012.
- (vii) The Interconnect Regulations, 2012, was fully applicable to both side.
- (viii) The statement of account, qua Respondent No. 1, was maintained by petitioner company for a period of January 2018 to April 2018 **Annexure P-4 Colly** in its usual way of business.
- (ix) The payment made towards invoices raised are entered in this statement. **Annexure P-5**, is the statement of account

maintained by petitioner, qua Respondent No. 1, towards subscription dues in favour of petitioner.

21. Disputed fact is that, that petitioner had never raised invoices, as per Interconnect Agreement entered, in between and the Respondent No. 1, was no more LCO since 3.4.2018. A notice of disconnection of three weeks had already been given to petitioner vide their letter dated 19.4.2018 and public notice dated 23.4.2018.

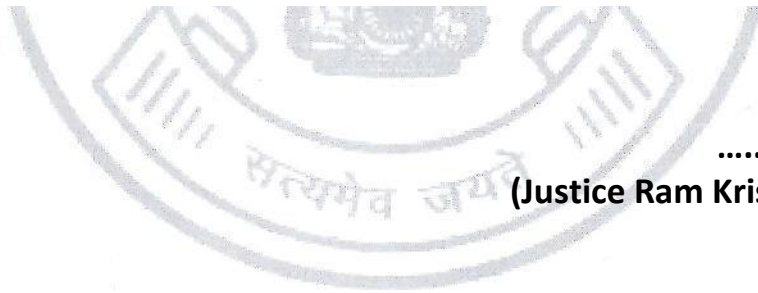
22. Now, under above contention of pleadings, the Interconnect Agreement dated 1.12.2017 is undisputed. Issuance of STBs and non-return of same, has been taken cognizance of and after contest, a decree for same had already been passed. Hence, the entire objection being raised as above, goes away, after the passing of decree, regarding STBs and accessories. The mere question of subscription charges remains to be adjudged. The Statement of Account at **Annexure P-5** to the petition, specifically shows the invoices raised and payment made for those invoices, for the period of effect of this Interconnect Agreement. Invoice dated 1.3.2018 reveals the due to be Rs.1,60,605/- and the payment received dated 3.3.2018 reveals the deposit of amount of Rs.1,61,020/-. The invoice dated 1.4.2018 reveals for

Rs.1,60,107/- and for this, there is no payment, nor any invoice, subsequent to it, is there. Rather pleading reveals that a notice of cease cum desist dated 29.3.2018 was issued, which is **Annexure P-6** to petition. The migration in the month of April 2018, is there in the judgment regarding the decree for STBs. Hence, after the invoice dated 1.4.2018, there remains no question of any outstanding subscription charge, for those STBs, subsequent to April 2018. Hence, the statement of account, filed on record, particularly at Page No. 38, i.e. the **Annexure P-5**, reveals the dues in the tune of Rs. 1,60,107/- only. Hence, the claim of Rs. 3,20,731/- could not be substantiated and proved by petitioner. Hence, the evidence filed by Respondent No. 1 is with no specific mention of its statement of account or the payment made towards this invoice for the month of 1.4.2018. Rather, the written statement filed as reply by Respondent No. 1, specifically admits that Respondent No. 1 had issued a notice of disconnection of three weeks on 19.4.2018, and a public notice for same dated 23.4.2018. Hence, he was to make the payment for above invoice for outstanding dues of invoice dated 1.4.2018. Hence, this outstanding dues in the tune of Rs. 1,60,107/- with pendentelite and future interest, at the rate of Simple Interest @ 9% p.a., till date of actual payment, is to be decreed in favour of petitioner. Hence, these three issues are being decided, accordingly.

ORDER

On the basis of discussions made above, this petition with regard to outstanding subscription dues, is being decreed for an amount of Rs. 1,60,107/- as on 1.4.2018, and pendentelite and future interest with simple interest in the tune of 9% p.a over the above amount from 1.4.2018, till actual date of payment, with the direction to Respondent No. 1, for depositing above amount, within two months, from the date of judgment 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

/NC/