

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL

NEW DELHI

Dated 24th September 2024

Broadcasting Petition No. 716 of 2020

Zee Entertainment Enterprises Limited ...Petitioner(s)

Vs.

Mahalakshmi Digital Cable and Communications

Private Limited

...Respondent(s)

BEFORE:

HON'BLE MR. JUSTICE RAM KRISHNA GAUTAM, MEMBER

For Petitioner : Ms. Payal Kakra
Mr. Shivam Mehrotra, Advocates

For Respondent : Mr. Yatin Grover,
Mr. Ankit, Advocates

JUDGMENT

1. This Broadcasting Petition, under Section 14, read with Section 14A of the Telecom Regulatory Authority of India Act, 1997 (hereinafter referred to as TRAI Act), read with Section 14 (a) (ii) of TRAI Act, has been filed by Zee Entertainment Enterprises Ltd, a Company,

incorporated under the Companies Act, 1956, through Mr. Anurup Narula, duly authorized to sign and affirm legal proceedings on behalf of Petitioner Company, vide Board Resolution (**Annexure P/2**), in his favour, against Mahalakshmi Digital Cable And Communications Private Ltd, a Multi System Operator (MSO), service provider, involved in the business of retransmission of the programming services, received from various Broadcasters, to the ultimate consumers, in the Territory agreed, as specified in the agreement, executed in between, with a prayer for a decree, in tune of Rs. 58,27,508/- (Rupees Fifty Eight Lakhs Twenty Seven Thousand Five Hundred Eight Only), in favour of Petitioner, against Respondent, towards outstanding dues, as on 27.10.2020, with a further prayer for grant of *pendentelite* and future interest, at the rate of 18% p.a, from the date of the institution of the Petition, till realization of above amount, against Respondent, with a further request for a direction to the Respondent to pay damages to the Petitioner, on account of continued default in making of outstanding dues, payable to the Petitioner in terms of the executed agreement.

2. In brief, the Petition contends that Petitioner had been supplying signals of its channels as Broadcaster to the network of Respondent, a

MSO for the retransmission of same to the ultimate consumers, in terms of subscription agreement executed, in between, from time to time. Hence, both are service provider. Respondent had approached the Petitioner to avail signals of the channels of Petitioner, and accordingly, parties executed MRP based Interconnection Agreement (MRP Agreement), dated 12.2.2019, for retransmission of signals of channels of Petitioner Broadcaster, to the network of Respondent, in the authorized Territory, in light of the directions of the Government of India, as a consequence of Covid-19 pandemic. This MRP Agreement was got extended from time to time, vide extension Letter dated 15.06.2020, 30.06.2020, 31.07.2020, 31.08.2020 and 30.09.2020, valid till 31.10.2020. Respondent had undertaken to pay monthly subscription fees regularly, without any default, and this copy of MRP Agreement, along with extension letters, are **Annexure P/3 (colly)**.

3. In terms of new Regulatory regime, the Respondent was mandated to provide monthly subscriber report to the Petitioner, which was the basis of the monthly invoices, to be raised by Petitioner, on the Respondent. Accordingly, invoices were raised and received by Respondent. But, intentionally and persistently, Respondent defaulted

in making payment of the agreed subscription fees, on the due dates, which resulted adversely the commercial interest of Petitioner. The copy of invoices along with statement of account, are **Annexure P/4 (colly)** to the Petition.

4. During the Covid-19 pandemic, Petitioner started retransmission of signals of channels of Petitioner in an unencrypted mode, which was against the Rule 4A of the Cable Television Networks Regulations Act, 1995. Hence, Petitioner, vide its Letter dated 18.05.2020, informed the Respondent, regarding this illegal act of Respondent, with the direction to forbid the same. This Letter, dated 18.05.2020 and 22.05.2020, are **Annexure P/5 (colly)**. Respondent, vide its communications, dated 14.05.2020 and 15.05.2020, requested Petitioner, and it was responded by Petitioner with request to Respondent to collect an alternate set of IRDs for availing the supply of signals of channels of the Petitioner, with a further request for paying outstanding dues, accumulated to be of Rs.50,65,372/- (Rupees Fifty Lakhs Sixty Five Thousand Three Hundred Seventy Two Only), as on 30.04.2020. This is **Annexure P/6** to Petition.

5. As per agreement, Respondent had undertaken to pay monthly subscription fee, without any default and delay, hence, timely payment was the essence of that agreement. But, it was not adhered by Respondent. Hence, a notice for disconnection, with respect to non- payment of outstanding dues and continued default, dated 18.08.2020, was issued and got served over Respondent, which is **Annexure P/7** to the Petition.

6. Respondent, to evade disconnection of the signals, issued two cheques towards part payment of outstanding liability of Rs. 10,00,000/- (Rupees Ten Lakhs Only), each, to the Petitioner, bearing no. 351790 and 351792, which were presented for their encashment and were got dis-honoured with endorsement of "funds insufficient". These cheques, along with memos of dishonor are **Annexure P/8 (colly)** to Petition. Ultimately, Petitioner was constrained to deactivate signals of its channels to the network of the Respondent on 11.09.2020. A Legal Demand Notice, dated 14.10.2020, calling upon the Respondent, to clear the entire subscription dues of Rs. 58,27,508/- (Fifty Eight Lakhs Twenty Seven Thousand Five Hundred and Eight Only), due and payable by Respondent, as on 30.09.2020, was got issued and served over Respondent, which is **Annexure P/9** to

Petition, but this all was of no avail. Rather, Respondent had availed uninterrupted services of Petitioner without making any payment for same, which enriched it illegally. A cause of action, within territorial jurisdiction of this Tribunal, in limitation period, subject to jurisdiction of this Tribunal had arisen, for which this Petition, with above prayer, had been filed.

7. Reply, by and on behalf of Respondent, was with this contention that Petitioner had suppressed material facts before this Tribunal, which were necessary for proper adjudication of present dispute. This Petition is to coerce the Respondent to succumb arbitrary and unlawful demands of Petitioner. Respondent is not liable to pay any outstanding dues to the Petitioner. In fact, the outstanding dues, if any, payable to the Petitioner, are attributed to the competing MSO of the Respondent, namely, M/s DVR Siti Digital, which is the management consultant of the Respondent. Respondent itself, is a victim to the nefarious and illegal acts, on the part of M/s DVR Siti Digital, aforementioned MSO, in the area concerned, because of the competing MSO, The Respondent was left with no option, but to completely close its cable business, and it was informed to the Petitioner.

8. Petitioner and the Respondent executed an MRP based Interconnect Agreement, on 12.09.2019 for the supply of Petitioner's TV channels signals in various parts of Andhra Pradesh. The said agreement, was thereafter renewed by the Petitioner on various occasions, the last renewal being for the period upto October 2020. It is pertinent to submit that the Agreement, dated 12.02.2019, was renewed by the Petitioner for more than a year, only on being satisfied with the regular payments, received from the Respondent. But, between the continuance of aforementioned agreement, the Respondent was subjected to immense harassment and hardships by the proprietor of aforementioned MSO, M/s DVR Siti Digital through Mr. Dagada Venkateshwara Reddy, an active political worker and has connections with high ups and a stooge of big wigs in the Ruling Party of the State of Andhra Pradesh, who disturbed the business of Respondent Company by threatening its employees and staff. Respondent being a small MSO in the area of Kurnool, could not resist above big wigs and the business of Respondent was handed over on the basis of terms of understanding arrived at between Respondent and M/s DVR Siti Digital. In this regard, the Respondent passed a Resolution, dated 15.02.2020 in favour of its Director Mr. Valmiki Srinivasulu,

authorizing him to execute the aforesaid Management Service Agreement with M/s DVR Siti Digital, and draft copy of Management Service Agreement is **Annexure R-1** and this DVR Siti Digital was to pay to the Respondent, as compensation for interesting the authorization to maintain the business a sum of Rs. 25,00,000/- (Rupees Twenty Five Lakhs Only) per month on or before 9th day of every calendar month and this DVR Siti Digital was to bear all the expenditure for maintaining and running the cable operation on day to day basis. All expenses, including taxes, payments to Broadcasters, was to be paid to Respondent, Hence, M/s DVR Siti Digital was to be solely responsible for making the payment towards subscription fees to the Broadcaster, including the Petitioner.

9. Petitioner was also informed about that Management Service Agreement, vide Letter dated 14.05.2020, that having regard to the business relationship arrived at, in between, the Respondent and M/s DVR Siti Digital, the headends/master control room, all the equipment, decoders, receivers, servers of the answering Respondent have been shifted to a new address, accordingly, the Respondent sought fresh IRDs from the Petitioner. This Letter dated 14.05.2020 is **Annexure R/2**. Subsequently, it got opened to Respondent that M/s

DVR Siti Digital had misused its position in an unauthorized manner under the garb of Management Service Agreement to enrich itself unlawfully, and this was communicated to Petitioner vide Letter dated 15.05.2020.

10. Petitioner responded the said Letter, dated 14.05.2020, as well as 15.05.2020 belatedly, on 22.05.2020, with an instruction to supply fresh IRDs to Respondent. But, clearance of outstanding dues was directed to be made before IRDs Supply of its TV channels signals was not disconnected deliberately, rather it continued to be supplied till Disconnection Notice dated 18.08.2020. Hence, Respondent itself is victim of manipulation of M/s DVR Siti Digital, for which FIR, bearing no. 447 of 2020, was got lodged on 22.07.2020. Hence, present Petition was not maintainable against the answering Respondent. Rather is to be filed against M/s DVR Siti Digital or it be added as a party, in this proceeding. Hence, a prayer for dismissal of this Petition.

11. Replication cum rejoinder by Petitioner was with contention that contention of Petition are being reiterated and reaffirmed. Petitioner has nothing to do with the alleged agreement, entered by Respondent with a third party M/s DVR Siti Digital. Rather, Petitioner had an

Interconnect Agreement with Respondent, under TRAI Interconnection Regulation, and accordingly, in terms of Interconnection Agreement, executed between Petitioner and Respondent, respondent is duly and severely liable to clear the pending outstanding dues towards the Petitioner. Issuing of two cheques by Respondent in favour of Petitioner and they have been dishonoured by Bank is not disputed fact. Respondent, vide its Email dated 04.06.2020, shared a payment plan and accordingly, thereafter, shared the cheques to clear the pending outstanding dues, duly liable to be paid to the Petitioner. The copy of Email dated 04.06.2020 is **Annexure P/10** to the rejoinder. Hence, the prayer for passing the decree was made.

12. On the basis of pleadings of both side, Court of Registrar, vide Order dated 13.01.2022, framed following issues:

- (i) Whether the Petitioner is entitled for a decree for sum of Rs.58,27,508/- against the Respondent as on 31/05/2020 along with *pendentelite* and future interest from the date of institution of the petition till realization of the decretal amount?

- (II) Whether the Respondent is liable to pay damages to the Petitioner on account of its continued default in making payments to the Petitioner towards its legal liability in terms of the duly executed Interconnect Agreements? If yes, to what amount?
- (III) To what other relief / reliefs the Petitioner is entitled for?

13. Evidence by way of affidavit, for and on behalf of Petitioner is of Mr. Anurup Narula, filed by Petitioner and as of Mr. K. Sathyanarayana for Respondent, got filed by Respondent.

14. Written submission by Petitioner as well as Respondent got filed.

15. Heard argument of Learned Counsels for both side and gone through material placed on record.

16. 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.

17. 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 cast 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.

18. Issue No. 1

PW-1, Mr. Anurup Narula, legal Manager, an authorized representative of Petitioner Company, who had filed this Petition, in his affidavit of evidence has proved authorization in his favour by Board Resolution exhibit **PW/A**. This claim for outstanding subscription dues as on 27.10.2020, in the tune of Rs. 58,27,508/- (Fifty Eight Lakhs Twenty Seven Thousand Five Hundred Eight Only), was said to have arisen out of MRP Agreement dated 12.02.2019, and this agreement was extended, vide Letters dated 15.06.2020, 30.06.2020, 31.07.2020, 31.08.2020 and 30.09.2020. This Agreement was validated till 31.10.2020, and this document, along with its

extension letters, have been duly proved by this witness and exhibited as exhibit **PW/3**. The demand notice and acceptance by Respondent towards outstanding dues and delivery of two cheques of Rs. 10,00,000/- (Rupees Ten Lakhs Only) each by Respondent to Petitioner, has also been proved by this witness. The cheque numbers were given and they were dishonored by the Banks with endorsement of 'insufficient fund'. This has also been proved by this witness. The outstanding dues, as well as Legal Demand Notice, dated 14.10.2020, has been duly proved on oath and exhibited **PW/9** by this witness. The invoices were raised and it were served over Respondent, but were not paid by Respondent. This has been proved by this witness, without any contradiction.

19. More so, Respondent's witness K. Sathyanarayana, in its evidence affidavit at Para 06, had categorically admitted that "I state that the Petitioner and the Respondent executed an MRP based Interconnect Agreement on 12.02.2019 for the supply of Petitioner's TV channel signals in various parts of Andhra Pradesh. The said agreement was thereafter renewed by the Petitioner on various occasions, the last renewal being for the period upto October 2020. Needless to state

that the said Agreement dated 12.02.2019 was renewed by the Petitioner for more than a year, only on being satisfied with the regular payments received from the Respondent". The payment being made regularly is being said by this witness.

20. Now, burden of proving this fact shifts upon Respondent, but neither statement of account, nor the fact of payment, towards raised invoices, have been proved, by this witness. Rather, the inability to make payment and liability, if any, to be of competitive MSO M/s DVR Siti Digital, is being said by this witness. The same is with fact contended in reply too. Now, the agreement entered by Respondent with M/s DVR Siti Digital, whatsoever it may be, was not a tripartite agreement. Rather, Petitioner was not a party to this agreement, and merely by being no party to it, it cannot be enforced by it, or be enforced by others, against Petitioner, because of principle of Privity of Contract. The alleged agreement, being said to have been entered with competitive MSO, M/s DVR Siti Digital, and the liability, if any, to be fastened with above competitive MSO, as is being argued by Learned Counsel for Respondent, is not tenable. Agreement, executed between the Respondent and any other third party, i.e. M/s DVR Siti Digital, in absence of Privity of Contract, the Petitioner cannot be

fastened with the responsibility to intervene in the matter between Respondent and third party.

21. The principle of Privity of Contract provides that, as a general rule, a contract cannot confer rights or impose obligations, arising under it, to any person, who is not a party. Therefore, the Petitioner had not been entitled to or bound by the conditions of a contract to which it is not a party.

22. Hon'ble Apex Court by its decision in M.C Chacko vs. State of Travancore AIR 1970 SC 500, has propounded the Doctrine of Privity of contract, as below "a person not a party to a contract cannot, subject to certain well recognized exceptions, enforce the terms of contract". Hence, the very saying of the Respondent that he entered in an agreement with competitive MSO, and then after his responsibility was finished, is not provided under the law.

23. Whereas, the email communication, between Respondent and Petitioner, which has been said in the written submission, at Page No. 05 and which is **Annexure P/10** to Petition, i.e. Respondent's Email dated 04.06.2020, at Page 333 of rejoinder, is of the fact that

outstanding arrived was 30,00,000/-(Rupees Thirty Lakhs Only) by adjusting the incentives to receipts and the TDS against accruing outstanding to Petitioner, in the tune of Rs. 41.56 Lakhs. A payment plan was proposed by this K. Sathyanarana, by above email. Hence, merely by this email, it is the apparent that liability has been undisputed by Respondent. Under above facts and circumstances, and on the basis of evidences placed on record, as well as the admission, made in the pleading, it is apparent that there was outstanding dues as on 27.10.2020 in the tune of Rs. 58,27,508/- (Fifty Eight Lakhs Twenty Seven Thousand Five Hundred Eight Only). The same is to be paid by Respondent. The cause of action had arisen, for which this Petition has been filed and the claimed money is to be paid as above.

24. With regard to rate of interest, this Tribunal in many decided Petitions and in view of current fiscal scenario, has awarded *pendentelite* and future interest, at the rate of simple interest of 9% p.a. Hence, from the date of 27.06.2020 till actual payment date, *pendentelite* and future interest, in the tune of Rs. 9% p.a. simple interest is also to be paid by Respondent. Accordingly, this issue number one is being decided in favour of Petitioner.

25. Issue No. 2

The outstanding dues and the interest over it, along with *pendentelite* and future interest, has been held to be awarded in the disposal of issue number one. Hence, the question of payment of further damages does not arise. Accordingly, this issue is being decided in negative.

26. Issue No. 3

On the basis of discussions made above, the Petition is to be decreed with cost.



Accordingly, this Petition is being decreed with cost. Respondent, Mahalakshmi Digital Cable and Communications Private Limited, is being ordered to make payment, by way of deposit in this Tribunal, within two months from date of Judgment, Rs. 58,27,508/- (Rupees Fifty Eight Lakhs Twenty Seven Thousand Five Hundred Eight Only), along with *pendentelite* and future interest, from date 27.10.2020 till actual date of payment, at the rate of simple interest of 9% p.a, for making payment to Petitioner.

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

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

24.09.2024
/KT/

