

**TELECOM DISPUTES SETTLEMENT AND APPELLATE TRIBUNAL,
NEW DELHI**

Dated 5th December 2025

Broadcasting Petition No. 406 OF 2020

DEN Networks Limited ...Petitioner

Versus

Aakash Cable NetworkRespondent

HON'BLE MR. JUSTICE RAM KRISHANA GAUTAM, MEMBER

For Petitioner : Mr. Vibhav Srivastava, Advocate
Ms. Aashi Arora, Advocate
Ms. Rhea Yadav, Advocate
Ms. Manika Priyadarshini, Advocate

For Respondent : None

JUDGEMENT

1. The present Petition, under Section 14, read with Section 14A of the Telecom Regulatory Authority of India Act, 1997 (As amended from time to time) (hereinafter referred to as "TRAI Act") has been filed on behalf of

the above Petitioner Company, against the Respondent no.1, a Local Cable Operator, Aakash Cable Network, bearing LCO code LCOKL227 in the Petitioner's system, for default on the part of the Respondent no.1, in making payment of Monthly subscription fee from the subscribers, to the Petitioner for availing cable signal feed with a prayer for direction to the Respondents to jointly and severally, clear the outstanding subscription dues of Rs. 1,22,633/- (Rupees One Lakh Twenty Two Thousand Six Hundred and Thirty Three Only), as on 30th April 2020, with a further direction to the Respondents, to return total 550 Set Top Boxes in good and working condition, which has been issued to Respondent no.1, or in lieu of the same, pay a total amount of Rs.10,99,450/- (Rupees Ten Lakhs Ninety Nine Thousand Four Hundred and Fifty Only), @ 1999/- per set top box. The Petitioner also prays to restrain the Respondent no.1 to receive cable TV signals from Respondent no.2, or any other MSO, until the Set Top Boxes of Petitioner returned to the Petitioner, in good working condition or cost equivalent to such set top boxes is paid by the Respondent no.1 and also restrain Respondent no.2 from supplying signals to Respondent no.1, until the dues of the Petitioner are cleared and STBs are returned to the petitioner. Petitioner also requested the Tribunal to pass such orders, as it may deem fit and appropriate, in the

facts and circumstances of the present case, in favour of the Petitioner, and against the Respondents, along with cost of the Petition, in accordance with law.

2. In brief, it was contented that the Petitioner is a cable television service provider, duly registered under the provision of the Cable television Networks (Regulation) Act, 1995 (hereinafter referred to as “Cable Television Act”). The Petitioner is carrying on Distributor Platform Operator [herein referred as “DPO”] business. The Respondent no.1, Aakash Cable Network, is a Local cable operator (LCO), and has been receiving 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. The Respondent no.1 has entered into an interconnect agreement on 17th October, 2019 (herein after referred to as “Agreement”) with petition for obtaining Cable signal feed from 17th October 2019. Copy of the agreement dated 17th October 2019 is annexed herewith and marked as **Annexure-P1** to the Petition. The Respondent no.2, SITI Cable, is also engaged in the business of cable television service under the provisions “Cable Televisions Act” and is

working in the area of operation of the Petitioner and is service provider under TRAI Act, 1997.

3. It has been submitted that Respondent no.1, has migrated to the competitor DPO of the Petitioner i.e., SITI Cable, Respondent no.2, without giving any notice & complying with the TRAI regulations and clearing outstanding amount, due and payable, by the Respondent no.1, to the Petitioner. It has been mentioned in the Petition that these above 550 STBs are the exclusive property of the Petitioner and has been mentioned in the Agreement, executed between the Parties. The Petitioner stated that the Respondents are trying to damage the business of the Petitioner. It is stated that on the basis of the terms of written agreement, executed between the parties, from time to time, the Petitioner on a monthly basis, raised invoices on the Respondent no.1 for the payment of subscription amount, collected from subscribers. Copy of few invoices raised by the Petitioner towards monthly subscription charges are annexed as **Annexure-P2** to the petition. Also, a copy of statement of accounts maintained by the Petitioner Company is annexed herewith and marked as **Annexure-P3** to the petition.

4. That Respondent no.1 has defaulted in meeting its obligations, as laid down under the agreement, by constantly defaulting in making payments towards the monthly subscription charges. Whereas petitioner has fulfilled its obligation under the Agreement and ensured uninterrupted supply of signals to Respondent no.1, but Respondent no.1, on the other hand, has now migrated to Respondent no.2, without giving any notice on clearing the dues of the Petitioner, due to which, the Petitioner is suffering heavy financial losses on everyday basis. Hence, the Petitioner has filed this petition for appropriate directions in the interest of justice.

5. The Tribunal has the jurisdiction to entertain and try the present petition under the provisions of the TRAI Act, and it has been filed within the limitation period.

6. It has been contended that on many occasions, the Petitioner orally requested the Respondent no.1 to clear the outstanding amount, but the Respondent no.1 paid no heed to request of the Petitioner, and continued to default in making any payments and giving false assurances that the same will be cleared soon and swapped the petitioner's set top boxes. On further default, petitioner issued a demand notice, dated 29th June 2020,

to the Respondent no.1, and the notice is annexed herewith and marked as **Annexure-P4** to the petition. It has further been contented that despite requests of the Petitioner, the Respondent no.1 did not come forward to clear the outstanding dues of the Petitioner, nor returned the Set Top Boxes issued by the Petitioner. It is stated in the petition that the Petitioner is also entitled to recover from the Respondent no.1, an interest at the rate of 18% p.a., on such outstanding amount, from the date it became due, till the date of realisation.

7. Mr. Siddharth Priya Srivastava, Manager of the Petitioner's Company is duly authorised to file this petition vide Board Resolution dated 15.01.2019. A copy of the said Board Resolution is annexed herewith and marked as **Annexure-P5** to the petition.

8. After giving sufficient opportunities to the respondents, neither appearance, nor any reply got filed. Hence, on 22.01.2024, the Respondent no.1 was proceeded ex-parte, and on 16.05.2025 the Respondent no.2 was proceeded ex-parte.

9. Evidence by way of affidavit, dated 01st May 2025, was filed by Mr. Prakash of petitioner's Company, reiterating the contents of the petition in totality and based on the terms of written agreement the Petitioner issued the Set Top Boxes to the Respondent no.1 for deployment at subscriber's place for which the Inventory List of 550 Set Top Boxes by the Petitioner Company herein, the evidence affidavit which reflects the number of Set Top Boxes issued by the Petitioner to the Respondent no.1. Copy of the Inventory List is exhibit hereto and marked as **EXHIBIT-PW1/2** to the evidence affidavit. It is also stated in the affidavit that the letter no.1-19/2012-B&CS dated 13th December 2013, issued by TRAI, and the reply shared by the Petitioner, vide its letter dated 27th December, 2013, wherein it is disclosed the SET TOP BOX (STB) PLAN. Copy of the documents is exhibit hereto and marked as **EXHIBIT-PW1/6** to the evidence affidavit. No evidence, either oral or documentary, for and on behalf of Respondent, could be filed, by Respondents.
10. Petitioner also filed written arguments in this Petition specifying the details of the amount to be awarded to the petitioner.
11. Heard learned counsel for the Petitioner and gone through the material place on record.

12. Hon'ble Apex Court in Anil Rishi v. 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 the defendant. It has further propounded in Premlata Vs. Arhant Kumat Jain-AIR1976 SC 626 that where both the 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 judgement. The old principle propounded by Privy Council in Lakshman v. Venkateshwarloo- 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 Krishan 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. As there is no privity of contract, in between, petitioner and respondent no.2, and proposition of law laid down by this Hon'ble Tribunal, in many cases is of this effect, as competitor MSO, having no privity of contract, will not be held liable for any default made by LCO with regard to liability arisen with other competitive MSO, out of interconnect agreement, in between, petitioner and that LCO. Hence, respondent no.2 is not to be

fastened with any liability. Therefore, no relief against competing service provider may be claimed or awarded.

15. Since, during the proceeding before this Hon'ble Tribunal, the respondents chose not to appear, not filed their reply, nor participated, hence, there is no negation of contents of petition. Hence, this petition merits its allowance with costs. Further Petitioner's evidence affidavit is with reiteration and the contents of petition, wherein the interconnect agreement has been made annexure to the affidavit, and it was not controverted by the respondents. Issuance of 550 STBs, along with VCs, in compliance of interconnect agreement, in between, petitioner and respondent no.1, has been stated in uncontroverted affidavit along with the details of the STBs. The price per STB, is given as Rs.1,999/-, and total amount, as a cost of these STBs as well as VC has been calculated to be Rs.10,99,450/-. Whereas as per the agreement entered, in between, the compensation for STBs, ought to be depreciated value of STB and this Tribunal, very often has decided depreciation of 15% for the value of purchase (BP No. 267 of 2019- Hathway digital Private Limited Vs. Jaipur cable Network). Hence, Rs.1999/-, has been claimed as the value of per STBs, and with depreciated value, it will come to Rs. 1699/- per STB.

Hence, the amount payable in case of failure to restore the STBs and VCs, will come to Rs.9,34,450/- (Rs.1699*550 STBs).

16. Unrebutted affidavit of Petitioner is in fully reiteration and corroboration of Petition. These facts have been fully proved by Petitioner, by way of uncontroverted affidavit. Hence, Petitioner had proved its case with all precise and cogent evidence.

17. The Petition is to be decreed for an amount of Rs. 1,22,633/- (Rupees One Lakh Twenty Two Thousand Six Hundred and Thirty Three Only), Rs.9,34,450/- (Rupees Nine Lakhs Thirty Four Thousand Four Hundred and Fifty Only) (Rs.1699*550 STBs), along with pendente lite and future interest, @ 9% p.a., simple interest, an interest, which is being very often awarded in present fiscal scenario, by this Tribunal in other decided petitions.

ORDER

Petition is being allowed with the cost. Respondent no.1, is being directed to make deposit, within two months, from the date of judgement, the outstanding subscription dues of Rs.1,22,633/- (Rupees One Lakh Twenty Two Thousand Six Hundred and Thirty Three Only), as on 30th April 2020, and to return total 550 Set Top Boxes in good working condition, which has been issued to it, or in lieu of that, pay the total amount of Rs.9,34,450/- (Rupees Nine Lakhs Thirty Four Thousand Four Hundred and Fifty Only), @1699/- per Set Top Box, along with pendente lite and future interest, @9% p.a., simple interest, till actual date of payment, in Tribunal, for making payment towards petitioner.

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

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(Justice Ram Krishana Gautam)
Member

5.12.2025
/NC/