

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL**NEW DELHI****Dated 10th January 2025****Broadcasting Petition No. 279 of 2021**

Den Networks Limited

...Petitioner

Vs.

Fun TV Cable and Anr.

...Respondents

BEFORE:**HON'BLE MR. JUSTICE RAM KRISHNA GAUTAM, MEMBER**For Petitioner : Mr. Vibhav Srivastava, Advocate
Ms. Aashi Arora, Advocate

For Respondent : None

JUDGMENT

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, Fun Tv Cable, bearing LCO code LCODL923 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. 17,12,126/- (Rupees Seventeen Lakh Twelve Thousand One Hundred Twenty Six Only) as on 31st March, 2021, with a further direction to the Respondents to return total 1117 Set Top Boxes in good and working condition which has been issued to Respondent no.1, or in lieu of the same, pay an total amount of Rs. 22,32,883/- (Rupees Twenty Two Lakh Thirty Two Thousand Eight Hundred Eighty Three Only) @ Rs. 1999/- per Set Top Box. The petitioner also prays for restoration of the set top boxes of the Petitioner at subscribers' premises, if any, already swapped by the Respondents and restrain the Respondent No. 1 to receive cable TV signals from Respondent no. 2 or any other DPO until the Set Top Boxes of Petitioner returned to the Petitioner in good and working condition or cost equivalent to such set top boxes is paid by the Respondent No.1 and also restrain the 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, alongwith cost of the Petition, in accordance with law.

2. In brief, it was contended that the petitioner is a cable television service provider, duly registered under the provisions of the Cable Television Networks (Regulation) Act, 1995 (hereinafter referred to as “Cable Television Act”). The Petitioner is carrying on Distribution Platform Operator [hereinafter referred to as “DPO”] business. The Respondent No. 1, Fun Tv Cable, 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 7th October, 2019 (herein after referred to as “Agreement”) with Petitioner for obtaining Cable Signal feed from 7th October, 2019 onwards. Copy of the agreement dated 7th October, 2019 is annexed herewith and marked as **Annexure- P1** to petition. The Respondent no. 2, Alcoa Digital Private Ltd., is also engaged in the business of cable television service under the provisions “Cable Television 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. Alcoa Digital Private Limited, 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 1117 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 some of the invoices raised by the Petitioner towards monthly subscription charges are annexed as **Annexure- P2** to petition. Also a copy of the statement of Accounts maintained by the Petitioner Company is annexed herewith and marked as **Annexure P- 3** to petition.

4. The Respondent No. 1 has defaulted in meeting with 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. This 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 cum cease and desist notice to the Respondent No. 1 on 21st January, 2021, which is annexed herewith and marked as **Annexure- P4** to petition. It has further been contended 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 realization.

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 as **Annexure P – 5** to petition.

8. After giving sufficient opportunities to the respondents, neither appearance, nor any reply got filed. Hence, on 15.1.2024, the respondents were proceeded ex parte.

9. Evidence by way of affidavit dated 23rd March 2022 was filed by Mr. Harsh Singh of petitioner's company reiterating the contentions of the petition in totality. 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 placed on record.

12. 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.

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 Tribunal, in many

cases is of this effect, as competitive 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 Tribunal, the respondents chose not to appear, nor 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 contention of the petition, wherein the interconnect agreement has been made Annexure to affidavit, and it was not controverted by respondents. Issuance of 1117 STBs, along with VCs, in compliance of interconnect agreement, in between, petitioner and respondent no. 1, has been stated in this uncontroverted affidavit. The price per STB, is given as Rs. 1999/-, and total amount, as a cost of these STBs as well as VC has been calculated to be Rs.22,32,883/-. Whereas, as per the agreement entered, in between, the compensation for STBs, ought to be the 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. 18,97,783/- (Rs.1699*1117 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. The Petition is to be decreed for an amount of 17,12,126/- (Rupees Seventeen Lakh Twelve Thousand One Hundred Twenty Six Only), Rs. 18,97,783/- (Rupees Eighteen Lakh Ninety Seven Thousand Seven Hundred and Eighty Three Only) (Rs.1699*1117 STBs) along with *pendentelite* and future interest @ 9% p.a., 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 cost. Respondent No. 1 is being directed to make deposit within two months, from the date of judgment, the outstanding subscription dues of Rs. 17,12,126/- (Rupees Seventeen Lakh Twelve Thousand One Hundred Twenty Six Only) as on 31st March, 2021, and to return total 1117 Set Top Boxes in good and working condition, which has been issued to it or in lieu of that, pay the total amount of Rs.18,97,783/- (Rupees Eighteen Lakh Ninety Seven Thousand Seven Hundred and Eighty Three Only) @ Rs. 1699/- per Set Top Box, along with *pendentelite* and future interest @ 9% p.a., 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 Krishna Gautam)
Member

10.01.2025
/NC/