

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL

NEW DELHI

Dated 22nd May 2025

Broadcasting Petition No. 142 of 2017

Den Networks Ltd. ...Petitioner

Vs.

Star Cable (CASPN Cable) ...Respondent

BEFORE:

HON'BLE MR. JUSTICE RAM KRISHNA GAUTAM, MEMBER

For Petitioner : Mr. Vibhav Srivastava, Advocate
Ms. Aashi Arora, Advocate

For Respondent : None

JUDGMENT

1. This Petition, under Section 14, read with Section 14A of Telecom Regulatory Authority of India Act, 1997 (hereinafter referred to as "TRAI Act") (as amended upto date), has been filed by Den Networks Limited, against Star Cable (CASPN cable), with a prayer for a Decree of Rs. 3,79,299/- (Rupees Three Lakhs Seventy Nine Thousand Two Hundred and Ninety Nine Only),

towards the outstanding dues, payable to Petitioner by Respondent, alongwith interest, at the rate of 18% per annum, with a further direction to return 404 Set Top Boxes(STBs), in good and working condition, or to pay cost equivalent to the same to the Petitioner.

2. In brief, the petition contends that Petitioner is a Multi System Operator(MSO), carrying on its Cable Television business, under Cable Television Act, for which it is duly registered, under Provision of Section 3 of the Cable Television Networks Regulation Act, 1995. Respondent, is Local Cable Operator(LCO), as per TRAI Regulations, and had been receiving encrypted cable signal feed of Television Channels, from the addressable system of the Petitioner to re-transmit the same through its Cable Television Network, to its subscribers in its area of operation, under the name and style as above. Respondent has entered into interconnect agreement on 05.01.2015, with Petitioner for obtaining cable signals feeds, which is Annexure P-1 to petition. Based on the terms of the written interconnect agreement, Annexure P-1, services were provided, for which invoices were raised upon Respondent, for the payment of subscription amount, collected from subscribers, but it was not paid. Petitioner issued a demand notice, for the Set Top Boxes issued, and payment of outstanding dues, dated 01.03.2016 i.e. Annexure P-2 to petition, but it was of no avail. Respondent made default

in making payment of collected monthly subscription fee from its subscribers to Petitioner, for availing cable signal feeds, resulting total outstanding dues, in the tune of Rs. 3,79,299/-, over which interest at the rate of 18% per annum is also payable. Rather it moved to other MSO, without giving any notice, and complying with TRAI Regulations i.e., without clearing outstanding dues payable by Respondent to Petitioner. Hence, a cause of action within period of limitation had arisen within the jurisdiction of this Tribunal. Hence, this petition with above prayers.

3. In spite of sufficient service, held by this Tribunal, vide order dated 12.07.2017, none appeared for Respondent, nor any reply got filed. Hence, an order to proceed ex-parte was there on 17.08.2017. Affidavit, in ex-parte Evidence, got filed by Petitioner. As Covid period intervened, in between, hence, in utter precaution, a notice by way of Police Mode were also served. Still then, none appeared for Respondent. Hence, again order to proceed ex-parte was passed on 28.10.2024.

4. Heard learned counsel for Petitioner and gone through the material placed on record.

5. 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.

6. 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.

7. Mr. S P Srivastava, who has said himself to be with authority, to file Evidence, for and on behalf of the Petitioner, as Authorized Representative of the Petitioner Company, and being fully conversant with the facts and circumstances of the present case, on the basis of document, pertaining to it, has filed this petition, with uncontroverted statement, on oath that Respondent, a Local Cable Operator, was under balance of amount of Rs. 3,79,299/-, as on 31.03.2016, payable to Petitioner Company – MSO, in accordance with the subscription charges, accrued, levied and invoiced for supplying Digital Cable T.V. signals to the Respondent. In November 2012, based upon an oral understanding, which was subsequently formulated later, in written agreement, 404 Set Top Boxes were given to Respondent, for re-transmitting signals supplied by the Petitioner to subscribers, and they were only to be deployed at subscribers' premises, with a condition that ownership of them will remain with the Petitioner-MSO. In accordance with agreement,

dated 05.01.2015, encrypted cable signals feed, issued by Petitioner was availed by Respondent, for re-transmitting the same through its Cable Television Network to its subscribers in the area of operation. The agreement is Annexure P-1, and was substantiated by this statement on oath, causing it Exhibited as Exhibit-PW 1/1. The monthly invoices were raised and these are Exhibited PW 1/2 (colly) in Evidence Affidavit. Statements of accounts, duly maintained by Petitioner, is Exhibit PW 1/3. Demand notice, dated 16.02.2016, is Exhibit PW 1/4, of Affidavit in Evidence, as well as Annexure P-2 to the petition. It was specifically said on oath that this subscription amount, due as balance, was not paid by Respondent.

8. There is no iota of Evidence, either in contradiction of this contented fact of Petitioner, or reply to pleading by Respondent. Hence, the very contention in pleading of Petitioner is fully proved by this Evidence on oath. Accordingly, this petition is to be decreed with cost.

ORDER

Petition is being decreed with cost. Respondent is being directed to make deposit within two months of judgment Rs. 3,79,299/- (Rupees Three Lakhs Seventy Nine Thousand Two Hundred and Ninety Nine Only) towards Subscription dues, balance as on 31.03.2016, along with *Pendentelite* and future interest, at the rate of simple interest 9% per annum, for making

payment to Petitioner. He is further being directed to make return of 404 STBs alongwith its accessories, in good and working condition, within two months from Judgment to Petitioner or to make payment of Rs. 4,04,000/- (404*1000) (Rupees Four Lakhs Four Thousand only), on Notional Depreciated Value @ Rs. 1000/- per STBs. Pending MAs, if any, shall also stand disposed of.

Formal order/Decree be got prepared by the office, accordingly.

22.05.2025
/NC/



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(Justice Ram Krishna Gautam)
Member