TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL

NEW DELHI

Dated 30th May 2025

Broadcasting Petition No. 202 of 2017

M/s Kal Cables Pvt. Ltd. …Petitioner

Vs.

Mr. R. Murthy, Anand Network …Respondent

BEFORE:

HON'BLE MR. JUSTICE RAM KRISHNA GAUTAM, MEMBER

For Petitioner : Mr. Ajay Kumar, Advocate

For Respondent : Mr. Sharath Sampath, Advocate
Ms. Kavya Singh, Advocate

JUDGMENT

1. The present Petition, under Section 14, read with Section 14A, of the Telecom Regulatory Authority of India Act, 1997, (hereinafter referred to as "TRAI Act"), has been filed, by Kal Cables Pvt. Ltd.-petitioner, against Mr. R. Murthy, Proprietor, M/s. Anand Network, for a decree in the tune of 13,45,586/- towards head of

compensation, on account of premature delinking of the signals of petitioner network with the respondent, within the period of 7 years from the date of interconnection agreement, dated 21.11.2014, along with interest, @ 18% per annum, with effect from 24/01/2017, with further prayer of a direction to respondent to return the 327 SD and 10 HD Set Top Boxes(STBs), in total 337 STBs, along with their viewing cards, Remote controls and AV cords, in good condition to the petitioner, or in case of failure, to make payment for them in the tune of Rs.5,20,500/- against the cost of set top boxes, with their accessories, along with interest, @ 18% per annum, with effect from 24/01/2017.

2. In brief, the petition contends that the petitioner is a Multi System Operator(MSO), having its office at No.229, Kutchery Road, Mylapore, Chennai-600004. It is a company incorporated under the provisions of "The Companies Act,1956" and is a Multi System Operator (MSO), as per definitions, envisaged in Regulation 2(s) of The Telecommunication (Broadcasting and Cable Services) Interconnection (Digital Addressable cable Television systems) Regulations, 2012. Shri J. Rajesh is the General Manager of the petitioner company, who is duly

authorized to file the present petition, on behalf of the petitioner company, vide its Board Resolution, dated 31/03/2015, which is **Annexure P-2 to the petition.** The respondent, Mr. R. Murthy, is the sole Proprietor firm, in the name and style of M/s. Anand Network, No.7/21 A, Munnniaappa Nagar, 1st Street, Chhinnmaya Nagar Ext. II, Chennai-600092, which is in a cable operator business, within the meaning and definition, provided under regulation 2(k) of the said Interconnection Regulations of 2012, and distributing its signals to the end consumers, within the parts of Chennai, particularly detailed seven names, written in sub- para (b) of para 4 of the petition.

3. The petitioner, MSO, is engaged in the business of distribution of television channels in digital mode. The petitioner and respondent entered into an Interconnection agreement, dated 21/11/2014, with two options, (1) revenue sharing in accordance with the proportion stipulated by the Tariff Order of the Authority (TRAI), or (2) special revenue sharing arrangement, on mutually agreed basis, on an assurance of a minimum lock-in period of 7 years, and this Respondent adopted the second option. An addendum, was entered, in between, the parties on

24.02.2016, in which the Respondent has agreed to pay a sum of Rs. 21,595/- per month, as a fixed subscription amount for set top boxes up to 269 numbers. As per this Interconnection agreement, the petitioner is the absolute owner and right holder for the set top boxes and viewing cards and other accessories because as per this arrangement, the set top boxes and viewing cards shall remain, as an exclusive property of the petitioner at all times, and in case of termination of the arrangement/agreement, in between the parties, the petitioner shall be entitled to recover the set top boxes, viewing cards, remote controls or to claim damages for the same . Besides this, the petitioner was also entitled to recover charges/damages for pre mature delinking or termination of agreement by the respondent, before the expiry of 7 years terms, as per clause 13.6 and 13.7 of the interconnect agreement, executed, in between the parties.

4. The respondent was using, 327 number of Standard Definition (SD) set top boxes and 10 number of High Definition (HD) set top boxes, i.e. in total 337 number of STBs, absolutely on free to use and "use and return basis". As per this interconnection

agreement, the petitioner continuously and without any interruption, has provided the signals to the respondent on the payment of agreed subscription charges on the agreed terms, till September 2016. In the month of September 2016, the respondent without any intimation to the petitioner switched over to some other MSO, without clearing the outstanding subscription charges. Rather, it refused to return the set top boxes to the petitioner. Whereas not only STBs but also its accessories are to be returned. Rather, as per clause 13.7 of the interconnect agreement, the petitioner is entitled to recover the charges/compensations for premature delinking of the services of respondent before the expiry of 7 years term. Respondent migrated to other MSO, without giving notice to that effect to the petitioner, or making clearance of dues in the month of September 2016, for which a legal notice dated 24/01/2017, was given with a direction to return all the set top boxes (327 SD set top boxes and 10 HD set top boxes), total 337 STBs, alongwith accessories, or alternatively to make payment in the tune of Rs.5,20,500/- in lieu thereof, with a further request to make payment of Rs.13,45,586/- towards charges/compensations for

premature delinking of the signals of petitioner MSO, within the period of 7 years from the date of delinking, till the end of the term of interconnect agreement, as per clause 13.7 of the interconnect agreement. A copy of this legal notice dated 24/01/2017 is **Annexure P-3 colly to the petition.**

5. This notice, was replied by Respondent on 23.02.2017, wherein contention was denied, with a claim that Set Top Boxes, issued by Petitioner to Respondent, were on outright purchase basis, and it was as per description given in the notice. This reply is in **Annexure P-4 (Colly) to petition**. The cause of action had arisen within the jurisdiction of this Tribunal. Hence, this petition with above prayer got filed. Reply was with this contention that there was no outstanding towards subscription amount, in favour of Petitioner, nor it was claimed in present petition. Relationship between the parties was on the basis of oral understanding, for the past many years, as is the practice in the DAS areas of Chennai, all cable operators including, respondent herein, takes signals from all the MSOs operating in the area, hence, contention to move to other competitive MSO is misconceived. Rather, petitioner had disconnected the signal to the network of

Respondent, because respondent started demanding the copy of agreement, which had been signed by the parties in year 2015, with a detailed statement of account of the payments, made by Respondent to Petitioner, towards invoices, which have till date, not been received by Respondent. Petitioner, either on the basis of oral understanding, or the written agreement, did not supply the copy of it to the Respondent. A continuous threat by Petitioner to Respondent with regard to disconnection of Set Top Boxes, in case of non-stopping of taking signals from other MSO, operating in the area, i.e, confining exclusively to the signals of Petitioner only, and in case of failure, to face discontinuation, was being extended. The alleged claim for lock-in period of seven years in interconnect agreement, dated 21.11.2014, was against the mandate of competent authority, by virtue of Telecommunication (Broadcasting and Cable Services) Interconnection (Digital Addressable Cable Television Systems) (Seventh Amendment) Regulations, 2016 (3 of 2016), dated 15.03.2016, which came in operation, with effect from 15.03.2016, whereby it was made mandatory for all the MSOs and LCOs to enter into fresh agreement, on the basis of Model

Interconnect Agreement (MIA) or Standard Interconnect Agreement (SIA) and the MSO was to bring the exiting agreement in line with the MIA or the SIA, under Clause 13 (B), or in the alternative, provide an option to the LCOs, such as the Respondent herein, in writing to amend the existing agreement in light of same, under Clause 13 A. But no such information/option, as contemplated in the interconnect Regulations, in writing, has been received by the Respondent, till date.

6. From the very perusal of interconnect agreement, though a copy of which were never given to Respondent, it is apparent that it is contrary to Interconnect Regulations, said as above. The mandatory MIA or SIA provides the time to be of one year for each agreement, as against alleged seven years lock-in period. Thus, the claim for cost or compensation or damages with regard to lock-in period of seven years is not maintainable. Though no basis for claiming an amount of Rs 13,45,586/-, towards alleged compensation charges, for pre-matured linking of signals, was given in the pleading. But there is a provision of 21 days' prior notice for discontinuation of signals for either side. More so, no

actual loss of damage, suffered by Petitioner, with regard to this pre-matured de-linking, was pleaded or proved by Petitioner, which is in contrary to proposition of law, given under Indian Contract Act, 1872. Most of the STBs were purchased outright by the Respondent, much prior to the signing of the agreement, relied upon by the Petitioner, and the remaining, were purchased thereafter. Respondent paid an amount of Rs 600 to 900 per STB, towards outright purchase of the same. There is no report of the activation of the STBs, which may clearly prove, when the same were purchased by the Respondent? If the contention of the Petitioner is being taken, STBs which were said to be issued more than three years back, became property of subscribers / LCOs, who made payment of it, after three years, in view of schedule provided by TRAI in its Telecommunication (Broadcasting and Cable) Services(Fifth) (Digital Addressable Cable Television System) Tariff Order, dated 27.05.2013. Hence, the petition is to be dismissed.

7. Replication cum Rejoinder, denying the contention of reply, and reiterating petition, has been filed with the same prayer of petition.

8. On the basis of pleadings, following issues were framed by Court of Registrar on 08.03.2018 :

(1) Whether the petitioner is entitled for relief as claimed in the petitions?

(2) Whether the Agreement between the parties is a valid one?

(3) Whether the Agreement is in violation of the Interconnect Regulations? If so, to what effect?

(4) Whether the petitioner is entitled to receive from the respondents amounts and/or STBs as set out in the petition?

(5) Whether the petitioner is entitled to receive from the respondents any amounts as compensation charges as set out in the petitions?

(6) Whether the Petitioner is entitled to any interest on the amounts so claimed or any other amount and if so, at what rate?

9. Learned Counsel for Petitioner filed affidavit of evidence PW-1 in it's evidence, and respondent has filed affidavit of Mr. R. Murthy, as it's evidence.

10. Heard learned counsel for both side and gone through the material placed on record.

11. 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.

12. 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.

13. **Issue Nos. 2 and 3**

Both of these issues have been framed on the basis of reply filed by Respondent, and in brief, the dispute is with regard to validity of interconnect agreement, owing to legislative mandate of legislation, which came in effect from 15.03.2016 i.e., the Telecommunication (Broadcasting and Cable Services) Interconnection (Digital Addressable Cable Television Systems) (Seventh Amendment) Regulations, 2016 (3 of 2016) dated 15.03.2016, wherein, a mandate was for all MSOs and LCOs, to enter into a fresh agreement, on the basis of the Model Interconnect Agreement (MIA) or Standard Interconnect Agreement (SIA) under Clause 13 (B) or in the alternative, provide an option to the LCO, in writing, to amend the existing agreement in light of the same, under Clause 13 (A), and as per mandate of this legislation, the tenure and term of interconnect agreement, was renewable after one year each. Hence, the very contention of lock-in period of 07 years, is being challenged on this basis. The pleadings of both side, specifically admits the Interconnect Agreement, dated 21.11.2014 i.e., Annexure P-1 to Petition, entered in between parties, on 21.11.2014. The terms and conditions are elaborated in it. The Annexures are there. The only dispute in written submission, as well as in reply, by Respondent, is that

he admits signature over this agreement. Contents are not being admitted. But, as per law laid down repeatedly, that in a case of written document, if the signatures are being admitted, execution is being admitted, then the interpretation of this Agreement, will be in accordance with the words written in it, in between, the lines. Hence, this agreement, Annexure P-1 to Petition has been proved by Affidavit filed in Evidence of PW-1 and it is with a very clear and unequivocal terms and conditions written in it. Hence, this agreement is to be interpreted as is written in it. The only challenge is with regard to lock-in period of 07 years, whereas, this agreement was prior to above date of operation of legislation on 15.03.2016. It was of 21.11.2014 wherein, the terms and conditions were enclosed, signed and acted upon by the parties, entering into agreement.

14. The Black's Law Dictionary, in its 9th Edition at Page No. 78, categorically gives the meaning of 'agreement', that a mutual understanding between two or more persons, about their related rights and duties, regarding past or future performances; a manifestation of mutual essence by two or more persons. Hence, acknowledging the past performances and assuring for the future, by mutual understanding,

between two or more persons, are 'agreement'. Even in the definition of 'consideration', given under Indian Contract Act, it is very well there, that it may be a past consideration too. Hence, in present undertaking i.e., agreement Exhibit P-1, nothing illegal is there. Rather, it is a valid one agreement. By the operation of law, the period of one year has been prescribed for Interconnect Agreement as per Standard Interconnect Agreement or Model Interconnect Agreement. Hence, from the operation of this law, the next renovation of any existing agreement will be for that period of one year, and there is an option given for re-entering into an Interconnect Agreement, in between, MSO and LCO, by way of a notice in writing for executing the same. Hence, merely by giving this provision, this agreement already executed, in between, and acted upon, will not become invalid.

Hence, this agreement in question, Exhibit P-1, is a valid one and **Issue No. 2** is being decided, accordingly.

15. With regard to **Issue No. 3**, the lock-in-period of 07 years, will cease to come in effect, from the date of operation of above legislation i.e., 15.03.2016, or the renewal or readjustment of agreement, on the basis

of mutual understanding, as per MIA or SIA, by the parties entered subsequently to date of this agreement, dated 21.11.2014. Hence, for one year i.e., upto period of 21.11.2015, this agreement is a valid one. This **Issue No. 3** is being decided in favour of Petitioner.

16. **Issue No. 4:**

Specifically, it is there in the pleading that 327 SD Set Top Boxes, and 10 HD Set Top Boxes, along with its accessories, were given to Respondent/LCOs for provisioning the same to ultimate subscribers' premises. This fact is therein Schedule (B) of the agreement, wherein, the details with serial nos. of STBs had been given and it has been signed by both side, to have been received. Hence, the acknowledgment appended at page no. 27 of paper book, specifically reveals the undertaking cum acknowledgement by LCO, for receipt of the copy of the interconnect agreement, executed, in between, on 21.11.2014. Hence, nothing against it, can be said. The specific provision of ownership of these STBs and accessories with Petitioner, has been written in this agreement, dated 21.11.2014. Under Clause 7.5 (i) of this agreement, it was provided that the Petitioner is the absolute owner and right holder for the Set Top Boxes and viewing cards and the

Respondent is bailee for all these Set Top boxes and viewing cards, which would remain the exclusive property of the Petitioner at all times. Sub-Clause 7.5 (iii) provides that these Set Top Boxes are returnable property of the Petitioner and in case of any damage or loss thereof, the Respondent will compensate the Petitioner, as and when demanded by the Petitioner. There is a categorical averment in this agreement dated 21.11.2014, that all the Set Top Boxes provided by the Petitioner to Respondent along with accessories will always remain the property of Petitioner and same is returnable to Petitioner by Respondent, as and when Petitioner so demands.

17. The list of these Set Top Boxes and viewing cards are enclosed in agreement from page nos. 28 to 33 of the paper book. This fact, as said in Petition, has been proved unequivocally in Evidence of the Petitioner. This witness has been cross-examined by Respondent, but there is no variation. Rather, the same is in full support of the testimony and Examination-in-chief. As against this Evidence, the contention in the reply was that Respondent had purchased these Set Top Boxes from the Petitioner for cost and the burden to prove this, immediately shift over the Respondent. Whereas, it has been specifically admitted in Evidence

of the PW-1 that there is no documentary proof of such purchase. Hence, in all preponderance of probabilities, the case of Petitioner is much more at high pedestal, than the Respondent. Rather, Petitioner had fully proved its case with regard to ownership of these Set Top Boxes. The non-return of same is undisputed fact, and the ceasing of the relationship from September 2016, is also undisputed fact. Receipt of demand notice and reply with contention to owner of those Set Top Boxes on 23.02.2017 i.e., reply of Respondent is also undisputed fact. The demand was made on 24.01.2017. Immediately it ought to be returned, but it was kept till today by Respondent. Hence, the Petitioner was entitled to get back his property on immediate cessation of relationship in September 2016. More so, after demand made by legal notice dated 24.01.2017, but it was not returned so. Hence, the loss suffered from 24.01.2017 is to be compensated to Petitioner against Respondent. The price for purchase of these STBs was said to be not there, nor placed by Petitioner on record. Hence, for how much cost it was purchased? There is no contention in the plaint, nor any Evidence. It is a fact. Specific cost per STBs had neither been pleaded, nor proved. But admission is the best Evidence and it has been admitted by Respondent in its reply and Evidence that these STBs were

purchased for a cost ranging from Rs. 600 to Rs. 900 in year 2012. Meaning thereby, these STBs were costing @ Rs 1000/- each, on alleged execution of document agreement on 21.11.2014. Considering this admission and notional depreciation regarding the general wear and tear of STBs, till it is non-return, till date of demand i.e., 24.01.2017, the cost per STB, appeared to be Rs. 1200 per STB alongwith all accessories including Viewing Card, Remote Control and AV cord, as a proper and genuine one. Hence, on the date of non-return of these 327 SD STBs and 10 HD STBs, the property worth Rs. 1200 * 337= Rs. 4,04,400/-, was suffered by Petitioner. There may be an order to return in good and working condition of these STBs, but by lapse of these 8 years, no electronic item like STBs, viewing cards etc, will be of any use or worth and this happened, because of dishonest act of Respondent. Hence, a direction to return in good and working condition these STBs will be proved to be futile. Accordingly, the payment of this compensation accrued at the rate of Rs.1200 per STB for 337 STBs (327 SD +10 HD) till 24.01.2017, and then after the principal amount, along with 9% per annum simple interest, running till actual date of payment will be just and reasonable, equitable relief to petitioner for compensation. Accordingly, this issue is being decided in favour of Petitioner.

18. **Issue No 5**

The lock-in period of seven years and de-linking before it has been made basis for claiming compensation in tune of Rs 13,45,586/-, but as per admitted legal proposition, the Interconnection Regulations came in effect on 15.03.2016, from when the agreement as per MIA and SIA, was to be entered, in between, and the tenure may be of one year. The learned counsel for petitioner while making arguments clearly and fairly admitted this proposition, and said for one year i.e, from 24.02.2016 to 24.02.2017, that is one year tenure, this de-linking caused loss of agreed Rs. 21,595/-, minimum guarantee for above STBs, as per addendum to agreement, dated 24.02.2016. It is admitted by Petitioner that Respondent moved to another competitive MSO in September 2016. This fact is not disputed by Respondent. Rather, it was admitted that he was availing the signals from other competitive MSO, in accordance with prevailing business usages, at Chennai. Hence, till September 2016, these signals were availed, and after it, there was shift to another MSO. Hence, as the signals were not used or availed after September 2016, though loss was there, hence, for remaining period from September 2016 till February 2017 i.e., 6 months, the payment at the agreed rate of Rs 21,595/-, towards loss is to be borne by erring party. But there is neither any specific pleading, nor any proof on this

factum. Hence, a reasonable prudent guesswork is to be made, for reaching just and equitable decision, which results that 50% will be borne by Respondent and 50% by Petitioner. Hence, this equitable compensation comes to Rs. 64,785/- (Rs.21,595*6/2).

Accordingly, this issue is being decided in favour of Petitioner.

19. **Issue nos. 1 and 6**

These issues are one and common. The interest rate claimed is of 18% per annum. Whereas, this Tribunal in repeated judgments, considering the fiscal scenario and the hard period of cable workers, had awarded simple interest @ 9 % per annum, in previously decided petitions, and the same seems to be reasonable and just rate of interest over above amount. But the same is to be given from the date of notice, when cause of action had arisen till the actual date of payment, over above amount. Accordingly, these issues are being decided in favour of Petitioner.

ORDER

Petition is being allowed. Respondent is being ordered to make deposit in the Tribunal, within two months of judgment, :

(a) Rs. 4,04,400/- (1200 * 337) (Rupees Four Lakhs Four Thousand Four Hundred only) against 337 (327 SD +10 HD) STBs alongwith all accessories, including Viewing Card, Remote Control and AV cord, till 24.1.2017, with 9% S.I. p.a. till date of payment.

(b) Rs 64,785/-, (Rupees Sixty Four Thousand Seven Hundred and Eighty Five only) towards compensation, with 9% simple interest per annum, over above amount from the date of judgement till actual payment,

for making payment to the petitioner, failing which, the same will be realized by due process.

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

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(Justice Ram Krishna Gautam)
Member

30.05.2025
/NC/