

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL

NEW DELHI

Dated 19th November 2025

Broadcasting Petition No. 341 of 2017

Hathway Cable & Datacom Limited & Anr. ...Petitioner(s)

Vs.

Om Sai Cable & Anr. ...Respondent(s)

BEFORE:

HON'BLE MR. JUSTICE RAM KRISHNA GAUTAM, MEMBER

For Petitioner : Mr. Nasir Husain, Advocate

For Respondent No. 2 : Mr. Vibhav Srivastava, Ms. Aashi Arora,
Ms. Rhea Yadav, Advocates

JUDGMENT

1. This 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 Hathway Cable & Datacom Limited and Hathway Digital Private Limited, Petitioners, against Om Sai Cable & M/s CCN Den Network Pvt. Ltd., Respondents, with a prayer for a direction

against Respondents, to pay an amount of Rs. 5,61,028/- (Rupees Five Lacs Sixty One Thousand and Twenty Eight Only), and interest at the rate of 18% per annum, towards outstanding subscription charges of the Petitioners, with a direction to return of 637 STBs, or in the alternative to pay its cost, amounting to Rs. 7,96,250/- (Rupees Seven Lacs Ninety Six Thousand Two Hundred and Fifty Only), @ Rs. 1250/- per STB, to the Petitioner. A further relief was also claimed for grant of permanent injunction against Respondent No. 2, a competitive MSO, for not providing signal to Respondent No. 1, until the liability, written as above, are being cleared by Respondent No. 1, in accordance with the TRAI Regulations.

2. In brief, the Petition contends that Petitioner No. 1, namely, Hathway Cable and Datacom Limited is a public limited company, incorporated under the provisions of the Companies Act, 1956, having its Registered Office, at 'Rahejas' 4th Floor, Corner of Main Avenue & V.P. Road, Santacruz (West), Mumbai- 400 054. The Petitioner No. 1, is a cable television service provider, duly registered under the provisions of Section 3 of the Cable Television Networks (Regulation) Act, 1995 (hereinafter referred to as "Cable Television Act"). Petitioner No. 2, namely, Hathway Digital Private Limited, is a wholly owned subsidiary

company of Petitioner No. 1, Hathway Cable and Datacom Limited and a company registered under Companies Act, 1956, having its office at "805/806, "Windsor" Off C.S.T. Road, Kalina, Santacruz (E), Mumbai-400098, and is engaged in retransmitting the signals of Cable TV to its various operators on PAN India basis. Cable TV business of the Petitioner No.1 has been assigned to Petitioner No. 2 w.e.f. 01.04.2017, due to internal restructuring of the Petitioner No.1 Company, and the Petitioner No. 2 has changed its name from Hathway Digital Private Limited to Hathway Digital Limited w.e.f. 03.06.2020.

3. Respondent No.1, namely, Om Sai Cable, is a local cable operator, represented through its proprietor, namely, Mr. Sumit Aggarwal, who had been retransmitting the signals / services to the subscribers from the Petitioner, and thereby, distributing the same in the area of Bihari Colony, Shahdara and has its office situated at 2895, Gali No.1, Bihari Colony, Shahdara Delhi-110032. Respondent No.2, namely M/s CCN Den Network Private Limited, is a competitor MSO, of the Petitioner, having its office at B-13/1, Block B, Krishna Nagar, Delhi-110051.
4. On the request of the Respondent No.1, the Petitioner agreed to provide its signals / services for further retransmission to the subscribers in the area of Bhol Nath Nagar, Shahdara, Delhi and

entered into Interconnect Term Sheet/Agreement, under the terms of which the Respondent No. 1, was liable to pay the monthly subscription charges, accordingly. As per the Interconnect Term Sheet, the Petitioner had issued approximately 637 set top boxes to the Respondent No.1. Copy of the Interconnect Term sheet is marked as **Exhibit P-1** of the Paper book.

5. On the basis of the Interconnect Term Sheet the Petitioners raised invoices on the Respondent No.1, which were duly received by it, without any protest or demur. However, against the invoices raised the Respondent No.1, made part payments only, and from the very inception the Respondent No. 1, has been a regular and chronic defaulter in discharging its liabilities. Copies of some of the invoices sent to the Respondent No.1 are marked as **Exhibit P-2** of the Paper book.
6. The Petitioners maintained a Statement of Account in the usual and ordinary course of its business. Copy of the Statement of Account is marked as **Exhibit P-3** of the Paper book.
7. The Respondent No.1, had violated the terms and conditions of the Agreement and deliberately avoided to clear the outstanding dues of the Petitioner, towards outstanding subscription dues, despite regular

requests, follow-ups and reminders from the Petitioner. The Respondent No. 1, instead of making the payments, only provided false assurances to the Petitioner, despite the fact that the Petitioner always acted bonafidely in terms of the Agreement, with a hope that Respondent No.1, shall honour its contractual commitments, in terms of the Agreement with bonafide intentions.

8. It is stated that the intentions of the Respondent No.1 were malafide from the very inception and was to play fraud upon the Petitioners and the Petitioner received information from the market sources that the Respondent No.1, in utter disregard of the Regulations, had migrated to the competing MSO of the Petitioners, namely, M/s CCN Den Network Private Limited w.e.f. 15.06.2017, without clearing the outstanding subscription dues of the Petitioner, and without returning the set top boxes, which are the exclusive property of the Petitioners at all times. Respondent No.1 has deliberately violated the Interconnect Regulations, and also violated the terms of the Interconnect Term sheet, and in connivance and collusion with the Respondent No.2, had migrated from the network of the Petitioners, and had swapped all the set top boxes of the Petitioners. Respondent No.1 had failed to obey requisite notices before disconnecting the services of the Petitioners,

as mandated under the Interconnect Regulations, thereby causing huge financial losses to the business of the Petitioners and due to the illegal acts, committed on the part of the Respondents, the Petitioners were constrained to send a notice, dated 27.06.2017, to the Respondents, for the said outstanding amount. Copy of the notice, dated 27.06.2017, sent by the Petitioner, along with proof of dispatch and delivery, are marked as **Exhibit P-4 (Colly)** of the Paper book. It has been clarified further that in the notice, dated 27.06.2017, inadvertently, an amount of Rs. 5,61,028/-, as on 20.06.2017, has been mentioned towards the outstanding subscription, whereas, it was upto May 2017, and it does not include the subscription amount for the billing for the month of June 2017, and despite the notice dated 27.06.2017, the Respondents, did not show positive response in clearing the outstanding subscription dues, nor it returned the set top boxes of the Petitioners, thus, caused irreparable loss to the business of the Petitioners.

9. Hence, a cause of action, within the jurisdiction of this Tribunal, had arisen and finally, this petition with above prayer, got filed.
10. Respondent No. 1 was absent and matter was proceeded ex-parte against him. Respondent No. 2 filed its written statement, denying the contention of Petition and its liability with regard to subscription

charges, being said to be due against Respondent No. 1. No swapping of STBs by and on behalf of Respondent No. 2 was there. Rather, Respondent No. 2, being a competitive MSO, had entered in Interconnect Agreement with Respondent No. 1, and had transmitted by way of its own system. As there is no Privity of Contract, in between, Respondent No. 2 and Petitioner, hence, no claim of Petitioner, against Respondent No. 2, is tenable. More so, no such swapping could be proved by Petitioner as against Respondent No. 2.

11. Replication by Petitioner with the reiteration of Petition was there.

12. Court of Registrar, vide order dated 1st March 2018, framed following issues, for and on behalf of pleadings of petitioner and respondent No.2:

(1) Whether the petitioner is entitled to recover the amount and STBs from the Respondents, as claimed in the petition?

(2) Whether the petitioner has provided any services to Respondent No.2?

(3) Whether the petitioner has provided any STBs to Respondent No. 2?

(4) Whether the Respondent No. 1 has migrated to Respondent No. 2 in June 2017 in violation of the Interconnect Regulations?

13. Evidence by way of affidavit of Petitioner, along with a certificate under Section 65B of Indian Evidence Act, and Resolution of Board was filed, by Petitioner. The same was filed by Respondent No. 2 as affidavit of Ms. Hardeep Kaur. No evidence by Respondent No. 1 was there.
14. Written submission by Petitioner and Respondent No. 2 got filed.
15. Heard learned counsel for both side and gone through the 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 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 bonus 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 Nos. 1 and 3

Petitioner's evidence i.e. Affidavit of Mr. Hemal Jeet Tamang 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 Respondent No. 1. Issuance of 637 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. 1250/-, and total amount, as a cost of these STBs as well as VC has been calculated to be Rs. 7,96,250/-. Whereas, as per Model Interconnect Agreement (MIA) and 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% p.a. for the value of purchase. Hence, Rs.1250/- has been claimed as the value of per STBs, and with depreciated value, it will come to Rs. 1062.50/- per STB. Hence, the amount payable in case of failure to restore the STBs and VCs, will come to Rs. 6,76,813/- (Rs.1062.50*637 STBs). The written submissions filed by the petitioner and arguments advanced is of this fact too. Hence, the revised amount comes to Rs. 6,76,813/-, for which Petitioner is entitled.

Further, in view of discussion made above, the Petitioners are entitled for amount of Rs. 5,61,028/-, with *pendentelite* and future interest over it, @ simple interest 9% p.a., being very often provided by this Tribunal in Petitions, is being decided by this Tribunal in this petition too.

Hence, these issues are being decided, accordingly.

19. **Issue No. 2**

Respondent No. 2 is a competitive MSO, written in Petition itself and transmission of signals to LCO, through Respondent No. 1 is being stated to be by competitive MSO, Respondent No. 2. The same is there in evidence filed by Respondent No. 2, in its affidavit, which is uncontroverted. Hence, admittedly, 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, be not 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. Accordingly, this issue is being decided in favour of respondent no. 2.

20. **Issue No. 4**

Proof of fact made by testimony of Petitioner, ought to be rebutted by Respondent No. 1. But owing to its failure to appear and contest, the same burden could not be exhausted by Respondent No. 1. However, Petitioner, in its evidence, by way of uncontroverted affidavit, had proved this fact. But illegally swapping had been rebutted by evidence, by Respondent No. 2. Hence, the very burden of proof of swapping with Respondent No. 2 could not be proved by Petitioner. Hence, this issue is being decided in negative.

21. On the basis of discussion made above, the Petition is liable to be allowed against Respondent No. 1. No relief against Respondent no. 2 is to be awarded.

ORDER

The petition is allowed. Respondent No. 1 – Om Sai Cable, is being directed to make deposit of Rs. 5,61,028/- (Rupees Five Lacs Sixty One Thousand and Twenty Eight Only) towards outstanding subscription amount, alongwith *pendentelite* and future interest over it @ simple interest of 9% p.a., till date of actual payment, in the Tribunal, for

making payment to petitioner, within two months of date of judgment, with a further direction for restore/return of 637 STBs alongwith VCs, in good working condition, to petitioner by respondent no. 1, within two months of judgment and in case of failure, to make the payment, a compensation in the tune of Rs. 6,76,813/- (Rs.1062.50*637 STBs) for 637 STBs and VCs @ Rs. 1062.50/-, depreciated value per STB, alongwith *pendentelite* and future, simple interest @ 9% p.a., till date of actual payment, in the Tribunal for making payment to the petitioner.

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

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(Justice Ram Krishna Gautam)
Member

19.11.2025
/NC/

