

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL

NEW DELHI

Dated 11th September 2025

Broadcasting Petition No. 122 of 2018

Technobile Systems Pvt. Ltd.

... Petitioner

Vs.

M/s Avadh Manoranjan Cable TV Network & Anr

... Respondents

BEFORE:

HON'BLE MR. JUSTICE RAM KRISHNA GAUTAM, MEMBER

Appellant

:

Mr Sharath Sampath & Ms Kavya Singh,
Advocates

Respondent

:

Mr Pankaj Bhagat & Mr Devesh Khandelwal,
Advocates for R-1

JUDGMENT

1. It is a Petition U/s 14 read with Section 14A of TRAI Act, 1997 by Technobile Systems Pvt. Ltd. against M/s Avadh Manoranjan Cable TV Network and Another, with a prayer for a restraint order against Respondent No.1, with regard to non-moving to competitive MSO Respondent No.2, without compliance of the provisions of Interconnect Regulations, 2012 i.e., making payment of subscription

dues, due against it, with a further relief of a direction to pay to Petitioner, for a sum of Rs. 4,60,766/- (Rupees Four Lakhs Sixty Thousand Seven Hundred and Sixty-Six Only), due as subscription charges, as on 01.04.2018, with an interest, @18% per annum, with a further prayer for grant of pendente lite and future interest, @18% per annum, till date of actual payment of same.

2. In brief, the contention of Petition is that, Petitioner is a Multi System Operator (MSO), a company registered under the Indian Companies Act, 1956, engaged in the business of distributing signals of various broadcasters to the cable operators and its consumers in various parts of Uttar Pradesh, including DAS area of Lucknow. Mr Mayank Jain is an authorized representative, authorized vide Resolution of Board of Directors of Companies, (Annexure - P1, to Petition), to file this Petition, for and on behalf Petitioner Company.
3. Respondent No.1 M/s Avadh Manoranjan Cable TV Network is a Local Cable Operator (LCO), affiliated to the network of Petitioner, in the area of Lucknow, and it is a sole proprietorship concern of Mrs Usha Arora. The other concerned sister concern is M/s Manoranjan Cable TV Network, was being run by husband of Mrs Usha Arora.

Respondent No.2 is a competitive MSO, operating PAN India, and is a company registered under Companies Act.

4. Petitioner entered into an Interconnect Agreement dated 24.11.2016, with Respondent No.1, for retransmitting the pay and Free-to-Air (FTA) channels, to ultimate consumers. This agreement is Annexure - P2 to Petition, and was valid up till 30.11.2017.
5. 14,573 Set Top Boxes (STBs) were provided to M/s Manoranjan Cable TV Network, for its deployment to various ultimate users at their premises. The outstanding subscription dues remained due for payment in the tune of Rs. 4,60,766/- (Rupees Four Lakhs Sixty Thousand Seven Hundred and Sixty Six Only) till 01.04.2018, by Respondent No.1 to Petitioner. Invoices were timely sent and received by Respondent, but were not honoured. Those are Annexure – P3 (Colly) to Petition. The above dues of outstanding subscription charges was apparent from the Statement of Account (SOA) maintained by Petitioner qua Respondent, and filed as Annexure – P4 to Petition. Repeated request, even by issuing notice, was made for making payment and not shifting to other MSO but was of no avail. Hence, a cause of action had arisen within territorial jurisdiction of this Tribunal. Hence, this Petition, with above prayer.

6. This was replied by Respondent No.1, with contention of lapse of Interconnect Agreement, by efflux of time, on 30.11.2017. Hence, no liability, if any, beyond that period, because of being no Interconnect Agreement, in between, may be claimed. Invoices were never unpaid, and were not raised to Respondent, which could be said to be outstanding. To the best of knowledge and belief, all outstanding dues were cleared by Respondent No.1, till 30.11.2017. Even then, a reply was there for reconciliation of Statement of Account till 30.11.2017, so that the financial liabilities of the parties can be ascertained till 30.11.2017. The STBs, if any, said to be supplied by Petitioner, were not supplied to Respondent No.1. Rather, were supplied to subscribers directly, and Respondent No.1 was with no role, with STBs. No cause of action had ever arisen. Hence, this Petition be got dismissed.
7. Reply by Respondent No.2 was with the same contention, that there is no Privity of Contract, in between, Respondent No.2 and Petitioner. No cause of action had arisen against Respondent No.2, and no relief may be granted against Respondent No.2.
8. The Court of Registrar, vide order dated 02.08.2019, had framed following issues:

- (i) Whether the Respondent No.1 has illegally attempted to migrate or has in fact migrated from the network of the Petitioner to the network of Respondent No.2 without clearing the outstanding subscription fee and without returning the STBs supplied by the Petitioner, in violation of the TRAI Interconnect Regulations 2012?
- (ii) Whether the Petitioner is entitled to recover the amounts, as has been finally claimed in Para 13 of the Rejoinder towards subscription fee, from the Respondents jointly and severally?
- (iii) Whether the Petitioner is also entitled to interest? If so, at what rate?
- (iv) To what relief, if any, the Petitioner is entitled?

9. Evidence, by way of affidavit of Mr Mayank Jain, got filed by Petitioner on record. Evidence by Respondent is not there.

10. Heard Learned Counsels for both side and gone through material placed on record.

11. 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.

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 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.

13. Issue Nos. 1 & 2

The Petition clearly contends that Interconnect Agreement was entered with Respondent No. 1, i.e., M/s Avadh Manoranjan Cable TV Network, which is a sole proprietor concern of Mrs Usha Arora. Whereas, the STBs were said to have been delivered for installation to M/s Manoranjan Cable TV Network i.e., not a party to that contract, from which rights and liabilities, are said to have been accrued, and with whom there was no Privity of Contract. Hence, issuing of STBs and alleged migration of same with Respondent No.2, by Respondent

No.1, may never be in existence. Because, the STBs were never delivered to Respondent No.1 and this has been specifically said in reply filed by Respondent No.1, that it was of no role with the STBs, alleged to be supplied for deployment to ultimate subscriber's premises. Hence, this very contention, regarding migration of STBs, could not be proved by Petitioner. Hence, the Issue No.1 which is with regard to illegal migration was to be proved by Petitioner, but could not be proved. Accordingly, Issue No.1 is decided negatively.

14. This Tribunal itself while disposing of other BP No. 119/2018 has specifically laid down that after the end of Interconnect Agreement, by efflux of time, there was no Interconnect Agreement, in between, after 30.11.2017. Hence, any subscription dues, for that period, beyond 30.11.2017, may never be awarded because of settled proposition of law. And this legal proposition is being fairly admitted by Learned Counsel for Petitioner at this juncture with a categorical mention of claim only of Rs.3,79,689/- (Rupees Three Lakhs Seventy-Nine Thousand Six Hundred Eighty-Nine Only), towards subscription dues, due upto 30.11.2017 only.

15. For proving the outstanding dues in above period, the invoices raised, served, not paid, and apparent in Statement of Account, being

maintained by Petitioner, in its ordinary course of business, filed on record, as per provisions of evidence act, ought to be proved by Petitioner. Because of the fact, that it was apparently denied by Respondent. Hence, the very onus, to prove this fact was upon Petitioner to prove its case. But, the evidence, filed by annexing with Petition, and depicting in Statement of Account, is of this fact, that the invoices were raised to another entity M/s Manoranjan Cable TV Network but not to present Respondent No.1 i.e., M/s Avadh Manoranjan Cable TV Network.

16. The ledger/ Statement of Accounts, annexed with Petition as well as filed by affidavit in evidence, is also of the same fact, that it was issued and said to be due against M/s Manoranjan Cable TV Network i.e, not against present Respondent No.1.

17. A specific query to Learned Counsel, arguing for Petitioner Shri Sharath Sampath was made as to whether there is any evidence showing mention of invoices to Respondent No.1 and Statement of Account specifying dues against Respondent No.1? It has been fairly admitted that 'No'.

18. Hence, the very onus of proving the fact, could not be fulfilled by Counsel for Petitioner. Accordingly, the preponderance of

probabilities is not in favour of Petitioner, resulting disposal of Issue No.2 against the Petitioner.

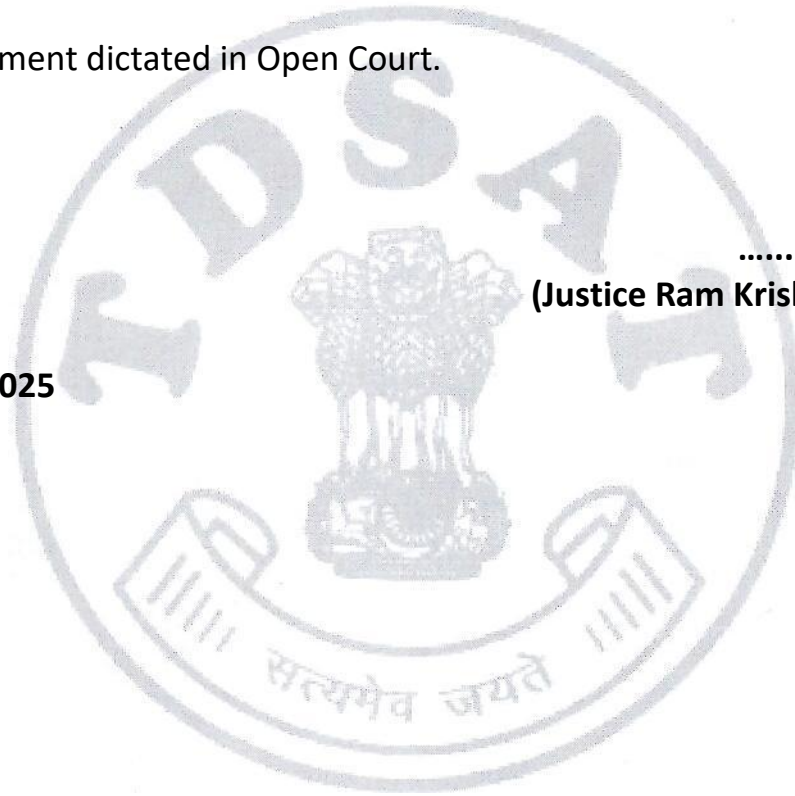
19. On the result of above discussions, this Petition merits dismissal.

Considering the facts and circumstances, there is no need for any order with regard to cost.

20. Accordingly, this Petition is being dismissed.

21. Judgment dictated in Open Court.

11.09.2025
/BN/



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(Justice Ram Krishna Gautam)
Member