TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL

NEW DELHI

Dated 20th August 2026

Broadcasting Petition No. 297 of 2019

Hathway Digital Private Limited …Petitioner

Vs.

Jagat Gouri Cable Net and Anr …Respondent(s)

BEFORE:

HON'BLE MR. JUSTICE RAM KRISHNA GAUTAM, MEMBER

For Petitioner : Mr. Nasir Hussain, Advocate

For Respondent : None

JUDGMENT

1. This Petition, under Section 14(A) (1), read with Section 14 (a) (ii) of the Telecom Regulatory Authority of India Act, 1997 (hereinafter referred to as "TRAI Act") has been filed by Hathway Digital Private Limited, Petitioner, against Jagat Gouri Cable Net, through its proprietor – respondent no. 1 & M/s Saptak Digital Pvt. Ltd., Respondent no. 2, with a prayer for a decree of restraint against respondent no. 1 from swapping the STBs of the petitioner with that of respondent no. 2, without ensuring the payment of outstanding subscription dues and return of 194 STBs in good and working condition or to make payment, in lieu of the 194 STBs, in the tune of Rs. 2,92,800/- (Rupees Two Lakhs Ninety Two Thousand Eight hundred Only) @ Rs. 1600/-

per STB, with a further prayer for injunction to respondent no. 2 or any other competitor for not providing signals to respondent no. 1, until respondent no. 1 return the STBs, and to pass such orders as this Tribunal deems fit and proper in the present case.

2. In brief, the Petition contends that Petitioner, namely, Hathway Digital Private Limited, is wholly owned subsidiary of Hathway Cable and Datacom Limited and is a company registered under the provisions of the Companies Act, 1956, having its Registered Office, at 805/806, “Windsor” Off C.S.T. Road, Kalina, Santacruz (E) Mumbai-400098 and engaged in the business of retransmitting signals of cable TV to its various broadcasters on PAN India basis. The Cable TV business of Hathway Cable and Datacom Limited has been assigned to Hathway Digital Private Limited w.e.f. 01.04.2017 due to internal restructuring of the Petitioner Company.

3. The Respondent No.1, namely, Jagat Gouri Cable Net, is a local cable operator(LCO) represented through its proprietor, namely, Mr. Ashok Bera, having its office at Hetamchak, Ankri Sri Rampur, Post Office – Gholdighriu Police Station- Pursurah, District - Hooghly, 712401 West Bengal. The Respondent No. 2, namely, M/s Saptak Digital Pvt. Ltd, is a competing MSO, of the Petitioner, having its registered office, at Rahaman Building, 2nd Floor, Grand Trunk Road, Memari, East Bardhaman-713146 West Bengal.

4. On the request, made by the Respondent No.1, the Petitioner agreed to provide its signals / services, to it for further re-transmit to the subscribers, in the area of Hooghly and for it both parties entered into a Model Interconnect Agreement (MIA), annexed as Annexure P-1 to petition. In

furtherance of above interconnect agreement, petitioner issued 377 Set Top Boxes and viewing cards, to respondent no. 1, who had been providing cable TV signals to the subscribers in the area of Hooghly. This agreement was valid from 1.8.2019 to 31.8.2020.

5. Petitioner received information from the market sources that respondent no. 1, in utter disregard of the TRAI Regulations, has started illegally swapping the STBs belonging to the petitioner, with the STBs of respondent no. 2, without following due process of law, and without returning the STBs, which were exclusive property of the petitioner. Upon enquiry the above information was found to be correct one, wherein respondent no. 1 had swapped all its STBs, with respondent no. 2 without making the compliance of interconnect regulations, as well as interconnect agreement entered, in between. The requisite notice, required under clause 6.1 and 6.2 of the interconnect regulation, i.e. of three weeks prior notice, was never given by respondent no. 1. Inspite of interim order by this Tribunal, STBs were not returned. It caused huge financial loss to the petitioner. Hence, a cause of action, within the jurisdiction of this Tribunal, within the period of limitation had arisen. Hence, this petition with above prayers.

6. Reply by respondent no. 1 is with contention that this recovery petition is abuse of process of law. Petitioner has not paid any stamp duty in the agreement annexed with the petition. Hence, the same is liable to impounded and is not admissible, as an evidence, in the eyes of law. Petitioner and respondent no.1 never entered into LCO and MSO relationship. Respondent no. 1 had never executed any written agreement with the petitioner. Rather, respondent no. 1 was merely an agent of the

petitioner, who was acting in accordance with the petitioner, in return of small commissions. Petitioner instructed respondent no. 1 to connect new subscribers with the network of petitioner. Respondent no. 1 collected charges from subscribers of the petitioner and installed the STBs at the subscribers' location. This was a pre-paid model, wherein, the customer has to recharge its services, before availing the services from the petitioner. The subscriber can recharge directly online, or may come to kiosk of the petitioner, which were taken care by the respondent no.1, to get the recharge done by cash / card. The only relationship with the petitioner and respondent no. 1, was that whenever a new customer will be connected, through respondent no. 1, and whenever it recharges through kiosk, then respondent no. 1 will get certain commissions. The issue arose between the petitioner and respondent no. 1, when the petitioner made numerous kiosks in the area of respondent no. 1, resulting non -generation of the adequate amount of subscription for the petitioner, and resultantly, less commission for respondent no. 1, compelled to stop providing kiosk services to the subscribers of the petitioner and thereafter, petitioner started threatening respondent no. 1 from taking legal action against it. Respondent no. 1 cannot activate or deactivate any subscriber of the petitioner; rather, it was only the petitioner, who can disconnect/reconnect/activate/deactivate the services to its subscribers. The allegation of migration by respondent no. 1 to respondent no. 2, is not of any substance because the petitioner had the direct control over the subscribers and it further has all the contact details, including KYC of the subscribers. As per knowledge of respondent no.1, most of the subscribers are still receiving the signals of the petitioner and respondent no. 1 has no obligation to provide any services to the subscribers of the petitioner.

7. Petitioner had never handed over STBs to respondent no.1. Rather, whenever request was made, it supplied STBs from its local office to the answering respondent, for the purpose of seeding the same in the customer’s premises, and respondent no.1 only acted as a facilitator for seeding the STBs of the petitioner, therefore, no liability can be fastened upon the answering respondent no. 1. There is no relationship of MSO qua LCO, in between, petitioner and respondent no. 1, hence, no jurisdiction of this Tribunal is there. The petition was prayed to be dismissed.

8. Rejoinder cum replication by petitioner was with negation of contention of reply. Rather, respondent no. 1 had swapped 194 STBs and viewing cards of petitioner with respondent no. 2 and has not paid cost of those STBs, amounting to Rs. 2,92,800/- to the petitioner. The interconnect agreement was wilfully executed by respondent no. 1, via online portal, wherein, respondent no. 1 had agreed and consented on the terms and clauses of the agreement and had not raised any dispute regarding the same. The online agreement, in between, the parties is not required to be stamped. Rather the same one is valid legal document, binding both the parties to it. Respondent no. 1 had executed MIA with the petitioner via online through portal, after discussions made with the petitioner. All the LCOs, availing signals from the Petitioner, have been given access to Hathway Connect Portal, with unique user ID and once they are registered, the same can only be accessed by them as it can only be operated by using a password. The LCOs have been given all the rights through portal to activate, deactivate

services of the consumers, change the packaging and provide channels, as per choice of consumers, and making payments to the Petitioner online, through Portal and this system was working in view of guidelines issued by TRAI, in this regard. The terms contained in MIA, are as prescribed by the TRAI, and are uploaded on petitioner's website, wherein share of the revenue within the Petitioner and LCOs at one of the lowest rates in the Industry, was being levied by petitioner. Petitioner and respondent no. 1 - LCO had agreed and accepted the agreement on portal, then this interconnect agreement was got executed, and same has been annexed with the petition. The validity of this electronic contract is supported by certificate, under section 65B of Indian Evidence Act, 1872.

9. Under clause 9.6 of the Model Interconnect Agreement (MIA), entered in between, the LCO shall not replace the STBs of the MSO, with the STBs of any other MSO, without receiving the request from its subscribers in the territory, through application forms for returning the STBs of the existing connections, and for providing new connections through Customer Application Form. The new STB shall be activated only after entry of the details, as provided in new Customer Application Form, into the SMS of the new MSO. Respondent no.1 has swapped STBs and VCs of petitioner, with STBs of the competing MSO-respondent no. 2, in utter disregard of TRAI Regulations, and without following the due process of law, as mandated under the regulations, and without returning the STBs, which were exclusive property of the petitioner. Even in the interconnect agreement entered, in between, respondent no. 1 had acknowledged the ownership of the said STBs as of petitioner – MSO. Hence, this petition was prayed to be allowed.

10. Respondent no. 2 has filed its reply with contention that petitioner is guilty of *suppressio veri and suggestio falsi*. Respondent no. 2 owes no money to the petitioner, nor it ever received STBs from petitioner. It is not in the custody of any STBs of the petitioner, as no privity of contract in between the petitioner and respondent no. 2 – MSO. It can never be made liable for the alleged misconduct of LCO-respondent no. 1. Being a competing MSO, respondent no. 2 had approached respondent no. 1 for the purpose of requesting respondent no. 1 to also offer its services to consumers, but since it was already availing feed from other MSO, no understanding could be reached. Then respondent no. 2 did extensive door to door marketing in the various areas, including the area of respondent no. 1 and thereafter, because of the demand of the customers, respondent no. 1 started taking feed also from answering respondent no. 2. The petitioner was running its business on a pre-paid model and in the pre-paid model the customer has liberty to recharge the STB it has, as per his/her choice. Therefore, the allegation pertaining to swapping/replacement of STBs with the STBs of respondent no. 2, is completely frivolous. No swapping of STBs by respondent no. 2 was ever there. Hence, the prayer is for dismissal of this petition, qua respondent no. 2.

11. On the basis of pleadings of both side, following issues were framed by Court of Registrar of this Tribunal, vide order, dated 28th February 2024:

    (a) Whether Petitioner is entitled for recovery of STBs and viewing Cards in good working condition from Respondents or in the alternative an amount towards the cost of STBs as claimed in the Petition?

(b) Whether Respondent No.1 has migrated to Respondent No.2 ? if so, whether such migration is in compliance of Interconnect Regulations of TRAI?

12. Learned counsel for petitioner has filed its evidence on affidavit of Kalyan Patra, alongwith required certificate under section 65B of Indian Evidence Act. Respondent was given opportunity to file its evidence, but this opportunity was not availed. Rather, counsel for respondent took discharge, because of no instruction or response or communication from its client, inspite of its best efforts. Vide order dated, 9.9.2025, matter was proceeded ex-parte.

13. Written submission by Petitioner got filed.

14. Heard learned counsel for petitioner at length and gone through the material placed on record.

15. 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.

16. 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 seizes 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 9 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.

17. **Issue Nos. 1 and 2** - The Pleading is by contention of entering into agreement by respondent no. 1, and the agreement being Annexure P-1 to petition. This was vehemently denied by respondent no. 1. But no issue in this regard was framed by Court of Registrar, which ought to be framed as issue no. 1. The second objection was with regard to maintainability of this petition because of no dispute in between two service providers. The very relationship of MSO and LCO was denied in the reply of respondent no. 1. Rather, respondent no.

1 is said to be an agent of petitioner, having no concern with the business of petitioner. This too was never framed as an issue. The third contest with regard to migration. Both of respondents had denied it. But issue nos. 1 and 2, the only issues framed are regarding this fact only. The ownership of STBs were never denied by respondents in their reply. But the denial was with regard to swapping and it was said to be seeded at the premises of subscribers by petitioner itself, and no fact was there as to whether these STBs are at the given seeded place or not? Neither these facts were pleaded, nor came up in the pleading, filed by either side. The opportunity of evidence was given to both side, and examination in chief by way of affidavit, was filed by petitioner, but respondent whose counsel was present all through, never applied for cross examination of this witness, nor cross examined this witness, nor respondent's opportunity to lead evidence was availed, rather discharge was taken. And on the date of hearing, in the absence of either respondents, the proceeding was ordered to be ex-parte, wherein ex-parte written submission has been filed and it was argued so. Hence, the very contention of petition was there in the affidavit filed, in support of it as well as evidence Affidavit filed on record, by petitioner with the reiteration of same contention of petition, with no controversion, or no piece of evidence by respondents. Hence, the very contention of petition has been fully proved, by way of affidavit evidence, having reiteration of same in it. The Affidavit required under section 65B of the Indian Evidence Act, for proving the documents, which were in software form in online transactions, and were taken therefrom, by way of annexing them with this petition, was got filed. Hence, interconnect agreement-Annexure P-1, and same proved as

Exhibit PW 1/1, marked as above exhibit had proved the execution of interconnect agreement by respondent no. 1 with petitioner. The issuance of STBs in the tune of 377 by petitioner is there in the petition. But the swapping has been said to be of 194 STBs and the claim in the tune of Rs. 2,92,800/- @ Rs. 1600, towards cost per STB has been made. Though in the written submission, all those 377 STBs have been claimed, but pleading is not of this fact and unless the facts pleaded, not be proved, and may not be decreed. Hence, the pleading is with prayer of only 194 STBs, the same is to be awarded. The petitioner, by way of its affidavit evidence has proved the contention of pleading. As against it, there is no iota of evidence by respondents. Hence, the both of these issue nos. 1 and 2 are being decided in favour of Petitioner.

18. This Tribunal in many previously decided precedents, had already held that because of being of no privity of contract, in between, competing MSO with petitioner MSO, no liability of competing MSO be fastened, against liability of LCO. The same is the pleading of respondent no. 2 in this petition too. For respondent no. 2, petition merits dismissal. But, for respondent no. 1, it has been proved with all preponderance of probabilities.

19. The claim had been made @ Rs. 1600/- per STB, whereas depreciated value is to be awarded. The agreement was valid upto year 2020. This petition was got filed in 2019. More than six years have been elapsed. Hence, the depreciated value is to be adjusted by depreciating @ 15% p.a for this electronic item and ultimately, comes to Rs. 1360/- per STB. Hence, for all 194 STBs @ 1360/- per STB will cost Rs. 2,63,840/- (Rupees Two lakhs sixty three thousand eight hundred and forty only) (1360*194).

20. This petition merits to be decreed. The interest, being awarded in the present fiscal and financial scenario of cable and TV business is of simple interest @ 9% per annum, over principal amount. Hence, this interest is also to be awarded against respondent no. 1.

21. On the basis of discussion made above, this petition merits to be allowed.

ORDER

Petition is being decreed against respondent no. 1. Respondent no. 1- Jagat Gouri Cable Net is being directed to return all 194 STBs alongwith its accessories, in good and working condition, to the petitioner, within two months of judgment or to make payment, by way of deposit in Tribunal, Rs. 2,63,840/- (Rupees Two lakhs sixty three thousand eight hundred and forty only) @ depreciated value of Rs. 1360/- per STB, for 194 STBs, alongwith simple interest @ 9% p.a., from the date of this petition to actual date of payment, for making payment to petitioner and in case of failure, the same will be realised through process of execution.

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

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(Justice Ram Krishna Gautam)
Member

20.08.2026
/NC/