

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL  
NEW DELHI

Dated 23<sup>rd</sup> November, 2017

Broadcasting Petition No. 429 of 2017

Amrit Aneja, Sole Proprietor of AACL Enterprises ... Petitioner

Versus

Siti Network Ltd. ... Respondent

**BEFORE:**

**HON'BLE MR. JUSTICE SHIVA KIRTI SINGH, CHAIRPERSON**  
**HON'BLE MR. B.B. SRIVASTAVA, MEMBER**  
**HON'BLE MR. A.K. BHARGAVA, MEMBER**

For Petitioner : Ms. Nidhi Mohan Parashar, Advocate

For Respondent : Ms. Ritwik Nanda, Advocate  
Mr. Pratyush Prasanna, Advocate

**ORDER**

By S.K. Singh, Chairperson – On the very first day when the matter was listed for preliminary hearing, the respondent appeared on advance notice through learned counsel, Ms. Ritwik Nanda who raised a preliminary objection as to the maintainability of this petition. The objection was raised with due seriousness and therefore, learned counsel for the petitioner, Ms. Nidhi Mohan

Parashar was granted accommodation to come ready on the issue of maintainability raised mainly on the ground that the petitioner by himself does not meet the description and requirement of a "service provider" and the nature of the dispute does not fall within the ambit of Section 14 of the Telecom Regulatory Authority of India Act 1997 (hereinafter referred to as the Act). Both the counsel have been heard in detail on the preliminary issue noted above. This order is being passed only to decide the preliminary issue because parties have not been heard on the merits of their respective case.

2. The petitioner is the sole proprietor of a concern described as AACL Enterprises. It has claimed that it is in the business of "distributorship" of cable TV signals and the parties have a long association of nearly 22 years.

3. According to averments in the petition, the respondent is a company engaged in the business of Multi System Operator (MSO) and that both the parties are service providers under the Act.

4. In the words of the petitioner, the nature of its service and nature of dispute between the parties can be fairly gathered from averments made in paragraphs 7 to 15 which are as follows:

"7. That in terms of the arrangement between the Parties, the Respondent was liable to pay the Petitioner 50 percent of the carriage collected for the territory of Faridabad as commission with effect from 2008. The Respondent belatedly made the payment of the said carriage collection. However, there was a shortfall in the payment of the same for the years 2011-2012 and 2012-2013.

8. That for the year 2011-2012, the Respondent itself quantified the shortfall of carriage commission that was to be paid to the Petitioner at Rs.2,71,371/- (Rupees Two Lakhs Seventy Thousand Three Hundred and Seventy One). Copy of the email dated 20.06.2014 quantifying and acknowledging the said amount is annexed hereto and marked as **Annexure P-1**.

9. That the Respondent always made delayed payments to the Petitioner. Not only was there shortfall in the payment to the Petitioner towards carriage collection for the year 2011-2012 but there was also a shortfall in the payment of the Respondent to the Petitioner for the year 2012-2013. The total carriage collection share of the Petitioner was Rs.33,32,982/- (Rupees Thirty Three Lakhs Thirty Two Thousand Nine Hundred and Eighty Two). However there was shortfall in the same since the Respondent did not pay the share of the Petitioner in the TDS received by it. The Petitioner calculated the said shortfall to be of Rs.3,70,331/- (Rupees Three Lakhs Seventy Thousand Three Hundred and Thirty One). Copy of the email dated 03.03.2015 acknowledging the carriage commission paid to the Petitioner for the year of 2012-2013 is annexed hereto and marked as **Annexure P-2**.

10. That with the onset of Phase II digitalization in Faridabad, the Respondent appointed the Petitioner as its distributor and Parties executed an agreement dated 26.05.2013 ("Agreement"). Under the Agreement, the primary responsibility of the Petitioner was to ensure and supervise uninterrupted supply/distribution of digital cable signals to the cable operators and /or subscribers within the territory of Faridabad. The obligations of the Petitioner included timely delivery of invoices/bills raised by the Respondent to the cable operators/subscribers, collection of subscription charges from cable operators/ subscribers and collection of security deposits of Set Top Box (STB). Copy of the Agreement dated 26.05.2013 is annexed hereto and marked as **Annexure P-3**.

11. That the term of the Agreement was for a period of one year, that is from 01.04.2013 to 31.03.2014. In terms of Schedule A of the said Agreement, the Respondent was liable to pay the Petitioner Rs.2/- (Rupees Two) per active STB every month if the Petitioner seeded more than 15000 (Fifteen Thousand) STBs in the first two months. In addition to this, the Respondent was also liable to pay the Petitioner commission on collection of subscription charges at the rates stipulated in the Schedule.

Furthermore, the Respondent undertook to pay the Petitioner, 25(Twenty Five) percent of carriage fee received by it for the territory of Faridabad.

12. That the terms of the said Agreement were extended by the Parties till 31.03.2015 vide letter dated 01.03.2014. Copy of the letter dated 01.03.2014 is annexed hereto and marked as **Annexure P-4**.

13. That since the payments under the Agreement were linked to the carriage and subscription that was collected for the Respondent, it was necessary that the Respondent maintained transparency with the Petitioner. This was the only method by which the Petitioner could have ensured that it was receiving the correct amount of consideration under the Agreement. With digitalization, the control of the ground shifted to the hands of the Respondent. The intentions of the Respondent upon gaining this control became dishonest and the Respondent failed to maintain any transparency in its dealings with the Petitioner. Not only this, the employees of the Respondent would conduct themselves in a high handed manner and would bear a 'take it or leave it' attitude.

14. That the Respondent derailed the payment process by denying the information required for raising of invoice in time to the Petitioner. When the information was shared belatedly, the respondent would refuse to share or show the back-up data for the same. Copy of the email dated 01.01.2015 where the Respondent shared the data for 2013-2014 is annexed hereto and marked as **Annexure P-5**.

15. That despite the Petitioner carrying out all its obligations under the agreement, the Respondent failed to release timely payments. The Respondent thus remained in material breach of its obligations under the Agreement.”

5. According to learned counsel for the respondent, if the aforesaid averments on behalf of the petitioner are read and appreciated in the context of contents of the agreement dated 26.05.2013 (**Annexure P-3**), it would be absolutely clear that the petitioner does not claim either to be a broadcaster or a multi-system operator(MSO) or a local cable operator. The petitioner at best,

claims to be an agent or employee of the respondent entrusted with the responsibilities of supervising the business of the respondent on commission basis and some incentives. It has further been submitted that the nature of dispute between the petitioner and the respondent is quite similar to a demand for dues of wages or commission payable by a master to its employee or agent. According to submission, such dispute is of a different nature, outside the ambit and scope of the Act and also Section 14 thereof. As per submission, such dispute has nothing to do with inter-se dispute between service providers relating to telecom matters. Petitioner's dispute does not require regulation or settlement or adjudication either by the Telecom Regulator Authority of India (TRAI) or this Tribunal as it has no connection with interests of service providers and consumers of the telecom sector. In nutshell, the stand of the respondent is that it is a purely civil dispute over which the civil court must have jurisdiction and not this Tribunal.

6. Learned counsel for the respondent in support of the preliminary objection has drawn our attention also to various statements and clauses in the agreement where it is clearly mentioned that the petitioner, described as a distributor, is being engaged for various services which the respondent is required to perform as a registered MSO. The obligation cast upon the petitioner is to protect the interest and promote the business of the respondent company, to distribute and to ensure installation and activation of STBs of the company to the cable operators/subscribers as per instructions of the respondent

company and to ensure timely collection of various charges from such entities. It has also been shown that the agreement is not for any partnership purpose. It has also been made clear that the word “distributor” in the agreement shall not be construed as distributor of TV channels as defined under Telecommunication (Broadcasting & Cable Services) Interconnection Regulations 2004 (Regulations of 2004). Clause 13.1 of the agreement provides that the legal relation between the parties shall be subject matter of sole jurisdiction of courts of Delhi. On the basis of such provisions, stand of the respondent is that petitioner is neither a service provider under the Act or the relevant Regulations, nor the nature of dispute raised by the petitioner falls within the ambit of the Act.

7. On the other hand, learned counsel for the petitioner has submitted that by doing various acts on behalf of the respondent, a MSO, the petitioner also gets covered by the definition of service provider, such as, a MSO.

8. No doubt definition of service provider under Section 2(1)(j) in the Act is an inclusive one which reads as under:

“service provider” means the [Government as a service provider] and includes a licensee”

But it has been expanded by Section 2(i)(n) of the Regulations of 2004 whereunder:

“service provider” means the Government as a service provider and includes a licensee as well as any broadcaster, multi-system operator, cable operator or distributor of TV channels.

9. These regulations also define broadcaster, cable operator and multi-system operator.

10. Admittedly, petitioner is not having any cable service of its own nor it has been granted registration under the Cable Television Networks (Regulation) Act, 1995 as a multi-system operator. The letter, as per definition, receives a programming service from a broadcaster and retransmits the same or transmits its own programming service. The only claim of the petitioner is based upon being a helper and distributor of respondent and on that basis it claims to be a service provider.

11. We have no difficulty in rejecting the stand of the petitioner that it is a service provider only because of being an employee or agent of the respondent. Such a claim could have received somewhat better consideration if a third entity had sued the respondent as well as the petitioner treating them to be jointly responsible as a service provider in the capacity of a MSO. But in a dispute inter-se between the petitioner and the respondent, the petitioner cannot be permitted to claim any colour or benefit which it could have claimed as an entity together with or under the respondent. In the present litigation, it must stand on its own feet and own rights. Applying this test, we find the claim of the petitioner of being a service provider absolutely unacceptable.

11. There is another aspect also. Section 14 of the Act clearly limits the jurisdiction of this Tribunal by providing that it has been set-up to adjudicate

any dispute – (i) between a licensee and a licensor; (ii) between two or more service providers; and (iii) between a service provider and a group of consumers. Additionally, the Tribunal has jurisdiction to hear and dispose of appeal against any direction, decision or order of TRAI. As shown above, the petitioner's claim of being a service provider is not acceptable. It has not claimed to be a licensor or a licensee or a group of consumers and therefore, the dispute does not qualify for adjudication by this Tribunal.

12. Both the parties have also cited some judgments and orders in support of their respective claims. The respondent has relied upon a judgment of High Court of Delhi in **Viom Network Ltd. Vs. S. Tel Pvt. Ltd. – AIR 2014 Delhi 31**, a decision of High Court of Delhi in **Gaur Distributors Vs. Hathway Cable & Datacom Ltd.** (Arbitration Petition No.129/2016) decided on 02.08.2016 and an order of this Tribunal dated 05.08.2008 in Petition No.147(C) of 2008 (**M/s Tirupati Tele Services Vs. ZEE Turner Ltd.**). On the other hand, learned counsel for the petitioner has placed reliance upon an order of this Tribunal dated 28.05.2009 in Petition No.99(C) of 2005 (**Hathway Media Vision Pvt. Ltd. Vs. M/s Spider Cables**).

13. In **Hathway Media Vision Pvt. Ltd. Vs. M/s Spider Cables** relied upon by the learned counsel for the petitioner, there was a finding that both the parties were admittedly service providers and the main issue was recovery of dues from the local cable operators by a multi-system operator. It is clear that

the facts of that case were entirely different. That judgment is of no help to the petitioner. On the other hand, the three judgments relied upon by the respondent, particularly, one in the case of **M/s Tirupati Tele Services** supports preliminary objection advanced by learned counsel for the respondent.

14. The purpose of establishing a special Tribunal like TDSAT must be judged by the objects of the Act and its contents. To regulate the concerned services and sector, the Regulator as well as the Appellate Tribunal is expected to dispose of disputes and issues expeditiously. Because of specialised knowledge, it is expected that the defined disputes concerning the services and sectors governed by the Act can be conveniently and expeditiously dealt by the Tribunal. If disputes of general nature not covered by the scope and ambit of the Act such as dispute between master and servant, are entertained, it will adversely affect efficiency. Hence, these cannot be accepted as disputes attracting jurisdiction of a special Tribunal like TDSAT. It can safely be said that other than the occupation of parties, it is the nature of the dispute which is more relevant for deciding the jurisdiction of this Tribunal. Supposing both the spouses are service providers, even then their matrimonial dispute would not qualify for adjudication by this Tribunal. Applying this test also, we come to the conclusion that the subject matter of this petition does not fall within the jurisdiction of this Tribunal.

15. The petition is accordingly dismissed on the preliminary ground of jurisdiction.

16. It is made clear that we have not examined the merits of the matter and the petitioner would be at liberty to seek its remedy against the respondent in accordance with law before any appropriate court or forum without being prejudiced by this order.

.....  
**(S.K. Singh, J)**  
**Chairperson**

.....  
**(B.B. Srivastava)**  
**Member**



.....  
**(A.K. Bhargava)**  
**Member**