

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL  
NEW DELHI

Dated 30<sup>th</sup> May, 2018

Broadcasting Petition No. 441 of 2017  
(MA No. 46 of 2018)

Hathway Digital Private Ltd. ... Petitioner  
Versus  
Dhanraj Datacom Services Pvt. Ltd. & Ors. ... Respondents

**BEFORE:**

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

For Petitioner : Mr.J.K.Mehta, Advocate  
Mr.Nasir Husain, Advocate

For Respondent No. 1 and 2 : Mr.Rohan Swarup, Advocate  
Mr.Kunal Vats, Advocate  
Ms. Nikita Khetrapal, Advocate

For Respondent No. 3 : Mr.Naman Joshi, Advocate

**ORDER**

By S.K. Singh, Chairperson – The petitioner is a Multi-System Operator (MSO). Respondent No.3 is also a rival MSO. However, a serious issue has arisen as to the capacity in which respondents No.1 and 2 have been impleaded for seeking relief against them. This issue is directly linked to the issue to maintainability of this petition under Section 14 of the Telecom Regulatory

Authority of India Act, 1997 (the Act). This issue of maintainability has been pressed on the behalf of respondents No.1 and 2 as a preliminary issue. After pleadings were complete, in the last order dated 15.05.2018 it was recorded that learned counsel for the respondents No.1 and 2 want to press the issue of the non-maintainability of this petitioner before decision on other issues. For that purpose, the matter was listed for hearing the parties on the issue of maintainability. Accordingly, parties have been heard in detail.

2. The prayer in the petition is as follows:

- a. Restrain the Respondent No.1 and 2 from swapping the STBs of the Petitioner with that of Respondent No.3 until the Respondents follow the due process of law.
- b. Direct the Respondents to pay Rs.2,67,86,578/- (Rupees Two Crore Sixty Seven Lakhs Eighty Six Thousand Five Hundred and Seventy Eight Only) towards outstanding dues with interest due thereon at the rate of 18% per annum towards subscription charges to the Petitioner and return 59544 STBs to the petitioner or in alternate pay the amount Rs.7,62,16,320/- (Rs.Seven Crore Sixty Two Lakhs Sixteen Thousand Three Hundred and Twenty Only) @ Rs.1280/- towards the cost per STB to the Petitioner.
- c. Direct the Respondent No.3 by way of a permanent injunction from providing signals to the Respondent No.1 and 2 until the Respondents pay Rs.2,67,86,578/- (Rupees Two Crore Sixty Seven Lakhs Eighty Six Thousand Five Hundred and Seventy Eight Only) and interest due thereon at the rate of 18% per annum towards subscription charges to the Petitioner and return the 59544 STBs to the petitioner or in alternate pay the amount Rs.7,62,16,320/- (Rs.Seven Crore Sixty Two Lakhs Sixteen Thousand Three Hundred and Twenty Only) @ Rs.1280/- towards the cost per STB to the Petitioner.

d. Direct the Respondents to pay an amount of Rs.2,67,86,578/- (Rupees Two Crore Sixty Seven Lakhs Eighty Six Thousand Five Hundred and Seventy Eight Only) and interest due thereon at the rate of 18% per annum towards subscription charges to the Petitioner.

e. Direct the Respondent to return 59544 STBs to the Petitioner or in alternate pay an amount Rs.7,62,16,320/- (Rs.Seven Crore Sixty Two Lakhs Sixteen Thousand Three Hundred and Twenty Only) @ Rs.1280/- towards the cost per STB to the Petitioner.

f. Pass such other or further orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

3. Learned counsel for respondents No.1 and 2 has referred to Section 14 of the Act to highlight that this Tribunal being a creature of the statute enjoys jurisdiction only as indicated in the Act. Hence, it can adjudicate a dispute of the present nature only if the parties are service providers or a service provider and a group of consumers. Since this case does not relate to consumers, it has been submitted that the main relief having been claimed against respondents No.1 and 2, the petitioner must prove that these two respondents are service providers and have been sued in that capacity.

4. It is the case of the respondents No.1 and 2 that they are not service providers within the meaning of the term as defined under Act or in the Interconnect Regulations. It has been specifically alleged and argued that the Memorandum of Understanding dated 23.09.2013 contained in **Annexure P-1** clearly reveals that the petitioner has entered into an agreement or understanding

treating these respondents only as a distributor of its signals on the basis of fixed reward or commission. The understanding or the agreement does not deal with or create any obligation to supply, distribute or re-transmit the TV channel signals of the petitioner. No terms, conditions or fees of interconnection are mentioned in the agreement and it clearly shows that it is not a Standard Interconnect Agreement or the Model Interconnect Agreement which is required to be executed between a MSO and a Local Cable Operator (LCO). The supply of Set Top Boxes through the answering respondents indicates that they were only working as agents or employees of the petitioner for a fixed rate/commission. Respondent No.1 has claimed that it is not a registered MSO nor there is any written interconnect agreement between the petitioner and this respondent. It has claimed that the dispute raised is one between a service provider with its distributor/agent and therefore, not maintainable in the light of various judgments and order annexed as **Annexure R-1(Colly)**.

5. Before coming to the judgments and orders cited on behalf of the respondents No.1 and 2, the stand of respondent No.2 also needs to be noted. It has averred that it is not a party to the Memorandum of Understanding dated 23.09.2017. For the purpose of jurisdictional issue under consideration, the stand of respondent No.2 is almost identical to that of respondent No.1 as already noted. The first judgment and order cited on behalf of respondents is dated 05.08.2008

passed in **Petition No.147(C) of 2008 (M/s Tirupati Tele Services Vs. Zee Turner Ltd.)**. On the basis of responsibility and the work assigned to the petitioner in the agreement between the parties, this Tribunal held that the petitioner was not a service provider as it was not in business of transmission or re-transmission of signals but was only collecting money on account of subscription fee from the cable operators/MSOs. Therefore, it was held that the petition was not maintainable as it related to a civil dispute which was not between two service providers.

6. The other judgment and order is dated 23.11.2017 in **Broadcasting Petition No.429 of 2017 (Amrit Aneja, Sole Proprietor of AACL Enterprises Vs. Siti Network Ltd.)**. Both of us are parties to this judgment rendered by a Bench of three. In that case also the averments of the petitioner who claimed to be a service provider were read and appreciated in the context of the agreement between the parties. The conclusion was that the petitioner was not a broadcaster or a Multi-System Operator or a Local Cable Operator. At best it could claim to be an agent or employee of the respondent of that case entrusted with the responsibilities of supervising the business of respondent on commission basis and incentives. It was further found that the petitioner's dispute did not require either the Regulations or any settlement or adjudication by the TRAI or this Tribunal. It was held that since the dispute had no connection with the interests of service providers or consumers

of the telecom sector, it was purely a civil dispute amenable to ordinary jurisdiction of the civil court and not this Tribunal. In paragraph 11 of that judgment, the claim of the petitioner of being a service provider only because of being an employee or agent of the respondent was also rejected. In paragraph 14, the Tribunal explained with illustrations that “.....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.”

7. Before adverting to the submissions advanced on behalf of petitioner on the aforesaid preliminary issue of jurisdiction as raised by respondents No.1 and 2, it is relevant to extract the relevant parts of Memorandum of Understanding dated 23.09.2013 executed between the petitioner and respondent No.1. It reads as follows:

**“WHEREAS**

- A. The Company is inter alia a Multi System Operator (MSO) and Internet Service Provider (ISP) and carries on Cable TV Business and has its network in many parts of India, including Mumbai.
- B. Dhanraj represent that it has expertise and skill for operating the Cable TV Business and has proposed to the Company that the Company can avail of the services of the Dhanraj for the smooth conduct of the operations of the Company for which the Parties are desirous of entering into this MOU.

C. Both Parties are desirous of entering into an MOU based on the following terms and conditions.

**NOW THIS MOU WITNESSETH:**

1. Hathway has provided 1,10,000 standard set top boxes to Dhanraj on such terms and conditions as mutually agreed between them.
2. Dhanraj shall supply the said 1,10,000 standard set top boxes to Nrupoor Communications and Space Communications to be deployed in their Cable TV Network.
3. It is agreed that Nrupoor Communications and Space Communications shall be appointed as Distributor of the Company on non-exclusive basis for Cable TV for the Territory of Pimpri Chinchwad in Pune with effect from the 1<sup>st</sup> June 2013 for an initial period of 5(five) years.
4. Dhanraj represents that Nrupoor Communications Network consists of a subscriber base of minimum 33 Cable TV operators with a combined active regularly paying subscriber base of minimum 30,000 (thirty thousand) subscribers (i.e. 8,000 primary/direct points of Distributor and 22,000 secondary/indirect points of Distributor).
5. Dhanraj represents that Space Communications network consists of a subscriber base of minimum 60 Cable TV operators with a combined active regularly paying subscriber base of minimum 77,000 (seventy seven thousand) subscribers (i.e. 12,000 primary/direct points of Distributor and 65,000 secondary/indirect points of Distributor).
6. It is agreed that the Company shall charge a sum of Rs.90/- per standard set top box per month (inclusive of taxes) as input/feed charges for each activated and deployed set top box till 31<sup>st</sup> December, 2013 in Nrupoor Communications and Space Communication's network. Thereafter, it is agreed that Hathway shall charge Rs.100/- per standard set top box per month plus taxes as applicable till 31<sup>st</sup> March 2014. After 31<sup>st</sup> March 2014, the input charges shall be based on packages subscribed by the subscribers in Nrupoor Communications and Space Communications network.

7. In consideration of Nrupoor Communications and Space Communications collecting and paying the input feed charges, the Company shall pay a commission of 12% on the Cable TV subscriptions/collections received by the Company from the number of set top boxes deployed in their network after deduction of taxes.
  8. The Company agreed to pay Dhanraj a commission towards carriage and placement income of Rs.10/- per month per set top box basis the number of set top boxes deployed by Nrupoor Communications and Space Communications in their respective Cable TV networks. The payment of such commission shall be subject to deduction of taxes.
  9. This MOU is valid and legally binding and is enforceable in accordance with its terms as set out therein till a long form agreement is drawn between Nrupoor Communications, Space Communications, Dhanraj and the Company.
  10. Notwithstanding anything contained herein, Hathway shall, without prejudice to any other right or remedy, have the right to terminate this MOU at its sole discretion after giving 30 days prior written notice to Dhanraj. In the event of such termination, neither Party shall have any rights, obligations or claims against the other, except those provisions which by their nature survive termination of this MOU.
  11. Any dispute, controversy or claim arising out of or in relation to this MOU, or any related Agreement between the Parties or the construction, breach, enforcement or termination or invalidity of this MOU or any related agreement, shall be settled by arbitration by a panel of 3 arbitrators in accordance with the Arbitration and Conciliation Act, 1996. The Arbitration shall be held in Mumbai in English Language.”
8. Learned counsel for the petitioner has referred to the various sub-paragraphs of paragraph 4 which contain descriptions of respondents No.1, 2 and 3. Before advertng to facts beyond the Memorandum of Understanding on which petitioner

has also placed reliance as **Annexure P-1**, it is worthwhile to note that petitioner has not claimed any other agreement with respondents No.1 and 2. However, a submission has been advanced that the provisions in the MoU denote that respondents No.1 and 2 are not only collecting agents of the petitioner but are also service providers in the capacity of MSO and/or LCO. A reference has also been made to Emails sent by the petitioner to the respondents No.1 and 2 as contained in **Annexure P-6(Colly)**. It is noted that learned counsel for respondents No.1 and 2 has also referred to these Emails for the purpose of showing the duties which these respondents were required to perform for the petitioner. A number of Emails raise a grievance that there was fall in the number of STBs renewed under distribution of these respondents and hence the petitioner needed their help to get the STBs renewed. According to respondents, the duty was clearly not that of a service provider but only of a distributor/agent of the petitioner. On the other hand, learned counsel for the petitioner has referred to some of these Emails to point out that at places name of the respondent No.1 appears as a LCO under respondent No.2. Similar documents were shown by the learned counsel for the petitioner from Emails containing charts and reports, filed with the reply of respondent No.2.

9. Learned counsel for the petitioner has placed reliance upon paragraphs 7 to 9 in the judgment and order dated 28.05.2009 passed in **Petition No.99(C) of 2005 (Hathway Media Vision Pvt. Ltd. Vs. M/s Spider Cables)**. That judgment does

refer to some issues relating to jurisdiction of the Tribunal but ultimately no firm view was expressed because in paragraph 9 it was found that the respondent had taken no objection about the jurisdiction of the Tribunal and as noted, it had filed a counter-claim which amounted to submitting to the jurisdiction and therefore, the point needed no decision. That judgment is, therefore, not an authority relating to the jurisdictional issue under consideration.

10. Learned counsel for the petitioner has also placed reliance upon paragraph 13 of the Supreme Judgment reported in **Ramesh B. Desai & Ors. Vs. Bipin Vadilal Mehta & Ors. – (2006) 5 SCC 638**. In paragraph 13, the Apex Court has approved the decision in the case of **Major S.S. Khanna Vs. Brig. F.J. Dillon – AIR 1964 SC 497**. The paragraph extracted and relied upon does not support the case of the petitioner that issue of jurisdiction should not be decided as a preliminary issue. If such issue is only of law on the basis of undisputed facts, court has the jurisdiction under Order XIV Rule 2 of the CPC to try such an issue of law, all by itself. Further, the jurisdiction to try issues of law relating to jurisdictional issue does require early determination because the whole suit may be disposed of on that basis alone. It is further noted that TRAI Act expressly provides that CPC is not to apply to proceedings before this Tribunal.

11. In the facts of the case, we find that the Memorandum of Understanding clearly show the relationship between the petitioner and respondent No.1 as well as

respondent No.2 as that of Principal or Master on the one side and Distributor/Agent on the other. This agreement which is the basis of petitioner's claim against respondents No.1 and 2 may impose some liability on respondents No.1 and 2 which may require determination on the basis of facts proved through evidence, but those responsibilities or liabilities are clearly not of a service provider i.e. either an MSO or a cable operator.

**12.** Even if it is presumed and accepted that these respondents also have the business of LCO, there is no denial of the fact that they have no interconnect agreement with the petitioner nor this petition is based upon any such claim. Thus reading the entire petition as well as the Memorandum of Understanding/Agreement, it is beyond any doubt that respondents No.1 and 2, the principal respondent have been sued not as a service provider and therefore, the petition against them is found to be beyond the jurisdiction of this Tribunal and therefore, not maintainable.

**13.** The petition against respondent No.3 is based upon claims against respondents No.1 and 2 only because no direct relief has been claimed against respondent No.3. In such circumstances when the petition must fail on the ground of jurisdiction of this Tribunal vis-à-vis respondents No.1 and 2, it cannot survive against respondent No.3.

14. In view of the aforesaid findings, the preliminary issue is decided in favour of respondents No.1 and 2 and against the petitioner. The petition is accordingly dismissed as not maintainable before this Tribunal for want of jurisdiction. It goes without saying that if so advised, petitioner may present its claim before appropriate court in accordance with law for being decided as a pure civil claim which does not attract jurisdiction of this Tribunal.

15. In the facts and circumstances of the case, there shall be no order as to costs.

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(S.K. Singh, J)  
Chairperson

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(A.K. Bhargava)  
Member