

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL
NEW DELHI

Dated 1st August, 2019

Broadcasting Petition No. 637 of 2012

Den Satellite Network Pvt. LtdPetitioner
Versus
Diamond Cable Network & AnrRespondents

Broadcasting Petition No. 638 of 2012

Den Satellite Network Pvt. LtdPetitioner
Versus
Vandana Cable NetworkRespondent

Broadcasting Petition No. 639 of 2012

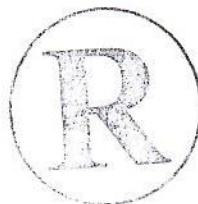
Den Satellite Network Pvt. LtdPetitioner
Versus
Om Sai Cable NetworkRespondent

Broadcasting Petition No. 640 of 2012
(with M.A. No. 266 of 2018)

Den Satellite Network Pvt. LtdPetitioner
Versus
Jamir Cable Vision & AnrRespondent

Broadcasting Petition No. 642 of 2012

Den Satellite Network Pvt. LtdPetitioner
Versus
Star Cable NetworkRespondent



Broadcasting Petition No. 643 of 2012

Den Satellite Network Pvt. Ltd	....Petitioner
Versus	
Friends Cable Network	....Respondent

**Broadcasting Petition No. 644 of 2012
(with M.A. No. 267 of 2018)**

Den Satellite Network Pvt. Ltd	....Petitioner
Versus	
Noble Cable	....Respondent

Broadcasting Petition No. 645 of 2012

Den Satellite Network Pvt. Ltd	....Petitioner
Versus	
Siddhi Cable Network	....Respondent

**Broadcasting Petition No. 646 of 2012
(with M.A. No. 275 of 2018)**

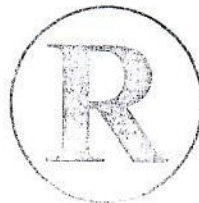
Den Satellite Network Pvt. Ltd	....Petitioner
Versus	
Anand & Rahul Cable	....Respondent

Broadcasting Petition No. 648 of 2012

Den Satellite Network Pvt. Ltd	....Petitioner
Versus	
Kings Cable	....Respondent

Broadcasting Petition No. 649 of 2012

Den Satellite Network Pvt. Ltd	....Petitioner
Versus	
National Cable	....Respondent



Broadcasting Petition No. 651 of 2012

Den Satellite Network Pvt. Ltd

....Petitioner

Versus

Om Sai Satellite

....Respondent

BEFORE:

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

For Petitioner

: Mr. Sharath Sampath, Advocate
 Mr. Manikya Khanna, Advocate
 Ms. Shivangi Dham, Advocate
 Mr. Umang Singh, Advocate

For Respondent No. 1

: Mr. Sandeep Arya, Advocate

For Respondent No. 2

: Ms. Vandana D Jaisingh, Advocate
 Ms. Kanupriya Gupta, Advocate
 Mr. Rohit Kaul, Advocate
 Mr. Narendra P. Yadav, Advocate

ORDER

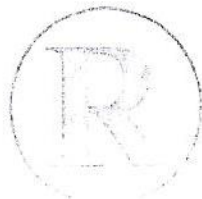
By S.K. Singh, Chairperson – In these 12 petitions, the petitioner and respondent No.2 are common. The genesis of the dispute and most of the issues are also common. Therefore, these petitions have been heard together for final disposal and shall be governed by this common judgment.

2. At the outset, it is necessary to take note of a significant fact which has significant legal effect. In 6 matters, consisting of B.Ps. Nos.637, 645, 646, 648, 649 and 651 of 2012 there was no subsisting or valid agreement between the petitioner who is a Multi-System Operator (MSO) and respondent No.1, a



Local Cable Operator (LCO) during the period relevant for subscription dues and the alleged migration to respondent No.2 on 18.08.2012. Out of these, B.P. No.651 of 2012 has been argued on behalf of respondent No.1 as the lead matter. In rest of the 6 petitions, agreements were in place and therefore, these form another group in which B.P. No.638 of 2012 has been taken as the lead matter for the purpose of convenience alone. It may be noted here that respondent No.2 is common and represented in all the matters. But respondent No.1 is represented and contesting the claim of the petitioner only in 4 matters, i.e., B.P.Nos.638, 645, 649 and 651 of 2012. As already noted, in these matters, except B.P.No.638 of 2012, there is no valid agreement to help the petitioner. The rest 8 matters have been heard *ex parte qua* respondent No.1 in view of orders passed earlier for *ex parte* hearing.

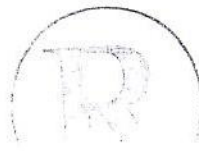
3. In respect of 6 petitions where there is no valid agreement, it is not in dispute that because of amendment in the Interconnection Regulations, 2004 as made in 2009, requirement of a written agreement was mandatory for supply of signals and in the light of subsequent judgments including that in the case of **UCN Cable Network India Pvt. Ltd. & Anr. Vs. Raj Cable Network & Ors. and connected matter** (Petition Nos.611 and 176 of 2015), decided on 10.05.2016, petitions without agreement are not maintainable in this Tribunal at least for realisation of subscription fees. In absence of the mandatory agreement, petitioner cannot even protest that there were curbs on respondent



No.1 on its migration to another MSO, respondent No.2. Hence in this group of 6 cases, the claim has to be confined and examined only for the Set-Top Boxes (STBs) and equipments and for damage to optical fibre etc. It is relevant to note that petitioner has claimed in all the petitions money on account of – (i) dues of subscription fees, (ii) value of STBs, (iii) claim for optical fibre plus equipment said to have been damaged and (iv) claim for loss of subscriber base. Where there are no subscription agreements, as indicated earlier, petitioner's claim for subscription amount and for loss of subscriber base will have no legal basis and therefore, only the other two claims will need to be considered *qua* the respondent No.1. Against respondent No.2 also only the last two heads of claims may be relevant.

4. On behalf of petitioner, we have been furnished with a chart in which in the first 6 cases only there was a subscription agreement at the relevant time and not in the rest of the 6 matters at the bottom of the chart. The chart gives facts and figures relating to the agreement as well as the amounts claimed in each petition under the four different heads indicated earlier and also the number of STBs entrusted to respondent No.1 in each petition, as per the petitioner and not returned in breach of the entrustment. For the sake of convenience the said chart is extracted hereinbelow:-

S.No	Petition No.	Agreement commencement date	Agreement termination date	Due for subs.amount	No.of STBs	Claim for STBs (Rs.1999/- each)	Claim for optical fiber + equipment	Claim for loss of subscriber base
1.	B.P.No. 638/ 2012	01.08.2009	Termination by either	Rs.78,186/-	450	Rs.8,99,550/-	Rs.9,250/-	Rs.1,22,244/-



			parties after notice clause 10.1(pg.24)					
2.	B.P.No. 639/ 2012	16.10.2000	Termination by either parties after notice clause 7(pg.24)	Rs.1,93,625/-	100	Rs.1,99,900/-	Rs.10,000/-	Rs.73,344/-
3.	B.P.No. 640/ 2012	16.06.1998	Termination by either parties after notice clause 7(pg.23)	Rs.15,793/-	100	Rs.1,99,900/-	Rs.10,000/-	Rs.55,008/-
4.	B.P.No. 642/ 2012	13.02.2006	Termination by either parties after notice clause 7(pg.23)	Rs.1,08,268/-	15	Rs.29,985/-	Rs.11,440/-	Rs.1,52,796/-
5.	B.P.No. 643/ 2012	22.09.1998	Termination by either parties after notice clause 7(pg.23)	Rs.2,62,838/-	604	Rs.12,07,396/-	Rs.10,500/-	Rs.2,81,148/-
6.	B.P.No. 644/ 2012	15.09.1998	Termination by either parties after notice clause 7(pg.24)	Rs.2,05,659/-	226	Rs.4,51,774/-	Rs.9,250/-	Rs.1,22,244/-
7.	B.P.No. 637/ 2012	01.04.2010	31.03.2012	Rs.10,934/-	200	Rs.3,99,800/-	Rs.10,750/-	Rs.1,22,244/-
8.	B.P.No. 645/ 2012	No.	N.A.	Rs.1,05,879/-	911	Rs.18,21,089/-	Rs.9,975/-	Rs.1,52,796/-
9.	B.P.No. 646/ 2012	No.	N.A.	Rs.60,961/-	80	Rs.1,59,920/-	Rs.11,500/-	Rs.1,22,244/-
10.	B.P.No. 648/ 2012	No.	N.A.	Rs.3,98,404/-	N.A.	N.A.	Rs.10,000/-	Rs.1,65,024/-
11.	B.P.No. 649/ 2012	No.	N.A.	Rs.1,39,491/-	230	Rs.4,59,770/-	Rs.13,000/-	Rs.1,52,796/-
12.	B.P.No. 651/ 2012	No.	N.A.	Rs.6,57,075/-	200	Rs.3,99,800/-	Rs.11,440/-	Rs.1,52,796/-

5. Learned counsel for the petitioner, Mr.Sharath Sampath, has submitted that the petitioner has seriously challenged the action of respondent No.1 in migrating to the network of respondent No.2 as illegal because it was done without following the requirement of Regulations which required clearing of all the dues of the petitioner and obtaining a No Dues Certificate. The other requirement, allegedly violated, was of giving 21 days' notice to the petitioner and also to the public as per clauses 4.1 and 4.3 respectively of the Interconnection Regulations 2004. It is also the case of the petitioner that respondent No.2, as a competitor MSO should not have gone in connivance



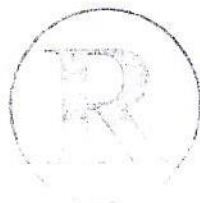
with respondent No.1 and should not have granted signals to defaulters who had failed to obtain No Dues Certificate from the petitioner, in disregard of clause 3.2 of the Interconnection Regulations 2004. Respondent No.2, according to petitioner, should not have encouraged illegality and violation of the Regulations when admittedly no notice was given either to the petitioner or to the public before respondent No.1 migrated to respondent No.2 in an illegal manner.

6. As already noted, out of the 6 petitions wherein there were subsisting subscription agreements, respondent No.1 has appeared and contested only in B.P. No.638 of 2012. It has relied upon averments in the reply wherein a half-hearted attempt has been made to submit that the petitioner company entered into the shoes of an earlier company but never gave this information to respondent No.1 and that there was no franchisee agreement between the parties. After making such a claim in Para 1 of the reply, this respondent has not denied the pleadings in Para 4 of the petition referring to the copy of the agreement between the parties (**Annexure P-3**) and has not denied the said agreement nor has brought on record anything to show that the said agreement has been terminated by respondent No.1 prior to migration. The other defence of respondent No.1 is that it was not the respondents but petitioner who illegally disconnected the signals without notice on 17.08.2012 and then the respondent No.1 and other LCOs approached respondent No.2 and obtained signals. It has



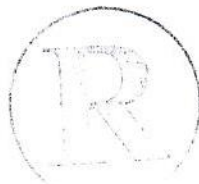
also claimed to have purchased the STBs from the petitioner @ Rs.600/- per STB and in support of its stand, two receipt dated 26.05.2012 and 14.06.2012 have been annexed. Both the receipts are of some entity – Digital Satellite Cable TV Network disclosing receipt of Rs.1,20,000/- from Sidhi Cable – Rajesh Shinde. In one of the receipts the User ID is filled with the figures “@ Rs.600/-”. In the other receipt, against the User ID the words “STBs” are mentioned. The respondent No.1 has admitted outstanding subscription fees only for 17 days in the month of August 2012 and has alleged that the petitioner has harassed the respondent No.1 by not giving 21 days prior notice of disconnection and therefore, it is not liable to claim subscription fees for 17 days.

7. The defence of respondent No.2 is that the agreement between the petitioner and respondent No.1 is doubtful because copies of agreements have been produced only in some cases. Respondent No.2 has taken the stand that only after signals were disconnected on 17.08.2012 by the petitioner, respondent No.2 came in the picture and provided signals to respondent No.1 on 18.08.2012. Respondent No.2 has relied upon “must provide” clause i.e. clause 3.2 of the Interconnection Regulations 2004. According to respondent No.2 the last invoice raised by the petitioner did not show arrears and therefore, respondent No.1 could not be a defaulter and moreso when respondent No.1 was always ready to pay for 17 days subscription fees which is the only



outstanding dues payable by respondent No.1 to the petitioner. According to respondent No.2, it has committed no illegality and is not a necessary party to the petition.

8. Before deciding as to which party acted in violation of the Interconnection Regulations 2004 in respect of disconnection of signals on 17-18.08.2012, it is necessary to consider the relevant materials and decide as to who effected disconnection, petitioner or respondent No.1/respondent No.2. The stand of the petitioner and respondent No.1 are conflicting as already noted. Learned counsel for the petitioner has rightly submitted that for deciding this issue, the safest course would be to look into contemporaneous letters and petitions written or made by the parties. On 21.08.2012, a legal notice was given to the Additional Collector of Mumbai suburb on behalf of Cable Operators Association representing respondent No.1 in these matters. That document at pages 114-119 of the brief contains an extensive narration of facts relating to the controversy at hand. In Para 1 of this complaint, a limited allegation has been made against petitioner and its men that they were threatening the local cable operators that they shall appoint dummy cable operators. But there is no direct or indirect allegation that in the night of 17-18 August, 2012 the petitioner or its men disconnected supply of signals. Para 2 begins with an admission that on 18.08.2012 the local cable operators entered into an agreement with respondent No.2 and began transmitting its signals. A



copy of the same complaint dated 21.08.2012 was also addressed to the Commissioner of Police, Greater Mumbai and it shows that when the cable operators like respondent No.1 approached the Police with a written complaint, they made no allegation that the petitioner had illegally disconnected their signals on 17.08.2012. The third document which is also annexed to the reply of respondent No.1 is a complaint on behalf of local cable operators dated 01.10.2012. The same bears a stamp of the Police Station of the same date and does not allege that petitioner or its men had disconnected their signals on 17.08.2012. Thus, the aforesaid allegation made by way of defence in Para 6 of the reply of respondent No.1 is not supported by any of the three annexures on which respondent No.1 has placed reliance in the reply. It also does not apply to the reason that respondent No.1 without any apparent good reasons will do such an act so as to loose a big chunk of its business to respondent No.2.

9. On behalf of petitioner it has been shown by learned counsel that respondent No.1 has not cross-examined petitioner's witness in 5 cases and even where cross-examination has been done, there is no suggestion that STBs were not supplied by the petitioner. There is no suggestion that STBs had been purchased by respondent No.1 nor any document was produced to support the case of purchase as suggested in the pleadings. No question or suggestion as to who disconnected the signals supplied by the petitioner in the area concerned and clearly there is no suggestion that disconnection was done by the petitioner.



It was pointed out that evidence affidavit was filed by respondent No.1 only in B.P.Nos.645, 649 and 651 of 2012 but the witness was not produced for cross-examination. Respondent No.2 submitted evidence affidavit in all petitions but did not produce any witness. On the basis of nature of evidence pointed out above, learned counsel for the petitioner has submitted that petitioner's evidence is much superior and there is no legal evidence adduced on behalf of respondents because no witness was produced for cross-examination by the petitioner. It has been submitted, therefore, that petitioner's case deserves to be accepted on the basis of quality of evidence and respondents should be held responsible for disconnection of signals of the petitioner on 17.08.2012 and also on other relevant issues including the issues relating to claim for STBs/payments in lieu thereof.

10. Respondent No.2 has tried to support respondent No.1 by taking a similar stand in Para 5 of its reply that respondent No.1 approached respondent No.2 for signals on the plea that the petitioner had disconnected the signals on 17.08.2012. During arguments, respondent No.2 has taken a clear stand that it came at the scene only on 18.08.2012 to supply signals to respondent No.1 at its request. The hearsay version of respondent No.2 cannot have any value, moreso when after analysing the documents of respondent No.1 it has already been noticed that its complaints made as late as on 01.10.2012 also do not support the defence that signals of the petitioner were disconnected by



petitioner itself on 17.08.2012. Such defence is found to be untrustworthy. The petitioner's version based upon agreement and other circumstances including its complaint to Police dated 21.08.2012 (**Annexure P-6**) appears more reliable and is accordingly accepted. It is found and held that respondent No.1, the local cable operator, had disconnected supply of signals unilaterally. Admittedly, respondent No.1 gave no notice either to the petitioner or to the public and hence, it is further held that such disconnection of supply of signals was effected by respondent No.1 in violation of the relevant Regulations of 2004 which required notice. Admittedly, the required notices were not given by respondent No.1.

11. On pleas like arrears being only of 17 days and then not payable as pleaded by respondent No.1 who is now agreeable to pay that arrears, it is not possible to hold that there was no outstanding dues payable to the petitioner on the date of illegal disconnection of signals. Even when dues were only for a part of the month, in order to migrate to another MSO, respondent No.1 was under obligation to obtain a No Dues Certificate by paying the lawful dues and respondent No.2 was under legal obligation to accept migration only after ascertaining that respondent No.1 had obtained No Dues Certificate from the MSO who was supplying signals from before under a valid agreement. The defence of respondent No.2 on this issue is also found unacceptable.



Subscription Dues:

12. So far as subscription dues are concerned in B.P. No.638 of 2012 which is the only petition wherein respondent No.1 has contested such claim of the petitioner, it is found that there is a valid and subsisting subscription agreement for the period for which such dues have been claimed, amounting to Rs.78,186/- in total. In support of this claim, petitioner has brought on record copies of ledger account and also copies of invoices. A perusal of the aforesaid documents discloses that the last invoice for Rs.10,187/- is for the whole month of August, 2012 whereas admittedly supply of signals stood disconnected on 17-18.08.2012. Ordinarily, petitioner would have been entitled to invoice the respondent No.1 only for 17 days of August 2012 but since we have found that signals were disconnected illegally and without any notice by respondent No.1, i.e. the cable operator, therefore, at least for the three weeks' notice period the petitioner could have charged the respondent No.1. In that view of the matter, it would not be just and proper to make any deduction for 14 days of August, 2012. Respondent No.1 has not raised any plausible defence against the claim for subscription dues. The accounts and the invoices have not been challenged. Hence, the claim of the petitioner against respondent No.1 in all six petitions in which there is a valid subsisting agreement is allowed in terms of the prayer made for such a claim. But as noted earlier, such a claim is disallowed in the

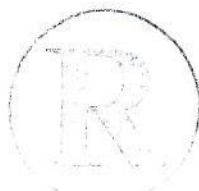


remaining six petitions where there is no agreement or the agreement had expired earlier.

Claim for STBs/Payment in lieu thereof:

13. As already noted earlier, in absence of the mandatory agreement in 6 of these cases, the claim for dues on account of subscription fees has been disallowed but the claim for STBs and equipments needs to be considered even in these cases. It has been rightly submitted on behalf of petitioner that judgment in the case of **UCN Cable Network (supra.)** is confined to claim for subscription fees and helps the respondent No.1 to the extent it holds that subscription fees cannot be realised through petitions before this Tribunal in absence of subscription agreement as required under the Regulations. However, the said judgment does not hold so with finality in respect of claim for STBs and such claims have been held maintainable even in absence of subscription agreement in a recent judgment of this Tribunal dated 07.05.2019 in **Technobile Systems Pvt. Ltd. Vs. Trimurti International Network & Anr. (Broadcasting Petition No.119 of 2018 & other connected matters)**. The later judgment in **Technobile Systems (supra.)** distinguishes the earlier judgment and has clearly held that claim for STBs can be maintained on the basis of evidence even in absence of subscription agreements.

14. In B.P. No.638 of 2012, it is the case of the petitioner that it had issued 450 STBs to respondent No.1 and the cost of STBs at the relevant time was



Rs.1,999/- per STB. In support of this stand pleaded in the petition, learned counsel for the petitioner has relied upon the evidence on this point and also on a sample Subscriber Hardware Registration Form in which for outright purchase the cost of the STB is shown as Rs.1,999/-.

15. On the other hand, while respondent No.1 has admitted the receipt of STBs from the petitioner, it has raised defence that the STBs were purchased by respondent No.1 for Rs.600/- per STB and therefore, respondent No.1 is not liable to return the STBs nor to pay anything for the same. In support of such plea, respondent No.1 has annexed with its reply two receipts as part of **Annexure P-3(colly)** at pages 110-111 of the brief. The receipts show that Digital Satellite Cable TV Network has acknowledged receipt of Rs.1,20,000/- only on 26.05.2012 from Sidhi Cable. Against the column User ID, it has been written thus: "@600/-". The other receipt dated 14.06.2012 is again from Digital Satellite showing receipt of Rs.1,20,000/- from Sidhi Cable. Against the column for User ID, the entry reads thus: "STB". These receipts do not support in any way a transaction of sale of STBs by the petitioner Den Satellite to respondent No.1, Vandana Cable. However, the petitioner in its rejoinder has brought on record Activation Service Invoice dated 23.01.2012 for activation of 50 STBs billing the respondent No.1 for an amount of Rs.37,490/- @ Rs.749.80p per STB but the payments for that also remained on credit, as recorded in the document. A declaration in the invoice shows that the STBs are



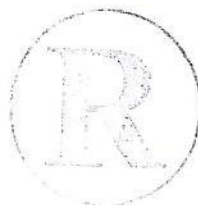
Fixed Assets and shall remain the exclusive property of the petitioner and are not being sold. The other invoice dated 28.06.2012 shows STBs Activation and Registration Charges for 400 STBs @ Rs.600/- per STB, again on credit to respondent No.1. This receipt also contains similar declaration as noted earlier. The aforesaid two receipts are at pages 153-154 of the brief as part of **Annexure R-1(colly)**.

16. The documents of the respondent No.1 do not inspire confidence and are not reliable. Further, there is no evidence that any money was actually paid to the petitioner for STBs. There is no receipt brought on record to show payment to the petitioner. Learned counsel for respondent No.1 has mainly highlighted that there are no agreements in B.P. Nos.645, 649 and 651 of 2012. On this plea, we have already held in favour of respondent No.1 that in such cases dues of subscription fee cannot be realised. It is further submitted by learned counsel for respondent No.1 in all the 4 cases including B.P. No.638 of 2012 that the petition is loosely worded because in Para 2 of B.P. No.651 of 2012 petitioner has claimed that it supplies TV signals in analogue and digital mode which is not possible. This defence has no substance because an MSO, under the earlier regime, at different points of time was engaged in supply of TV signals in some areas in analogue and in some areas in digital mode. It is also immaterial because the defence is that no signals were ever supplied to respondent No.1 and it never received any supply of signals. However, this defence in Para 5 of



the reply of respondent No.1 in B.P. No.651 of 2012 is clearly belied by the statements pleaded in Para 16(j) wherein respondent No.1, while denying allegations in Para 10 of the petition in respect of cutting of cable connections and destroying of fibre network services has replied that “since the petitioner cut down the signal of the respondent No.1 and other cable operators on 17.08.2012, immediately the respondent and other cable operators approached other company for providing signal feed. The complaints filed on behalf of LCOs and respondent No.1 have been annexed as **Annexure P-4(colly.)**”. Same conclusion emerges from statements of respondent No.1 in Para 16(k) of the reply. Hence, while the defence of there being no subscription agreement is found correct, the claim of respondent No.1 that it actually had no supply of signals nor it had taken STBs from the petitioner is found to be false and unacceptable. This inference and conclusion is supported by copy of the Ledger Account in respect of respondent No.1 for the period 01.04.2012 to 01.08.2012 maintained by the petitioner company in its ordinary course of business. This extract is **Annexure P-4** to the petition which is supported by evidence brought on record by the petitioner. Similar is the conclusion from a copy of invoice dated 01.08.2012 for an amount of Rs.12,733/- issued on respondent No.1 (**Annexure P-3**).

17. Since learned counsel for respondent No.1 has chosen to argue also on the basis of facts in B.P. No.651 of 2012 in addition to facts mentioned above, it



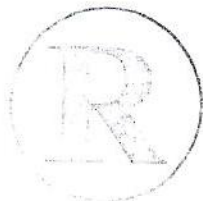
is noted that petitioner has pleaded in Para 5 that it had supplied large number of STBs to respondent No.1 and the cost of each STB was Rs.1,999/- and on this account respondent No.1 has to pay an outstanding to the tune of Rs.3,99,800/-. After the denial of respondent No.1, petitioner had brought on record an entry dated 03.08.2013 in the Ledger Account relating to respondent No.1 to show a credit against respondent No.1 for Rs.1,20,000/- for activation of 200 STBs issued vide Note dated 11.05.2012. Some more documents described as "Activation Service Invoices" and "STB Issue Notes" are of dated 11.05.2012 for 200 STBs. They have been filed in duplicate under some mistake but the total number of STBs covered by the Notes is also 200. It shows a credit transaction at the rate of Rs.600/- per STB, including taxes. Further 200 STBs are covered by the Activation Service Invoice of Rs.18,213/- in which the rate is of Rs.534/- per STB and the payment has been again shown as credit.

18. The claim of the petitioner that the cost of STB was Rs.1,999/- is not supported by any document of purchase or sale. No doubt the Subscriber Hardware Registration Form which is a sample and blank form shows the price to be Rs.1,999/- for outright purchase but this price does not relate to any particular make or model nor does it render any help as to the date or year to which this price may relate. The blank form do not help in deciding that in 2012 or 2013 the STBs supplied by the petitioner had the cost of Rs.1,999/- per

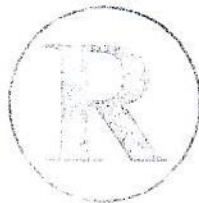


STB. On the basis of market conditions, the price of STBs has to be decided reasonably. On that basis and as appears from the facts in some other cases, the rate of STB could not have been less than Rs.1500/-. This is also supported by the contents of a Notification dated 27.05.2013 (Tariff Order No.1 of 2013) issued by TRAI. Learned counsel for the respondent No.1 has referred to Para 18 of Explanatory Memorandum to this order relating to cost of STB for prescribing the standard tariff package. The cost was found to be in the range of Rs.1635/- to Rs.1939/-. Hence, in the previous year, it can reasonably be held as Rs.1500/- per STB whereas petitioner has advanced its claim on the basis of cost of Rs.1,999/- per STB. Hence, the claim for STBs in all the 12 cases is found fit to be allowed but only at $\frac{3}{4}$ th of the rate claimed. The amounts, therefore, claimed for STBs against the respondent No.1 in all the 12 cases is reduced by $\frac{1}{4}$ th of the claim in each of the petitions. The amount shall be further rounded-off to the nearest whole amount in rupees so as to not to leave a fraction.

19. At this stage, it is noted that learned counsel for the petitioner took us through the cross-examination of petitioner's witnesses to point out that there has been no effective cross-examination either on the number of STBs claimed by the petitioner or over its stand that it never sold the STBs to the respondent No.1. During cross-examination, there is no suggestion that respondent No.1 had purchased the STBs at the rate of Rs.600/- per STB. Reliance has been

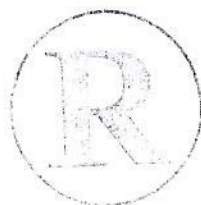


placed on a judgment of Bombay High Court in the case of **Banganga Cooperative Housing Society Ltd. Vs. Vasanti Gajanan Nerukar – 2015 SCC OnLine Bom 3411** to submit that when the parties had opted for oral cross-examination, then not producing the witness for cross-examination will deprive the concerned party from relying on any part of evidence of such witness. The submission is supported by the discussions in Paras 12 and 22 of the judgment. Learned counsel has also placed reliance upon a judgment of the Hon'ble Supreme Court in the case of **Muddasani Venkata Narasaiah Vs. Muddasani Sarojana – (2016) 12 SCC 288** wherein it has been held in Para 15 that not cross-examining the witness on a relevant issue amounts to not disputing the statement of witness on that issue. On the touchstone of these judgments, it is found that petitioner has succeeded in supporting its case that it had supplied the STBs as claimed and the STBs had not been sold to the respondents. A number of documents issued as receipts/invoices clearly state that the STBs have not been sold by the petitioner. However, as discussed above, the value of the STBs has not been successfully established to be Rs.1,999/- per STB and therefore, on the basis of available materials, it has been held above that the acceptable/reasonable value comes to Rs.1500/- per STB. The loss suffered due to non-return of STBs is, therefore, assessed on this value leading to reduction of petitioner's claim by ¼th of the amounts claimed, as discussed above.



Claim for optical fibre plus equipment:

20. Petitioner has also claimed damages for destruction/loss of optical fibre and connecting equipment. It is petitioner's case that these materials were destroyed/damaged by respondent No.1 and respondent No.2 with the aid of some anti-social elements on 17.08.2012. The claim on this head in different petitions ranges from Rs.7,975/- to Rs.13,000/-. Some bills and receipts have been annexed to show that petitioner had purchased optical fibre and equipment during the relevant time. However, merely loss caused to the petitioner cannot entitle it to claim damaged from any person including respondent No.1 and respondent No.2 unless there are cogent materials to show that the person in question has caused the alleged damage. Only on the basis of proof of purchase, the guilt cannot be fastened unless witnesses come forward to identify the guilty in support of the allegation. Such evidence is totally lacking in these cases and therefore, claim under consideration for damages to optical fibre and equipment cannot be allowed either against respondent No.1 or against respondent No.2. It is worthwhile to note that respondent No.2 is not alleged to be present or active on the date of disconnection i.e. 17.08.2012. Both the versions of the incident show that respondent No.2 provided signals to respondent No.1 in these cases only on 18.08.2012 on being approached by respondent No.1.



Damages for loss of subscriber base and area of operation:

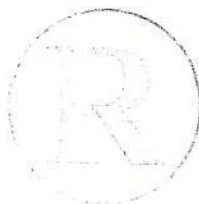
21. In each of these petitions, according to the petitioner, the respondents are jointly and severally liable to compensate the petitioner on all heads such as subscription dues, STBs, equipments etc. But on appreciation of the facts as pleaded and also the evidence, it is found that respondent No.2, the rival MSO cannot be held liable for damages or loss to the petitioner on any other account except for loss of subscriber base. This liability will also be confined only to the 6 petitions, i.e., B.P.Nos.638, 639, 640, 642, 643 and 644 of 2012 in which the respondent No.1 was having a subsisting subscription agreement with the petitioner. In the remaining 6 petitions, since there was no valid or subsisting agreements there was no liability to give notice of migration and therefore, the claim under this head will be considered only in respect of the first category of petitions consisting of 6 numbers noted above. The issue of dues and No Dues Certificate flows from the requirement of Interconnect Regulations 2012. Relevant provisions have already been noted and it has been discussed earlier that at least No Dues Certificate should have been sought by respondent No.2 before permitting respondent No.1 in these 6 matters to migrate to its network. Since respondent No.2 did not care for such a requirement flowing from the Regulations and admittedly allowed migration in violation of the Regulations, it is liable to compensate the petitioner for the loss that petitioner suffered on account of illegal migration. It is also clear from pleadings and evidence that



respondent No.1 in these 6 petitions did not give the required notice of three weeks, by force effected disconnection and migrated to respondent No.2 without complying with requirement of notice and No Dues Certificate. Hence, respondent No.1 in these petitions is also liable to compensate the petitioner for reasonable loss that the petitioner must have suffered.

21. Although petitioner has claimed Rs.1,22,244/- on this head in B.P. No.638 of 2012, it is found that the monthly invoice amount was only around Rs.10,000/-. Hence, in each of the 6 petitions the claim for loss of subscriber base is assessed at Rs.10,000/- payable by respondent No.1. So far as respondent No.2 is concerned, it has ignored the provisions of Regulations to cause large-scale loss to the petitioner because the total number of LCOs affiliated to the petitioner in the area was quite large. Hence, under this head respondent No.2 is directed to pay to the petitioner, Rs.20,000/- in each of the 6 petitions where there was subsisting subscription agreement between the petitioner and respondent No.1. For the sake of clarity, a chart showing the reliefs granted against claims pressed in all the petitions is given below:-

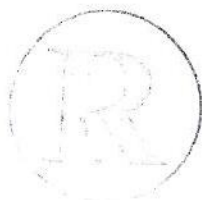
S. No	Petition No.	Dues claimed for subscription amount	Relief granted against dues for subs. amount	Dues claimed for STBs	Relief granted against claim for STBs	Dues claimed for optical fiber + equipment	Relief granted against claim for optical fiber + equipment	Dues claimed for loss of subscriber base	Relief granted against claim for loss of subs. base to be paid by R-1 and R-2 respectively
1.	B.P.No. 638/ 2012	Rs.78,186/-	Rs.78,186/-	Rs.8,99,550/-	Rs.6,74,662/-	Rs.9,250/-	Nil	Rs.1,22,244/-	R-1=Rs.10,000/- R-2=Rs.20,000/-
2.	B.P.No. 639/ 2012	Rs.1,93,625/-	Rs.1,93,625/-	Rs.1,99,900/-	Rs.1,49,925/-	Rs.10,000/-	Nil	Rs.73,344/-	R-1=Rs.10,000/- R-2=Rs.20,000/-
3.	B.P.No.	Rs.15,793/-	Rs.15,793/-	Rs.1,99,900/-	Rs.1,49,925/-	Rs.10,000/-	Nil	Rs.55,008/-	R-1=Rs.10,000/-



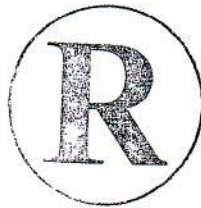
	640/ 2012								R-2=Rs.20,000/-
4.	B.P.No. 642/ 2012	Rs.1,08,268/-	Rs.1,08,268/-	Rs.29,985/-	Rs.22,489/-	Rs.11,440/-	Nil	Rs.1,52,796/-	R-1=Rs.10,000/- R-2=Rs.20,000/-
5.	B.P.No. 643/ 2012	Rs.2,62,838/-	Rs.2,62,838/-	Rs.12,07,396/-	Rs.9,05,547/-	Rs.10,500/-	Nil	Rs.2,81,148/-	R-1=Rs.10,000/- R-2=Rs.20,000/-
6.	B.P.No. 644/ 2012	Rs.2,05,659/-	Rs.2,05,659/-	Rs.4,51,774/-	Rs.3,38,830/-	Rs.9,250/-	Nil	Rs.1,22,244/-	R-1=Rs.10,000/- R-2=Rs.20,000/-
7.	B.P.No. 637/ 2012	Rs.10,934/-	Nil	Rs.3,99,800/-	Rs.2,99,850/-	Rs.10,750/-	Nil	Rs.1,22,244/-	Nil
8.	B.P.No. 645/ 2012	Rs.1,05,879/-	Nil	Rs.18,21,089/-	Rs.13,65,817/-	Rs.9,975/-	Nil	Rs.1,52,796/-	Nil
9.	B.P.No. 646/ 2012	Rs.60,961/-	Nil	Rs.1,59,920/-	Rs.1,19,940/-	Rs.11,500/-	Nil	Rs.1,22,244/-	Nil
10	B.P.No. 648/ 2012	Rs.3,98,404/-	Nil	N.A.	N.A.	Rs.10,000/-	Nil	Rs.1,65,024/-	Nil
11	B.P.No. 649/ 2012	Rs.1,39,491/-	Nil	Rs.4,59,770/-	Rs.3,44,827/-	Rs.13,000/-	Nil	Rs.1,52,796/-	Nil
12	B.P.No. 651/ 2012	Rs.6,57,075/-	Nil	Rs.3,99,800/-	Rs.2,99,850/-	Rs.11,440/-	Nil	Rs.1,52,796/-	Nil

22. Although in the petition, claim has been made of large amount for loss of goodwill but on that issue there is no cogent evidence nor such claim has been pressed during the course of hearing.

23. Petitioner has prayed to direct the respondent to pay the lawful dues and damages along with interest, *pendente lite* and future, @ 18% per annum. However, following our various judgments and orders, we allow interest only @ 9% per annum. In the fact of the case, we direct the respondent Nos.1 and 2 to pay the decretal amount by way of dues or damages under different heads as decided earlier, within two months failing which the petitioner will be entitled to realise the same through execution proceedings. The Registry is directed to prepare a decree on the basis of this judgment in each of the petitions at an early date preferably within two months. The petitions are allowed to the aforesaid



extent along with cost of Rs.10,000/- payable by respondent No.1 in each of the contested petitions only. Since respondent No.2 has appeared and contested in all petitions, it is also held liable for cost of Rs.10,000/- in each of the 12 petitions. The cost should also be paid within a period two months failing which it shall be realisable along with interest @ 9% per annum.



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(S.K. Singh, J)
Chairperson

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(A.K. Bhargava)
Member

