

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL
NEW DELHI

Dated 10th October, 2019

M.A. No. 203 of 2016
In
Broadcasting Petition No.574 of 2015

Shashank Cable Network & Ors.

... Petitioners

Vs.

Den Network Ltd.

... Respondent

BEFORE:

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

For Petitioners : Mr. Nittin Bhatia, Advocate

For Respondent (Applicant : Mr. Vibhav Srivastava, Advocate
in M.A. No. 203 of 2016)

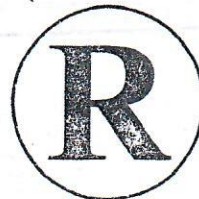
ORDER

By S.K. Singh, Chairperson – This matter has a chequered history. The main petition, i.e., B.P. No.574/2015 was filed in the name of an Association of Local Cable TV Operators (LCOs) having business in Karnataka. The petition was initially on behalf of 9 members with prayers including directions to the respondent, DEN Networks Ltd., not to disconnect the supply of signals to the members of the petitioner association and not to increase the monthly



subscription charges arbitrarily. On the first occasion, when the matter was listed on 20.10.2015, the respondent appeared and the matter was adjourned to another date with a direction to the petitioner to visit the respondent's Bangalore Office for reconciliation of accounts and for holding negotiations for entering into proper Interconnect Agreement. Similar direction was reiterated on the subsequent dates with further direction that the LCOs shall pay to the respondent the monthly subscription fees for the month of October, 2015. On 26.11.2015, the respondent stated that they shall not change the composition of the bouquet of channels being supplied to the LCOs but it will be open for the respondent to disconnect the supply of signals of *a la carte* channels unless the LCOs pay for such channel on *a la carte* basis. According to the respondent, there was an oral direction on 20.10.2015 itself not to effect disconnection and to wait till reconciliation of accounts. However, a liberty to disconnect for non-payment of *a la carte* channels was made available on 26.11.2015.

2. On 15.12.2015, the Tribunal noted a dispute in respect of alleged alteration of bouquets and that non-payment had led to disconnection. But the supply was directed to be restored on certain terms vide order dated 18.12.2015. The issue of reasonable rates was to be decided for which affidavit was filed on behalf of DEN on 22.12.2015. The respondent introduced limited number of new packages for its network all over the country and the same was duly recorded on 23.12.2015.



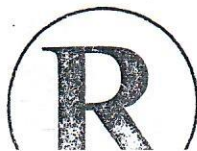
3. On 03.02.2016 the Tribunal took-up various MAs filed by the parties. The Tribunal recorded its *prima facie* satisfaction in respect of package scheme implemented by the respondent. The LCOs were directed to enter into agreements for which the Tribunal indicated two options available to the petitioner. Option 1 was a mix of earlier bouquet at a determined and rate along with *a la carte* channels on separate rates, as per option. Option 2 was as per package and scheme of respondent implemented w.e.f. 01.01.2016 for all its subscribers. Here also separate payments were provided for additional channels. Such arrangement by option made available was to continue till the final adjudication of the case. On 01.04.2016, respondent filed a reply and raised a grievance that LCOs were not making payments as required by order dated 03.02.2016. Petitioner was granted time for filing rejoinder. No rejoinder was filed on behalf of petitioner but an order to maintain status quo was passed on 27.04.2016. Finally, the order of status quo was recalled and right to file rejoinder was closed vide order dated 03.06.2016. Order passed on 27.04.2016 discloses that when a grievance was raised on behalf of respondent that the LCOs have not communicated their options and are not making full payments, on behalf of LCOs it was asserted that all have opted for Option No.1 and are making payments accordingly.
4. On strong apprehension of possibility of swapping of the STBs of the respondent by the members of the petitioner association, MA No.194/2016 was



filed by the respondent in which an order for stay on migration was passed on 14.06.2016 and the MA was disposed of.

5. The only surviving issues which are required to be adjudicated by this order arise from MA No.203/2016 that was filed on 08.07.2016. This application under Section 20 of the Telecom Regulatory Authority of India Act, 1997 (TRAI Act) read with Section 151 of CPC was filed by the respondent for taking action against the petitioner for violation of the order of the Tribunal dated 14.06.2016 whereby the members of the petitioner association were directed not to migrate to any other MSO. Through this MA, the respondent/DEN Networks sought various directions including a direction to restore its Set-Top Boxes(STBs) and to make Siti Cable as a respondent in the petition and to appoint an Advocate-Commissioner to verify the allegations of swapping. Subsequently, Siti Cable was added as a respondent and the pleadings were completed. An Advocate-Commissioner was also appointed who submitted his report after completing the commission.

6. On 28.04.2017 both the parties came ready and the Tribunal was required to consider a preliminary issue raised on behalf of respondent/DEN Network as to the maintainability of the petition by an Association. But learned counsel for the petitioner sought to withdraw the petition on the ground that the 9 members of the Association who are local cable operators are now out of business. On behalf of respondents, this was opposed and they asserted that the members are



still in business but the Tribunal dismissed the petition as withdrawn. It was made clear that no liberty is being given to the petitioner association to move this Tribunal again in this matter because the petition did not involve rights of individual cable operators. As a result of dismissal of the petition, all connected MAs also stood disposed of with an exception of MA No.203/2016. That application under Section 20 of the TRAI Act was ordered to be considered separately.

7. MA No.203/2016 was ultimately considered on its merits on 11.08.2017. By the order passed on that date, this Tribunal noted the relevant facts. On the basis of supplementary affidavit and contents of the MA, the respondent claimed entitlement for restitution by way of money decree against particular members of the petitioner association on the allegation that they had taken advantage of the pendency of the main petition and various orders and interim orders to continue availing signals from the respondent DEN Network and then they illegally migrated without notice and without paying the arrears of subscription fee. The arrears were summarised in a chart in the supplementary affidavit filed in the MA(at running Pg.82). It also disclosed details of the individual LCOs and also the number of STBs which they had individually failed to return as per a chart at running Pg.114. The Tribunal noted various relevant details since the filing of the petition on 19.10.2015, including material interim orders passed on 03.02.2016, 01.04.2016, 27.04.2016 and lastly on



03.06.2016 when the status quo was vacated. Thereafter, there was no contract between the parties. It was noted that thereafter the parties were left free of any interim order and also the fact that even till June 2016 when the status quo was vacated, no agreement was in place to bind the parties and in that situation the concerned LCOs had ultimately migrated to other MSOs.

8. Since there was no agreement between the parties, no notice was required in terms of the agreement and the supply of signals was also required to be discontinued. Hence, in the background of such facts this Tribunal found that the main grievance of the respondent that it is entitled to restitution in respect of alleged dues and for return of STBs alone remained to be examined. Clearly when the main petition had been dismissed as withdrawn, the effect of the order of 11.08.2017 is to confine the issues for further consideration – only to the claim for restitution in respect of alleged dues and return of STBs by the concerned LCOs. It was also clarified at the instance of learned counsel for the original petitioner, the association, that if the Tribunal ultimately finds that the member cable operators have not derived any advantage out of pendency of the petition and interim orders passed by this Tribunal, the MA may also be disposed of on the lines of order dated 08.05.2017 passed in Petition No.510(C) of 2015, leaving the respondent/applicant, DEN Network, to pursue its claim for money against individual LCO through appropriate proceedings. But if it was established that the LCOs have derived advantage on account of pendency and



orders, appropriate order for equitable restitution may have to be passed as sought by the applicant in the MA No.203/2016 through a supplementary affidavit.

9. In the background of aforesaid facts and after considering the pleadings in respect of MA No.203/2016, on 09.05.2018, the Tribunal directed for filing amended Memo of Parties in MA No.203/2016 and directed for making them parties by name and for issuing notice against the individual LCOs to meet the claim of restitution. The cause-title of the MA was changed as per orders to show the name of individual LCOs in place of Association as petitioner. After the notices were served and pleadings were completed by filing of reply by the LCOs and rejoinder by the applicant, the MA was heard finally on several dates and order was reserved on 09.08.2019.

10. In view of order passed on 11.08.2017 and the subsequent orders, the main issues for consideration have been confined to the claim for restitution by way of adequate monetary compensation for the unpaid dues and for STBs which have been allegedly not returned to the applicant, DEN Network Ltd. No action under Section 20 of the TRAI Act is deemed proper to be taken against the individual LCOs because when the interim orders were passed, the only petitioner before the Tribunal was the Association whose petition has already been dismissed as withdrawn. The order passed on 11.08.2017 also clearly indicates that action under Section 20 of the TRAI Act was not reserved for

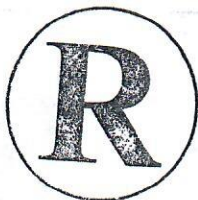


consideration against the individual LCOs who were subsequently added as parties and are now appearing as non-applicant in the MA under consideration. On the issue of claim for restitution, learned counsel for the applicant has submitted that since passing of the first order on 20.10.2015, the applicant had to orally undertake not to effect disconnection and the subsequent order passed on 26.11.2015 supports the aforesaid understanding because on that date statement of learned counsel for the applicant was recorded that until further orders the composition of the bouquet of channels shall not be altered and that respondent could disconnect the supply of *a la carte* channels only if the LCOs failed to pay for such channels. Hence, according to learned counsel, the applicant is entitled to restitution of all losses in view of pendency of the petition with above orders and also subsequent orders such as those passed on 01.04.2016 and 27.04.2016 which disclose that the applicant informed this Tribunal about non-payment by the LCOs but parties were directed to maintain status quo even as late as on 27.04.2016 and this order was recalled only on 03.06.2016. But an order not to migrate was passed in favour of applicant only on 14.06.2016 but by then there was no binding contract and the LCOs migrated without paying the outstanding dues. Hence, according to learned counsel for the applicant, all dues which have remained unpaid since November 2015 till May 2016 deserve to be paid to the applicant by way of restitution and for this necessary order or decree should be passed. Similarly, he seeks orders for compensating the applicant if the STBs are not returned by the LCOs.



11. In the supplementary affidavit on behalf of the applicant, filed on 10.08.2017 it has been alleged that the cable operators of the petitioner association have not made payments of monthly subscription charges leading to huge outstanding. A combined statement of account to show the outstanding amount due and payable by 9 individual members has been annexed as Exhibit 'B'. The number of STBs provided to the individual cable operators/the 9 members of the petitioner association has been annexed as Exhibit 'C'. The consolidated chart of outstanding dues till July 2016 discloses the total amount against 9 LCOs to be Rs.65,43,981/-.

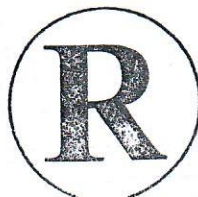
12. In respect of claim for STBs, learned counsel for the applicant has referred to and relied upon value of STB shown as Rs.1999/- mentioned in STB Plan of the applicant contained in Annexure 'A' to the reply affidavit of the respondent/applicant filed on 07.11.2017. Annexure 'A' is a letter dated 27.12.2013 addressed to TRAI. Learned counsel for the applicant has pointed out that initially when the reply was filed on behalf of Association (original petitioner), the claim made in Para 17 was that the LCOs have made payment of Rs.1018/- inclusive of service tax for each STB and the respondent/applicant is liable to refund the said amount to get the STBs back. Learned counsel also referred to subsequent reply filed on 16.10.2018 on behalf of individual LCOs to show that same stand has been taken in Para 17. It was shown that in the



later pleadings also the individual LCOs have not disputed the number of STBs supplied to them.

13. Learned counsel for the applicant referred to documents contained in Annexure 'A'(colly.) to the affidavit of the petitioner dated 08.12.2015. According to him, the document described as Order Request Form-cum-Receipt shows that the amount of Rs.1018/- was paid as one time activation fee/registration charges per STB and the receipt clearly mentions at the bottom that STB being fixed assets shall at all times remain the exclusive property of DEN and are not being sold and that the amount is only towards one time activation fee including service tax.

14. So far as claim for refund of STBs is concerned, no further arguments need to be noticed because we are inclined to agree with the contention raised on behalf of non-applicants that the STBs were not obtained or retained by the non-applicants on account of pendency of the petition and interim orders of this Tribunal passed therein. On that preliminary ground we accept that the advantage not being on account of the petition and orders of this Tribunal, such claim should not be considered or allowed by way of restitution. For claiming the loss on account of non-return of STBs and for any other dues, the applicant would be at liberty to file petition in accordance with law, if it is so advised, with suitable pleas for condonation of delay, if any, due to the pendency of the petition and the matter at hand.



15. So far as claim for arrears and dues of monthly subscription fees is concerned, the claim of the applicant has been resisted by learned counsel for the respondent by contending that initially this court did not pass any stay order to prevent disconnection or for restoration but all protection was on account of concession made on behalf of the applicant. According to him, effective order was passed only on 18.12.2015 for restoration of *a la carte* channels. For bouquet a status quo order was passed on 27.04.2016 which was operative for a short period till it was vacated on 03.06.2016. It has also been submitted that in reply filed on 16.10.2018 LCOs have alleged that in spite of order dated 18.12.2015, the *a la carte* channels were not restored/reconnected. However, this defense is not supported by the proceedings and the orders as no contempt was made out against the applicant, or even by the Email annexed as Annexure 'A' to the reply. The grievance through the Emails in Annexure 'A' and 'B' relates to alleged bulk deactivation of a particular *a la carte* channel and that does not affect the invoiced amount.

16. It is further found that the belated defence through allegation of discrepancy in the account of particular LCOs has no substance and no such discrepancy was pointed out and any grievance made against the accounts at the relevant time. Such a plea has been taken merely as an afterthought.

17. On carefully going through the various orders since the filing of the petition, it is clear that the LCOs derived advantage by not paying their monthly



subscription charges and skipping disconnection on account of pendency of the petition without various interim orders, undertaking and observations to their help. The invoiced amounts as reflected in the accounts of the individual LCOs is found fit to be accepted as amount payable by the non-applicants during the period the LCOs took advantage of the petition and orders passed therein. There is no dispute over amount that was paid by the non-applicants and is reflected in the accounts. There was some dispute whether the applicant disconnected supply of signals on 20.05.2016 against order of status quo as alleged by the non-applicants or whether there was no disconnection even after the status quo order was vacated on 03.06.2016 and whether as claimed by the applicant the LCOs themselves migrated to other MSOs and against that the applicant filed MA No.203/2016 on 14.06.2016. On this issue, it is found that although in Para 15 of the reply by the non-applicants dated 16.10.2018, there is general averment that networks of petitioners were illegally disconnected in May 2016, no specific date of disconnection has been mentioned nor the police complaint (Annexure 'E') said to have been filed on 23.05.2016 supports this allegation. In the police complaint the allegation is general that the applicant has acted to unilaterally disconnect "certain channels". That would not affect the liability to pay the invoices because controversy relating to channels was only for *a la carte* channels. Hence, we accept that there was a status quo order effective till 03.06.2016 and at least till then no disconnection was effected by the applicant. Hence, the non-applicants are liable to pay the subscription



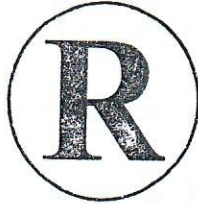
charges and dues for the period from November 2015 to May 2016(billing done during the months December 2015 to June 2016). For claiming dues for any other period, the applicant will have to seek relief through appropriate proceedings as already observed earlier and it cannot be allowed in the present proceedings by way of restitution. The dues remaining outstanding for this period of 7 months against the 9 LCOs has been derived from their respective accounts and has been made available in the form of small charts furnished during the course of the hearing. These charts show the previous outstanding dues till November, 2015 relating to the previous months at the top and that amount has to be subtracted from the total outstanding. On the basis of the charts the dues found payable by each of the 9 non-applicants for the period for which restitution has been allowed is noted hereinbelow and the same is allowed in favour of the applicant and against the concerned LCO:-

S.No.	Name of the LCO	Amount payable
1.	Sri Manjunatha Cable	Rs.99,202/-
2.	Meghana Communication	Rs.7,08,710/-
3.	Chandrabhanu Communication	Rs.1,62,233/-
4.	Sri Revanasiddeshwara Cable Network	Rs.4,21,047/-
5.	Shashank Cable Network	Rs.1,45,336/-
6.	Vinayaka Cable Network	Rs.5,39,094/-
7.	Shashank Communication	Rs.89,248/-
8.	Swetha Communication	Rs.83,026/-
9.	Dakshesh Cable Network	Rs.1,35,604/-

18. The claim for restitution against the LCOs is allowed to the aforesaid extent. The outstanding dues shown against the individual 9 LCOs should be



paid by them to the applicant within two months from today failing which the applicant shall be entitled to realise the same through execution proceedings. The Registry is directed to prepare a decree on the basis of this judgment and order at an early date preferably within six weeks. If the amount is not paid within two months, the applicant shall be entitled to an interest @ 8% per annum from the date of this order till the date of realisation. Each of the non-applicant is also held liable to pay a cost of Rs.20,000/- (Rupees Twenty Thousand only) within two months failing which the same shall also carry interest @ 8% from the date of this order till the date of realisation.



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(S. K. Singh, J)
Chairperson

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(A.K. Bhargava)
Member