

**TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL**

**NEW DELHI**

**Dated 26<sup>th</sup> August 2022**

**Broadcasting Petition No. 177 of 2016**

Rahul Cable

...Petitioner

Vs.

Digi Cablecomm Services Pvt. Ltd.

...Respondent

**BEFORE:**

**HON'BLE MR. JUSTICE RAM KRISHNA GAUTAM, MEMBER**

For Petitioner : 1. Mr. Abhishek Kumar, Advocate

For Respondent : Mr. Diggaj Pathak, Ms. Shweta Sharma  
Mr. Pranjal Pachauri, Advocates

**JUDGMENT**

1. This Broadcasting Petition was filed by Rahul Cable, against DIGI Cablecomm Services Pvt. Ltd., under Section 14 of the Telecom Regulatory Authority of India Act, 1997 ("TRAI Act"), for recovery of Rs. 32,93,853/-, alongwith future and pendentilite interest @ 18%, accrued thereon. In brief, the contention was that M/s. Rahul Cable, being a sole

proprietorship concern of sole proprietor Raju Shah, was carrying out the business of cable at Non Das area, situated at Bansberia, Jute Mill Colony, Hooghly, West Bengal. It was a registered concern, having a certificate of registration, alongwith the Certificate of Enlistment, Annexed as Annexure P-1 and P-2 of the Petition.

2. Digi Cablecomm Pvt. Ltd., - Respondent, is a Cable distribution company having its registered office at Mansarowar, 3B, Camac Street, 1<sup>st</sup> Floor, Kolkata and its Corporate Office at Digicable Network (India) Private Limited, Digi House, B-8, Marol Industrial Area, Andheri East, Mumbai 400093.
3. The Petitioner was taking the signals from the Respondent Company after paying requisite subscription fees regularly which was discontinued since 01.01.2013 with the introduction of Digital Addressable System (DAS) in Greater Kolkata, in the year 2013. In the year 2013, 5556 Set Top Boxes (STBs), with adapter and accessories, were taken by the Petitioner from the Respondent on different dates for an aggregate amount of Rs.25,56,990/- paid through cheque and cash respectively. This amount of payment detail was Annexed vide Annexure P-3.
4. For this payment, a loan from bank was taken. Respondent failed to give technical support to the Petitioner and as a result of which 4500 STBs

were return back to Respondent on 05.07.2013 and 1056 STBs were returned on 02.11.2013 i.e. total 5556 STBs were returned by the Petitioner to the Respondent. This was received with a receipt executed by the Respondent. The same is Annexure P-5.

5. Vide letter dated 31.10.2013, an amount of Rs. 20,25,000/- for surrender of 4500 STBs were agreed to be refunded, after adjusting the subscription amount, till the date for remaining STBs running with the Petitioner's network. Whereas no subscription amount was due nor STBs were running, Rather, entire STBs were returned as above.
6. An email, dated 31.10.2013, was sent by the Petitioner, making a request for discontinuing and withdrawing the signals, mentioning return of 1056 STBs. Respondent instead of refunding Rs. 25,56,990/- to the Petitioner, issued a letter dated 21.02.2014 for reconciliation of the accounts for ascertaining outstanding balance for/ against both sides.
7. Refund was not made by the Respondent. A legal notice, dated 05.11.2014, was thereafter issued for demand of Rs. 25,42,990/- and it was replied vide letter dated 13.11.2014, with a mention to return of 4500 STBs only. However, it was owed that amount of Rs.2,39,975/- was due in favour of the Petitioner. But it was admitted to be refunded after receipt

of all STBs i.e. 5556. However, Rs. 21,12,000/- were admitted to be with regard to returned STBs at the rate of Rs.2000/- each of STBs.

8. As reply was with regard to facts, hence a subsequent legal notice was sent on 25.06.2015 and 25.08.2015 for refund of Rs.25,42,990/-, but it was of no avail. This resulted for a cause of action. Hence, this Petition, with a prayer for Rs. 25,56,990/- along with interest @ 18% from the date of return of the STBs i.e. 05.07.2013 and 02.11.2013 to actual date of realization of amount with further claim of compensation in the tune of Rs.7,36,853/-, which was compelled to be paid in the Bank by the Petitioner.
9. The Written Statement of respondent admitted supply of 5556 STBs and return of 4500 STBs but the counter claim/ set off with regard to dues with a tune of Rs. 38,99,695/- after deducting the Security Deposit of STBs was due against the Petitioner in favour of the respondent. As per law laid down by this Tribunal in the matter of UCN Cable Network India Pvt. Ltd. Vs. Raj Cable Network & Anr. (B.P No. 611 of 2015) alongwith B.P. No. 176 of 2015 (Manthan Broadband Services Pvt. Ltd. Vs. Rajarhat Cable Broadband Services & Anr.) delivered on 10.05.2016. There was no interconnect agreement with regard to alleged transaction. Hence, the Petition for realisation of alleged dues was not maintainable. The

interconnection agreement of April 2011, filed with reply, was with specific mention for application for 12 months only i.e. it was written agreement for 1 year. Whereas, the disputed transaction is of year 2013 i.e. with no interconnect agreement. Hence, no Petition was maintainable with regard to said STBs.

10. More so the return of 4500 STBs were not disputed. But the return of 1056 STBs were never accepted and all the documents with regard to it are forged one. It is a fabricated document, which was never executed by the respondent. More so, this was not returned at all. The subscription dues were pending and a letter was written in reply to letter of Petitioner for coming ahead for getting the accounts reconciled and re-assessed the dues and liability in between.
11. Petitioner owes a sum of Rs. 38,99,695/- to the respondent on account of outstanding subscription fees and the cost of unreturned 1056 STBs. After adjusting the security deposit of Rs. 25,42,990/- liable to be refunded to the Petitioner by the Respondent. This amount was reduced to Rs. 13,56,705/- which is the total amount that the Petitioner is liable to pay to the respondent. There is no responsibility of respondent to compensate the petitioner for any interest, which petitioner has said to have paid to the bank. A copy of the detailed statement of accounts gives

the breakup of outstanding subscription fees due from petitioner to the respondent and it was annexed as Annexure R-12 with the written statement. The pleadings were further filed by the petitioner by way of rejoinder/ replication. Wherein the contention of petition was reiterated and it was stated that the alleged interconnection agreement of April 2011 was with some other recital. Xerox copy of which is with the petitioner. The disputed STBs are not relating with above interconnection agreement. Though the agreement was of April 2011 and was for 1 year, but it continued its operation and inspite of repeated request for renewal, the same was not renewed by the respondent.

12. The return of 1056 STBs and receipt executed therefor is the genuine one and acknowledgement issued by respondent for return of 4500 STBs is not specifically mentioning the number and marks. This was deliberate and as a result of which this further denial is there. Whereas, the petitioner stated that the 1056 STBs were also returned for which receipts were there. Issues were framed on 08.11.2016, which are as follows:

- (i) Whether the present Petition is maintainable in view of the Order and Judgment dated 10.05.2016 passed by this Hon'ble Tribunal in Broadcasting Petition No. 611 of 2015 in the matter of *UCN Cable Network India Pvt. Ltd. Vs. Raj Cable Network & Anr.*?

- (ii) Whether Petitioner is entitled to amount along with interest from Respondent as claimed in the Petition?
- (iii) Whether the Petitioner returned the 1056 Nos. of STBs belonging to the Respondent under the alleged Material Return Memo on 02.11.2013 and whether the said Material Return memo dated 02.11.2013 is a forged and fabricated document?
- (iv) Whether the Respondent is entitled to adjustment/ set-off of an amount of Rs. 17,87,695/- for the outstanding subscription dues and for a sum of Rs. 21,12,000/- being the cost of the STB's still not returned/ withheld by the Petitioner?
13. Evidence were filed by way of affidavit as examination in chief under Order 19 of CPC by permission of this Tribunal. Petitioner filed affidavit of Petitioner Raju Shaw, annexing therewith the annexures, filed with the petition and cross-examination of this witness was conducted by counsel for respondent. Respondent filed its evidence by way of affidavit of Koushik Mitra as examination-in-chief and he was cross examined by counsel for petitioner.
14. Preliminary issues, with regard to maintainability of this petition, in view of judgment dated 10.05.2016 of this Tribunal in BP No. 611 of 2015 in the matter of UCN Cable (supra), was pressed by learned counsel for

respondent and this was placed before this Tribunal for adjudication as preliminary issue.

15. This Tribunal held that this issue will be decided alongwith final adjudication, after recording of evidences of the both sides.
16. Heard learned counsel Mr. Abhishek Kumar for the petitioner as well as Mr. Diggaj Pathak counsel for respondent and gone through the material placed on record.
17. **Issue no. 1.** – From the very perusal of this petition it is apparent that the cause of action was said to have arisen after issuing a legal notice and for making payment of Rs. 25,42,990/- with regard to 5556 STBs returned in two break up; first of 4500 and second of 1056 alongwith its accessories and adapters and these notices were dated 22.6.2015 and 25.8.2015. Failure to make payment was said to be cause of action for this petition. Nowhere it was written that any interconnect agreement was entered in between the petitioner and respondent i.e. LCO and MSO. Though the DAS and its introduction in Greater Kolkata was said to be in operation since year 2013 and the subscription and purchase of 5556 STBs with accessories and adapters from the respondent on different dates after payment, in aggregate amount of Rs. 25,56,990/- through cheque and cash, respectively, was said to be after this DAS implementation in the

year 2013 in para 5 of petition. Whereas interconnection agreement is of year 2011 and it was admittedly for one year i.e. w.e.f. April 2011 to March 2012. The very mention in rejoinder that instead of repeated request, this agreement was neither renewed nor extended, is there. Subsequently, it is admitted that at the implementation of DAS system in 2013, this interconnection agreement was not in existence at all. Hence, the very claim with regard to these STBs viz-a viz subscription amount in counter claim / set off are related with non-existing interconnection agreement. Whereas this Tribunal, vide judgment in BP No. 611 of 2015 (Supra) has elaborately discussed and propounded that in previous regulations with regard to Regulation of 2004, issued by TRAI, vide notification issued on 10.12.2004, in order to cover the arrangement for interconnection and revenue sharing among service providers in the broadcasting sectors, it was specifically provided vide clause 4A in the body of the Regulation that it shall be mandatory for the broadcaster of pay channels and distributors of TV channels to reduce the terms and conditions of all their interconnection agreements to writing. Sub clause 2 of clause 4A provides that no broadcaster of pay channels or distributor of TV channels, such as multi system operator or headend in the sky operator, shall make available signals of TV channels to any distributor of

TV channels without entering into a written interconnection agreement.

This provision was adopted *mutatis mutandis* in subsequent regulations after enforcement of DAS Interconnection Regulations 2012 by way of clause 5(17) to 5(20), which is as under:

*“(17) It shall be mandatory for the multi system operator to reduce the terms and conditions of the interconnection agreements into writing.*

*(18) No multi system operator, shall make available signals of TV channels to any linked local cable operator without entering into a written interconnection agreement.*

*(19) Nothing contained in regulations (17) or (18) shall apply to any supply of signals or continuance of supply of signals of TV channels by a multi system operator in pursuance of or in compliance with any order or direction or judgment of any court or tribunal, including any order or direction or judgment of any court or tribunal on any proceeding pending before such court or tribunal.*

*(20) It shall be the responsibility of every multi system operator to hand over a copy of signed interconnection agreement who enters into an interconnection agreement with a linked local cable operator/s to hand over a copy of signed interconnection agreement to such cable operator and obtain an acknowledgement in this regard within a period of 15 days from the date of execution of the agreement. “*

Meaning thereby the Rules and Regulations framed by TRAI specifically mandate for a written agreement of interconnection for above activities and the TRAI is with a specific aim and purpose to regulate the

telecommunication services, adjudicate disputes, dispose of appeals and to protect the interests of service providers and consumers of the telecom sector, to promote and ensure orderly growth of the telecom sector and for matters connected therewith or incidental thereto.

18. Once a Regulation provides for written agreement of interconnection in between for operating any services under this Regulations then it must be there and by non-existence of any interconnect agreement, neither a claim for any dues nor counter-claim / set off for any subscription may be made before this Tribunal. Hence, admittedly, there is no interconnection agreement in between for subscription charges for which this claim and counter claim/set off relates. Hence, this proceeding is not maintainable. Accordingly, this issue no. 1 is decided negatively i.e. this petition and counter claim / set off is not maintainable.
19. **Issue No. 2.** - The second issue as issue no. 1 is decided against the petitioner, hence, entitlement of amount alongwith interest from respondent as claimed in the petition does not arise. This issue is also decided negatively.
20. **Issue No. 3** – This was a specific burden over the petitioner to prove return of 1056 number of STBs as was stated in the petition, but receipt has been specifically denied by the respondent and was said to be forged and

fabricated and hence, burden shifted to the petitioner to prove it. Nowhere, it was specified that STBs supplied are of two categories and are of two heads wherein receipt of return of 1056 STBs are with two heads. It admittedly, makes a distinction as to what specific categories of STBs were supplied and what were returned and more so merely an oral statement coming is there to specific execution of and for receipt by respondent. Hence, petitioner failed to prove this fact and issue. Accordingly, this issue is decided negatively.

21. Counter-claim / Set Off as well as interest being claimed by the respondent is not maintainable because the same also relates for an alleged subscription not connected with any existing interconnect agreement. In view of issue no. 1 decided negative above, accordingly, decided negatively.
22. As a result of above discussion, this petition and set off merits its dismissal.
23. Dismissed as such. There shall be no order as to costs.

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**(Justice Ram Krishna Gautam)**  
**Member**

**/NC/**