

**TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL
NEW DELHI**

Dated 12th March, 2021

Broadcasting Petition No.719 of 2020

Sreedevi Digital Systems Pvt. Ltd.

....Petitioner

Versus

Jallepalli Kurmanayakulu and Sons & Anr.

....Respondents

BEFORE:

HON'BLE MR. JUSTICE SHIVA KIRTI SINGH, CHAIRPERSON

For Petitioner : Mr. Upender Thakur, Advocate

For Respondent No.1 : Mr.Nittin Bhatia, Advocate

For Respondent No.2 : Mr. Nasir Husain, Advocate

ORDER

By S.K. Singh, Chairperson – Both the parties have been heard in detail on the issue of maintainability of the petition before this Tribunal.

2. Petitioner is a Multi-System Operator(MSO). Respondent No.1 is a Local Cable Operator(LCO) in Andhra Pradesh, within the area of operation of the petitioner. Respondent No.2 is a competing MSO of the petitioner in the same area. Admittedly, all the three, by the nature of their business activities fall within the definition of “service provider” in terms of the Telecom Regulatory Authority of India Act, 1995(TRAI Act).

3. The prayers made in this petition and also the interim prayer are of usual nature found in large number of petitions filed in recent times by different MSOs. The prayers and interim prayer are as follows:

“PRAYER

- (a) Pass an Order/decreed directing the Respondent No.1 to immediately hand over about 25,028 Set Top Boxes, Viewing Cards and other equipment to the Petitioner;

- (b) in the alternative to (a), direct the respondent no.1 to compensate the petitioner for the cost of the STBs numbering about 25,028 @ Rs.500/- per STB totaling to Rs.1,25,14,000/- along with applicable interest, as handed over by the petitioner to the Respondent;
- (c) Pass an order/decreed against Respondent No.1 for an amount of Rs.1,06,39,680/- towards outstanding subscription fee payable to the Petitioner;
- (d) an order directing the Respondents to pay the Business Losses accumulated from the date of migration.
- (e) Pass such other or further order or orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

INTERIM PRAYER

- (a) Restrain the Respondent No.1 from migrating to the network of competing MSO-Respondent No.2 or any other MSO whatsoever, without clearing the outstanding dues and returning Set Top Boxes, as supplied by the Petitioner;
- (b) Restrain Respondent No.2 or any other competing MSO whatsoever from providing TV Channel Signals to the Respondent No.1 till the clearance of outstanding dues and the return of Set Top Boxes to the Petitioner, as submitted herein above;

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

4. The issue of maintainability has been raised by respondent No.1 with due seriousness on the basis of a stand in the reply that the petitioner and respondent No.1 are in a business relationship of a different nature than that of an MSO and LCO because successive agreements between them dated 23.04.2018 and 03.09.2019 are, according to respondents, not an interconnect agreement but only a "Digital Cable TV Signal Distribution Agreement".

5. In support of aforesaid stand of the respondent No.1 which has also been supported by respondent No.2, learned counsel has advanced submissions to the effect that as per provisions in the TRAI Act and also judgment of this Tribunal dated 30.05.2018 passed in B.P. No.441/2017(**Hathway Digital Pvt. Ltd. Vs. Dhanraj Datacom Services Pvt. Ltd. & Ors.**)(Annexure R/1-1), this Tribunal will have jurisdiction to try and adjudicate disputes between a licensor and a licensee, and/or between two or more service providers, and/or a service provider and a group of consumers. There is no denial that petitioner and respondent No.1 are service providers but the submission is that since the dispute arises out of a

Distribution Agreement and not from a simple Interconnect Agreement, therefore, it is not a dispute between the parties in the capacity of service providers rather in some different capacity and therefore in the agreement dated 03.09.2019 it is indicated in clause 24 that any dispute, suit or litigation arising in relation to the business are to be within the jurisdiction of the Visakhapatnam courts only. It is further submitted by learned counsel for the respondent that petitioner and respondent No.1 do not have any valid interconnection agreement because in terms of relevant regulations framed by TRAI, an MSO and LCO must sign either a Model Interconnection Agreement(MIA) or a Standard Interconnection Agreement(SIA) as per the format provided under the Regulations.

6. On the other hand, learned counsel for the petitioner has pointed out that the aforesaid objections with regard to jurisdiction raised in the reply of respondent No.1 in Paras 1 to 3 have been effectively denied in the rejoinder. He has placed strong reliance on Paras 3, 4, 5 and 6 of the rejoinder. In Para 4 it has been reiterated that respondent No.1 is a local cable operator, although it is not denied in the reply. It is further stated that respondent No.1 approached the petitioner seeking supply of TV channel signals in the area of its operation i.e. Srikakulam town and the surrounding area and this is supported and corroborated by the two

Distribution Agreements dated 23.04.2018(Annexure P-2) and 03.09.2019 (Annexure P-3).

7. On considering the rival contentions and on going through the two agreements, it is found that on a careful perusal of the entire contents of the agreement wherein petitioner is the first party and respondent No.1 is the second party it is clear beyond any doubt that the second party/respondent No.1 had approached the first party to take their digital TV signals on terms and conditions to which the first party also agreed, for the consideration indicated in the agreement. The labeling of the agreement as a "Digital Cable TV Signals Distribution Agreement" in place of simply "Agreement" or "Interconnect Agreement" does not make any difference. The subsisting agreement between the parties dated 03.09.2019 is effective from 01.06.2019. It lays down the territory or the area and also other commercial terms under which the petitioner is required to issue tax invoice to respondent No.1 on monthly basis towards subscription as per norms. The commission of respondent No.1 has also been determined under the agreement with the liability to maintain proper accounts and other commercial papers. The liability of the petitioner is limited to providing of digital cable TV signals only and it is not at all concerned with the business activities of respondent No.1.

8. In the case of **Hathway Digital Pvt. Ltd.(supra)**, the essential facts were noted in Para 12 for holding that respondents in that case were not sued as “service providers”. In that case the nature of agreement was quite different, not at all similar to one in this case. Hence that judgment does not help the respondents’ case.

9. For deciding the issue of maintainability it is not at all necessary to go into the merits of the petitioner’s claim at this stage. Whether the agreement, as it stands, is a valid agreement or suffers from defects, may affect the final outcome of the petition on merits but that issue has no bearing with the issue of maintainability. A dispute between two service providers may be maintainable even in absence of a subsisting agreement. The totality of facts will be relevant for deciding the issue of jurisdiction.

10. If any provision in the Model Interconnect Agreement is found to be in conflict with the agreement between the parties, the affected parties may get the advantage of provisions in the Model Interconnection Agreement. However, such consideration will arise only at the time of adjudication of the claims on merits. The Standard Interconnection Agreement is required to be executed only in case

the MSO and LCO fail to enter into interconnection agreement. In the present case it is found that the Digital Cable TV Signal Distribution Agreement has the basic ingredients of an Interconnection Agreement executed between the petitioner and respondent No.1 in their respective capacity as MSO and LCO. Hence, the objection of respondent No.1 to the jurisdiction of this Tribunal is found to be without any merits. The issue is accordingly decided in favour of the petitioner and against respondent No.1.

11. Let the matter be listed before the court of Registrar on 19.03.2021 for passing necessary order and directions to make the petition ready for hearing on merits.

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