

Hathway Digital Private Limited vs G.C.N (Mondal Cable Tv) And Anr on 19 May, 2026

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TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL
NEW DELHI
Dated 19th May 2026
Broadcasting Petition No. 118 of 2020

Hathway Digital Private Limited . . .Petitioner(s)
Vs.
GCN(Mondal Cable TV) & Anr. . .Respondent(s)

BEFORE:

HON'BLE MR. JUSTICE RAM KRISHNA GAUTAM, MEMBER

For Petitioner : Mr. Nasir Husain, Advocate

For Respondents : None

JUDGMENT

1. This Petition, under Section 14(A) (1) read with Section 14 (a) (ii) of the Telecom Regulatory Authority of India Act, 1997 (hereinafter referred to as "TRAI Act") has been filed by Hathway Digital Private Limited, Petitioner, against GCN(Mondal Cable TV) & M/s Saptak Digital Pvt. Ltd., Respondents, with a prayer for a direction against Respondents to return 123 STBs, or in lieu of the STBs issued, pay an amount of Rs. 1,96,800/- (Rupees One Lakh Ninety Six thousand Eight hundred only) @ Rs. 1600 /- towards cost per STB, to the Petitioner. A further prayer was to pass such orders as this Tribunal deems fit and proper in the facts and circumstances of the case.

2. In brief, the Petition contends that Petitioner, namely, Hathway Digital Private Limited, incorporated under the provisions of the Companies Act, 1956, having its Registered Office, at 805/806, "Windsor" Off C.S.T. Road, Kalina, Santacruz (E) Mumbai-400098. The Petitioner, is a MSO, engaged in the business of distribution of television channels and holds the license under the Cable Television Networks Act. The Cable TV business of Hathway Cable and Datacom Limited has been assigned to Hathway Digital Private Limited w.e.f. 01.04.2017 due to internal restructuring of the Petitioner Company. It has further been stated that the Petitioner has changed its name from Hathway Digital Private Limited to Hathway Digital Limited w.e.f. 03.06.2020.

3. The Respondent No.1, namely, G.C.N (MONDAL CABLE TV), is a local cable operator represented through its proprietor, namely, Mr. Birendra Nath Mondal, having its office at Ketera (Bhata) Post Office

- Tarakeswar Police Station- Tarakeswar District - Hooghly, 712410 West Bengal. That the Respondent No. 2, namely, M/s Saptak Digital Pvt. Ltd, is a competing MSO, of the Petitioner, having its registered office, at Rahaman Building, 2nd Floor, Grand Trunk Road, Memari, East Bardhaman-713146 West Bengal.

4. On the request, made by the Respondent No.1, the Petitioner agreed to provide its signals / services, to be further re-transmission to the subscribers, in the area of Hooghly and thereby entered into a Model Interconnect Agreement, under the terms of which, the Respondent No. 1 was issued 123 Set Top Boxes and viewing cards, to it by the petitioner. All the LCOs across India availing signals from the Petitioner have been given access to Hathway Connect Portal. Similar is the case of most of all major MSOs operating pan-India. In the case of Petitioner, each LCO is provided a unique user ID and once they are registered, the same can only be accessed by them as it can only be operated by using a password. The LCOs have been given all the rights through portal to activate, deactivate services of the consumers, change the packaging and provide channels, as per choice of consumers, and making payments to the Petitioner online, through Portal. It was stated that the said system was working in view of TRAI guidelines. The Digital MIA with financial sharing clause is uploaded on the Petitioner's Portal and the LCO, after perusing and going through the terms of the MIA, accepts the same and then it further logs in to conduct its business in its usual course. The terms contained in the MIA are, as per prescribed by the TRAI, and the Petitioner is sharing the revenue with the LCOs at one of the lowest rates in the Industry, which is known to all. At the particular time when the LCO accepts the terms of the MIA, the date, time and IP address from where they agreed to the terms, and accepted the MIA, gets captured in the digital copy, stored with the Petitioner. The LCO's login, acceptance and doing business through Portal post acceptance without any protest or demur does prove that LCOs have agreed to the terms and conditions of the MIA. A copy of the Model Interconnect Agreement is marked as Annexure P-1 to petition and exhibited as Exhibit PW 1/1.

5. Petitioner mentioned that the intention of the Respondent No.1, from the very inception, was to play fraud upon the Petitioner and the Petitioner received information from the market sources that the Respondent No. 1, in utter disregard of the Interconnect Regulations, had migrated to the Respondent No. 2/ competing MSO, by swapping all the STBs of petitioner, which are the exclusive property of the Petitioner.

6. It has further been stated that the Respondent No. 1 had deliberately violated the Interconnect Regulations and also the terms of the Agreement and in connivance and collusion with the Respondent No.2, has migrated from the network of the Petitioner. It was obligatory on the part of the Respondent No.1 to issue requisite notices before disconnecting the services of the Petitioner, but it unilaterally, without complying with the TRAI Regulations, and at the same time without the permission, consent and approval from the Petitioner, has swapped all 123 STBs of the Petitioner, thereby, causing huge financial losses to the business of the Petitioner, which cannot be

compensated easily.

7. The Respondent No. 1, in collusion and connivance with the Respondent No. 2, had played fraud upon the Petitioner by swapping all the STBs of the Petitioners with an oblique motive to cause huge financial losses to the business of the Petitioner. The STBs, which have been swapped by the Respondents, carry a substantial cost, which the Respondents are obligated to pay, so as to compensate the Petitioner. In order to secure its hardware in the form of set top boxes and to recover its outstanding subscription dues, Petitioner was constrained to issue a notice, dated 11.12.2019, to the Respondents, showing deep anguish and disappointment about the unethical acts of swapping the STBs belonging to the Petitioner and called upon the Respondents to return 123 STBs, or in lieu of the STBs issued, pay an amount of Rs. 1,96,800/- (Rupees One Lakh Ninety Six thousand Eight hundred only) @ Rs. 1600 /- towards cost per STB, to the Petitioner. Copy of the notice is marked as Annexure P-2 to petition and exhibited as Exhibit PW 1/ 2.

8. The Respondents, neither replied to the notice of the Petitioner, and neither returned the STBs belonging to the Petitioner, being the exclusive property at all times. It has been contended that due to the illegal acts on the part of the Respondents, the Petitioners have suffered huge financial losses and at the same time is deprived of its valuable property of the Petitioner in the form of set top boxes / viewing cards, which are in the illegal custody of the Respondents, who in connivance and collusion with each other, had facilitated the illegal migration of Respondent No. 1 from the Petitioners network to Respondent No. 2. Hence, a cause of action, within the jurisdiction of this Tribunal, had arisen and finally, this petition with above prayer got filed.

9. Both the respondents, i.e. Respondent No. 1 and Respondent No. 2 initially appeared and filed their respective written statements, denying the contention of Petition that there was never any written agreement executed, and petitioner never hand over any STBs to respondent no. 1, and its liability with regard to any dues against Respondents. No swapping of STBs by and on behalf of Respondent No. 1 was there. Rather Respondent No. 2, being a competitive MSO, had entered in Interconnect Agreement with Respondent No. 1, and had transmitted by way of its own system. As there is no Privity of Contract in between Respondent No. 2 and Petitioner, hence, no claim of Petitioner, against Respondent No. 2, is tenable. More so, no such swapping could be proved by Petitioner, as against Respondent No. 2.

10. Replication by Petitioner with the reiteration of Petition was there.

11. Court of Registrar, vide order dated 28th February 2024, framed following issues, for and on behalf of pleadings of parties :

(a) Whether Petitioner is entitled for recovery of STBs and viewing Cards in good working condition from Respondents or in the alternative an amount towards the cost of STBs as claimed in the Petition?

(b) Whether Respondent No.1 has migrated to Respondent No.2 ?

if so, whether such migration is in compliance of Interconnect Regulations of TRAI?

12. Evidence by way of affidavit of Petitioner, along with a certificate under Section 65B of Indian Evidence Act, and Resolution of Board was filed, by Petitioner. No evidence by Respondent No. 1 and Respondent No. 2 was there.

13. Written submission by Petitioner got filed.

14. Heard learned counsel and gone through the material placed on record.

15. The proceeding before this Tribunal is a civil proceeding, as has been given in the TRAI Act, itself. In a civil proceeding, the preponderance of probabilities is the touchstone for making a decision, as against strict burden of proof, required in criminal proceeding.

16. Hon'ble Apex Court in Anil Rishi Vs. Gurbaksh Singh - AIR 2006 SC 1971 has propounded that onus to prove a fact is on the person who asserts it. Under Section 102 of The Indian Evidence Act, initial onus is always on the plaintiff to prove his case and if he discharges, the onus shifts to defendant. It has further been propounded in Premlata Vs. Arhant Kumar Jain- AIR 1976 SC 626 that where both parties have already produced whatever evidence they had, the question of burden of proof ceases to have any importance. But while appreciating the question of burden of proof and misplacing the burden of proof on a particular party and recording of findings in a particular way will definitely vitiate the judgment. The old principle propounded by Privy Council in Lakshman Vs. Venkateswarloo - AIR 1949 PC 278 still holds good that burden of proof on the pleadings never shifts, it always remains constant. Factually proving of a case in his favour is cost upon plaintiff when he fulfils, onus shifts over defendants to adduce rebutting evidence to meet the case made out by plaintiff. Onus may again shift to plaintiff. Hon'ble Apex Court in State of J & K Vs Hindustan Forest Co. (2006) 12 SCC 198 has propounded that the plaintiff cannot obviously take advantage of the weakness of defendant. The plaintiff must stand upon evidence adduced by him. Though unlike a criminal case, in civil cases there is no mandate for proving fact beyond reasonable doubt, but even preponderance of probabilities may serve as a good basis of decision, as was propounded in M Krishnan Vs Vijay Singh- 2001 CrLJ 4705. Hon'ble Apex Court in Raghvamma Vs. A Cherry Chamma - AIR 1964 SC 136 has propounded that burden and bonus of proof, are two different things. Burden of proof lies upon a person who has to prove the facts and it never shifts. Onus of proof shifts. Such shifting of onus is a continuous process in evaluation of evidence.

Petitioner's evidence i.e. Affidavit of Mr. Kalyan Patra is with reiteration of the contention of the Petition, wherein the interconnect agreement has been made Annexure to affidavit. Issuance of 123 STBs, along with VCs, in compliance of Interconnect Agreement in between, Petitioner and Respondent No. 1, has been stated in this uncontroverted affidavit. The price per STB, is given as Rs. 1600/-, and total amount, as a cost of these STBs as well as VC has been calculated to be Rs. 1,96,000/-. Whereas, as per Model Interconnect Agreement (MIA) and the agreement entered, in between, the compensation for STBs, ought to be the depreciated value of STB and this Tribunal, very often has decided depreciation of 15% p.a. for the value of purchase. Hence, Rs.1600/- has been claimed as the value of per STBs, and with depreciated value, it will come to Rs. 1360 per STB.

Hence, the amount payable, in case of failure to restore the STBs and VCs, will come to Rs. 1,67,280/- (Rs. 1360 * 123 STBs). The written submissions filed by the petitioner and arguments advanced is of this fact too. Hence, the total amount comes to Rs. 1,67,280/-, for which Petitioner is entitled. Hence, this issue is being decided, accordingly. In view of decision made above, Petitioner is entitled for amount of Rs. 1,67,280/- , with pendente lite and future interest over it, @ simple interest 9% p.a., being very often provided by this Tribunal in Petitions, decided by this Tribunal. Hence, this issue is being decided accordingly, in favour of petitioner.

18. Issue No. 2.

Respondent No. 2 is a competitive MSO, written in Petition itself and transmission of signals to LCO, Respondent No. 1 is being stated to be by competitive MSO, Respondent No. 2. Respondent no. 2 in its reply has stated that allegations against it are denied and it is not in the custody of any of the STBs. Hence, admittedly, there is no Privity of Contract, in between, Petitioner and Respondent No. 2 and proposition of law, laid down by this Tribunal, in many cases, is of this effect, as competitive MSO, having no Privity of Contract, be not held liable for any default made by LCO, with regard to liability arisen with other competitive MSO, out of interconnect agreement, in between, Petitioner and that LCO. Hence, Respondent No. 2 is not to be fastened with any liability. Respondent No. 2 is stranger to the said alleged contract between petitioner and respondent no. 1. Accordingly, this issue is being decided in favour of respondent no. 2. No relief against Respondent no. 2 is to be awarded. This issue is being decided accordingly.

ORDER The petition is allowed. Respondent No. 1, is being directed to restore/return of 123 STBs alongwith VCs, in good working condition, to petitioner, within two months of judgment, and in case of failure, to make the payment, a compensation in the tune of Rs. 1,67,280/- (Rs. 1360 * 123 STBs) (Rupees One Lakh Sixty Seven Two Hundred Eighty Only) for 123 STBs and VCs, @ Rs. 1360/-, depreciated value per STB, alongwith pendente lite and future, simple interest @ 9% p.a., till date of actual payment, in the Tribunal for making payment to the petitioner.

Formal order/ decree be got prepared by office, accordingly.

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(Justice Ram Krishna Gautam) Member 19.5.2026 /NC/