

File Number N- 45010/5/2022- DAS
GOVERNMENT OF INDIA
Ministry of Information & Broadcasting

"A" Wing, Shastri Bhawan
New Delhi, Delhi – 110001
Dated the 9th September, 2022

Order

M/s Bhusawal Cable Network Pvt. Ltd. (BCN) has filed an appeal against this Ministry's order dated 30.05.2022 cancelling its MSO registration. The appeal was filed as per the order of Hon'ble High Court of Bombay to BCN in WP No. 6507 of 2022. The operation and effect of this Ministry's Order dt. 30/05/22 has been stayed giving relief to the petitioner during pendency of Appeal.

2. The Appellant appeared before undersigned on 04.08.2022 and availed the personal hearing granted to him. Appellant reiterated contents in the Appeal filed by him at the time of hearing. He also pleaded that the cancellation of registration for the alleged violations is too harsh. On the basis of material available on record and discussions during personal hearing granted to the Appellant on 04.08.2022; following order is passed.

Background

3. This Ministry had granted provisional registration of Multi-System Operator (MSO) to BCN for operating as MSO in Digital Address System in the State of Maharashtra and Madhya Pradesh as notified vide Notification Number 2534 (E) dated 11.11.2011 under Cable Television Networks (Amendment) Rules, 2021 vide its communication number 9/111/2014-BP&L dated 04.11.2015.

4. BCN was subsequently given PAN India registration of MSO vide this Ministry's Circular Number 2/108/2015-DAS dated 27.01.2017 and subsequently treated to have a regular registration of MSO vide this Ministry's Office Memorandum Number 9/406/2016-DAS dated 06.03.2017.

5. The registration of MSO granted to BCN by this Ministry was subject to adherence and compliance of certain terms and conditions.

6. Clause 4 (i) of the terms and conditions of registration of MSO granted to BCN bound it to comply with all the provisions of the Cable Television Networks (Regulation) Act, 1995 and the Rules made thereunder, as amended from time to time.

7. Clause 4 (ii) of the terms and conditions of registration of MSO granted to BCN provided that it should abide by the rules/regulations/orders/directions/guidelines etcetera issued by the regulatory authority or by this Ministry from time to time.

8. Clause 6 of the terms and conditions of registration of MSO granted to BCN cautioned it beforehand that it should ensure its continued eligibility as applicable

throughout the period of the permission and adhere to all the terms and conditions, failing which its permission shall be liable to be terminated /cancelled forthwith without giving any notice.

9. Pursuant to a complaint received in this Ministry against BCN regarding taking feed from DD Free dish and re-transmitting on its network, the Ministry requested the authorized officer (AO) concerned prescribed under the Cable Television Networks (Regulation) Act, 1995 to inquire into the matter and submit his report to this Ministry.

10. The AO in his report dated 20/09/2021 to the Ministry stated that feed from DD Free Dish was used by M/s BCN Private Limited for re-transmission of certain mandatory and private satellite channels. The supporting evidence in the form of Panchanama in the presence of two witnesses and corroborative video recording of the enquiry proceedings were also furnished.

11. In view of report of the AO, opportunity of being heard was provided by the Ministry to BCN vide this Ministry's communications dated 24/09/2021 and 07/10/2021 levelling all charges against it and demanded an explanation as to why non-compliance of the terms and conditions laid down in its MSO registration should not entail termination/cancellation of its registration.

12. In response to Ministry's communications, BCN submitted its reply. The logo of BCN superimposed on logo of DD Free Dish on its cable network for certain Free to Air mandatory DD Channels and Pay channels could not be explained to the satisfaction of the Ministry.

13. The Ministry concluded violation of Section 8 of the Cable Television Networks (Regulation) Act, 1995 read with the Appendix thereto for retransmitting satellite signals of mandatory DD channels by taking signals from KU Band of spectrum in place of mandated C Band.

14. The Ministry also concluded violation of rule 6(3) of the Cable Television Networks Rules, 1994 for the reason of unauthorised reception of DD Free Dish signals by the BCN and re-transmitting on their Cable Network.

15. On above mentioned reasons, the Ministry cancelled the MSO registration granted to BCN on 04.11.2015 giving therein an opportunity to appeal, if any.

16. BCN availed the opportunity and filed an appeal vide its letter dated 28/11/2021 and requested for personal hearing also. Accordingly, a personal hearing was granted to BCN by Appellate Authority i.e. the undersigned, on 23/12/2021 vide letter dated 17/12/2021 and was availed by the Appellant on 23/12/2021.

17. Post considering the submission made by the Appellant, the undersigned being the Appellate Authority passed its order on 14.01.2022 upholding the decision of Registering Authority to cancel the MSO registration granted to BCN.

18. Aggrieved by this, BCN filed Writ Petition No. 1230 of 2022 in Hon'ble High Court of Bombay, Bench at Aurangabad which was decided by the Court by reverting the matter to the Original Authority (OA) i.e. the Registering Authority (RA) for deciding the matter afresh on its own merits and in accordance with law while directing to provide an opportunity of personal hearing to the petitioner (BCN) without being

influenced by the observations made and conclusions drawn in the orders dated 23.11.2021 and 14.01.2022.

19. Pursuant to the Hon'ble Court's order dated 04.04.2022, personal hearing was granted by the Registering Authority to BCN on 10.05.2022, and was availed by BCN on 10.05.2022.

20. Post considering the submission made by the Appellant, the Registering Authority passed its order on 30.05.2022 cancelling the MSO registration granted to BCN and in compliance of Hon'ble Court's order dated 04.04.2022 in WP No. 1230 of 2022, time period of four weeks was granted to BCN to wind up its operations and no coercive steps was to be taken against it during the period of 4 weeks from date of issue of order.

21. Still aggrieved by the decision of Registering Authority, BCN again filed WP No. 6507 of 2022 before the Hon'ble High Court of Bombay which was decided by the Hon'ble Court on 24.06.2022 allowing the petitioner to avail the statutory remedy of appeal before the Appellate Authority. Also, Hon'ble Court extended the protection of 4 weeks granted vide its order dated 04.04.2022 in WP No. 1230 of 2022, to 15.07.2022, if the petitioner (BCN) made such appeal on or before 08.07.2022.

22. Pursuant to the Hon'ble Court's order dated 24.06.2022 in WP No. 6507 of 2022, BCN filed appeal before the undersigned being Appellate Authority vide its letter dated 05.07.2022. In the first instance, the undersigned granted relief to the Appellant by way of staying the operation and effect of Registering Authority's order dated 30.05.2022 cancelling MSO registration of the Appellant, till pendency of the appeal, vide letter dated 12.07.2022.

23. The undersigned also granted personal hearing to the Appellant which was availed by it on 04.08.2022. During the course of personal hearing, the Appellant requested for ten days' time to make further submissions. The same were received through email on 10.08.2022.

Grounds of Appeal

24. Violation of Rule 6 (3) of the Cable Television Networks Rules, 1994.

(i) That the Ministry based on the complaint followed by the AO's report dated 20.09.2021 has falsely alleged retransmission of certain mandatory and private Free to Air (FTA) satellite channels namely:- DD-01, DDKisan, DD Bharati, DD News, DD Sahyadri, DD Lok Sabha, DD Rajya Sabha, DD Rajasthan, Shemaroo, Masti, ABP News, ZEE News through DD free dish bypassing the broadcaster's authorization amounting to violation of the Copy Right Act,1972. The Appellant has raised questions over the video recording of AO's investigation and its authenticity and has denied the allegation of retransmitting the aforesaid channels through DD free dish to its subscriber.

(ii) That vide Notification S.O.2693 (E) dated 05.09.2013, Notification S.O. 1388 (E) dated 25.05.2015, Notification S.O 1699 (E) dated 07.05.2019, Notification S.O. 4136 (E) dated 15.11.2019, Notification N-45001/10/2021-DAS dated 24.09.2021 & 26.11.2021 issued by the Ministry of Information and Broadcasting from time to time , a total of 28 Prasar Bharati Channels, have been mandated to be carried by the

cable operators under the DAS regime to include the Channels namely DD-01, DD-Kisan, DD Bharati, DD News, DD Sahyadri, DD Lok Sabha, DD Rajya Sabha, DD Rajasthan. Therefore, retransmitting mandatory channels to the subscribers as mandated under Section 8 of the Cable Television Act, 1995 cannot amount to violation of the Copyright Act, 1972, rather it is a mandate enforcing upon the appellant to telecast the content flowing through the content owner which in this case is Prasar Bharati and thus cannot amount to violation of Rule 6 (3) under the Cable Television Network Rules, 1994.

25. The Appellant has submitted that no revenue/ commercial profit is being earned by it in carrying the mandatory channels. The DD mandatory channels of Prasar Bharati does not permit the cable Operators such as the Appellant to provide choice to its subscriber to not opt for them, but are mandated upon the subscriber by default without any additional subscription charges, on subscribing to cable TV services from the Appellant or from any other MSO across the country. As per the Telecommunication (Broadcasting and Cable) services (Eight) (Addressable Systems) Tariff Order, 2017, Clause 4(9) the mandated channels of Prasar Bharati is to be provided in addition to the number of channels which a subscriber is eligible to get for the network capacity fee paid by him, which only further clarifies that the mandated channels of Prasar Bharati are free of any addition subscription fee. Therefore, in the absence of any commercial gain to provide the mandated channel, the Appellant will not in any way under the sun gain anything from retransmitting the mandatory channels to its subscriber and in the absence of any commercial profit/ revenue gain, there cannot be a case of copyright infringement, thus cannot amount to violation of Rule 6 (3) under the Cable Television Network Rules, 1994.

26. The Appellant has submitted that with respect to Free-to-Air Private Channels namely Shemaroo, Masti, ABP News, ABP Ganga, and ZEE News which have been falsely alleged upon the Appellant to have infringed their copyright is denied in toto. TRAI under the Telecommunication (Broadcasting and Cable) services (Eight) (Addressable Systems) Tariff Order, 2017 defines "*Free-to Air channel (FTA)*" as "*a channel which is declared as such by the broadcaster and for which no fee is to be paid by a distributor of television channels to the broadcaster for signals of such channel*" therefore from the aforesaid definition the Broadcaster of the said channels are not undergoing any revenue loss if the distributor such as the Appellant carries its channels on its platform, rather gains and earns profit for maximum number of viewership Appellant has valid Agreements/Authorization executed with the Broadcasters for retransmitting the aforesaid channels. Thus, retransmitting the aforesaid free to air private satellite channel on authorization from the respective broadcasters does not amount to violation of Copyright Act.

27. Violation of Rule 6 (6) of the Cable Television Network Rules, 1994.

The Appellant has alleged that the Ministry despite being the governing authority and law maker specializing in broadcasting Industry has acted blindly on the compliant and report filed by the Authorized officers, who lacks knowledge and specialization of the industry and the governing laws. The Ministry understands and recognizes the broadcasting of local channels by a distributor on its platform as a platform service. The Ministry vide its letter dated 17.01.2013 had sought recommendation from Telecom Regulatory Authority of India (TRAI) on the issues related to local ground- based channel of cable TV operator, wherein TRAI had

issued recommendation dated 19.11.2014 titled "Regulatory Framework for Platform services" in response to the Ministry's letter. However, post the recommendations made by TRAI, the Ministry has so far, not notified any guidelines/policies/law requiring registering of local channels with the Ministry before telecasting the same by a distributor to its subscriber in the form of platform services. Therefore, as on date, in absence of any requirement of registration of local channels being telecasted as a platform service to its subscriber and in absence of any guidelines to that effect, the Appellant cannot be held in violation of Rule 6(6) of the Cable Television Network Rules 1994.

28. The Appellant has furnished that it has valid License Agreements with Eros International Media Limited, and UltraMedia & Entertainment Pvt Ltd. (hereinafter referred to as "content distributors") wherein the said content Distributors have a large library of contents to include movies & Music. The contents being telecasted by the Appellant on its local channels are flowing out of the libraries of the aforesaid content distributor, with whom the Appellant has executed agreements. Therefore the Appellant cannot be held in violation of copyright Act and thus cannot be held to be in violation of Rule 6(3) of the Cable Television Network Rules, 1994.

29. Violation of Rule 9(A) of the Cable Television Network Rules, 1994.

The Appellant has stated that on bare reading of Rule 9(A) read with section 2(a) mentions that under rule 9, TRAI is empowered to issue any notification and take appropriate decision on duly notifying to include issues relating to standard interconnection Agreements for distribution in the notified areas, of pay or free to air channels among Broadcasters and Multi System Operators; and (ii) multi system operators and local cable operators. The Appellant has stated that it failed to understand that how it is in violation of the said Rule 9(a).

30. Violation of Section 8 of the Cable Television Networks (Regulation) Act, 1995

(i) The Appellant has denied the allegation of violation of Section 8 of the Cable Television Act, 1995. The Appellant as per his submission has been carrying all the mandatory channel as mandated under various notification in the manner of reception and retransmission of such channels as has been notified by the Ministry vide the Notification S.O.2693 (E) dated 05.09.2013. Mr. G.N Khanzode - Assistant Engineer, head office DMC had visited the premises of the Appellant, the Assistant Engineer post verification to his satisfaction, issued a certificate dated 15.05.2015 certifying the Appellant in full compliance of the aforesaid notification. The Order 30.05.2022 passed by the Ministry, the Ld Joint Secretary does not rely upon the said certificate on the ground that the certificate was issued in the year 2015, and hence hold no value in the year 2021.

(ii) The Cable Television Networks (Regulation) Act, 1995 or the Cable Television Networks Rules, 1994 did not specify for a mandatory audit/inspection of compliance of the said notification, nor thus did the Act / provision lie down any provision of renewal of the certification of compliance. Further, the certificate issued by DMC does not specify of a validity period. Therefore, in the absence any such specification with respect to the period in the certificate or in the absence of any provision/ direction of renewal, the certificate of compliance cannot be done-away with. The Appellant, as per his submission has been

complying with the notifications being passed from time to time with respect to the mandatory carrying of the Channel on its platform. The Appellant has also questioned the authenticity of panchnama proceedings and the video recordings relied upon.

(iii) The Appellant has further submitted that Section 8 in true spirit only mandates the provision of the transmission of the mandatory channels so that the said channels reach out to every citizen of the country with further emphasis laid to retransmit the same through C -band by dish Antenna/ television receiver only of not less than 12 feet diameter and not yagi antenna only for the purpose of ensuring good quality reception and that it has complied with the said mandate.

31. Severe approach resorted to over liberal approach.

The Appellant has alleged that the authorities have resorted to the severe approach over liberal approach in his case. The appellant has also made a reference to Section 16 of the Cable Television Networks (Regulation) Act, 1995 which demarcates punishment based on first time offender and second time offender in the event of contravention of any of the provisions of the Act.

Judgement

Grounds of appeal at para 24,25 and 26

32. The issue of violation of Rule 6(3) of the Cable Television Networks Rules, 1994 was examined by the Registering Authority in its order dated 30.05.2022. The issue is regarding transmission of mandatory channels and pay channels through a manner which is not permissible in law.

33. The BCN's allegation regarding authenticity of video recording of Authorised Officer's recording was also examined by the Registering Authority in its order dated 30.05.2022. The Registering Authority noted that there existed a Panchnama of enquiry proceedings conducted by team of senior District officers with two witnesses. SDM, Bhusawal is also an Authorised Officer under the Cable TV Networks (Regulations) Act, 1995 and was himself part of the proceedings. The video recording of the proceedings corroborates the facts mentioned in the Panchnama. The Registering Authority ran the said video recording before the Appellant on 10.05.2022 and the quality of video recording was good enough as far as logos of TV channels and BCN's logo could indisputably be deciphered. Further, in the personal hearing dated 10.05.2022 before the Registering Authority, the director of Appellant namely, Shri Mohd. Salim Mahmood Kasim had identified the control room shown in the video recording as BCN premises. The Registering Authority had concluded that there was no reason to doubt authenticity of the video recording.

34. The issue of piracy has been examined by the Registering Authority in details in its order dated 30.05.2022. The documentary evidence in the form of panchnama of the enquiry proceeding and corroborative video recordings established that BCN took feed from DD Free Dish of the mandatory Free-to-Air channels and re-transmitted the same on its network. The logo of BCN superimposed upon the logo of DD Free Dish of mandatory and certain pay channels shown on the network of BCN also supported the allegation that feed was taken from DD Free Dish.

35. The issue of transmission of mandatory channels not through prescribed manner was also examined by the Registering Authority in its order dated 30.05.2022. The Registering Authority noted that the list of channels and manner of their retransmission has been specified in exercise of power granted in Section 8(1) Cable Television Networks (Regulation) Act, 1995. Every Cable Operator is required to re-transmit the mandatory Doordarshan Channels only after taking C-band satellite signals. The C band is preferred over Ku band because it is less susceptible to rain fade in comparison to Ku band. Hence the satellite channels broadcasted over C band have better customer uninterrupted experience. It was established from the AO's report and panchnama therein that BCN was re-transmitting channels after taking signals from DD Free Dish. The same was also corroborated by superimposition of BCN's logo over logo of DD Free Dish. The Ku band signals are ordinarily used by DTH service providers wherein signals are directly received at the end of consumer. The Ku band signals are not for the consumption by MSO who are not the end consumers but intermediaries between broadcasters and consumers.

Hence, the Registering Authority had rightly concluded that by taking Ku band signals of DD Free Dish, BCN has violated the provision of Rule 6(3) of the Cable Television Networks Rules, 1994.

Grounds of appeal at para 27,28 and 29

36. The issue of violation of Rule 6(6) and Rule 9(A) of the Cable Television Networks Rules, 1994 was also examined by the Registering Authority in its order dated 30.05.2022 and the Registering Authority noted that the Authorised Officer in his report dated 20.09.2021 informed the Ministry about the irregularities observed during the inspection of the premises of BCN. Authorised Officer reported violation of Rule 9(a) due to non-furnishing of inter connection agreements at the time of enquiry and Rule 6(6) for not furnishing registration documents of local channels being transmitted in the network of BCN. Based on above report, Ministry vide its letter dated 24.09.2021 sought clarification from the Appellant in relation to violation of Rule 9(a) and Rule 6(6) of the Cable Television Networks Rules, 1994. This may be treated as an opportunity of being heard which is as per the law. The need of raising these issues could not be invalidated just because further queries were not raised nor any adverse impact was drawn.

As the Registering Authority had not invoked these provisions in the impugned order, indulging in them is just an academic exercise and hence being not taken up.

Ground of appeal at para 30

37. The Registering Authority noted that the list of channels and manner of their retransmission has been specified in exercise of power granted in Section 8(1) Cable Television Networks (Regulation) Act, 1995. Every Cable Operator is required to re-transmit the mandatory Doordarshan Channels only after taking C-band satellite signals. The C band is preferred over Ku band because it is less susceptible to rain fade in comparison to Ku band. Hence the satellite channels broadcasted over C band have better customer uninterrupted experience. It was established from the AO's report and panchnama therein that BCN was re-transmitting channels after taking signals from DD Free Dish. The same was also corroborated by superimposition of BCN's logo over logo of DD Free Dish. The Ku band signals are ordinarily used by DTH service providers wherein signals are directly received at the end of consumer.

The Ku band signals are not for the consumption by MSO who are not the end consumers but intermediaries between broadcasters and consumers. The documentary evidence in the form of panchnama of the enquiry proceeding and corroborative video recordings established that BCN took feed from DD Free Dish of the mandatory Free-to-Air channels and re-transmitted the same on its network. The logo of BCN superimposed upon the logo of DD Free Dish of mandatory and certain pay channels shown on the network of BCN also supported the allegation that feed was taken from DD Free Dish.

Hence, the Registering Authority had rightly concluded that by taking Ku band signals of mandatory channels from DD Free Dish, BCN has violated the provision of Section 8(1) of the Cable Television Networks (Regulation) Act, 1995.

Ground at para 31

38. Section 16 of the Cable Television Networks (Regulation) Act, 1995 prescribes punishment for contravention of provisions of the act including imprisonment and fine or both for first offence and subsequent offence. Section 18 of the Act prescribes that no Court shall take cognizance of any offence punishable under the Act except upon a complaint in writing made by Authorised Officer. Thus, the power/authority to impose punishment prescribed under Section 16 rests with the Court. Whereas, Section 4 (7) of the Cable Television Networks (Regulation) Act, 1995 empowers the Central Government to only suspend or revoke the MSO registration granted under Section 4(5) if the cable operator violates one or more of the terms and conditions of registration. Apart from this conventionally this Ministry has been issuing warning/advisory for minor violations of technical nature. This is for the competent Authority to decide upon the type of punishment to be given depending of the facts of the particular case. Therefore, the cancellation order of the Registering Authority is within the provisions of law.

39. In view of the above, the violations of Section 8(1) of the Cable Television Networks (Regulation) Act, 1995 and Rule 6(3) of the Cable Television Rules, 1994 are clearly established.

40. In his defence, the Appellant has taken the plea that private TV channels and DD Channels alleged to be transmitted after taking signals from DD Free Dish are "Free Channels" and therefore violation of Copyright Act, 1957 and consequently Rule 6(3) of the Cable TV Network Rules, 1994 does not arise. Also he has further stated that Section 8 of the Cable TV Network (Regulations) Act, 1995 is in the statute to primarily ensure that the mandatory channels are transmitted on the network of Cable Operators. He has also submitted valid agreements with namely Zee Entertainment, TV-Vision, Shemaroo Entertainment, ABP Network, Eros International and Ultra Media when the inspection was carried on his Network on 17.09.2021. He also pleaded that the Registering Authority has taken severe approach over liberal approach in his case.

41. While the submissions mentioned in pre-para does not absolve the BCN from violations committed by them but it also appears that violations are such as would not warrant cancellation of license permanently. Also, the BCN was barred from distribution activities for the period 24.01.2022 to 03.04.2022 i.e. for 70 days. During this period cancellation order dated 14.01.2022 was partly in force and relay of channels by BCN was specifically disallowed by the Hon'ble High Court in its order dated 24.01.2022. This arrangement continued till Hon'ble High Court restored matter to Registering Authority to look a fresh

in its order dated 04.04.2022. Effectively, operation of BCN was suspended for the period of 70 days.

42. Considering the matter in its entirety, it is deemed appropriate to consider the period BCN was barred from distribution activities i.e. from 24.01.2022 to 03.04.2022 as sufficient penalty for offences committed by them. In addition to this, BCN is hereby warned for future to ensure compliance to the terms and conditions of its MSO registration and provisions of the Cable Television Networks Regulation Act, 1995 and rules framed thereunder.

43. In view of the above, MSO Registration of M/s Bhusawal Cable Network Private Limited is accordingly restored with immediate effect.

44. This order is passed without any prejudice to the action, if any, is being taken or proposed to be taken against the Appellant by the Authorised officer under the Cable Television Networks (Regulation) Act, 1995 or any other person or Authority under any law.



(Apurva Chandra)
Secretary

Ministry of Information and Broadcasting

To
M/s Bhusawal Cable Network (BCN) Private Limited
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Copy to:

1. Secretary, TRAI
2. Chief Secretary, Maharashtra
3. DGP, Police, Maharashtra
4. DC, Jalgaon.
5. NIC, MIB, with the request to upload this Order on Ministry's website for information of all concerned.