



No. \_\_\_\_\_

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**In The  
Supreme Court of the United States**

—◆—  
SUJIT GHOSH, PRO SE,

*Petitioner,*

v.

DISH NETWORK,

*Respondent.*

—◆—  
**On Petition For A Writ Of Certiorari  
To The United States Court Of Appeals  
For The Tenth Circuit**

—◆—  
**PETITION FOR A WRIT OF CERTIORARI**

—◆—  
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### **QUESTIONS PRESENTED**

- a) Can a "Non-Party" of an Arbitration Process get equal Privileges and Rights like a "Party" as per the laws of the United States and its Constitution, when the Arbitrator in fact barred the "Non-Party" to participate in the Arbitration proceedings any further?
- b) Can my agreement of Personal Guaranty be defied, and a Judgement be imposed on a non-party, without any fair trial as per the terms agreed in the Personal Guaranty Agreement?
- c) Can a Supplementary Agreement (here it is Personal Guaranty Agreement) be valid in the absence or without the existence of the concerned Principal Agreement (Master Retailer Agreement) on the date the supplementary agreement was signed?

### **LIST OF PARTIES**

Petitioner Sujit Ghosh, was the defendant in the district court and the appellant in the court of appeals.

Respondent Dish Network LLC, was the plaintiff in the district court and the appellee in the court of appeals.

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## **PETITION FOR A WRIT OF CERTIORARI**

Petitioner Sujit Ghosh, Pro Se respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Tenth Circuit in this case.

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## **OPINIONS BELOW**

The Order and Judgement of the United States Court of Appeals for the 10th Circuit filed on October 11th 2018 is reproduced in the Appendix at App. 1-12. The Memorandum Opinion and the Judgement of the United States District Court for the District of Colorado filed on March 19th 2018 is reproduced in the Appendix at App. 13-21.

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## **JURISDICTION**

The court of appeals entered judgment on October 11, 2018 (App. 1-12). That court denied rehearing on November 6, 2018 (App. 13-21). This Court has jurisdiction under 28 U.S.C. § 1254(1).

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## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

1. Article 10 of the Universal Declaration of Human Rights

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

<http://www.un.org/en/universal-declaration-human-rights/>

2. Seventh Amendment – U.S. Constitution

3. The right to Due Process of Law as per the Fundamental Rights and the Fifth and Fourteenth Amendments of the U.S. Constitution.

4. Human Rights Act, Article 6 Right to a fair trial States that the right to a fair trial is fundamental to the rule of law and to democracy itself.

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### STATEMENT OF THE CASE

I, Sujit Ghosh, left the corporation named Open Orbit Corporation in **2012**. My last day with the corporation in any capacity was **December 31st 2012**. At the time of leaving the Corporation I had obtained an Indemnity Bond (App. 85-90) for all necessary reasons, from the President and 100% owner of that Corporation (App. 88-97).

During my tenure with Open Orbit Corporation, we did not have any lawful agreement with Dish Network. We did sign and applied for several dealerships during my tenure but the agreement with Dish Network didn't come into effect during my tenure.



As a part of the DishTV Master Retailer agreement I had signed a **supplementary personal guaranty agreement** of the main Master Retailer Agreement on (App. 59-84) on **March 12th, 2012**, long before the Retailer Agreement of Open Orbit Corporation with Dish TV became effective. On that very date (March 12th, 2012) or till my last date with Open Orbit Corporation (December 31st, 2012), the retailer agreement did not come into effect. The **Master Retailer agreement** came into effect from **January 1st, 2013** (App. 59-84) that too with my signature on behalf of Open Orbit Corporation, when I was not even authorized to sign for Open Orbit. This makes the Retailer agreement completely invalid and so as all its supplementary agreements, including the Personal Guaranty becomes invalid document as well as no legal agreement cannot be valid with the signature of an unauthorized person.

In July 2015, DISH initiated arbitration against Open Orbit for various violations of the retailer agreement. I was communicated by the Honorable Arbitrator's office regarding the said arbitration as DishTV misinformed the Honorable Arbitrator that I was still the President of Open Orbit Corporation. So, in response, I had requested the arbitrator to remove my name from the pending arbitration because I was neither an officer nor a shareholder of Open Orbit. The honorable arbitrator recognized **that I was "not a party to this arbitration and also the honorable arbitrator barred me to participate in his arbitration any further"** (App. 49-50) which blocked my

constitutional rights to present my case in an appropriate manner to the Legal Systems of the country and to exercise my rights to have a fair trial in that legal proceeding. Eventually Dish Network got the Award in their favor from the Arbitration (App. 45-48).

**A. Proceedings in District Court:**

DISH filed a motion to confirm the arbitration award with the District Court of Colorado, under the Federal Arbitration Act against Open Orbit and me, and I filed a motion for relief from the award. Magistrate Judge Shaffer recommended granting the motion to confirm the arbitration award against Open Orbit and entering default judgment against Open Orbit, which had not appeared in this Court to defend the case. With respect to me, Magistrate Judge Shaffer recommended granting my motion and dismissing the claim against me under Federal Rule of Civil Procedure 12(b)(6) without prejudice. (Id.). Honorable Judge **Shaffer reasoned that because I was not a party to underlying arbitration and because DISH had not argued the award should be enforced against me as a non-party, its application to enforce the award against me was deficient. (Id. at 2-8).** I accepted Honorable Judge Shaffer's recommendations in full. (App. 22-44). DISH then filed an amended application to enforce the award, arguing that considering my personal guaranty, the Court should enforce the arbitration Case awards against me even though I was not a party to the underlying arbitration. I had opposed the amended application. After reviewing those

materials, Honorable Judge Babcock entered a show cause order directing DISH to address why the case should not be sent back to arbitration, consistent with arbitration provision in the personal guaranty signed by both DISH and me. Both DISH and myself responded to the show cause order. Later Honorable District Judge passed a Judgement against me (App. 13-21).

### **B. The Court of Appeals' Decision:**

Court of Appeal affirmed the District Court's Judgement (App. 1-12). It had also denied my Petition for panel rehearing (App. 51-52).



## **REASONS FOR GRANTING THE PETITION**

There are four main reasons based on which my Petition should be granted. They are as follows:

### **1. Validity of the Retailer Agreement and Personal Guaranty Agreement of Sujit Ghosh**

I would like to humbly inform here that the District Court did not address my concern over the validity of the Personal Guaranty and the Retailer Agreement (App. 53-58 and App. 59-84). The Appeal Court also didn't address my plea on this. On the contrary the Appeal Court through its Judgement (App. 1-12) barred me from initiating another arbitration as per my Personal Guaranty Agreement (App. 53-58).

a). The Retailer Agreement between Dish Network and Open Orbit Corporation was signed and effective from **January 1st 2013** (App. 59-84). I would like to inform the Court here that I, Sujit Ghosh was not associated with Open Orbit Corporation with effect from January 1st 2013 (App. 88-97). So, any agreement signed by me after December 31st, 2012, on behalf of Open Orbit Corporation **cannot be a valid document** as I was not authorized to sign any document on behalf of Open Orbit Corporation after December 31st 2012. Moreover, I would also like to inform the Court that **I did not sign any agreement dated January 1st, 2013** on behalf of Open Orbit Corporation. I must say this retailer agreement is not only an invalid agreement but also a doctored document which was prepared by Dish Network as the **Plaintiff manually entered the date of the agreement later without the knowledge and consent of the other party**. Which is a clear case of **Document Tampering**.

b). The Personal Guaranty Agreement was prepared on **March 12th 2012** (App. 53-58), when there was no existence of a Master Retailer Agreement between Dish Network and Open Orbit Corporation. Retailer Agreement was executed on **January 1st, 2013** as claimed by Dish Network. I believe no supplementary agreement can be prepared and be valid without the existence of its Master Agreement and it cannot be associated to a Master agreement created thereafter, without the consent or permissions of the parties. I never gave any consent in this regard. Moreover, there is a **Retailer Number** mentioned on the right hand

top corner of the first page of the retailer agreement (App. 59-84), which is the main reference number of this retailer agreement. **This retailer number must have been mentioned in the same Personal Guaranty to prove that this Personal Guaranty (App. 53-58) is the part of the same retailer agreement (App. 59-84).** It would be not a justice to a Personal Guaranty holder to attach his Guaranty to each agreement signed by Dish Network and Open Orbit Corporation, unconditionally, over the years, decades or centuries for any past and future agreements, without any consent or legal recourse to the Personal Guarantor. If this Judgement is allowed without honoring the clauses of the Personal Guaranty, then no one in future will feel secure or comfortable to sign such Personal guaranty knowingly that the clauses of the agreement won't be complied with and the personal guarantor will be at risk without any legal recourse.

## **2. On invocation of my Personal Guaranty**

a). Personal Guaranty is a very important agreement for any Personal Guarantor and every Personal Guaranty is unique and bound by the terms and conditions mentioned in that specific Personal Guaranty only. Any claim or Judgement can or cannot be passed on to invoke it unless such provisions are provided in that Personal Guaranty only.

b). I would also like to state that the Arbitration was conducted between the parties for settlement of disputes as per the Clause 15 of the Dish Retailer

agreement (App. 59-84) which had nothing to do with the Personal Guaranty Agreement or its holders.

c). The Arbitration award (App. 45-48) was given against the Defendant Corporation – Open Orbit Corporation and not against any Personal Guarantor.

d). As per the Dish Retailer Agreement, there are different provisions of Arbitrations provided for different situations (App. 59-84, Clause 15 and App. 53-58, Para 4) and the Award or Judgement against the Defendant Corporation cannot be passed on to the Personal Guarantors automatically in no circumstances unless there is a specific Arbitration Award given against the Personal Guarantors in a separate Arbitration process as per the App. 53-58, Para 4, where the Personal Guarantor will be a Lawful Defendant and will get a written notice from the Plaintiff regarding this.

e). It is nowhere mentioned in the Retailer agreement that any award received by Dish Network can be implemented against the Personal Guarantor by defying the arbitration clause of the said personal Guaranty.

f). I being a Personal Guarantor is only concerned about the piece of document which I had signed as my declaration towards my Personal Guaranty (App. 53-58), which clearly states that “Any and all disputes, controversies or claims arising out of or in connection of this Personal Guaranty shall be resolved by arbitration in accordance with both the substantive

and procedural laws of the Title 9 or the U.S. Code (Federal Arbitration Act) and Commercial Arbitration Rules of the American Arbitration Association. The Arbitration shall be initiated by the written notice from the initiating party to the other party stating the initiating party's intent to initiate arbitration (Notice of Arbitration). It is also mentioned in that App. 53-58, Para 4 that to claim against that Personal Guaranty is to be processed through arbitration by three member Arbitrators and there is no alternate provision provided for conducting this process with less number of arbitrators.

g). In that Arbitration process the personal guarantor must be a party or defendant and the Award must be given specifically against the Personal Guaranty holder in this regard to move Plaintiff to the court to seek a Judgement against the Personal Guarantor, which the Plaintiff didn't comply with.

h). I would also like to mention here that Plaintiff did not send any Written Notice to the Personal guarantor specifically to claim against his Personal Guaranty, as per the Arbitration terms mention in the Personal Guaranty Declaration (App. 53-58, Para 4).

i). The Personal Guaranty signed by me protects me from any such Awards received from the other Arbitration process and imposed on the concerned Corporation (here it is Open Orbit Corporation) to be passed on to me automatically.

j). I had agreed to sign the personal guaranty with an understanding that the clauses mentioned in

that specific agreement will be complied with for any future claim against my Personal Guaranty and I will get a fair chance to attend an arbitration process as mentioned in that agreement. If those terms are overruled and a judgement is imposed on me, then it will be certainly unjust and unfair with me.

k). I would also like to state here that, it is an example of the height of unethical practices by a Corporation, where they are requesting the court to defy their own agreement (App. 53-58) and wants to impose some other awards to the Personal Guaranty holder by bypassing the agreement which the Personal Guarantor had signed with them. I would also like to state that I am a Personal Guarantor subject to the terms and conditions of the said contract. **If those terms are defied for any reasons, then the status of my Personal Guarantor doesn't stand either.**

### **3. I was deprived of a Fair Trial**

- i) Being a Non-Party and being **barred from participating** (App. 49-50) further into the Arbitration process, I was certainly being deprived of my rights and authority to participate in a free and fair trial as given by the Constitution of United States and United Nations Organization.
- ii) Honorable Arbitrator and all honorable courts have unanimously agreed that I was not a party to the Arbitration (App. 1-12, App. 13-21, App. 22-44, App. 45-48). Being a **non-party** then, I couldn't even expect and didn't get the same privilege and constitutional rights like a **Party**, that too when



the honorable Arbitrator **barred** me from participating in his Arbitration further.

- iii) In the U.S., the right to a fair trial is secured by the Fourteenth Amendment as a fundamental liberty. A fair trial is a legal trial conducted according to the rules of common law. In a fair trial, the accused's legal rights are safeguarded and respected. A fair trial hears before it condemns. The trial proceeds on inquiry and renders judgment only after trial. In a fair trial, jurors are to be entirely indifferent as to the parties at the outset. The necessary elements of a fair trial are an adequate hearing and an impartial tribunal, free from any interest, bias, or prejudice. A fair trial presupposes full justice within human limitations. [Box v. State, 74 Ark. App. 82, 88-89 (Ark. Ct. App. 2001)].
- iv) Human Rights Act, Article 6 Right to a fair trial States that the right to a fair trial is fundamental to the rule of law and to democracy itself. The right applies to both criminal and civil cases. The right to a fair trial is absolute and cannot be limited. It requires a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.
- v) I would like to inform the court that, this arbitration was requested based on the clause 15A of the retailer agreement (App. 59-84, Clause 15.3) and it has nothing to do with the Personal guaranty agreement or the clause of Arbitration mentioned in the personal guaranty agreement (App. 53-58, Para 4). The Arbitrator did not have the scope or jurisdiction to decide on my Personal Guaranty as

the Arbitration was not filed based on clauses of my personal guaranty agreement. Moreover, Honorable Arbitrator himself declared me a non-party and **barred me to participate further into the Arbitrator proceedings** (App. 49-50). So, it is evident that I was a Non-Party and never got a fair chance to defend myself in any arbitration so far regarding my Personal guaranty. So, the arbitration award cannot be passed on to me without going through any proper trial in the court of arbitration as mentioned in my Personal guaranty agreement and as per the **right to trial** mentioned by Human Rights act and US Constitutional rights.

- vi) As per the Article 10 of the Universal Declaration of Human Rights, everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

<http://www.un.org/en/universal-declaration-human-rights>

#### 4. Conclusive Reason

If the Petition is not granted then, Dish Network, will be getting away with the Judgement based on legally invalid and doctored documents. Whereas I will be deprived of my constitutional rights to have a fair trial, which I never got so far in this case.



**CONCLUSION**

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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