

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of decision: 10th March, 2015

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LPA No.80/2015 & CM No.2778/2015 (for stay)

TAJ TELEVISION INDIA PVT LTD

..... Appellant

Through: Mr. Vikas Singh, Senior Advocate
with Mr. Tejveer Singh Bhatia, Mr.
Upender Thakur and Mr. Kapil
Mishra, Advocates.

Versus

**FASTWAY TRANSMISSION INDIA PVT.
LTD.& ANR**

..... Respondents

Through: Mr. Naveen Chawla with Mr. Ketan
Paul, Mr. Anurag Sharma and Mr.
G.S. Oberoi, Advocates for R-1.
Mr. Anurag Ahluwalia Standing
Counsel for R-2/UOI.

CORAM :-

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J.

1. This intra-court appeal impugns the judgment dated 5th February, 2015 of the learned Single Judge of this Court of dismissal of W.P.(C) No.1208/2015 preferred by the appellant.

2. The said writ petition was filed impugning the interim order dated 29th January, 2015 of the Telecom Disputes Settlement & Appellate Tribunal (TDSAT) to the extent directing the appellant, a broadcaster of TV channels

popularly known as 'Zee', to supply its signals to respondent no.1 (respondent no.2 is the Ministry of Information and Broadcasting, Government of India). However the said direction has been made subject to conditions, (i) that the same shall not create any equity in favour of the respondent no.1; (ii) that in the event of the respondent no.1 finally succeeding before the TDSAT the supply of said signals will suddenly come to an end without any notice and the respondent no.1 alone would be liable for the claims of its subscribers therefor; and, (iii) that the respondent no.1 shall pay monthly subscription fee @ of Rs.17 lacs to the appellant for supply of the said signals.

3. Though the TDSAT in its order has not given any reasons for so directing the appellant but the learned Single Judge has given detailed reasoning for dismissing the writ petition.

4. The senior counsel for the appellant before us has contended:-

- (a) that the TDSAT ought not to have so directed the appellant to supply the signals at this interim stage when vide the same order it had also fixed a schedule for framing of issues and for recording of evidence and had listed the dispute for hearing on 19th March, 2015; such a direction could have been given only if the

respondent no.1 had finally established a right to demand the said signals from the appellant;

- (b) that it was the case of the appellant that the respondent no.1 was not entitled to said signals having indulged in piracy of the signals of the appellant and which plea of the appellant of piracy was accepted by TDSAT also; attention in this regard is invited to the only reason given by TDSAT for issuing such mandatory direction i.e. that non-supply of signals may result in the respondent no.1 “losing the market on a daily basis”; it is contended that the question of the respondent no.1 losing the market would arise only if its existing market included the Zee Group of Channels and which market the respondent no.1 would lose upon being deprived of the said channels; it is argued that else TDSAT would have used the expression that without the appellant’s channels the respondent no.1 would not be able to “develop the market”;
- (c) that it is the settled position that distributors of TV channels as respondent no.1 are not entitled to channels if found to be indulging in piracy thereof;

- (d) that not only was the respondent no.1 indulging in piracy but was also in arrears of dues owed to the appellant and an amount of approximately Rs.5.80 crores is still outstanding; the respondent no.1 for this reason also was not entitled to any equitable relief; and,
- (e) that owing to the respondent no.1 having pirated the channels of the appellant, the other licensee of the appellant has already been making claim for refund of the license fee / charges settled by the appellant with it and that supply of TV channels as directed, to the respondent no.1, would affect the market in the area of the other licensee of the appellant, again affecting the appellant.

5. Before recording the contentions of the counsel for the respondent no.1 we may record that the direction of the TDSAT to the appellant is with respect to the area in Karnal, Haryana and that Regulation 3.2 of the Telecommunication (Broadcasting and Cable Services) Interconnection Regulations, 2004 framed by the Telecom Regulatory Authority of India (TRAI) in exercise of powers under the Telecommunication Authority of India Act, 1997 requires a broadcaster to provide on request signals of its TV channels on non-discriminatory terms to all distributors of TV channels, which

may include, but be not limited to a cable operator, direct to home operator, multi system operator, head ends in the sky operator. The provisos to the said regulation *inter alia* provide that this provision shall not apply in the case of a distributor of TV channels having defaulted in payment and that any imposition of terms which are unreasonable shall be deemed to constitute a denial of request.

6. The counsel for the respondent no.1 has contended:-

- (i) that Regulation 3.2 supra does not carve out any exception vis-à-vis a distributor of TV channels who is alleged to have indulged in piracy and TDSAT had not yet decided the said question whether piracy can be a ground for the broadcaster of TV channel to inspite of request deny the channels to a distributor of TV channels / cable operator;
- (ii) that in view of the allegations of the appellant of the respondent no.1 having indulged in piracy, TDSAT had appointed a Local Commissioner who has submitted a report to the effect that the respondent no.1 was not found pirating the channels of the appellant;

- (iii) that the appellant till May, 2014 was supplying its channels to the area of Karnal through another Multi System Operator (MSO); however in May, 2014 the respondent no.1 through its sister concern namely M/s City Cable and the respondent No.1 entered the said market of Karnal; that in December, 2014 fresh agreements were entered into between the appellant and the respondent no.1 with respect to other areas of the State of Haryana, Punjab and Himachal Pradesh; that had the respondent no.1 been indulging in piracy the appellant would not have entered into the fresh agreements with it and would have rather disconnected the signals of its TV channels being supplied with respect to the other areas; that the appellant does not want the respondent no.1 to enter the market area of Karnal, to enable its sister concern M/s City Cable to garner the said market;
- (iv) that the order of the TDSAT, as is apparent from the tenor of the entire order, is a consent order and it was only on the request of the counsel for the appellant that it was not so recorded; it is for this reason only that TDSAT did not give any reasons in the order; it is unfair on the part of the appellant to after leading the TDSAT

to believe that it is agreeable to the interim arrangement, prefer the writ petition and this appeal;

- (v) it is owing to the said consent only that no reasons for arriving at the monthly subscription fee fixed of Rs.17 lac also is given in the order; the said figure was suggested by the appellant as the subscription fee being paid by its other licensee and was agreed to by the respondent no.1 as an interim arrangement though according to the respondent no.1 the subscription fee should have been much less; and,
- (vi) that no objections have been filed by the appellant to the report of the Local Commissioner appointed by the TDSAT.

7. The senior counsel for the appellant in rejoinder contended:-

- A. that the Local Commissioner visited the area with advance intimation and in which situation the question of detecting any piracy did not arise;
- B. that the appellant has filed a contempt proceedings against the respondent no.1 before the TDSAT and in which also issues have

been framed; thus the need for filing objections to the report of the Local Commissioner did not arise; and,

- C. that TDSAT in its various orders has been consistently taking a view that piracy excludes the obligation under Regulation 3.2 supra and it is unfair on the part of the counsel for the respondent no.1 to contend that piracy is not yet accepted as an exception to the applicability of the said Regulation.

8. We had during the hearing enquired from the counsel for the respondent no.1 as to how the equities will be balanced if ultimately it were to be found that the respondent no.1 in fact had been indulging in piracy.

9. The counsel for the respondent no.1 informed that in the issues already framed in the proceeding pending before the TDSAT, an issue has also been framed as to the amount which will be due to the appellant in the event of the respondent no.1 being found to have indulged in piracy. He thus contends that the interest of the appellant stands fully safeguarded.

10. We have considered the rival contentions. This being a proceeding with respect to an interim order only, we do not feel the need to decide whether a distributor of TV channels can be denied the benefit of Regulation 3.2 on the

ground of having indulged in piracy. For the present purposes, we will proceed on the premise that the distributor of TV channels can be so deprived.

11. We are unable to accept the contention of the senior counsel for the appellant that the allegation of the appellant of the respondent no.1 having indulged in piracy stands admitted. Had that been so, it would have been so asserted before the TDSAT and the need for framing of any issues and particularly an issue on the aspect of piracy would not have arisen. As far as reliance on the expression “losing the market” used by the TDSAT in its order dated 29th January, 2015 is concerned, the same in our view cannot be interpreted as TDSAT having admitted the case pleaded by the appellant of piracy by the respondent no.1. The language used by TDSAT which is exercising judicial / *quasi* judicial powers in its order cannot be so interpreted. We, in this regard, tend to agree with the contention of the counsel for the respondent no.1 of interim arrangement including of time bound trial stipulated in the said order dated 29th January, 2015 being more consensual as otherwise we would ordinarily expect TDSAT to give reasons for its directions. Moreover, if TDSAT had accepted the plea of the appellant of piracy by the respondent no.1, the need for trial also would not have arisen and TDSAT would have proceeded to adjudicate whether on that ground the respondent

no.1 could be deprived of the signal. A finding of piracy is a serious one, affecting the character and reputation of a business entity and cannot be so lightly inferred.

12. Else, we find that under the Regulations it is mandatory for a broadcaster of TV channels to upon being so requested by a distributor of TV channels to provide the signals of its TV channels. Once it is so, a broadcaster of TV channels can be relieved of the said obligation only upon returning a conclusive finding of piracy. In our view a plea of piracy entails disputed questions of fact on which, in the absence of any cogent material, ordinarily no *prima facie* view can be expressed and which can be determined only after trial. If it were to be held that merely on such a plea of piracy being taken, broadcaster of TV channels can be relieved of the obligation under Regulation 3.2, the same will run counter to the spirit of the said Regulation. We are also of the view that once the appellant as broadcaster of TV channels has such an obligation, it would suffer no loss or injury if pending trial directed to fulfill the said obligations subject of course to its monetary claims being fulfilled. No grievance before us has been raised that the compensation stipulated for so providing the TV channels by way of interim arrangement of Rs.17 lacs per month is inappropriate. Though ordinarily the appellant upon succeeding in its

plea of piracy may have been required to institute proceedings for recovery of compensation for the period for which the respondent no.1 indulged in piracy but the said aspect also appears to have been taken care of by framing an issue thereon.

13. Courts / Tribunals while making interim arrangement are to balance the equities between the parties and to ensure that neither party suffers from the time taken in adjudication. While, as aforesaid, owing to the arrangement made by TDSAT, the question of the appellant suffering any injury from the interim arrangement does not arise, if the respondent no.1 is deprived of the channel during the period of adjudication, it may, even in the event of ultimately succeeding, not be able to recover for the lost time. In such an eventuality computing the loss so caused to the respondent no.1 by the appellant may not also be easy.

14. We therefore do not find any merit in the appeal and dismiss the same with costs of Rs.25,000/- to the respondent no.1 payable before the TDSAT.

RAJIV SAHAI ENDLAW, J.

CHIEF JUSTICE

MARCH 10, 2015/‘pp’