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

%   *Judgment reserved on: 26th July, 2016*
Judgment pronounced on : 2nd August, 2016

\+   **ARB.P. 129/2016**

GAUR DISTRIBUTORS ..... Petitioner
Through Mr.Sugriva Dubey, Adv.

versus

HATHWAY CABLE & DATACOM LTD. .... Respondent
Through Mr.Navin Chawla, Adv. with Ms.Sonali Jaitly, Mr.Jaiyesh Bhakhshi & Mr.Sachin Sharma, Advs.

CORAM:
HON'BLE MR.JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. The petitioner has filed the abovementioned petition under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the "Act") seeking for the appointment of an Arbitrator.

2. The brief facts of the case as per the petitioner are that the petitioner executed an agreement with the respondent on 23rd November, 2011 and the said agreement was executed at Delhi office at AB-6, Safdarjung Enclave, New Delhi.

3. The petitioner on 15th January, 2013 sent a letter to the respondent that it had invested huge amount, however, outstanding amount from September, 2012 was not released to the petitioner. It is stated that the respondent without serving any notice to show cause locked every prime channel from 24th January, 2013 to 2nd

February, 2013, though on 28th January, 2013 there was an engagement function of the son of the petitioner and 1000 persons assembled at the office of the petitioner and started causing nuisance and used filthy languages against the petitioner and the family, due to which the image of the petitioner was tarnished who also suffered huge loss. Thereafter, the petitioner wrote a letter to the respondent on 24th January, 2013 but there was no response. Various reminders were issued but disputes could not be resolved except a letter was received for adjusting the cost of boxes, which was purchased at Rs.500/- per box, but the respondent started adjusting the cost of the boxes at Rs.799/- per box, which was objected and it was also intimated that the payment has not been adjusted from February 2012, till 26th July, 2013 and the petitioner is also entitled for the penal interest on the said amount. The counsel for the petitioner submits that more than Rs. 1 crore is due from the respondent. Therefore, the petitioner has rightly invoked the arbitration.

4. The prayer of the present petition is strongly opposed by the respondent. It is argued by Mr.Navin Chawla, learned counsel for the respondent that the present petition is not maintainable. It is also submitted that earlier the petitioner itself had filed petition before TDSAT where no relief was granted. It is submitted that the dispute in the present case is admittedly between two service providers that if two private parties themselves enter into an arbitration agreement in order to avoid the jurisidiction of the statutory Tribunal who is only empowered to decide the same, the benefit under those circumstances cannot be derived by one of the parties. It is argued by Mr. Navin Chawla that the TDSAT is a Special Act, which

specifically bars the jurisdiction of the Civil Court. Therefore, the present petition is not maintainable.

5. It is an undisputed fact that both the petitioner as well as the respondent are 'service providers' within the meaning of Section 14(a)(ii) of the Telecom Regulatory Authority of India Act, 1997 (hereinafter referred to as "TRAI Act") therefore, it is to be examined as to whether the dispute is arbitrable or as per Section 15 of the TRAI Act it is only to be determined under the Telecom Disputes Settlement and Appellate Tribunal (hereinafter referred to as "TDSAT") which has exclusive jurisdiction to entertain and adjudicate the present disputes.

6. In order to appreciate the objection of the respondent, Section 14 and Section 15 of the TRAI Act which bear relevance for the adjudication of the present petition have been reproduced herein below:-

> "14. Establishment of Appellate Tribunal. - The Central Government shall, by notification, establish an Appellate Tribunal to be known as the Telecom Disputes Settlement and Appellate Tribunal to-
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> (a) adjudicate any dispute -
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> (i) between a licensor and a licensee;
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> (ii) between two or more service providers;
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> (iii) between a service provider and a group of consumers:
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> Provided that nothing in this clause shall apply in respect of matters relating to
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> (A) the monopolistic trade practice, restrictive trade practice and unfair trade practice which are subject to the jurisdiction of the Monopolies and Restrictive Trade Practices Commission established under subsection (1) of section 5 of the

Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969).

(B) the complaint of an individual consumer maintainable before a Consumer Disputes Redressal Forum or a Consumer disputes Redressal Commission or the National Consumer Redressal Commission established under Section 9 of the Consumer Protection Act, 1986 (68 or 1986);

(C) disputes between telegraph authority and any other person referred to in sub- section (1) of Section 7B of the Indian Telegraph Act, 1885 (13 of 1885);

(b) hear and dispose of appeal against any direction, decision or order of the Authority under this Act.

15. Civil Court not to have jurisdiction: No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act".

7. A bare perusal of Sections 14 and 15 of the TRAI makes it abundantly clear that the TDSAT is empowered to *adjudicate any dispute between two or more service providers.* Therefore, in respect of present dispute falling within the contours of Section 14(a)(ii), the same falls within the exclusive jurisdiction of the TDSAT.

8. It is not denied by the petitioner that the alleged dispute raised by the petitioner is pertaining to recovery of amount. Although, on merit it is the respondent who has to recover more than Rs. 2 crores from the petitioner.

9. Hence, the claim of the petitioner, if any, for recovery of distributorship dues is required to be filed and instituted before the TDSAT under Sections 14 read with 14A of the TRAI Act.

10. While interpreting the provisions of the TRAI Act, this Court in its judgment dated 30th July, 2009 passed in C.S. (OS) No.1358/2006 titled as "***Hathway Cable & Datacom Pvt. Ltd. v. Banjara Telelinks Pvt. Ltd.***" adjudicated the similar issue between the respondent herein and one other service provider and thereby rejected the said suit filed by the respondent herein under Order VII Rule 11 CPC on the ground that it was barred by the provisions of Sections 14 and 15 of the TRAI Act and further observed as under:

> "7. It appears to this Court from perusal of the order dated 31st August 2005 passed by the TDSAT in the Petition No. 52 (C) of 2005 that notice was not taken of the decision in ***Cellular Operators Association of India v. Union of India*** where the Supreme Court held that (SCC, Page 204): " ...the [power of the Appellate Tribunal is quite wide." Further in ***Union of India v. Tata Teleservices (Maharashtra) Limited*** it has been observed as under (SCC, page 525):
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> "19. The thrust of the argument on behalf of the respondent before us was, in a case where a licence had not actually be issued to a party by the Central Government, the dispute could not be said to be one between a licensor and a licensee, contemplated by Sections 14(a)(i) or (ii) of the Act, it is submitted that only on the actual grant of a licence, would a person become a licensee under the Central Government and only a dispute arising after the grant of a licence would come within the purview of the Act. The wording of the definition of licensee is emphasized in support. Considering the purpose for which the Act is brought into force and TDSAT is created, we think that there is no warrant for accepting such a narrow approach or to adopt such a narrow construction. It will be appropriate to understand the scope of Section 14 (a) (i) of the Act and for that matter Section 14 (a) (ii) of the Act also, as including those to whom licences were intended to be issued and as taking in also disputes that commence on the tender or offer of a person being accepted. In other words, a dispute commencing with the acceptance of a

> tender leading to the possible issue of a licence and **disputes arising out of the grant of licence even after the period has expired would all come within the purview of Section 14 (a) of the Act.** To put it differently Section 14 takes within its sweep disputes following the issue of a letter of intent, pre-grant of actual licence as also disputes arising out of a licence granted between a quondam licensee and the licensor." (emphasis supplied)

11. It was also held by the Bench of this Court that notwithstanding the decision dated 31st August 2005 passed by the TDSAT in Petition No. 52 (C) of 2005, in view of the law explained by the Supreme Court in ***Cellular Operators Association of India v. Union of India*** (2003) 3 SCC 186 *and* ***Union of India v. Tata Teleservices (Maharashtra) Limited*** (2007) 7 SCC 517***,*** disputes between two service providers should be adjudicated in the first instance only by the TDSAT. It may be noticed that against the decision of the TDSAT, an appeal is maintainable as a matter of right to the Supreme Court of India in terms of Section 18 of the TRAI Act.

12. In the case of ***Aircel Digilink India Ltd. v. Union of India & Anr.*** in Petition No.6/2003 decided on 6th January, 2005***,*** the Appellate Tribunal in paras 18, 19 and 20 held as under :

> "18. It is a matter of public policy laid in the public interest that telecom, broadcasting and cable services dispute which affect a large body of consumers all over the country should be amenable to one expert body. What will happen if in a dispute between two service providers in telecom sector arising out of an interconnection agreement, a service provider revokes the interconnection agreement. For these two, it may be dispute of recovery of money or damages or of technical nature but disconnection deprives consumers of access of one network to the other network. Consequences

are not limited to the two service providers only but are of far reaching nature not difficult to imagine. Similarly, if in cable industry, a broadcaster and a multi-service operator sever their relations under alloyed breach of agreement, it affects again a large body of consumers who would not be able to avail the signals for various channels and yet having made payment. An arbitrator will find himself lacking jurisdiction to give relief to hapless consumers.

19. The Act is a complete code. TDSAT has exclusive jurisdiction to adjudicate any dispute between the parties and also exercises exclusive appellate jurisdiction against any direction, decision or order of the TRAI. Sections 14 to 20 in Chapter IV of the Act deal with the jurisdiction and procedure of the TDSAT. Section 14M and 14N provides for transfer of pending cases before TRAI and appeals in the High Court to TDSAT after its constitution by the amending Act 2 of 2000 which carne into force on 21.2.2002. Jurisdiction of civil courts is barred in respect of any matter which TDSAT is empowered by or under the Act to determine and no injunction shall be granted by any court or any authority which includes arbitrator in respect of any action taken or to be taken in pursuance of the powers conferred by this Act on TDSAT. Orders passed by the TDSAT are executable as a decree and provision also exists for imposition of penalty for wilful failure to comply with the orders of the TDSAT. Under Section 18 of the Act, appeal lies to the Supreme Court against any order not being an interlocutory order of TDSAT on one or more of the grounds specified in the Section 100of the Civil Procedure Code. The Supreme Court in the case of Cellular Operators Association of India v. Union of India (2003) 1 Comp LJ 1 (SC): (2003) 3 SCC 186 has observed that appeal lies to the Supreme Court against the order of TDSAT only on the substantial question of law. The Preamble of the Act discloses as well the intent and object of the Legislature to confer exclusive jurisdiction to TDSAT to the exclusion of any court or authority.

20. The Arbitration Act, 1996, is a general Act and it will apply to all the arbitration agreements but the Act, i.e., TRAI Act is Special Act and applies to telecom sector and by notification issued on 9 January, 2004, also applies to broadcasting and cable services. The intention of the

Legislature in ousting the jurisdiction of all other courts and all other authorities is quite apparent and it is to ensure and enable one single authority, i.e., TDSAT, to uniformly regulate this vital telecom sector which includes broadcasting and cable TV sector. Proper functioning of various stakeholders in this telecom sector is vital to the development and to safeguard interest of the consumers at large who are the beneficiaries of these services. It may also be noticed that telecom sector is subject to various regulations issued by TRAI which even monitors the interconnection between various service providers. In the Cellular Operators Association of India v. Union of India (2003) 1 Comp LJ 1 (SC): (2003) 3 SCC 186, the Supreme Court has held that jurisdiction of TDSAT under Section 14 cannot be held merely to be supervisory jurisdiction and that it is the only forum for addressing the grievances of aggrieved party inasmuch as the appellate jurisdiction to the Supreme Court is only on the substantial question of law and jurisdiction of Civil Courts for filing a suit is ousted. TDSAT has power to adjudicate any dispute. The Supreme Court in the case of West Bengal [Telecom] Regulatory Commission v. CESE Ltd. : (2002) 8 SCC 715 has even recommended the establishment of a similar expert Tribunal like TDSAT in telecom sector in other similar regulatory bodies. The question of exclusive jurisdiction of an expert body like TDSAT has recently been discussed in a decision of Supreme Court in the case of Clariant International Ltd. and Anr. v. Securities and Exchange Board of India (2004) 4 Comp LJ 52 (SC): (2004) 8 SCC 524 (paras 64 to 82)."

13. The judgments ***Hathway Cable & Datacom Pvt. Ltd.*** (supra) and ***Aircel Digilink India Ltd.*** (supra) squarely apply to the facts of the present case and therefore, the present petition filed by the petitioner under the Act is not maintainable. In the facts of the present case where only the Special Act would prevail as by consent, the parties cannot exclude the statutory jurisdiction of the Court.

14. In view of the aforesaid facts and circumstances, the present petition filed by the petitioner is dismissed. However, liberty is

granted to the petitioner to approach the TDSAT for the adjudication of the present dispute, if so desired.

15. No costs.

(MANMOHAN SINGH)
JUDGE

AUGUST 02, 2016