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

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Judgment delivered on: 11.05.2017

+ W.P.(C) 3896/2017 and CM No. 17162/2017 (Stay)

ASERGIS TELECOM SERVICES PVT. LTD.

..... Petitioner

versus

UNION OF INDIA

..... Respondent

**Advocates who appeared in this case:**

For the Petitioner : Mr. Rajiv Kapur and Ms. Priyanka Das, Advocates

For the Respondent : Mr. Sanjay Jain, ASG with Mr. Abhay Prakash Sahay, Mr. Kartik Rai and Ms. Adrija Thakur, Advs.

**CORAM:-  
HON'BLE MR JUSTICE SANJEEV SACHDEVA**

**JUDGMENT  
11.05.2017**

**SANJEEV SACHDEVA, J. (ORAL)**

1. The petitioner, by the present petition, seeks setting aside of interim order dated 2<sup>nd</sup> May, 2017 passed by the Telecom Disputes Settlement & Appellate Tribunal (hereinafter referred to as 'the TDSAT') in MA No. 141/2017 in Telecom Petition No. 72/2016.
2. The petitioner is engaged in the business of telecommunication services of all types of voice and data communications etc.
3. The petitioner was granted a licence by the respondent under Section 4 of the Indian Telegraph Act, 1885 for three service areas i.e.

New Delhi, Mumbai and Bengaluru vide separate licence agreement for the three service areas.

4. On 14.09.2016, notice for termination of licence agreement was issued to the petitioner on the ground of alleged violation of terms and conditions of the licence. The notice was issued in terms of Condition No. 10.2 of the licence agreement.

5. By the notice dated 14.09.2016, the petitioner was, *inter alia*, informed that the licence agreement for the three service areas would stand terminated from the 60<sup>th</sup> day from issuance of the said letter.

6. The petitioner impugned the said termination by filing the above referred Telecom Petition before the TDSAT. By an ex parte interim order dated 11.11.2016, TDSAT stayed the notice for termination dated 14.09.2016 in respect of the three service areas.

7. The proceedings before TDSAT are pending.

8. On 02.05.2017, when the petition was listed before the TDSAT, the respondent produced a sealed envelope before the TDSAT containing communication received from the Ministry of Defence dated 17.03.2017.

9. TDSAT noted the contention of the respondent that they claimed privilege with regard to the information contained in the said letter. The said communication of Ministry of Defence was also produced before this Court and similar privilege was claimed. The

letter has been perused by this Court but not made part of the record in view of the privilege claimed.

10. TDSAT by the impugned order dated 02.05.2017 vacated the exparty ad-interim stay order granted on 11.11.2016.

11. A perusal of the impugned order dated 02.05.2017 shows that TDSAT, on bare perusal of the letter of Ministry of Defence, has vacated the interim stay granted to the petitioner on 11.11.2016. TDSAT has not examined the merits of the said letter vis-à-vis the notice for termination.

12. Learned counsel for the petitioner submits that TDSAT erred in not examining as to whether any action had been taken by the respondents with regard to the ground on which the notice for termination dated 14.09.2016 was issued to the petitioner.

13. Learned counsel further contends that in case the letter of the Ministry of Defence gave any cause of action to the respondents, the respondent should have taken steps in terms of condition 10 prior to the said letter becoming the basis of vacation of the interim order.

14. Learned counsel for the petitioner contends that the condition no. 10 lays out certain pre-conditions to be complied with prior to the termination of the licence.

15. Mr. Sanjay Jain, learned ASG for the respondent, per contra, contends that the TDSAT has balanced the equities by observing that

in case the petitioner succeeds, the petitioner would be entitled to claim monetary compensation.

16. Learned ASG further submits that in case this Court were to take a view that the order vacating the interim protection granted to the petitioner is liable to be set aside, then an opportunity should be granted to the respondents to take appropriate steps in terms of condition no. 10 of the licence agreement in view of the letter dated 17.03.2017 of the Ministry of Defence.

17. The notice for termination dated 14.09.2016 specifically notes that the respondents have applied condition 10.2 of the licence agreement for terminating the licence granted to the petitioner. The termination letter is preceded by a show cause notice dated 20.11.2014 listing the grounds of violation.

18. The letter dated 17.03.2017 has not relied on either in the show cause notice as well as the notice for termination. This is because the letter is subsequent to the show cause notice as also the notice for termination.

19. Condition 10.1 *inter-alia* grants a right to the Licensor to suspend the operation of the Licence, at any time, if in the opinion of the Licensor, it is necessary or expedient to do so in public interest or in the interest of the security of the State or for the proper conduct of service.

20. Condition 10.2 *inter-alia* grants a right to the Licensor to

terminate the Licence under the circumstance mentioned therein.

21. If in the opinion of the Respondents, the letter dated 17.03.2017 of the Ministry of Defence, gave rise to cause as specified under condition 10.1, the respondent would have proceeded in terms of condition 10.1 and in case the said letter gave rise to any circumstance stipulated under condition 10.2, then they would have proceeded there under.

22. It is an admitted position that neither any action under 10.1 nor 10.2 has been taken by the respondent based on the letter dated 17.03.2017 till now.

23. TDSAT in the said Telecom Petition, is considering the validity of the action taken as recorded in the notice of termination dated 14.09.2016. The letter of 17.03.2017 is a subsequent development.

24. If a subsequent letter or information available with the respondent gave rise to a fresh cause of action to the respondent to take action, it would be for the respondent to act prior to the TDSAT making it a basis of vacation of the stay order. The respondents would be entitled, if circumstance warrant to take action in terms of condition 10 of the licence agreement.

25. Since respondent, as of now, have not taken an action in terms of Section 10, in my view, TDSAT erred in vacating the interim order on an anticipated action which the respondent could have taken under condition 10 of the licence agreement. In that view of the matter,

TDSAT clearly erred in vacating the interim protection granted to the petitioner by the impugned order dated 11.11.2016.

26. In view of the above, the vacation of the ad interim order dated 11.11.2016, by the impugned order dated 02.05.2017 is set aside.

27. It is clarified that the respondent would be at liberty to take appropriate action on the letter dated 17.03.2017, if so warranted, *inter alia* in terms of condition 10 of the licence agreement or under such other law, as may be permissible.

28. It is further clarified that that this Court has not considered the grant of the *ex-parte ad interim* stay dated 11.11.2016 on merits since the application for grant of *ad interim* stay is still pending before TDSAT. Further, as TDSAT had vacated the *ex-parte ad-interim* order without considering the case of the petitioner or respondents on merits and the interim application is still pending, TDSAT, while disposing of the interim application, would be free to vary, modify or vacate the order dated 11.11.2016, on merits of the matter, without being influenced by anything stated in this order. TDSAT would also be at liberty to take into account any subsequent action that the respondents may take on the letter dated 17.03.2017.

29. Order *Dasti* under signature of the Court Master.

**SANJEEV SACHDEVA, J**

**MAY 11, 2017/§d**