

\$~13.

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

+ LPA 715/2016

HOME CABLE NETWORK PVT LTD

..... Appellant

Through: Mr. Sanjay Hegde, Sr. Adv. with Mr.
Vivek Sarin, Ashish Kumar and
Pranjal Kishore, Adv.

versus

MEDIA PRO ENTERPRISE INDIA PVT LTD & ORS

..... Respondent

Through: Mr. Rajiv Nayyar, Sr. Adv. with Mr.
Saurabh Srivastava and Mr. Ranjeet
Singh, Adv for R-3

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE REKHA PALLI

ORDER

12.07.2017

%

C.M. No. 47206/2016

Mr. Nayyar fairly does not oppose the application. Accordingly, for the reasons stated in the application, the delay stands condoned. The application stands disposed of.

LPA 715/2016

The appellant has preferred the present LPA to assail the order dated 15.05.2015 passed by the learned Single Judge in W.P. (C.) No.4754/2015. In the said writ petition, the appellant had assailed the order dated

01.05.2015 passed by the Telecom Disputes Settlement and Appellate Tribunal (TDSAT). The grievance raised by the appellant before the learned Single Judge, as evident from the impugned order, was that the TDSAT while passing the order dated 01.05.2015 had relied upon the report of an expert authority i.e. Broadcasting Engineering Consultants India Ltd. (BECIL) dated 15.04.2015, which it could not have done. The said report had been made by the BECIL to establish that on the date of inspection, the appellant was found to be in breach of the order dated 20.12.2013 passed by the TDSAT, whereby interim protection was granted by the TDSAT in favour of the appellant upon the appellant filing an undertaking stating therein that it will restrict its area of operation to the NCT of Delhi as defined in the notification of the Ministry of Information and Broadcasting dated 11.11.2011. As per the report of BECIL, on the date of inspection, the appellant was found to be in breach of the order inasmuch, as, the telecom signals were being distributed by the appellant in unauthorised areas. Consequently, the TDSAT had imposed a penalty upon the appellant under Section 20 of the Telecom Regulatory Authority of India Act, 1997.

Mr. Hegde, learned senior counsel for the petitioner, on instructions, submits that the appellant does not challenge the impugned order passed by the learned Single Judge and the order passed by the TDSAT dated 01.05.2015, except to the extent that the penalty imposed by the TDSAT upon the appellant of Rs.25 lakhs is not justified and excessive.

The submission of Mr. Hegde is that even in a case of wilful non compliance of the order passed by the Appellate Tribunal, the punishment of fine may extend to Rs.1 lakh. It is only in case of a second or subsequent offence, that the fine may extend to Rs.2 lakhs, and only in the event of a

continuing contravention being established, the additional fine may extend to Rs.2 lakhs for every day during which such default continues. The submission of Mr. Hegde that there was no material available with the tribunal, even if the report of BECIL were to be accepted, to come to the conclusion that there was continuing contravention, attracting higher penalty of Rs.2 lakhs per day of contravention. Mr. Hegde submits that the appellant would be satisfied if the penalty is reduced and limited to Rs.1 lakh since the contravention found by the BECIL in its report pertains to the first contravention.

Mr. Nayyar fairly does not dispute this submission, in the facts and circumstances of the case.

Accordingly, we dispose of the present appeal by modifying the penalty imposed by the TDSAT in its order dated 01.05.2015 to Rs.One Lakh only. The said penalty shall be deposited by the appellant within two weeks from today.

VIPIN SANGHI, J

REKHA PALLI, J

JULY 12, 2017

sr