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

\+ W.P.(C) 5487/2019

MULTI REACH MEDIA PRIVATE LIMITED ..... Petitioner

Through: Mr Meet Malhotra, Sr. Advocate with Mr Diggao Pathak, Ms Shweta Sharma, Mr Ravi S. S. Chauhan, Ms Palak Singh and Mr Qasim Ali Khan, Advocates.

versus

UNION OF INDIA & ANR. ..... Respondents

Through: Mr Kritiman Singh, CGSC for R-1. Ms Payal Kalra with Md. Ehraz Zafar and Ms Tanya Gupta, Advocates for respondent.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

<u>O R D E R</u>

% **20.05.2019**

<u>CM No. 24079/2019</u>

1. Allowed, subject to all just exceptions.

<u>W.P.(C) 5487/2019 & CM No.24078/2018</u>

2. The petitioner has filed the present petition, *inter alia,* impugning orders dated 03.05.2019 and 16.05.2019 passed by the Telecom Disputes Settlement & Appellate Tribunal (TDSAT).

3. The petitioner is a Multi System Operator. Apparently, there are some disputes between the petitioner and respondent no.2 with regard to the charges payable by the petitioner to respondent no. 2 (Sony Pictures Network India Pvt. Ltd.). It is in this context that the petitioner had filed a

petition (Broadcasting Petition Nos.99/2019 & 100/2019) before TDSAT.

4. It is the petitioner's case that according to its subscriber base, the petitioner was required to pay only sum of ₹6.79 lakhs (approximately) per month to respondent no.2. The petitioner's grievance stems from the fact that instead of raising invoices of the aforesaid amount, respondent no.2 had raised invoices for an amount of approximately ₹23 lakhs.

5. The issue as to whether the invoices issued by respondent no.2 are correct or not can be resolved by an audit of the subscribers. It is respondent no.2's case that it is entitled to conduct such an audit in terms of Regulation 15(2) of the Telecommunication (Broadcasting and Cable) Services Interconnection (Addressable Systems) Regulations, 2017 (hereafter 'the Regulations'). In terms of the Regulations, an auditor is required to be appointed from panel of auditors to be empanelled by TRAI. Admittedly, the said panel had not been published.

6. There is no dispute that in terms of the Regulations, respondent no.2 as a broadcaster would be entitled to conduct of an audit by an auditor empanelled by TRAI. Since, such a panel has not been framed as yet, the matter was considered by TDSAT and an interim order dated 03.05.2019 was passed. In terms of the said order, respondent no.2 was directed to raise provisional bills on the basis of the subscriber reports submitted by the petitioner (in other words, invoices in the vicinity of 6.75 lakhs as claimed by the petitioner) and the petitioner was directed to make payments of the same. Subject to the said payments being made, respondent no.2 was restrained from giving effect to its disconnection notice until further orders. In the meanwhile, respondent no.2 was also given an option to conduct an

audit through its own auditor. TDSAT also made it clear that the aforesaid order was without prejudice to the contentions of the parties.

7. Whilst the petitioner continued to enjoy the protection of interim order dated 03.05.2019, as the impugned notice of disconnection issued by respondent no.2 was kept in abeyance, it did not permit respondent no.2 to conduct the audit as permitted in terms of the said order. Admittedly, the audit team appointed by respondent no.2 had proceeded to the premises of the petitioner for conduct of the audit, however, the petitioner – in complete defiance of the said order – declined to permit the said team to conduct the audit.

8. It is the petitioner's case that an audit ought to have been conducted by an independent auditor and not by one appointed by respondent no.2. The said matter was considered by TDSAT by an order dated 16.05.2019, which is impugned herein. TDSAT recorded that, *prima facie*, the conduct of the petitioner amounted to wilful disobedience of its orders. It is in this context that TDSAT has vacated its interim order passed on 03.05.2019.

9. This Court finds no infirmity with the orders passed by TDSAT. It is, *ex facie*, clear that the petitioner has been in wilful disobedience of the orders passed by TDSAT. Although the petitioner continued to take benefit of the interim protection granted by the order dated 03.05.2019, it wilfully obstructed respondent no.2 from conducting an audit as directed.

10. It is not necessary to examine whether the audit was required to be conducted by an independent third-party auditor since that issue is yet to be considered by TDSAT. The order dated 16.05.2019 has been passed solely on the basis of the conduct of the petitioner.

11. Mr Malhotra, learned senior counsel appearing for the petitioner states that there are several objections to the conduct of the audit including that the auditor chosen by respondent no.2 was directly connected to respondent no.2. It is not necessary to examine the said contentions because TDSAT had not precluded the petitioner from raising its contentions in the main petition. The order dated 03.05.2019 passed by TDSAT was an interim order and as noticed above, the impugned order dated 16.05.2019 has been passed solely on account of conduct of the petitioner which, this Court is of the view, ought to be deprecated.

12. This Court is also of the view that given the conduct of the petitioner, the present petition ought to be dismissed with costs.

13. Accordingly, the petition is dismissed with costs quantified at ₹25,000/-. The costs shall be deposited with the Delhi High Court Advocates Welfare Trust within a period of two weeks from today.

14. The pending application is also disposed of.

VIBHU BAKHRU, J

MAY 20, 2019
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