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

+ **W.P.(C) 7327/2019 & CM Nos. 30516/2019 & 30517/2019**

SHRISTI COMMUNICATION NETWORK Petitioner

Through: Mr Vikram Singh, Ms Smita Singh and Ms Bhanu Pant, Advocates.

versus

**TECHNOBILE SYSTEMS PVT LTD
& ANR**

..... Respondents

Through: Mr Raj Shekhar Rao, Ms M. Khanna, Mr Gaurav Sanswal and Ms Shivani Dham, Advocates.

**CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU**

**ORDER
10.07.2019**

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VIBHU BAKHRU, J

1. The petitioner has filed the present petition, *inter alia*, impugning orders dated 11.01.2019 and 07.05.2019 passed by the Telecom Disputes Settlement and Appellate Tribunal (hereafter 'TDSAT'). The said impugned orders are common orders passed in the batch of petitions preferred by respondent no.1 (hereafter 'TSPL'), under Sections 14 and 14A of the Telecom Regulatory Authority of India Act, 1997 (hereafter 'the TRAI Act').

2. By the impugned order dated 11.01.2019, TDSAT had listed the petitions filed by TSPL for final hearing on the relief regarding the return of Set Top Boxes (STBs) or value thereof. The said order was passed considering the petitioner's objections that the said relief was a final relief and could not be granted as an interim order. TDSAT accepted the said contention and decided to hear the matter in regard to the said relief finally. TDSAT further held that oral evidence was not required for deciding the controversy and permitted the parties to file further material by way of evidence on affidavit.

3. By the impugned order dated 07.05.2019, TDSAT, *inter alia*, allowed TSPL's claim for return of STBs and directed the petitioner to return 880 STBs within a period of two weeks and on failure to do so, pay compensation quantified at ₹11,88,000/- within a period of further two weeks. TDSAT further held that in the event the said amount was not paid, the petitioner would be at liberty to initiate execution proceedings to realize the same with future interest at the rate of 9% per annum.

4. Mr. Vikram Singh, the learned counsel appearing for the petitioner has assailed the impugned orders on, essentially, two fronts. First, he has submitted that the impugned order dated 11.01.2019 is unreasoned as it does not disclose any reason for not permitting the petitioner to lead oral evidence. It is contended that TDSAT is a 'court' and therefore, it was bound to record oral evidence. He relied upon Section 16(2) of the TRAI Act in support of his contention.

5. Second, it is contended that the impugned order dated 07.05.2019 is unsustainable as TDSAT had granted the final relief by way of an interlocutory order. He also contended that the said order is not appealable under Section 18 of the Act and therefore, the petitioner's vital right to file an appeal has been curtailed.

6. The petitioner (M/s Shrishti Communication Network) is a Local Cable Operator (LCO). TSPL and respondent no. 2 (Siti Networks Ltd) are Multi System Operators (MSO) operating in the city of Lucknow. The respondents as MSOs distribute signals of various broadcasters to the cable operators and to the consumers.

7. TSPL had affiliated its network with the petitioner and the petitioner would re-transmit the signals being supplied by TSPL to its customers. Respondent no.1 had provided around 1066 STBs to the petitioner in the year 2013, free of cost.

8. Certain disputes arose between the petitioner and TSPL. TSPL claims that the petitioner had failed to make payments of monthly subscription fee as required. TSPL also claims that respondent no.2 was indulging in swapping of the STBs provided by the petitioner and thus causing heavy financial loss to it. In view of the above disputes, TSPL filed a petition being Broadcasting Petition 123/2018 before TDSAT under Section 14 read with Section 14A of the TRAI Act. The reliefs sought by TSPL in that petition, are set out below:-

“(a) Restrain the Respondent No. 1 from taking signals from the Respondent No. 2 or any other

MISO without first complying with the Interconnect Regulations, 2012 and till such time as the subscription dues of the Petitioner are paid by the Respondent No. 1 and the STBs of the Petitioner are returned in good working condition or cost of such STBs is paid by the Respondent No. 1;

(b) Direct the Respondent(s) to pay to the Petitioner a sum of Rs. 4,17,345/- as on 01.04.2018 along with interest at the rate of 18% p. a. for the outstanding subscription charges;

(c) Direct the Respondent No. 1 to return 1066 STBs in good working condition alongwith all accessories or in lieu pay the cost of STBs;

(d) Direct the Respondent(s) to pay pendente lite and future interest at the rate of 18% per annum;”

9. TSPL had also filed four separate petitions against four other LCOs seeking reliefs of a similar nature. The petition filed by TSPL against the petitioner was taken up by TDSAT, along with the said petitions. It is relevant to note that all the LCOs, who were arrayed as respondents in the said petitions including the petitioner, were represented by the same advocate: Mr Vikram Singh, the learned advocate who appears for the petitioner in these proceedings as well.

10. It was, *inter alia*, contended on behalf of the petitioner and other LCOs that they were not in a position to return the STBs on their own and TSPL should send its employees to collect the same from various customers. It was also contended on behalf of the petitioner that TSPL was not the owner of STBs and, therefore, was not entitled

to seek return of the same. The petitioner also claimed that it had received the STBs in question as a gift from TSPL.

11. TSPL contended that the return of STBs was vital for its existence as it was impairing its capacity to do business with the other MSOs and LCOs. TSPL also alleged that the STBs were withheld at the instance of rival competitors as the same would be of no use to the petitioner and other LCOs.

12. In view of the above, TSPL sought interim orders for return of the STBs. The petitioner objected to any interim order being passed, *inter alia*, on the ground that the same would amount to finally deciding TSPL's claim with regard to return of the STBs.

13. TDSAT considered the aforesaid objections and did not pass an interim order for return of the STBs at a hearing held on 11.01.2019 but decided to set down the petitions for final hearing regarding TSPL's claim for return of STBs or a value thereof. TDSAT also directed that oral evidence was not necessary for adjudication of the said claim and permitted the parties to place on record any further material by way of evidence on affidavit. This is one of the petitioner's principal grievances in this petition.

14. It is important to note that the petitioner did not challenge the impugned order dated 11.01.2019 at the material time. On the contrary, the petitioner accepted it; it availed the opportunity of filing evidence by way of an affidavit and participated in the final hearing held before TDSAT. The petitioner has placed no material on record

that even remotely suggests that it had participated in the final hearing before TDSAT under protest or reserved its rights to challenge TDSAT's decision to not to record any oral evidence. The petitioner also did not make any application for leading oral evidence indicating its reasons for seeking the same.

15. Having failed to prevail on merits, the petitioner has now filed the present petition seeking to assail the order dated 11.01.2019. This Court had also pointedly asked the learned counsel appearing for the petitioner as to why the petitioner had not challenged the order dated 11.01.2019 at the material time; His only response was that the petitioner has challenged the order now and is entitled to do so.

16. It is well settled that remedy under Article 226 of the Constitution of India is a discretionary remedy and in view of the above, this Court is not persuaded to accept that exercise of any discretion under Article 226 of the Constitution is warranted to entertain the petitioner's challenge to the impugned order dated 11.01.2019.

17. The petitioner's contention that TDSAT is bound to record oral evidence to decide cases instituted before it, is unmerited and the decision of TDSAT to not record any oral evidence for deciding the claims regarding the return of STBs cannot be interfered with.

18. Section 16 of the TRAI Act expressly stipulates that TDSAT shall not be bound down by the procedure as laid down by the Code of Civil Procedure, 1908 but shall be guided by the principles of natural

justice. It also provides that TDSAT shall have the powers to regulate its own procedure. Sub-Section (2) of Section 16 also expressly provides that TDSAT would have the same powers as vested in a Civil Court while trying a suit, including to receive evidence on affidavits. Section 16 of the TRAI Act is set out below:

“16. Procedure and powers of Appellate Tribunal

- (1) The Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 (5 of 1908), but shall be guided by the principles of natural justice and, subject to the other provisions of this Act, the Appellate Tribunal shall have powers to regulate its own procedure.
- (2) The Appellate Tribunal shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit, in respect of the following matters, namely:-
 - (a) summoning and enforcing the attendance of any person and examining him on oath;
 - (b) requiring the discovery and production of documents;
 - (c) receiving evidence on affidavits;
 - (d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872) requisitioning any public record or document or a copy of such record or document, from any office;

- (e) issuing commissions for the examination of witnesses or documents;
 - (f) reviewing its decisions;
 - (g) dismissing an application for default or deciding it, ex parte;
 - (h) setting aside any order of dismissal of any application for default or any order passed by it, ex parte; and
 - (i) any other matter which may be prescribed.
- (3) Every proceeding before the Appellate Tribunal shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purposes of section 196 of the Indian Penal Code (45 of 1860) and the Appellate Tribunal shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974)."

19. In *Union of India & Anr. v. Delhi High Court Bar Association & Ors.*: (2002) 4 SCC 275', the Supreme Court had observed as under:

"22. ...The reason for establishing Banking Tribunals being to expedite the disposal of the claims by the banks, Parliament thought it proper only to require the principles of natural justice to be the guiding factor for the Tribunals in deciding the applications, as is evident from Section 22 of the Act. While the Tribunal has, no doubt, been given the power of summoning and enforcing the attendance of any witness and examining him on oath, but the Act does not contain any provision which makes it mandatory for the witness to be examined, if such a witness could be produced."

20. The said observations were made by the Supreme Court in the context of Section 22 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, which is similarly worded as Section 16 of the TRAI Act. It is not necessary for TDSAT to permit oral evidence in every case. The contention that the petitioner has the right to lead oral evidence and TDSAT is required to record oral evidence is erroneous.

21. This Court is also unable to accept the contention that the impugned order dated 07.05.2019 is an interlocutory order. Mr Singh had referred to the decisions in *Mohammad Amin Brothers Ltd. and Ors. v. Dominion of India and Ors.*: AIR 1950 FC 77; *S. Kuppuswami Rao v. The King*: AIR (36) 1949 Federal Court 1; and *V.C. Shukla v. State Through C.B.I.*: AIR 1980 SC 962 in support of his contention. It contended that since the impugned order dated 07.05.2019 did not finally dispose of the petition, the said order ought to be considered as an interlocutory order.

22. There can be no dispute that the impugned order dated 07.05.2019 finally decided TSPL's claim regarding return of the STBs. Insofar as this relief is concerned, the right and liabilities of the parties stood concluded. Thereafter, the petitions filed by TSPL survived only in respect of the claim regarding arrears of subscription charges.

23. In *V.C. Shukla v. State* (*supra*), the Supreme Court referred to the decisions of the Federal Court in *S. Kuppuswami Rao* (*supra*) and *Mohammad Amin Brothers Ltd.* (*supra*) and observed as under:-

“31.Thus, the Federal Court in its decision seems to have accepted two principles, namely,-

- (1) that a final order has to be interpreted in contradistinction to an interlocutory order; and
- (2) that the test for determining the finality of an order is whether the judgment or order finally disposed of the rights of the parties.”

24. The Court thereafter proceeded to apply the aforesaid principles to determine whether an order framing charges under Section 120B of Indian Penal Code, 1860 and under the relevant provision of the Prevention of Corruption Act, 1947 was to be construed as an interlocutory order. In the present case, the impugned order dated 05.07.2019 finally disposed of the claim of TSPL with regard to return of STBs. The decision on the issue of return of STBs also cannot be considered as a supporting matter to the principal dispute. Indisputably, the claim for return of STBs is one of the principal disputes raised in the petition filed by TSPL. This decision is clearly a final order.

25. Thus, the contention that TDSAT has frustrated the petitioner's right of an appeal by deciding the said claim, is also unpersuasive.

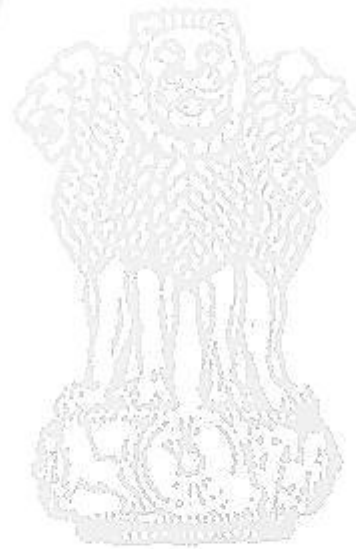
26. For the reasons stated above, this Court does not consider it apposite to entertain the present petition.

27. The petition is dismissed with costs quantified at ₹10,000/-. The costs shall be deposited with the Delhi High Court Legal Services Committee.

28. The pending applications are also disposed of.

JULY 10, 2019
MK/RK

VIBHU BAKHRU, J



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