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IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 3391/2020, CM APPL. 12034/2020 & CM APPL. 12035/2020

SUN DISTRIBUTION SERVICES PRIVATE LIMITED

..... Petitioner

Through: Mr. Amit Sibal, Senior Advocate with Mr. Abhishek Malhotra, Ms. Shilpa Gamnani and Ms. Atmaja Tripathy, Advocates.

versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr. Abhay Sahay, CGSC alongwith Ms. Aakanksha Kaul and Mr. Manek Singh, Advocates for R-1.
Mr. Jayant Pawar, Advocate for R-2.
Mr. Sachin Datta, Senior Advocate with Mr. Manikya Khanna, Advocate for R-3.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

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09.06.2020

1. The hearing was conducted through video conferencing.
2. This petition is being filed under Article 226 and 227 of the Constitution of India seeking the following reliefs:-

“a) Issue a Writ of Mandamus or any other appropriate writ, order or direction in the nature thereof, restraining Respondent No.3 from onboarding/adding the LCOs affiliated with Respondent No. 2's network and re-transmitting the signals of Petitioner's channels to the subscribers of Respondent No. 2 and also directing it to desist from providing signals to the LCOs/subscribers that were part of Respondent No.2's network; AND

b) Issue a Writ of Mandamus or any other appropriate writ, order or direction in the nature thereof, directing Respondents to pay the admitted dues of INR 22,20,00,000/- (Rupees Twenty Two Crores Twenty Lakhs only) payable by the Respondent No.2 to the Petitioner for the services provided by the latter under the Agreement and to secure the total dues of INR 32,03,44,059/(Rupees Thirty Two Crores Three Lacs Forty Four Thousand Fifty Nine only); AND

c) Pending final disposal of the present writ petition, pass ad-interim orders in terms of prayers a) and b) above; AND

d) pass any such other order(s) that this Hon'ble Court may deem fit in the interest of justice.”

3. The ground on which the aforesaid relief is sought is that in the Claim Petition filed before the Telecom Dispute Settlement & Appellate Tribunal (TDSAT) the date given is of 06.07.2020 to hear the application for grant of interim protection in terms of the aforesaid prayers, so as to protect the petitioner's claims, especially because respondent no. 2 is alleged to be depleting its assets by transferring the same to respondent no. 3. According to the petitioner, both respondent nos. 2 and 3 are under common control and are in breach of Clauses 5(11) and 27 of their respective License Agreements with the petitioner. According to the petitioner, there is an admitted document of transfer of assets, which was brought to the notice of the petitioner on 03.06.2020 by one Mr. Somashekhar, ex-Director of respondent no. 2 company. He is said to have informed the petitioner that 100% business of respondent no. 2 is to be taken over by respondent no. 3, which according to the petitioner is a clear breach of the aforesaid Clauses of the Agreement. The learned counsel for

respondent no. 3 submits that the acquisition of assets is not a breach of the contract and that they are not providing any link to the Local Cable Operators (LCOs) or to other subscribers of R2 or other MSOs and it is supplying signals only to its own subscribers. It contends that, subscribers have the freedom to choose their own cable operator. It further contends that, in any case, it is maintaining a record of all subscribers who may have migrated from other LCOs and would furnish a detailed account of the same to the petitioner.

4. The learned Senior Advocate for the petitioner contends that if the assets of respondent no. 2 are taken over by respondent no. 3, respondent no. 2 would remain only a shell company and the money decree, if granted, would be nugatory.
5. The Court is of the view that these issues would best be decided by the court of first instance i.e. by TDSAT. In the circumstances, the learned counsel for the parties would request the learned TDSAT to take up the matter preferably on an earlier date. The petitioner may move an application for early hearing of the case before the learned TDSAT. The respondents have no objection to preponement of the case and to early hearing of the same.
6. In the interest of an early resolution of the *lis*, respondent nos. 2 and 3 undertake to serve a copy of their respective replies by 13.06.2020 to the petitioner's claim petition and would file the same before the TDSAT on 15.06.2020.
7. The petition, alongwith pending applications, is disposed-off in the above terms with the hope that the learned TDSAT will accommodate the request of the petitioner and hear the case preferably in the next

week.

8. This Court has not expressed any opinion on the merits of the case.
9. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the counsels through email.

NAJMI WAZIRI, J

JUNE 09, 2020/RW