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

Date of decision: 5th March, 2021

\+ **W.P.(C) 2983/2021, CM APPLs. 9031/2021 & 9032/2021**

REWARI DIGITAL NETWORK ..... Petitioner

Through: Mr. Jayant Mehta & Mr. Nittin Bhatia, Advocates.

versus

UNION OF INDIA MINISTRY OF INFORMATION AND BROADCASTING & ANR. ..... Respondents

Through: Mr. Kunal Tandon, Mr. Kumar Shashank Shekher and Mr. Amandeep Singh, Advocate.

CORAM:
JUSTICE PRATHIBA M. SINGH

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

% **05.03.2021**

1. This hearing has been done through hybrid mode (physical and virtual hearing).

<u>CM APPL. 9032/2021 (for exemption)</u>

2. Allowed, subject to all just exceptions. Application is disposed of.

<u>WP(C) 2983/2021 & CM APPL. 9031/2021 (for stay)</u>

3. The Petitioner has filed the present petition challenging the order dated 5th February 2021, passed by Telecom Disputes Settlement & Appellate Tribunal (*hereinafter, "TDSAT"*) in Broadcasting Petition bearing no. ***BP/567/2020***, vide which the TDSAT has directed that alternative calculations as to the charges for under reporting shall be submitted by the parties for arriving at a proper and just rate and an interim arrangement thereto.

4. The Petitioner is a Multi Systems Operator, which is operating in

Rewari, Haryana. It has an arrangement with the broadcaster, Respondent No. 2 - Star India Private Limited, for availing of its signals for onwards distribution to its cable operators and consumers.

5. The case of Respondent No. 2/ broadcaster before the TDSAT is that the Petitioner/MSO was guilty of under reporting and it relied on an audit report in support of its case before the TDSAT. According to the broadcaster, the MSO was liable to make higher payments, in order to continue to avail of the signals of the broadcaster.

6. The main petition is pending before the TDSAT. During the pendency of the main petition, the audit report given by the auditor was perused by the TDSAT, and an observation has been made in the impugned order to the effect that the TDSAT is inclined to order an interim arrangement on the basis of the submissions advanced at this stage before its forum.

7. The submission of Mr. Mehta, ld. counsel, appearing for the MSO/ Petitioner today, is that the TDSAT has proceeded on the basis of there being no objections to the audit report, which was submitted by the auditor, whereas the factum of under reporting is itself disputed by the Petitioner. Reliance is placed upon the reply filed by the Petitioner to the petition filed before the TDSAT, wherein the Petitioner has taken a stand that the auditor's findings are being disputed by the Petitioner. Mr. Mehta, ld. Counsel, thus submits that when the Audit report itself being disputed, the direction by TDSAT to proceed to make the calculations, under the presumption that the audit report is correct, would be completely premature. Therefore, in his submission, the audit report has been accepted without deciding upon the objections raised by the Petitioner.

8. On the other hand, Mr. Tandon, appearing for Respondent No.2/

broadcaster, submits that the impugned order is only an interim order by the TDSAT. The petitioner has not raised any direct objections to the auditor's report. In any event, he submits that the objections, if any, have to be raised within a period of one week, to the auditor's report as per clause 8 of the Audit Manual published by the TRAI. Mr. Tandon, ld. counsel further submits that in fact, the Petitioner admits in a recent affidavit, that the amounts due, which are being demanded by the broadcaster, are not liable to be paid but a lesser amount is liable to be paid. He, thus, submits that there is no serious objection that has been raised as to the auditor's report. He further submits that the TDSAT being an expert tribunal, as per settled law, the scope of interference by this court, in writ jurisdiction, is very limited in nature, and in any case, the issue merely concerns the calculation of money which is payable.

9. Heard ld. Counsels for the parties. A perusal of the impugned order shows that at this point of time, TDSAT is only considering as to whether, any interim directions have to be passed for making any payments for the Petitioner to continue to enjoy availing of the signals of the Respondent No. 2/ broadcaster. It is for that purpose that the TDSAT observes as under:

> "*Parties have been ultimately heard on 3.2.2021 and today.*
> *In the facts of the case, it is deemed just and proper to order for an interim arrangement on the basis of submissions advanced at this stage.*"

10. Moreover, it is not disputed that the audit report was given to the Petitioner, and the Petitioner did not raise any objections with the auditor, in respect of the said report. It is only after a period of almost one month having expired that copies of recordings were sought from the broadcaster.

Thus, this may not be completely in adherence with the audit manual which has been notified by the Telecom Regulatory Authority of India.

11. In any event there is no cause of concern, insofar as the Petitioner is concerned, to the extent that even if some interim arrangement of payment is directed by the TDSAT, the same would be subject to the outcome of the final adjudication of the petition. Considering the reply which has been raised by the Petitioner before the TDSAT, as also the lack of any particulars thereof, the interim order passed by the TDSAT does not deserve to be interfered with. However, if there are any substantive objections to the audit report at the final stage, the same shall be comprehensively adjudicated by the TDSAT.

12. With these observations, the petition and all pending applications are disposed of. It is made clear that this court has not examined the merits of the audit report or the objections thereof.

PRATHIBA M. SINGH
JUDGE

MARCH 5, 2021
dj/AK