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

Date of Decision: 23rd January, 2023

\+ **W.P.(C) 772/2023 & CM APPLs. 2994-96/2023**

ROYAL DIGITAL CABLE AND COMMUNICATION PVT. LTD ..... Petitioner

Through: Mr. J. Sai Deepak, Advocate.

versus

STAR INDIA PVT. LTD. & ANR. ..... Respondents

Through: Mr. Kunal Tandon, Mr. Kumar Shashank Shekher, Ms. Aanchal Khanna, Mr. Abhinav Dubey Ms. Shivangi, Advs. (M- 7838379879) Mr. Arjun Natarajan, Adv and Ms. Kamana Pradhan, Advocates for R-2 (M- 6370646277)

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.

2. The present petition has been filed by the Petitioner - Royal Digital Cable and Communication Pvt. Ltd. seeking setting aside of the impugned orders dated 17th November, 2022 and 22nd December 2022 passed by the ld. Telecom Disputes Settlement and Appellate Tribunal, New Delhi (TDSAT).

3. The Petitioner is a Multi-System Operator (MSO) offering its services in Burhanpur, Madhya Pradesh. It is engaged in the business of providing cable television services by way of supplying signals of Free-to-Air as well as Pay Channels including supply of programmes, packages etc. to cable operators including the channels of the Respondent No.1 - Star India Pvt. Ltd.

4. It is the case of the Petitioner that on 23rd October, 2020 an audit

report was generated by an empanelled auditor, under regulation 15(1) of the Telecommunication (broadcasting and cable) Services Interconnection (addressable systems) Regulations, 2017 (*hereinafter, "TRAI Regulations, 2017"*). The said report was shared with the Respondent No.1. As per the said report, the Petitioner's system was found to be compliant with the TRAI Regulations, 2017. However, Respondent No.1 was not satisfied with the same and it appointed another empanelled auditor, namely, M/s Borkar and Mazumdar who issued and shared the audit report under regulation 15(2) of the TRAI Regulations, 2017 on 31st May, 2021 *(hereinafter, "second audit report").*

5. The second audit report generated by the empanelled auditor was disputed by the Petitioner. On the basis of the second audit report, a demand letter for additional license fee from the Petitioner was raised by the Respondent No.1. The said demand letter was challenged by the Petitioner before the TDSAT in Petition No. 471/2021. The said matter was pending before the TDSAT and on 11th March, 2022, an *interim* order was passed holding that the matter would require final hearing. The said *interim* order came to be challenged by the Respondent No.1 in ***W.P.(C) 6681/2022*** titled ***Star India Pvt. Ltd. v. Royal Digital Cable Communication Pvt. Ltd. & Anr.*** when the matter was remanded back to the TDSAT.

6. Thereafter, an application was filed by the Respondent No.1 before TDSAT taking the position that it is entitled to disconnect the signals of the Petitioner. On the said application, vide order dated 17th November, 2022, the TDSAT observed as under:

> *" 14. Thus, prima facie it appears that original petitioner has not complied with requirements of*

schedule - Ill appended with the Interconnection Regulations, 2017 and looking to the audit report prima facie, there is an additional system available with the original petitioner which is not revealed to the broadcaster who is the applicant of this M.A. and respondent in the main broadcasting petition. The quantum of the discrepancy which is to be converted into the amount to be deposited by the original petitioner to the original respondent shall be decided at the time of final hearing. But prima facie it ·appears that there is non-compliance of requirements of Schedule Ill of the Interconnection Regulations, 2017 by the original petitioner.

15. Much has been argued out by the counsel appearing for the original petitioner that audit report under Regulation 15(1) is also reliable audit report and evidence upon which the auditor while carrying out audit under Regulation 15(2) has relied upon were, in fact, not collected and verified in presence of the original petitioner. There is no need to consult first the petitioner and thereafter to collect the evidence by the broadcaster. Evidence of the broadcaster can be collected by the broadcaster on its own. The evaluation of this evidence depends upon the auditor's report. It ought to be kept in mind that the audit has been chosen from the empaneled auditors. This empanelment was done by TRAI and, therefore, prima facie we have no reason to arrive at any other conclusion than what is mentioned hereinabove in the audit report which is Annexure- 20 of the memo of the petition as prima facie made out that the petitioner has violated the requirements of schedule - Ill appended with the Interconnection Regulations, 2017.

16. We, therefore, permit this applicant {original respondent - broadcaster) looking to the 3rd Proviso of Regulation 15(2) of the Regulations, 2017 to disconnect the supply of signals of the channels of this applicant to the original petitioner. The breach or *breaches of the petitioner as pointed out by the auditor are now required to be quantified in terms of money at the time of final hearing of the broadcasting petition."*

7. Thus, the TDSAT permitted disconnection of the signals of the Petitioner. Thereafter, the Petitioner filed a review application before the TDSAT being RA No. 12/2022, wherein vide order dated 22nd December, 2022, the matter has been posted for recording of evidence. The said order passed by the TDSAT reads as under:

> *"Counsels appearing for both the sides are eager to lead evidences before the Court of Registrar and it is submitted specifically by the counsel for the petitioner that they are in a hurry to give the evidences and let the matter be fixed before the court of Registrar.*
> *In view of this submission, this matter will be listed before the court of Registrar for framing issues and taking evidence on 10.1.2023. Counsels for both the sides submitted that they shall co-operate the hearing before the court of Registrar and they shall not ask for any unnecessary adjournments'*

8. The aforementioned orders dated 17th November, 2022 and 22nd December 2022 passed by the TDSAT are under challenge in the present petition. It is submitted by Mr. Sai Deepak, ld. Counsel appearing for the Petitioner that the Petitioner is willing to undergo an audit by an independent audit agency and is also willing to deposit Rs.50 lakhs. He further, submits that as the signals having been disconnected, the MSO's business is being adversely affected.

9. Mr. Kunal Tandon, ld. Counsel for the Respondent No.1 appearing for the broadcaster, submits that the Petitioner has had adequate opportunities and the second audit report is against the Petitioner. Further, a detailed order

was passed by the TDSAT on 17th November, 2022 after which, the matter has proceeded for evidence vide order dated 22nd December, 2022. Thus, according to him, this is not a case for exercising jurisdiction under Article 227 of the Constitution of India.

10. It is submitted Respondent No.1 that the liability of the Petitioner along with the interest in terms of Rule 15(2) second proviso of the TRAI Regulations, 2017 is more than approximately Rs. 4 crores till December, 2020 and the said amount has doubled till December, 2022. This computation is disputed by the ld. Counsel for the Petitioner.

11. A perusal of the chronology of events as also the impugned order dated 17th November, 2022 shows that the TDSAT has considered the matter in detail and has *prima facie* come to a conclusion that the second audit report found that an additional system was installed by the Petitioner which was not revealed to the broadcaster earlier. Thus, the TDSAT has come to the conclusion that there is non-compliance of the requirements of Schedule III of the TRAI Regulations, 2017.

12. Considering the nature of the impugned orders dated 17th November, 2022 and 22nd December, 2022 passed by TDSAT, in the opinion of this Court, the present petition is not a matter to be entertained under Article 227 of the Constitution. Moreover, the dispute between the Petitioner and the Respondent No.1 is primarily in view of the second audit report and the amount that would be liable to be paid by the Petitioner.

13. In this background, the present writ petition is not entertained by this Court. However, if the Petitioner wishes to seek reconnection of signals by agreeing to deposit the pending amounts with the TDSAT or with the Respondent No.1, it is free to do so by way of an application before the

TDSAT.

14. At this stage, Mr. Tandon, ld. Counsel for the Respondent No.1 submits that the Petitioner is no longer entitled to claim reconnection of signals as the Petitioner is non-complaint under Schedule III of the TRAI Regulations, 2017. This submission shall be raised before the TDSAT if the Petitioner decides to avail of its remedy by moving an application for reconnection of signals by deposit of amount before the TDSAT.

15. The petition, along with all pending applications, is disposed of.

16. It is made clear that this Court has not opined on the merits of this matter.

PRATHIBA M. SINGH
JUDGE

JANUARY 23, 2023
Rahul/KT