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

Date of decision: 09th FEBRUARY, 2023

IN THE MATTER OF:

\+ **LPA 79/2023 & C.M. No. 5051-5052/2023**

SEVEN STAR DOT COM PVT. LTD. ..... Appellant

Through: Mr. Devesh Tripathi, Mr. Kaustubh Shakkarwar & Mr. Mukeshwar Nath Dubey, Advocates

versus

ZEE ENTERTAINMENT ENTERPRISE LTD. ..... Respondent

Through: Mr. Kunal Tandon, Mr. Kumar Shashank Shekher, Ms. Aanchal Khanna & Mr. Abhinav Dubey, Advocates.

**CORAM:**
**HON'BLE THE CHIEF JUSTICE**
**HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD**

# JUDGMENT

**SUBRAMONIUM PRASAD, J.**

1. Aggrieved by the Order dated 23.01.2023, passed by the learned Single Judge in W.P. (C) 644/2023 dismissing the Writ Petition, the Appellant herein has filed the instant appeal.

2. Shorn of details, the facts, in brief, leading to the instant appeal are as under:

a) It is stated that an inter-connection Agreement dated 10.06.2021 was entered into between the Appellant herein and the Respondent herein which was valid till 09.06.2022. It is stated that a disconnection notice dated 12.10.2021 was issued by the Respondent to the Appellant herein which was challenged by the Appellant herein by preferring a Broadcasting Petition, being BP No.636/2021, before the Telecom Disputes Settlement and Appellate Tribunal (*hereinafter referred to as 'the Tribunal'*). It is stated that during the pendency of the broadcasting petition, *vide* letter dated 28.04.2022, the Respondent herein raised an additional demand of Rs.16,33,76,703/- upon the Appellant. The Tribunal *vide* Order dated 10.05.2022 disposed of BP No.636/2021 with liberty to the Appellant herein to challenge the demand issued by the Respondent herein.

b) It is stated that *vide* letter dated 26.05.2022, the Respondent herein issued a disconnection notice to the Appellant herein. The Appellant herein preferred a Broadcasting Petition, being BP No.312/2022, before the Tribunal challenging the said disconnection notice. The Tribunal directed the Appellant herein to deposit Rs. 2 Crores before the Registrar, TDSAT, by way of a bank draft and subject to the said deposit, the Respondent herein was restrained from disconnecting the supply signals to the Appellant herein. The Appellant herein deposited the said amount on 20.06.2022.

c) When the matter came up for hearing on 18.11.2022, the Respondent herein highlighted before the Tribunal a number of non-compliances of the provisions/requirements under Scheduled III Appended to the Telecommunication (Broadcasting and Cable) Services Interconnection (Addressable Systems) Regulations, 2017 (*hereinafter referred to as 'the*

*Interconnection Regulations, 2017'*). The Tribunal, after hearing both the parties and after taking into account the opinion of the empanelled auditor of the TRAI, came to the conclusion that there have been substantial non-compliances on the part of the Appellant herein of the requirements under Scheduled-III appended with the Interconnection Regulations, 2017. The Tribunal also held that the effect of the non-compliances and the methodology adopted by the Appellant herein, *prima facie*, leads to a fact that there is a substantial under-declaration by the Appellant of the number of subscribers. Therefore, the TDSAT, *vide* Order dated 18.11.2022 vacated the stay granted on 14.06.2022.

d) The said order has been challenged by the Appellant before this Court by filing a Writ Petition, being W.P.(C) 644/2023.

e) The Appellant herein also moved an application, being CM APPL.456/2022, before the Tribunal, seeking recall of the order dated 18.11.2022 as well as for restoration of supply of signals by the Respondent herein. The application was withdrawn by the Appellant on 09.01.2023.

f) The learned Single Judge *vide* Order dated 23.01.2023 has dismissed the Writ Petition by observing that the Order of the Tribunal vacating the stay was based on the material available before the Tribunal and the same does not call for any interference.

g) It is this Order which has been challenged by the Appellant in the instant Appeal.

3. Heard the Counsel for the parties and perused the material on record.

4. The instant Appeal primarily arises out of Order dated 18.11.2022 by which the Tribunal had vacated the interim order dated 14.06.2022 by which the Respondent herein was injuncted by the Tribunal from disconnecting the signals of the Appellant herein subject to the Appellant depositing a sum of Rs.2 Crores with the Tribunal. When the matter came up for hearing on 18.11.2022, the Tribunal, after going through the material on record before it and more particularly the report of the Auditor of the TRAI, found that various non-compliances have been found on the part of the Appellant herein on the requirement of Scheduled-III appended with the Interconnection Regulations, 2017. Relevant portion of the said Order reads as under:

> *"5. Having heard the counsel for the respondent and looking to the audit conducted by the empanelled auditor under Regulation 15 (2) of the Regulations, 2017 which is at Annexure P-9 to the memo of the petition given by the respondent. It appears that there are following types of noncompliances of the requirements by the petitioner*
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> > *Page No. 329*
> > *"Compliance Report for CAS & amp; SMS*
> >
> > > *The compliance status as enumerated in below table is for currently deployed 3 CAS (Irdeto, ABV & amp; NSTV) and 1 SMS (Media Nucleus) however the same cannot be confirmed for the SMS used by DPO till 31st August, 2021 as the said system is found to be not connected with the network. The IRDETO CAS certificate(s) provided by DPO are undated and not contemporary therefore, non-compliant with the provisions of Schedule III.*

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| *Sl. No* | *Regulation Requirement* | *Compliance Status* |
|---|---|---|
| *15.* | *The CAS shall be able to tag and blacklist VC numbers and STB numbers that have been involved in piracy in the past to ensure that such VC or the STB cannot be re-deployed. (Schedule III – C 15)* | *Checked and found to be partially compliant as IRDETO CAS has no option for Blacklisting the STB or VC but ABV and NSTV do have Screenshot confirming same is attached herewith & marked as Annexure-33 Sample report is attached herewith & marked as Annexure-33* |
| *16.* | *It shall be possible to generate the following reports from the logs of the CAS:*<br><br>*STB-VC Pairing/De-Pairing*<br>*a. STB Activation/Deactivation*<br>*b. Channels Assignment to STB*<br>*c. Report of the activations or the deactivations of a particular channel for a* | *Checked and found to be partially compliant for (c) & (d) as IRDETO CAS has no option to generate these reports from frontend except for (a) as IRDETO CAS has cardless boxes only.*<br>*a. Annexure-34* |

| | | |
|---|---|---|
| | *given period. (Schedule III – C 16)* | *b. Annexure-35*<br>*c. Annexure-36*<br>*d. Annexure-36* |

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| *Sl. No.* | *Regulation Requirement* | *Compliance Status* |
|---|---|---|
| *3.* | *The fingerprinting should not get invalidated by use of any device or software. (Ref. Schedule III – D 3)* | *Checked & found to be partially compliant as in IRDETO boxes Finger print disappear on Reboot Annexure-40* |
| *5.* | *The finger printing should be on the top most layer of the video. (Ref. Schedule III – D 5)* | *Checked & found to be partially compliant as in IRDETO CAS boxes finger printing is not on Top Most Layer.* |

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| *Sl. No.* | *Regulation Requirement* | *Compliance Status* |
|---|---|---|
| *12.* | *Scroll messaging should be only available in the lower part of the screen. (Ref. Schedule III – D 12)* | *Checked & found to be Partially compliant as scroll is not supported in IRDETO Boxes. Annexure-43* |
| *13.* | *The STB should have a provision that fingerprinting is never disabled. (Ref. Schedule III –* | *Checked & found to be Partially compliant as after reboot of IRDETO Boxes finger print* |

| | | |
|---|---|---|
| | *D 13)* | *disappeared.* |

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| *Sl. No.* | *Regulation Requirement* | *Compliance Status* |
|---|---|---|
| *3.* | *The STB should be capable of doing fingerprinting. The STB should support both Entitlement Control Message (ECM) and Entitlement Management Message (EMM) based fingerprinting. (Ref. Schedule III – E 3)* | *Checked & found to be partially compliant as IRDETO Box could not display the ECM Command on Boxes Screen Shot is attached and marked as Annexure-44* |
| *5.* | *The STB should be able to receive messages from the Head-end. (Ref. Schedule III – E 5)* | *Checked & found to be partially compliant as IRDETO CAS has no option for messaging* |
| *6.* | *Messaging character length should be minimal 120 characters. (Ref. Schedule III – E 6)* | *Checked & found to be partially compliant as IRDETO CAS has no option for messaging.* |

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| *Sl. No.* | *Regulation Requirement* | *Compliance Status* |
|---|---|---|
| *7.* | *There should be provision for global messaging, group messaging* | *Checked & found to be partially compliant as IRDETO CAS has* |

| | | |
|---|---|---|
| | *and the individual STB messaging. (Ref. Schedule III – E 7)* | *no option for messaging and NSTV and ABV has no option for Group Messaging.* |
| *8.* | *The STB should have forced messaging capability including forced finger printing display. (Ref. Schedule III – E 8)* | *Checked & found to be partially compliant as IRDETO CAS has no option for messaging and NSTV has no option for Force messaging. Annexure-45* |
| *9.* | *The STB must be compliant to the applicable Bureau of Indian Standards. (Ref. Schedule III – E 9)* | *Checked & found to be partially compliant as DPO did not provide BIS Certificate for 6 out of 10 STB models declared by it. Annexure-8* |
| *11.* | *The STBs with facilities for recording the programs shall have a copy protection system. (Ref. Schedule III – E 11)* | *Checked & found to be partially compliant as in case of IRDETO related STBs, recording was playing even after deactivation.* |

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| *Sl. No.* | *Regulation Requirement* | *Compliance Status* |
|---|---|---|
| *8.* | *Compliance Status of the CAS and SMS* | *The SMS used by DPO till 31st August, 2021 was* |

| | | |
|---|---|---|
| | | *found to be not connected with the network hence the compliance status for same cannot be confirmed. The IRDETO CAS certificate(s) provided by DPO are undated and not contemporary therefore, non-compliant with the provisions of Clause C of Schedule III* |
| *9.* | *Compliance Status of Fingerprinting* | *In case of IRDETO CAS related STBs finger print disappears on Reboot hence noncompliant to clause D (3) and D(13) of Schedule III.*<br><br>*In case of IRDETO CAS related STBs finger print does not appear on top most layer hence non-compliant to clause D(5) of Schedule III.*<br><br>*In case of IRDETO CAS related STBS, the colour and position of* |

| | | |
|---|---|---|
| | | *fingerprint is fixed hence non-compliant to clause D(8) of Schedule III.*<br><br>*In case of IRDETO CAS related STBS individual finger print appears as global hence noncompliant to clause D (10) of Schedule III.*<br><br>*Scroll is not supported by IRDETO CAS related STBS hence non-compliant to clause D (12) of Schedule III.* |

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*AUDITOR'S OPINION & CONCLUSION*

*The Digital Addressable System (CAS, SMS and STB) available and installed at M/s. Seven Star Dot Com Pvt. Ltd., Versova during the compliance audit (14th February 2022 to 26th February 2022), except reported otherwise in the previous sections of this report, meets the minimum requirements as specified by TRAI under DAS Schedule-III of Telecommunication (Broadcasting and Cable) Services Interconnection (Digital Addressable*

> *System) Regulations, No. 1 of 2017, dated March 3, 2017 issued by TRAI.*
>
> *In view of our observations regarding the SMS which was in use for substantial audit period (31 out of 36 months) and IRDETO CAS Servers having major subscriber data, the com compliance status cannot be confirmed for the entire audit period."*"

5. Based on the material before it, the Tribunal came to the conclusion that the resultant effect of the non-compliances and the methodology adopted by the Appellant herein, *prima facie*, leads to a fact that there is a substantial under-declaration by the Appellant of the number of subscribers. The Tribunal held that more the subscribers, more the amount is payable by the Appellant to the Respondent. The Tribunal further held that the Appellant herein, who is an MSO (Multiple System Operator), has attempted to under-declare the number of subscribers by adopting various methods and, therefore, an audit by an empanelled auditor was done as per the Interconnection Regulation, 2017. On the basis of the auditor's report and looking at the substantial non-compliances, the Tribunal found that the Respondent herein has all power, jurisdiction and authority to disconnect the supply of signals of their channels which are given to the Appellant herein and, therefore, the Tribunal found it expedient to vacate the interim order.

6. The Order of the Tribunal is well reasoned and the learned Single Judge, while exercising its jurisdiction under Article 226 of the Constitution of India, has chosen not to interfere with the said Order. The learned Single Judge has also pointed out that the Petitioner has, in fact, in addition to moving the Writ Petition, has also moved an application, being CM APPL.456/2022, before the Tribunal for recall of the order dated 18.11.2022,

which is an abuse of the process of law. The Appellant ought not to have resorted to avail two parallel remedies, i.e. approaching this Court by filing a Writ Petition and also approaching the Tribunal by filing an application for recall of the Order dated 18.11.2022. In any event, the said application was withdrawn after some arguments before the Tribunal which means that the said application was withdrawn only when the Appellant herein found that the Tribunal was not inclined to recall its order dated 18.11.2022. The Broadcasting petition is pending consideration before the Tribunal.

7. In view of the above, this Court does not find any reason to interfere with the Order dated 18.11.2022, passed by the Tribunal and also with the Order dated 23.01.2023, passed by the learned Single Judge.

8. It is made clear that the observation made by this Court is only in the context of the correctness or otherwise of the Order dated 18.11.2022 by which the stay granted *vide* Order dated 14.06.2022 had been vacated and is not an expression on the merits of the case.

9. Accordingly, the appeal is dismissed, along with pending application(s), if any.

**SATISH CHANDRA SHARMA, C.J.**

**SUBRAMONIUM PRASAD, J**

**FEBRUARY 09, 2023**
*Rahul*