

**TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL
NEW DELHI**

Dated 21st August, 2019

M.A. No. 217 of 2019

In

Broadcasting Petition No.99 of 2019

(with M.A. Nos. 127, 131,136, and 213 of 2019)

Multi Reach Media Pvt.Ltd.	... Petitioner
Vs.	
Sony Pictures Networks India Pvt. Ltd.	... Respondent

M.A. No. 218 of 2019

In

Broadcasting Petition No. 100 of 2019

(With M.A. Nos. 128, 132, 137, and 214 of 2019)

Digi Cablecomm Services India Pvt.Ltd.	... Petitioner
Vs.	
Sony Pictures Networks India Pvt. Ltd.	... Respondent

BEFORE:

HON'BLE MR. JUSTICE SHIVA KIRTI SINGH, CHAIRPERSON

HON'BLE MR. A.K. BHARGAVA, MEMBER

For Petitioner	:	Mr. Diggaj Pathak, Advocate Ms. Shweta Sharma, Advocate Mr. Naved Ahmed, Advocate
For Respondent	:	Ms. Payal Kakra, Advocate Ms. Vidya Prabhakaran, Advocate Ms. Tanya Gupta, Advocate

ORDER

By S.K. Singh, Chairperson – Heard learned counsel for the petitioner / applicant and also learned senior counsel for the other side in respect of M.A. Nos. 217 & 218 of 2019. Both the MAs are identical, seeking similar interim relief in each of the petitions. The prayer is to direct the respondent to restore the supply of signals to the network of the petitioner for the period the petition remains pending, subject to payment of invoices.

Before advertng to the merits of the M.As, it is necessary to note that the petitions were filed against a notice of disconnection dated 15.4.2019 sent by the respondent broadcaster with the allegation that the monthly subscriber reports were in an incorrect format rendering it impossible to raise invoices so as to claim the monthly license fees. Besides the dispute over amount charged through invoices, the petitioner also objected to holding of an audit by the respondent on the ground that TRAI had not created a panel of auditors. By the interim order dated 3.5.2019, protection was granted to the petitioner on conditions and the respondent was given liberty to hold audit on any date after one week. When the audit could not begin on account of stand of the petitioner, the subsequent developments were noted while considering various applications and for reasons recorded, the interim protection granted to the petitioner was vacated vide order

dated 16.5.2019. It was also held that “since no audit can be held in terms of interim order due to non-cooperation of the petitioner, it would not be just and proper to continue the interim protection granted to the petitioner.” In order to avoid unnecessary repetition of relevant facts, the orders passed on 3.5.2019 and 16.5.2019 should be treated as part of this order.

On 28.5.2019 petitioner informed the Tribunal that Hon’ble Delhi High Court did not interfere with the order of 16.5.2019. The respondent disconnected signals to the petitioner on 22.5.2019. On 24.5.2019 petitioner filed M.A. No.147 of 2019 praying for restoration of interim order passed on 3.5.2019 and for direction to restore the signals on suitable terms and conditions. This Tribunal simply noted that outside the Court, the petitioner had made certain offers and agreed to abide by certain terms and conditions. The respondent had accepted the same and activated the signals on the condition that if the petitioner failed to comply with the stipulations in its offer, the respondent would be at liberty to forthwith disconnect signals under the force of TDSAT’s order dated 16.5.2019.

The respondent filed M.A.Nos. 213 & 214 of 2019 to bring on record materials in support of its contention that the ongoing audit has been rendered useless and of no value as was apparent from facts found during the audit.

Learned counsel for the respondent submitted that there was no positive restraint order but M.As were filed to seek permission because the settlement between the parties had been recorded in an earlier order passed on 28.5.2019.

This Tribunal passed the following order on 8.8.2019:

“M.A. Nos. 213 and 214 of 2019 have been filed in these two petitions. Through these applications respondent has brought on record materials in support of its contention that the on-going audit has been rendered useless and of no value because of facts emerging during the audit. Learned counsel for the respondent has further submitted that although there is no positive restraint order not to effect disconnection of supply of signals to the petitioner during the pendency of these petitions, a prayer has been made seeking permission because a settlement between parties was brought on record as mentioned in the order passed by this Tribunal on 28.05.2019. Earlier to that an interim protection had been vacated and respondent had disconnected its signals on 22.05.2019 but the same was restored by the respondent on the basis of settlement dated 27.05.2019 which was noticed and recorded in the order of 28.05.2019.

The arrangement is continuing in terms of the settlement as is clear from order dated 28.05.2019. If the settlement permits the respondent to act in a particular way, it may do so in accordance with law and the settlement.

As prayed, two weeks' time is granted for filing reply to the M.A. Time for filing rejoinder shall be considered on the next date.

Post the matter under the same head on 03.09.2019.”

The M.As under consideration were filed on behalf of petitioner on 13.8.2019 raising a grievance that the respondent had disconnected the signals on 9.8.2019 without issuing a fresh notice in terms of the Regulations and without there being any good reasons even in the light of understanding reached between the parties leading to restoration of signals on 28.5.2019.

Learned counsel for the applicant / petitioner has submitted that disconnection of signals on 9.8.2019 without a fresh notice is illegal. According to him, the audit has not been completed and no report submitted for no fault of the petitioner and it is wrong to allege that petitioner has made the audit useless and of no value.

Learned counsel for the non-applicant has referred to various communications and emails contained in M.A Nos. 213 & 214 of 2019 to submit that it is for good reasons that the respondent has come to a conclusion that the petitioner is not ready and willing to comply with the stipulation that it shall render full cooperation and support in conduct of the audit. He has further submitted that the disconnection notice has not been waived by the respondent and sine this Tribunal vacated the interim protection to the petitioner vide order

dated 16.5.2019, the respondent has admittedly reserved its right to forthwith disconnect the signals under the order dated 16.5.2019.

On going through the relevant facts and materials, at this stage it is not possible to accept the contention of the petitioner that it has rendered full cooperation and support in conducting an audit of its system by the auditor appointed by the respondent. The disconnection notice under challenge in these petitions has neither been stayed nor the respondent has agreed to waive those notices. To the contrary, it had retained its right to effect disconnection under the order dated 16.5.2019.

In the facts and circumstances of the case, till the petitioner allows holding of meaningful audit by providing the necessary historical data, it is not deemed proper and in the interest of justice to extend any interim protection. The M.As are, therefore, disallowed.

It may be mentioned that on behalf of the respondent materials were shown that petitioner has indulged in piracy and unauthorized re-distribution of respondent TV signals. The petitioner's reply is that it has reprimanded its joint venture partners and asked them to desist from doing so forthwith. However, this issue is not found fit to be discussed any further at this stage.

Parties are directed to exchange pleadings within six weeks.

Post the matter before the Court of Registrar on 1.10.2019 to pass necessary orders and directions to make the petitions ready for hearing.

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(S.K. Singh, J)
Chairperson

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(A.K. Bhargava)
Member

/pkb/