

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL
NEW DELHI

Dated. 11th March, 2022

Broadcasting Petition No. 471 of 2021

With

Misc. Application No. 172 of 2021

Royal Digital Cable and Communication Pvt. Ltd. ...Petitioner

Versus

Star India Pvt. Ltd.& Anr. ...Respondent(s)

BEFORE :

HON'BLE MR. JUSTICE SHIVA KIRTI SINGH, CHAIRPERSON

HON'BLE MR. SUBODH KUMAR GUPTA, MEMBER

For Petitioner:

Mr. Saket Singh, Advocate

Mr. Shubham Jain, Advocate

Mr. Himanshu Dhawan, Advocate

Mr. Sumit Rawat, Advocate.

For Respondents:

Mr. Kunal Tandon & Mr. Shashank Shekhar, Advocates for R1

Mr. Arjun Natarajan, Mr. Sasank Iyer & Mr. Laxmi Kant
Srivastava, Advocates for TRAI (R2)

ORDER

By **Subodh Kumar Gupta, Member** - Heard Learned Counsel for the Petitioner and Learned Counsel for the respondents.

2. The present petition is filed under section 14 and 14-A of the TRAI Act, 1997 for setting aside the Demand letter dated 03.07.2021 issued by Respondent no. 1 (viz. Star India Pvt. Ltd, a Broadcaster) and the Audit Report dated. 31.05.2021, of the Petitioner's platform (i.e Royal Digital Cable and Communication Pvt. Ltd., an MSO providing Distribution Platform for retransmission of Broadcaster's channels); the Audit Report duly prepared and issued by a TRAI empaneled Auditor viz. M/s Borkar & Mazumdar, Chartered Accountants, Delhi for ascertaining conformity with schedule III of Telecommunication (Broadcasting & Cable) services, Interconnection (Addressable Systems) Regulations 2017, No. 1 of 2017 dated 03.03.2017 issued by TRAI. The Audit Report dated 31.05.2021 by the Auditor is issued through File no.B & MCA/DA/067 and digitally signed by Mr. Anil kumar Jain. The Auditors have conducted audit of petitioner's distribution platform which is installed at plot no. 09, block no. 33, in front of Adarsh Lodge, Pushpak bustand, Burhanpur, Madhya Pradesh - 450331. Further the petition is filed for setting aside the email dated 13.05.2021 sent by respondent no. 2.
3. The brief facts relevant for the present petition are as under:
 - a. Being unsatisfied by the self audit conducted by the petitioner under regulation 15(1), respondent no. 1 caused the audit of the petitioner's system under regulation 15(2) through a TRAI empaneled auditor namely M/s Borkar & Majumdar. The petitioner challenged the audit report issued by the said auditor wherein the auditor has upheld the authenticity and correctness of the videos without (as alleged by petitioner) even physically verifying STBs on the ground. The petitioner has further stated that the said auditor has bypassed his role of a transparent and independent auditor and further alleged to have acted as a puppet of the broadcaster who is the Appointing Authority of the auditor and is the payer of its fee.
 - b. Petitioner goes on further to state that respondent no. 2 (TRAI) has illegally held that the presence of the petitioner (MSO) is not mandatory at the time of physical verification of the videos. Hence petitioner thus comes before Hon'ble TDSAT to challenge the audit findings against the petitioner by disallowing its presence during the audit.
 - c. Respondent no. 1 has raised an audit demand to the tune of Rs. 3,88,70,177/- vide its letter dated 03.07.2021. Pertinently, this is a case wherein the demand is not based upon the

variance in the system of the petitioner. Further it is not the case of respondent no. 1 that any undisclosed CAS is found at the system of petitioner through which the petitioner is retransmitting signals of respondent no. 1. Admittedly, no additional subscribers are found in the petitioner's system.

- d. Further the auditor in its audit report has stated that the petitioner is supplying signals in an encrypted form. Hence demand cannot be raised by respondent no. 1 on the basis of subscribers which are not found in MSO's system. And in the event, the respondent no. 1's case is that the petitioner is doing piracy, it may lodge an FIR / criminal complaint against the petitioner.
 - e. That the petitioner and respondent no. 1 have executed one Reference interconnection agreement dated 29.12.2018 and post its expiry, respondent no. 1 has not come forward to renew the said agreements in accordance with New tariff order, 2020 & started issuing unilateral monthly extension letters by stating reasons that the writ petition to challenge the New tariff order, 2020 are pending before the Hon'ble Bombay High Court.
 - f. That in compliance with regulation 15(1) the petitioner appointed a TRAI empaneled auditor namely M/s Altruist Technologies Pvt. Ltd to conduct the audit of petitioner's system on 05.10.2020 for the period from Feb'2019 to Sep'2020. The audit report was shared with Respondent no. 1 who was unsatisfied with the said audit report and called upon the petitioner to allow Respondent no. 1 to exercise its right under regulation 15(2). Thus respondent no. 1 got the audit conducted as per regulation 15(2).
 - g. Respondent no. 1 appointed M/s Borkar & Majumdar to conduct DAS audit of the petitioner under regulation 15(2) for the period Aug'2019 to Mar'2021. Pursuant thereto, the auditor vide its email dated 19.03.2021 informed the petitioner that its representative will arrive on 22.03.2021 at the petitioner's Head End location to commence the audit.
 - h. Petitioner responded to observations of auditor in the audit report within 7 days in the said reply. Petitioner was served with the final audit report on 31.05.2021 to which petitioner responded to the observations made therein. Petitioner has challenged the audit report and the conduct of the auditor on grounds enumerated in his petition.
4. TRAI response to Petitioner's complaint vide email dated 13.05.2021 is crystal clear: Annexure P/13, pages 41 & 42 of the petition. Reply email from TRAI to the petitioner in respect of petitioner's letter dated 20.04.2021 complaining therein against M/s Borkar & Majumdar, the TRAI empanelled auditor, for not conducting audit in independent, fair and transparent manner. Auditor's reply to the petitioner's complaint against him: Annexure P/14, pages 43 to 58 (17 pages)

duly digitally signed by Mr. Anil Kumar Jain giving para wise reply of the complaint dated 20.04.2021 by the petitioner:

Date of complaint by Petitioner to TRAI: 20.04.2021

Date of letter (TRAI to auditor): 27.04.2021

Date of reply by auditor: 04.05.2021

5. On 06.01.2022 the Tribunal heard learned counsels for both the parties at length whether interim arrangement is required to be made or not. Order was reserved.
6. After carefully going through all the materials on record, the Tribunal has to consider whether this petition should proceed with detailed hearing of the parties at length or an interim arrangement can be arrived at giving the liberty to the parties to pursue their rights and claims in the light of audit report. Considering all the facts and circumstances of the case and the peculiar nature of the case where the parties are at logger heads among each other and also in the absence of any established norms / criteria to arrive at the correct subscriber base in the given situation, it doesn't seem reasonable to devise an interim arrangement to resolve the dispute thus leaving no option but, to adopt the course of detailed hearing to decide the matter. Hence no further interim order at this stage.
7. Post the matter before the Court of Registrar on 28.03.2022 for passing necessary orders and directions to make the case ready for hearing.

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(S.K. Singh, J)
Chairperson

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(Subodh Kumar Gupta)
Member

