

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

Dated: 18/11/2022

BROADCASTING PETITION/312/2022

Seven Star Dot Com Pvt Ltd. ...Petitioner(s)
Versus
Zee Entertainment Enterprise Ltd. ...Respondent(s)

BEFORE

**HON'BLE MR. JUSTICE DHIRUBHAI NARANBHAI PATEL, CHAIRPERSON
HON'BLE MR. SUBODH KUMAR GUPTA (MEMBER)**

**For Applicants/Appellants/Petitioners
Advocate**

Mr. Chandresh Mehta
Authorised Representative

For Respondents Advocate

Mr. Kunal Tandon
Mr. Shashank Shekhar
Mr. Abhinav Dubey

ORDER

1. Mr. Chandresh Mehta who is present in the court and who has submitted that he is the Authorized Representative of the petitioner, resolution to that effect has also been presented before this Tribunal. Photocopy of this authority letter has been given to the counsel for the respondent. It is submitted by the representative of the petitioner that initially they had engaged a lawyer and now today they want to engage another counsel and, therefore, petitioner is seeking time.

2. This prayer is vehemently objected by the counsel for the respondent.

3. It is submitted by the counsel for the respondent that the petitioner is enjoying an ad-interim relief granted by this Tribunal vide order dated 14.6.2022 which was granted in favour of the petitioner upon deposition of Rs.

2 Crore out of the total dues payable by the petitioner to the respondent, which is about Rs.16.33 Crores along with interest accrued thereupon. The total amount as per the respondent comes approximately Rs. 18 Crores and by the virtue of the ad-interim relief the petitioner is enjoying the supply of signals of the channels of the respondent otherwise respondent has already given a notice of disconnection of supply of their channels which is at **Annexure P-1 to the memo of this petition**. The **notice given by the respondent is dated 26.5.2022**. The lethargic approach of the petitioner is because of the ad-interim relief granted to the petitioner and, therefore, it is submitted by the counsel for the respondent that let the stay granted by this Tribunal be vacated especially in light of the audit report given by the auditor who is empanelled by TRAI. The said **report of the auditor is at Annexure P-9 to the memo of the reply** filed by the respondent. The **audit report** is dated **2.4.2022**. The audit has been conducted under **Regulation 15(2) of the Interconnection Regulations, 2017**. This audit has been conducted for the period running from February 2019 to February 2022.

4. Counsel for the respondent has taken this Tribunal to various annexures annexed with the memo of the reply including **Annexure P-9** and especially **page no. 329 onwards** which is a **conclusion** arrived at after the audit is conducted by the **auditor of digital addressable systems** installed by the petitioner at their end. Counsel for the respondent has also taken this Tribunal in detail about various **non-compliances** pointed out by the empanelled auditor for the **CAS as well as SMS** and it is submitted by the counsel to the respondent that there is a 97% under-declaration by the petitioner of the total number of subscribers. More the subscribers more the amount is payable by the petitioner to the respondent and, therefore, there are all endeavours, illegally by the petitioner to reveal minimum number of subscribers, as far as

possible by adopting all types of tactics which have been pointed out by the auditor in the report. Counsel for the respondent has also pointed out **varieties of non-compliances** of the provisions/ requirements pointed out under **Scheduled III Appended to the Telecommunication (Broadcasting and Cable) Services Interconnection (Addressable Systems) Regulations, 2017** [for the sake of brevity referred to as **Interconnection Regulations, 2017**].

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 non-compliances of the requirements by the petitioner .

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“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:	Checked and found to be partially compliant for (c) & (d) as IRDETO CAS has no option to generate these reports from frontend except

	<p>STB-VC Pairing/De-Pairing</p> <p>a. STB Activation/De-activation</p> <p>b. Channels Assignment to STB</p> <p>c. Report of the activations or the deactivations of a particular channel for a given period.</p> <p>(Schedule III – C 16)</p>	<p>for (a) as IRDETO CAS has cardless boxes only.</p> <p>a. Annexure-34</p> <p>b. Annexure-35</p> <p>c. Annexure-36</p> <p>d. Annexure-36</p>
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Sl. No.	Regulation Requirement	Compliance Status
3.	<p>The fingerprinting should not get invalidated by use of any device or software.</p> <p>(Ref. Schedule III – D 3)</p>	<p>Checked & found to be partially compliant as in IRDETO boxes Finger print disappear on Reboot</p> <p>Annexure-40</p>
5.	<p>The finger printing should be on the top most layer of the video.</p> <p>(Ref. Schedule III – D 5)</p>	<p>Checked & found to be partially compliant as in IRDETO CAS boxes finger printing is not on Top Most Layer.</p>

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

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Sl. No.	Regulation Requirement	Compliance Status
3.	<p>The STB should be capable of doing fingerprinting. The STB should support both Entitlement Control Message (ECM) and Entitlement Management Message (EMM) based fingerprinting.</p> <p>(Ref. Schedule III – E 3)</p>	<p>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</p>

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 and the individual STB messaging. (Ref. Schedule III – E 7)	Checked & found to be partially compliant as IRDETO CAS has 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 31 st 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	<p>In case of IRDETO CAS related STBs finger print disappears on Reboot hence non-compliant to clause D (3) and D(13) of Schedule III.</p> <p>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.</p> <p>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.</p> <p>In case of IRDETO CAS related STBS individual finger print appears as global hence non-compliant to clause D (10) of Schedule III.</p> <p>Scroll is not supported by IRDETO CAS related STBS hence non-compliant to clause D (12) of Schedule III.</p>

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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 compliance status cannot be confirmed for the entire audit period."

6. In view of the aforesaid observations by the empanelled auditor of TRAI and looking to the non-compliances of the requirements as enumerated Scheduled-III appended with the **Interconnection Regulations, 2017, *prima facie* it appears that looking to 3rd Proviso to Regulation 15(2) of the Regulations, 2017** the respondent who is a broadcaster may disconnect the supply of signals of their channels to the petitioner. *Prima facie*, looking to the report given by the empanelled auditor, there are substantial non-compliances of the requirement of Scheduled-III appended with the Interconnection Regulations, 2017. The resultant effect of the non-compliances and the methodology adopted by the petitioner, ***prima facie*, leads to a fact that there is a substantial under-declaration by the petitioner of the number of subscribers.** More the subscribers, more the amount is payable by the petitioner to the respondent. Petitioner is a MSO and, therefore, it is submitted by the counsel for the respondent that this petitioner-MSO is always in attempt of under-declaration of the number of subscribers by adopting varieties of methods and, therefore, audit by empanelled auditor has to be done as per the Interconnection Regulation, 2017 and looking to this auditor's report and looking to the substantial non-compliances, *prima facie* respondent has all power, jurisdiction and authority to disconnect the supply of signals of their channels which are given to the petitioner.

7. We, therefore, vacate the stay granted by this Tribunal vide our earlier order dated 14.6.2022.

8. The matter is adjourned for further hearing on 23.3.2023.

9. The party-in-person who is Authorized representative has understood the next date of hearing as 23.3.2023. He shall remain present on the next date of hearing.

(JUSTICE D. N. PATEL)
CHAIRPERSON

(SUBODH KUMAR GUPTA)
MEMBER

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