

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

**Dated: 17/11/2022**

**MISC APPLICATION/395/2022**

IN

**BROADCASTING PETITION/471/2021**

With

**MISC APPLICATION/172/2021**

**Royal Digital Cable And Communication Pvt. Ltd.**

**....Petitioner(s)**

**Versus**

**Star India Pvt. Ltd. &**

**....Respondent(s)**

**BEFORE:**

**HON'BLE MR. JUSTICE DHIRUBHAI NARANBHAI PATEL, CHAIRPERSON**

**HON'BLE MR. SUBODH KUMAR GUPTA (MEMBER)**

**For Applicants/Appellants/Petitioners**

**For Respondents Advocate**

**Advocate**

Mr. Kunal Tandon

Mr. Himanshu Dhawan

Mr. Shashank Shekhar

Mr. Abhinav Dubey

**ORDER**

**1. M A No. 395 of 2022 - This application has been preferred by the original respondent with following prayers.**

"(a) Pass an Order allowing the Respondent No. 1 to disconnect the signals from the Petitioner's network till the time the present petition is finally decided; and /or

(b) Pass an Order directing the Petitioner to deposit an amount of Rs. 3,88,70,177/- plus GST towards audit demand in terms of Audit Demand Letter dated 03.06.2021 and Disconnection notice dated 20.07.2021; and/or

(c) Pass such further order/orders as this Hon'ble Court may deem fit and proper under the facts and circumstances of the case."

2. Counsel appearing for the applicant (original respondent) has argued out the case at length and submitted that the audit carried out by the original petitioner under the regulation 15(1) **Telecommunication (Broadcasting and Cable) Services Interconnection (Addressable Systems) Regulations, 2017 (hereinafter referred to as Interconnection Regulation, 2017)** was not upto the mark of satisfaction and hence this applicant (original respondent) had carried out the audit under Regulation 15(2) of the Regulations, 2017.

3. It has been contended by the counsel appearing the **applicant (original respondent)** that audit under the **Regulation 15(1)** was conducted for the month of **February, 2019 to September, 2020** and the **report** was given in the month of **October, 2020**.

4. It is further submitted by counsel appearing for the applicant (original respondent) that upon receiving the aforesaid report under regulation 15(1) the broadcaster who is the applicant (original respondent) upon receiving the aforesaid report under Section 15(1) was of the opinion that the said report was not upto the mark of satisfaction and, therefore, as per the Interconnections Regulation 15(2) of the Regulations, 2017 **further audit was conducted of SMS and CAS Digital Addressable System by an auditor who is empaneled by TRAI.**

5. Counsel appearing for the applicant (original respondent) has taken this Court to the said report given by the auditor under Section 15(2) which is at **Annexure - 20** to the **memo of this broadcasting petition**. The said **report is dated 31.5.2021** for the period arising from **August, 2019 to December, 2020**. Counsel appearing for the applicant (original respondent) has taken this Tribunal to various annexures and has pointed out from the audit report given under Regulation 15(2) that there is a violation by the original petitioner of the provisions of **Schedule III** appended to **Interconnection Regulation, 2017 and hence as per the 3<sup>rd</sup> Proviso to Regulation 15(2)** this applicant (original respondent) - broadcaster can disconnect the supply of signals of the television channels of the original petitioner.

6. Earlier an **order was passed by this Tribunal dated 11.3.2022 which was challenged before the Hon'ble Delhi High Court vide order dated 26.9.2022 in WPC No. 6681 of 2022 (Annexure – E)** to the memo of the present M.A. has

pointed out that the Tribunal may decide whether this applicant (original respondent) has a right to disconnect the supply of signals of their television channels to the petitioner.

**7.** Counsel appearing for the applicant (original respondent) **has pointed out various deficiencies** which have been pointed out by the auditor in his report under Regulation 15(2) and has submitted that the **original petitioner has not complied with the requirements as enumerated in Scheduled III appended to the Regulations, 2017.**

**8.** It is further submitted by the counsel appearing for the applicant that *prima facie* there is additional system available with the original petitioner which is not revealed to the broadcaster and there is a difference in the number of subscribers upon audit of digital addressable system of the original petitioner (CAS, SMS and STBs) and therefore, *prima facie* there is **violation of Schedule III** by the original petitioner and hence this applicant (original respondent) - broadcaster may be permitted to disconnect the supply of signals of the applicant's channels.

**9.** Counsel appearing for the original petitioner submitted that there is no error in the audit report given under Regulation 15(1). It is submitted by the original petitioner that the report given by the auditor under Regulation 15(2) does not point out the number of subscribers that the original petitioner are more than what is revealed by the original respondent – broadcaster. It is also submitted by the original petitioner that the evidence upon which the auditor who has given a report under Regulation 15(2) has relied upon were never verified in presence of the original petitioner nor the same was supplied to the auditor who was carrying out audit under Regulation 15(1) and, therefore, let the evidence be taken in this matter and, therefore, a conclusion may be arrived at by this Tribunal about the right of the broadcaster to disconnect the supply of signals of their channels.

**10.** Having heard the counsels for both the sides and looking to the facts and circumstances of the case, it appears that audit was conducted under Regulation 15(1) of the Interconnection Regulation, 2017. **This audit was conducted at the behest of the original petitioner.**

**11.** Looking to the Regulation 15(2) the broadcaster has also a right to get the digital addressable systems be audited by the empaneled auditors. For the ready reference **Regulation 15(2)** reads as under: -

### **Clause 15 of the Interconnection Regulations, 2017:**

"15. Audit.— (1) Every distributor of television channels shall, once in a calendar year, cause audit of its subscriber management system, conditional access system and other related systems by an auditor to verify that the monthly subscription reports made available by the distributor to the broadcasters are complete, true and correct, and issue an audit report to this effect to each broadcaster with whom it has entered into an interconnection agreement: Provided that the Authority may empanel auditors for the purpose of such audit and it shall be mandatory for every distributor of television channels to cause audit, under this sub-regulation, from anyone of such empanelled auditors: Provided further that any variation, due to audit, resulting in less than zero point five percent of the billed amount shall not require any revision of the invoices already issued and paid.

**(2) In cases, where a broadcaster is not satisfied with the audit report received under sub-regulation (1) or, if in the opinion of a broadcaster the addressable system being used by the distributor does not meet requirements specified in the Schedule III, it shall be permissible to the broadcaster, after communicating the reasons in writing to the distributor, to audit the subscriber management system, conditional access system and other related systems of the distributor of television channels, not more than once in a calendar year:**

**Provided that the Authority may empanel auditors for the purpose of such audit and it shall be mandatory for every broadcaster to cause audit, under this sub-regulation, from anyone of such empanelled auditors:**

**Provided further that if such audit reveals that additional amount is payable to the broadcaster, the distributor shall pay such amount, along with the interest at the rate specified by the broadcaster in the interconnection agreement, within ten days and if such amount including interest due for any period exceed the amount reported by the distributor to be due for such period by two percent or more, the**

distributor shall bear the audit expenses, and take necessary actions to avoid occurrence of such errors in the future:

Provided also that it shall be permissible to the broadcaster to disconnect signals of television channels, after giving written notice of three weeks to the distributor, if such audit reveals that the addressable system being used by the distributor does not meet the requirements specified in the Schedule III."

**12.** Looking to the report under Regulation 15(2) which is dated 31.5.2021 for the period running from August, 2019 to December, 2020 (**Annexure P-20 to the memo of this broadcasting petition**), the relevant part of the said report reads as under: -

**“AUDITOR’S OPINION & CONCLUSION**

In view of the various observations made by us with respect to clause C-1, clause C-2, clause C-6, clause C-10, clause C-11, clause C-14, clause C-19, clause C-20, clause C-21, clause D-14, clause E-8, clause E-10 of Schedule III and the duplication of ECM PIDs, the Digital Addressable System (CAS, SMS and STB) available and installed at M/s Royal Digital Cable and Communication Pvt. Ltd., Burhanpur **as on 25<sup>th</sup> March 2021, found to be not meeting 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.”

**13.** Looking to the page no. 115 to 117 of the relevant part of the audit report C-1, C-2, C-6, C-10, C-1, C-11, C-12, C-16, C-19, C-20 and C-21 reads as under: -

<b>"Sl. No.</b>	<b>Regulation Requirement</b>	<b>Compliance Status</b>
	The distributor of television channels shall ensure that the current version of the CAS, in use, do not have any history of hacking.	Checked and found to be partially compliant.  CAS PID (Hex number = 0x1fff. Decimal = 8191) as mentioned in the CAS

	<b>(Ref. Schedule III-C 1)</b>	<p>certificate of Telecast CAS is found to be not matching with the actual PID (701) as recorded in TS during the audit. <b>Annexure-5.</b></p> <p>Copy of the certificate(s) are attached herewith and marked as <b>Annexure-4.</b></p>
	<p>The SMS shall be independently capable of generating, recording, and maintaining logs, for the period of at least immediately preceding two consecutive years, corresponding to each command executed in the SMS including but not limited to activation and deactivation commands.</p> <p><b>(Ref. Schedule III – C 2)</b></p>	<p>Checked and found to be partially compliant.</p> <p>The network ID (1) as mentioned in the SMS certificate is found to be in variance with the network ID (43981) recorded in TS during the audit.</p> <p>Copy of the certificate(s) are attached herewith and marked as <b>Annexure-10.</b></p>

Sl. No.	Regulation Requirement	Compliance Status
6.	<p>The distributor of television channels shall validate that the CAS has the capability of upgrading STBs over-the-air (OTA), so that the connected STBs can be upgraded.</p> <p><b>(Ref. Schedule III – C6)</b></p>	<p><b>Checked and found to be partially compliant</b> as though the CAS vendor certificates confirms the availability of said feature however the DPO is using third party software for same. Further, OTA on test STBs was demonstrated by DPO using pendrive on STB.</p> <p>Screenshot related to same is attached as <b>Annexure-18.</b></p>
10.	<p>The CAS and SMS should be capable of individually addressing subscribers, for the purpose of generating the reports on channel by channel and STB by STB basis.</p>	<p>Post testing of STBs in terms of activation, deactivation of customer and packages, the logs of SMS and CAS were extracted for the audit dates and found the same to be matching.</p>

	<b>(Ref. Schedule III – C10)</b>	However, in view of the pay channels found to be active in the ground samples but deactive in SMS transaction logs, <b>continued compliance throughout the audit period cannot be confirmed.</b>
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Sl. No.	Regulation Requirement	Compliance Status
11.	<p>The SMS should be computerized and capable of recording the vital information and data concerning the subscribers such as:</p> <ul style="list-style-type: none"> <li>(a) Unique customer identification (ID)</li> <li>(b) Subscription contract number</li> <li>(c) Name of the subscriber</li> <li>(d) Billing address</li> <li>(e) Installation address</li> <li>(f) Landline telephone number</li> <li>(g) Mobile phone number</li> <li>(h) E-mail address</li> <li>(i) Channels, bouquets and service subscribed</li> <li>(j) Unique STB number</li> <li>(k) Unique VC number</li> </ul> <p><b>(Ref. Schedule III – C11)</b></p>	<p>As per the Audit procedure defined in audit manual for checking the compliance of clause C-11, we requested DPO to provide 5 samples CAF however DPO failed to provide same during the audit hence <b>continued compliance cannot be confirmed.</b></p>
12.	<p>The SMS should be capable of:</p> <ul style="list-style-type: none"> <li>(a) Viewing and printing of historical data in terms of the activations and the deactivations of STBs.</li> <li>(b) Locating each and every STB and VC installed.</li> <li>(c) Generating historical data</li> </ul>	<p>Checked and found to be compliant based on the certificate provided by SMS vendors.</p> <p style="text-align: center;"><b>Annexure-19</b></p> <p style="text-align: center;"><b>Annexure-20</b></p>

<p>of changes in the subscriptions for each subscriber and the corresponding source of requests made by the subscriber.</p> <p><b>(Ref. Schedule III – C12)</b></p>	<p><b>Annexure-21</b></p> <p><b>However, the SMS transaction logs are found to be not reliable in view of the pay channels found to be active in the ground samples but having no corresponding transaction logs.</b></p>
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Sl. No.	Regulation Requirement	Compliance Status
14.	<p>The CAS shall be independently capable of generating, recording, and maintaining logs, for the period of at least immediately preceding two consecutive years, corresponding to each command executed in the CAS including but not limited to activation and deactivation commands issued by the SMS:</p> <p><b>(Ref. Schedule III – C14)</b></p>	<p><b>Checked and found to be non-compliant</b> as the CAS transaction logs are unreliable in view of the pay channels found to be active in the ground samples but having no corresponding transaction logs.</p>

Sl. No.	Regulation Requirement	Compliance Status
16.	<p>It shall be possible to generate the following reports from the logs of the CAS:</p> <p>(a) STB-VC Pairing/De-Pairing  (b) STB Activation / De-activation  (c) Channels Assignment to STB  (d) Report of the activations or the deactivations of a particular channel for a given period.</p> <p><b>(Schedule III – C 16)</b></p>	<p>Checked and found to be partially compliant.</p> <p>(e) All STBs are Cardless.  (f) <b>Annexure-32</b>  (g) No separate report is generated from system.  (h) No separate report is generated from system.</p>

Sl. No.	Regulation Requirement	Compliance Status
19.	<p>The distributor of television channels shall declare the details of the CAS and the SMS deployed for distribution of channels. In case of deployment of any additional CAS/SMS, the same should be notified to the broadcasters by the distributor.</p> <p><b>(Schedule III – C 19)</b></p>	<p>The DPO declared to have deployed three CAS and one SMS however during the audit, we found an additional server which was not declared by DPO in any documents.</p> <p>Further, during the audit, we observed that the IP address for LE CAS (10.15.17.1) as reflected in SMS was neither declared nor was traceable in IP scanning performed by us. Also, this IP address was not matching with the IP address (172.168.10.215) mentioned in the LE CAS vendor certificate and provided to access the LE CAS during the audit <b>(Annexure-16)</b>.</p> <p>DPO Declaration is attached and marked as <b>Annexure-7</b>.</p>
20.	<p>Upon deactivation of any subscriber from the SMS, all program / services shall be denied to that subscriber.</p> <p><b>(Schedule III – C 20)</b></p>	<p><b>Checked and found to be non-compliant</b> as though the stimulation tests performed by us on test STBs the said feature was working however in view of the pay channels found to be active in the ground samples but deactive in SMS transaction logs, continued compliance throughout the audit period cannot be confirmed.</p>
21.	<p>The distributor of television channels shall preserve unedited data of the CAS and the SMS for at Least two years.</p> <p><b>(Schedule III – C 21)</b></p>	<p><b>Checked and found to be non-compliant</b> as the SMS and CAS data is not reliable in view of the pay channels found to be active in the ground samples but having no corresponding transaction logs."</p>

**14. Thus, *prima facie* it appears that original petitioner has not complied with requirements of schedule – III 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 III 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 – III appended with the Interconnection Regulations, 2017.

**16. We, therefore, permit this applicant (original respondent – broadcaster) looking to the 3<sup>rd</sup> 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.

17. Counsel appearing for the original petitioner submitted that evidences which were collected by the broadcaster, and were verified by the auditor while conducting the audit under Regulation 15(2), the original petitioner was not allowed to be present.

**18. With these observations this M.A. is allowed and disposed of.**

**19. This Broadcasting Petition will be further heard on 14.3.2023.**

**(JUSTICE D. N. PATEL)  
CHAIRPERSON**

**(SUBODH KUMAR GUPTA)  
MEMBER**

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