

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

DATED THE 23rd APRIL 2003

**PETITION NOS. 1 OF 2003
(M.A. NO.18 OF 2003)**

Aircel Digilink India Ltd. Petitioner	...
Vs.	
Union of India & Another Respondents	...

**PETITION NOS. 2 OF 2003
(M.A. NO.19 OF 2003)**

Aircel Digilink India Ltd. Petitioner	...
Vs.	
Union of India & Another Respondents	...

**PETITION NOS. 3 OF 2003
(M.A. NO.20 OF 2003)**

Aircel Digilink India Ltd. Petitioner	...
Vs.	
Union of India & Another Respondents	...

BEFORE:

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**HON'BLE MR. JUSTICE D.P. WADHWA,
CHAIRPERSON
MR. R.U.S. PRASAD, MEMBER
MR. P.R. DASGUPTA, MEMBER.**

For the petitioner Advocate	:	Mr. C.S. Vaidyanathan, Senior With Mr. Manjul Bajpai, Mr. and Ms. Shaily Yogi, Advocates
Praveen Thomas		
For the respondents	:	Mr. Navin Chawla, Advocate

Interest - Migration Package notionally extended Effective Date by 6 months - held when there is no principal amount payable there cannot be any question of payment of interest - Further, held any clause in the Agreement that though principal amount is not payable, interest would be due and payable has no meaning in view of law laid down by the Supreme Court in Civil Appeal No. 5050/2002.

ORDER

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Petitioner has filed these three petitions under Section 14A(1) read with Section 14(a)(i) of the Telecom Regulatory Authority of India Act, 1997 as amended (for short the Act) challenging the claim of the respondents, the licensor, claiming interest for the period when for that period principal amount is not claimable. Petitioner was granted licence for providing cellular mobile telephone services in Rajasthan, Haryana and U.P. (East).

Petitioner made the following prayer when the petitions were originally filed:

"It is therefore, most respectfully prayed that this Hon'ble Tribunal may be pleased to:-

- (a) direct the Respondents to modify the Demand Notes dated 13.09.2001 and 26.1.2001, to the extent it is found to charge higher/excess amounts of licence fee, interest etc., and thereupon refund all the excess amount charged by the Respondents to the Petitioner together with interest thereon at the prevalent SBI prime lending rate plus 5% per annum (compounded monthly) till the date of such refund;
- (b) pass such further or other orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case".

However by applications (M.A. Nos. 18, 19 and 20/2003) petitioner sought to add the following prayers after prayer (a) in the prayer clause of the petitions:

"(b) direct the Respondents to modify clause 2(v) of the Migration Package dated 06.04.2000 to the extent that it is found to charge higher/excess amounts of interest and thereupon refund all the excess amount charged by the Respondents to the Petitioner together with interest thereon at the prevalent SBI prime lending rate plus 5% per annum (compounded monthly) from the date of payment of such excess amounts by the Petitioner till the date of refund.

(c) declare that clause 2(xi) of the Migration Package is discriminatory and violative of Article 14 of the Constitution of India."

Pass such further or other orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case".

There cannot possibly be any objection to these applications being allowed inasmuch as on the basis of the facts alleged in the petition a further prayer is sought to be added. We allow these applications and prayers (b) and (c) are incorporated in all the three petitions.

It was submitted by Mr. C.S. Vaidyanathan, Senior Advocate that he would confine his claim to prayer (b) which has now been added. This prayer is the same as was made by the Cellular Operators Association of India and four others in Petition No. 10/2001 filed against respondents and which petition was allowed by order of this Tribunal dated 9.4. 2002 and upheld by the Supreme Court in appeal filed by the respondent-Department of Telecommunications, by judgment dated March 4, 2003 (Civil Appeal No.5050 of 2002). This Tribunal in its order directed the respondent to modify the demand by modifying charge of interest. The Supreme Court, however, directed as under:

"We direct the appellants to modify the demand issued to the respondents to the extent it is found to charge higher amount of licence fee or interest on the principles set out by us in this order. The excess amount which is liable to be refunded to the respondents shall be adjusted towards outstanding or future

dues and if still any amount becomes due to them the same shall be refunded at the relevant bank rates. In other respects the direction given by the Tribunal stands maintained.”

In petition No.10/2001, four other cellular operators were Birla AT & T Communications Ltd, New Delhi, BPL Mobile Cellular Limited, Coimbatore, Escotel Mobile Communications Ltd., New Delhi and Fascal Limited, Ahmedabad.

If we examine the prayer in petition No.10/2001 and the prayer (b) now introduced by amendment in the present petition it is verbatim the same and so also the facts narrated in the present petition as well as in earlier petition No.10/2001.

Petitioner says that it is also the member of Cellular Operators Association of India and the judgment of this Tribunal as upheld by the Supreme Court would apply to his case as well. This is not agreed to by the respondents. It is the submission of Mr. Navin Chawla, learned counsel for the respondents, that this Tribunal in its earlier order in Petition No.10/ 2001 was influenced by the fact that there was no express provision in the ‘migration package’ that outstanding interest amount would not be payable when the ‘migration package’ provided only outstanding licence fee was not payable for the particular period. He said that in the case of the petitioner it was expressly provided in clause 2(v), (b) & (c) and clause 2(xi) of the ‘migration package’ that notional extension for exemption of payment of licence fee would have no effect on the outstanding interest liability.

We do not think we have to examine what led the respondents, the licensor, to offer the ‘migration package’ to the licensee as in our view the present petition is fully covered by the decision of this Tribunal in petition No.10/2001 and upheld by the Supreme Court as aforesaid. When there is no principal amount payable for any particular period there cannot be any question of payment of interest. Any clause in the agreement that though principal amount is not payable interest would be due and payable has no meaning in view of the law laid down by the Supreme Court in Civil Appeal No.5050/2002 filed by the respondents challenging the order of this Tribunal in Petition No.10/2001. This is how the Supreme Court considered the matter while rejecting the argument of the respondent:

“But this argument baffles all logic. The licence fee becomes due and payable from the effective date. When the effective date stood postponed by a period of six months then that is the date from which the licence fee will have to be reckoned and appropriate calculation made both for purposes of licence fee and interest. Unless the licence fee becomes due the question of payment of interest will not arise. However, the learned Additional Solicitor General submitted that there are two components namely, the licence fee and interest which was payable. In respect of one component the effective date was extended but not in respect of the other. But payment of interest is dependent upon the licence fee becoming due. Interest is not independent of the licence fee and when the licence fee had to be paid from a particular date, the interest would not accrue from a date prior to the licence fee becoming due for payment. In that view the matter we think the view taken by the Tribunal is correct and no interference is called for.”

Interest is claimed for the use of money lent or for delaying the repayment of debt. As rightly observed by the Supreme Court it is difficult to understand the logic of the respondent that when there is exemption from payment of principal, interest on that amount can still be claimed. The clauses referred to by Mr. Chawla in the ‘migration package’ runs counter to the law laid by the Supreme Court.

We, therefore, allow these petitions in terms of our order in petition No.10/2001 as modified by the Supreme Court in Civil Appeal No.5050/2002.

.....Sd/-.....J
(D.P. WADHWA)
CHAIRPERSON

..... Sd/-.....
(R.U.S. PRASAD)
MEMBER

.....Sd/-.....
(P.R. DASGUPTA)
MEMBER