

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

**DATED 18<sup>th</sup> MARCH, 2005**

**(a) M.A.No.22 of 2004**

in

**PETITION No.10 OF 2001**

Cellular Operators Association of India & Ors	...Petitioners
Vs.	
Department of Telecommunications & Anr	...Respondents

**(b) E.A.No.1 of 2004**

in

**Petition No.16 of 2002,**

Hexacom India Ltd.& Ors.	...Petitioners
Vs.	
Department of Telecommunications & Anr	...Respondents

**(C) E.A.No.3 of 2004**

in

**Petition No.1 of 2003,**

Aircel Digilink India Ltd.	...Petitioner
Vs.	
Department of Telecommunications & Anr	...Respondents

**(d) E.A.No.4 of 2004**

in

**Petition No.2 of 2003,**

Aircel Digilink India Ltd.	...Petitioner
Vs.	
Department of Telecommunications & Anr	...Respondents

**(e) E.A.No.5 of 2004**

in

**Petition No.3 of 2003,**

Aircel Digilink India Ltd.	...Petitioner
Vs.	
Department of Telecommunications & Anr	...Respondents

(f) PETITION No.8 OF 2003

(With M.A.No.34 of 2003 & M.A.No.35 of 2003),

BPL Mobile Cellular Limited & Another ...Petitioners  
Vs.  
Department of Telecommunications ...Respondent

(g) PETITION No.3 OF 2004,

Escotel Mobile Communications Ltd. ...Petitioner  
Vs  
Department of Telecommunications & Ors ...Respondents

(h) E.A.No.6 of 2004

in

PETITION No.9 OF 2002

Association of Unified Telecom Service Providers of India ...Petitioner  
Vs.  
Union of India (DoT) ...Respondent

(i) E.A.No.7of 2004

in

PETITION No.18 OF 2002

Tata Teleservices Limited ...Petitioner  
Vs.  
Union of India (DoT) ...Respondent

**BEFORE:**

**HON'BLE MR. JUSTICE D.P.WADHWA,  
CHAIRPERSON  
LT.GEN.D.P.SEHGAL(RETD.),MEMBER**

For Petitioners in (a), (b), (c), (d), (e) : Dr.A.M.Singhvi,  
Mr. C.S.Vaidyanathan,  
Senior Advocates with  
Mr. Manjul Bajpai,  
Ms.Neyha Bhandar and  
Ms.Jayne Kuriakose,Advocates

For Petitioners in (f) : Dr.A.M.Singhvi,Senior Advocate with  
Mr. Rishi Agrawala and Mr.Amit  
Bhandari, Advocates

For Petitioner in (g) : Mr.C.S.Vaidyanathan,Senior Advocate with Mr.Punit D.Tyagi, Advocate

For Petitioner in (h) Mr.Ramji Srinivasan with Mr.Gagan Sareen,Advocates

For Respondents : Mr.Navin Chawla, Advocate

### **Catchwords:**

**Migration Policy 1999 – Payment of one time entry fee – Extension granted for payment by 6 months – Challenge to the levy of interest by DoT – Held – Refund of excess amount charged with interest at the relevant SBI lending rate + 5% per annum.**

**Appeal filed in Supreme Court – Order of TDSAT upheld with modification – Excess amount to be refunded after adjustment of the same against dues and future dues if any – Interest rate also modified to Bank rate.**

**Held – Interest is on account of delayed payment of License Fee – Interest be calculated on Principal amount if any after adjustment w.e.f. 4.3.2003 and no tax interest component – Petition disposed of – Petition No.18 to be taken up separately – Case of Penalty also being considered separately.**

**Applicants again went to Supreme Court for interpretation of execution of TDSAT-cum-Supreme Court Order – Same dismissed as withdrawn.**

### **ORDER**

Cellular Operators of India Limited (COAI) and others filed M.A. No. 22 of 2003 for implementation/execution of the TDSAT Order dated 9<sup>th</sup> April 2002 as modified by the Hon'ble Supreme Court Judgement dated 4<sup>th</sup> March 2003 under Section 19\* of the

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\* 19. Every order made by the Authority under this Act or the order made by the High Court in any appeal against any order of the Authority shall, on a certificate issued by any officer of the Authority or the Registrar of the High Court, as the case may be, be deemed to be decree of the civil court and shall be executable in the same manner as a decree of that court. Orders passed by Authority or High Court to be executable as a decree.

TRAI Act read with Section 37<sup>3</sup>, 38<sup>+</sup>; and Order 45 Rule 15<sup>⊙</sup> of the Code of Civil Procedure.

2. The brief backdrop of the case is given in the subsequent paragraphs.

3. The various cellular operators were granted licenses for operation of cellular/mobile services in their respective circles in 1995. As per the licence agreement they were to pay licence fee for one year in advance and thereafter the licence fee was to be paid in quarterly instalments. In accordance with National Telecom Policy 1999 (NTP 1999), Central Government offered a Migration Package dated 22<sup>nd</sup> July 1999 to all the Service Providers whereby they could migrate to the new Revenue Sharing regime. The Migration Policy, from Licence Fee to Revenue Sharing regime, was to come into effect

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<sup>3</sup> 37. *Definition of Court which passed a decree – The expression “Court which passed a decree”, or words to that effect, shall, in relation to the execution of decrees, under there is anything repugnant in the subject or context, be deemed to include,--*

(a) *where the decree to be executed has been passed in the exercise of appellate jurisdiction, the Court of first instance, and*

(b) *where the Court of first instance has ceased to exist or to have jurisdiction to execute it, the Court which, if the suit wherein the decree was passed was instituted at the time of making the application for the execution of the decree, would have jurisdiction to try such suit.*

*[Explanation – The Court of first instance does not cease to have jurisdiction to execute a decree merely on the ground that after the institution of the suit wherein the decree was passed or after the passing of the decree, any area has been transferred from the jurisdiction of that Court to that jurisdiction of any other Court; but, in every such case, such other Court shall also have jurisdiction to execute the decree, if at the time of making the application for execution of the decree it would have jurisdiction to try the said suit].*

*Amendments : Objects and Reasons – Clause 18 – There is a conflict of decisions on the point as to whether in cases where jurisdiction over the subject-matter of a decree is transferred to another Court that Court is also competent to entertain an application for execution of the decree. The Calcutta High Court has held that both the Courts would be competent to entertain an application for execution of the decree but the Madras High Court has held that in the absence of an order by the Court which passes the decree that Court can alone entertain an application for execution and not the Court to whose jurisdiction the subject-matter has been transferred. The Supreme Court has left the point open. Proposed Explanation to Section 37 seeks to give effect to the Calcutta view. [Statement of Objects and Reasons (Bill) – Gazette of India, Ext., dt. 8-4-1974, Pt. II, S.2, p.303].*

<sup>+</sup> 38. *Court by which decree may be executed – A decree may be executed either by the Court, which passed it, or by the Court to which it is sent for execution.*

<sup>⊙</sup> 15. Procedure to enforce orders of the Supreme Court.—(1) Whoever desires to obtain execution of [any decree or order] of [the Supreme Court] shall apply by petition, accompanied by a certified copy of the decree passed or order made in appeal and sought to be executed, to the Court from which the appeal to [the Supreme Court] was preferred.

(2) Such Court shall transmit the [decree or order] of [the Supreme Court] to the Court which passed the first decree appealed from, or to such other Court as [the Supreme Court] by such [decree or order] may direct and shall (upon the application of either party) give such directions as may be required for the execution of the same; and the Court to which the said [decree or order] is so transmitted shall execute it accordingly, in the manner and according to the provisions applicable to the execution of its original decrees.

(3) [\*\*\*]

(4) [Unless the Supreme Court otherwise directs, no decree or order of that Court] shall be inoperative on the ground that no notice has been served on or given to the legal representative of any deceased opposite party or deceased respondent in a case, where such opposite party or respondent did not appear either at the hearing in the Court whose decree was complained of or at any proceedings subsequent to the decree of that Court, but such order shall have the same force and effect as if it had been made before the death took place.]

from 1.8.1999. Under the Migration Policy the licensee was to pay a one-time entry fee which was payable on 31<sup>st</sup> July 1999 and thereafter the Service Providers were to share the revenue with the licensor on percentage basis on their gross revenue. As a part of concession to the cellular operators the Government extended the date of payment of the licence fee by six months, which meant that the annual licence fee payable by an operator on 12<sup>th</sup> December 1995 stood extended for payment to 12<sup>th</sup> June 1996. Similarly, all subsequent quarterly instalments of licence fee also became payable by six months later date. However, the licence fee had already been paid by the operators either by due date or with interest in case where payment had got delayed.

4. The applicants filed Petition No. 10 of 2001 before this Tribunal and challenged inter-alia the levy of interest by the Government for that period of six months of the licence for which no licence fee, not even the principal amount, was payable. As per the applicants the Government had charged interest even for the said notionally extended period of 6 months. Applicants prayed therein to:-

- (a) direct the Respondents to modify the Demand Note bearing No. 15-6/99-LF dtd 10<sup>th</sup> August 2000 issued to the respective Petitioners, to the extent it is found to charge higher amounts of Licence Fee, interest etc. as stated herein and thereupon refund all the excess amount charged by the Respondents to the respective 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) direct the Respondents to reassess the liquidated damages, keeping in view the notionally extended Effective Date;
- (c) direct the Respondents to pay interest on Licence Fee paid by the Petitioners in advance for a period of six months.

5. This Tribunal in its Order dated 9<sup>th</sup> April 2002 allowed the petition and had directed the Respondents i.e. Department of Telecommunication to modify the Demand Notes dated 10<sup>th</sup> August 1999 and 18<sup>th</sup> February 2000. The operative portion of this Tribunal's Order dated 9.4.2002 reads as under:-

“Prayer (a) of the petitioner is as under:-

“Direct the respondents to modify the Demand Note bearing No. 15-6/99-LF dated 10th August, 1999 and 18th February 2000 issued to the respective Petitiones, to the extent it is found to charge higher amounts of Licence Fee, interest etc. as stated herein and thereupon refund all the excess amount charged by the Respondents to the respective Petitioner together with interest thereon at the prevalent SBI prime lending rate plus 5% per annum (compounded monthly) till the date of such refund.”

This prayer is allowed and we direct the respondents to modify the Demand Note bearing No. 15-6/99-LF dated 10th August 1999 and 18th February 2000 by modifying the charge of interest in the light of our judgment.

Prayer (b), which seeks to direct all the respondents to reassess the liquidated damaged, keeping in view the notionally extended Effective Date, is rejected. We also do not allow Prayer (c), which asks for payment of refund with interest.

The petition is disposed of as above.

Each party must pay and bear its own costs.”

6. The Department of Telecommunication filed an appeal being Civil Appeal No. 5050 of 2002 against the judgement and order dated 9<sup>th</sup> April 2002 of this Tribunal before the Hon’ble Supreme Court of India. While admitting the appeal the Hon’ble Supreme Court made the following order:-

*“The appeal is admitted for hearing. Liberty to both the parties to seek an early hearing.*

*It is brought to our notice that till this time the respondents have not sought for any refund under the impugned order. In view of that factual situation, no interim orders are called for at this stage. The parties are at liberty to make a mention before the*

*Hon'ble the Chief Justice for appointing a date for hearing in the month of January or February, 2003.”*

7. The Hon'ble Supreme Court, vide its judgement dated 4<sup>th</sup> March 2003, dismissed the Appeal filed by DoT and upheld the said judgement and order of this Tribunal and had modified the said order, inter-alia, and held/directed as under:

*“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 of the matter, we think the view taken by the Tribunal is correct and no interference is called for. However, in regard to the relief granted by the Tribunal we think the direction should be modified. The direction to the authorities will now read as follows:*

*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.*

*The appeal is thus dismissed subject to the modification made in the course of this order.”*

8. After the decision of the Supreme Court the Department of Telecommunications (DOT) computed the amount of interest in terms of that order and forwarded the same to the applicants. The interpretation of the order of the Supreme Court as put by the DoT was not accepted by the applicants and they filed an application in the Supreme Court (IA No. 5 of 2003) in the Civil Appeal No. 5050 of 2002, seeking clarifications/directions of the order dated 4.3.2003 of the Supreme Court. An application (IA No. 3 of 2003) seeking almost similar relief was also filed in the Supreme Court by BPL Mobile Cellular Limited, who was also an appellant in the C.A No. 5050 of 2002, and a member of the COAI. Prayer in I.A No. 5 of 2003 was as under:-

*“It is, therefore, most respectfully prayed that this Hon’ble Court may please to:-*

- (a) clarify the order dated 04.03.2003 rendered by this Hon’ble Court in CA No. 5050 of 2002 and to direct the DoT to comply with the order dated 04.03.2003 in CA No. 5050 of 2002 and forthwith refund/set off from the demands the amounts liable to be refunded along with interest thereon as mentioned in para 12 above at the prevalent SBI prime lending rate + 5% per annum per annum compounded monthly till the date of refund/adjustment from the dues of the Applicants/Respondents computed from the date of overpayment of the said amounts untill the adjustments/actual refund thereof;*
- (b) pass such other further order/orders which this Hon’ble Court may deem fit and proper in the interest of justice.”*

and that in I.A. No. 3 of 2003 as under:-

*“It is, therefore, most respectfully prayed that this Hon’ble Court may please to:*

- (a) Direct the DoT to comply with the order dated 4.3.2003 in C.A. No. 5050 of 2002 and set off from the demands the amounts liable to be refunded along with interest thereon at the prevalent SBI prime lending rate + 5% compounded monthly till the date of adjustment from the dues of the applicant and its sister company BPL Mobile Communication Limited and in the meantime DoT be*

*restrained from encashing the bank guarantee no. 46 of 2000 dated 29.05.2000 (as renewed from time to time).*

- (b) *Pass such other further order/orders which this Hon'ble Court may deem fit and proper in the interest of justice."*

As we see the dispute as raised by the applicants before the Hon'ble Supreme Court was that wrong interpretation given by DOT to the order of this Tribunal as modified by the Supreme Court. However, both the applications were dismissed as withdrawn (I.A. No. 5 of 2003 on 19.3.2004 and I.A. Nos. 3-4 of 2003 on 19.6.2003). The order in I.A. No. 5 of 2003 reads as under:-

*"Learned senior advocate for the applicants seeks leave of the Court to withdraw this application. I.A. No. 5 is dismissed as withdrawn."*

and that of I.A. Nos. 3-4 of 2003 reads as under:-

*"Upon hearing counsel the Court made the following Order. I.A. Nos. 3-4 are dismissed as withdrawn, as prayed for."*

Thereafter on 8.4.2004 present Application No. 22 of 2004 was filed by the COAI and that by the BPL Mobile Cellular Limited though earlier on 2.6.2003.

We will note that along with M.A. 34 of 2003 BPL Mobile Cellular Limited filed a substantive petition 8 of 2003 with the following prayers:-

*"The petitioner most respectfully and humbly prays that this Hon'ble Tribunal may be pleased to:*

- (a) *Quash and set aside the erroneous calculations made by the respondents in their various letters and demands dated 3.12.2002, 7.5.2003, 12.5.2003 (Annexures 12, 18 and 19) and direct the respondent to rectify the same in accordance with the principles mentioned herein by setting off all payments due from the petitioner to the respondent from amounts available with the respondent, without charging interest or imposing penalty.*

- (b) *Direct the respondent to undertake the adjustments of the outstanding from the refundable amounts worked out correctly in accordance with this Hon'ble Tribunal Judgments dated 9.4.2002 in Petition No. 10 of 2001 as confirmed by the Hon'ble Supreme Court.*
- (c) *Quash and set aside the Clause No. 3.8 of Letter No. 842-47/2002 dated 3.4.2002 of the respondent, whereby penalty of 150% is sought to be imposed and declare the same as null and void, inoperative and unenforceable.*
- (d) *Quash and set aside the penalty of Rs. 1,49,09,909/- as imposed by the respondent on the petitioner in respect of the Kerala circle.*
- (e) *Direct the respondent not apply the amendments made vide Letter No. 842-47/2002 dated 3.4.2002 retrospectively.*
- (f) *Pass any such other and further order(s) as this Hon'ble Court may deem fit and proper in the circumstances of the present case.”*

In this petition BPL filed an application M.A. 34 of 2003 seeking interim relief wherein the prayers were:-

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

- (a) *restrain the respondent from enforcing clause no. 3.8 of letter no. 842-47 of 2002 dated 3.4.2002;*
- (b) *stay the further demand of Rs. 45,81,67,200/- by the respondent by virtue of the letter dated 12.5.2003 being letter no. WFD-1000/WPC Spect.Ch/2003-04;*
- (c) *direct the respondent by way of an interim mandatory order to issue the corrected statement of account reflecting the adjustments according to the principles mentioned in the petition;*
- (d) *suspend the operation of the clause no. 3.8 of letter no. 842-47 of 2002 dated 3.4.2002;*
- (e) *pass ex-parte, ad-interim and interim relief in the above terms till the final disposal of the accompanying petitions;*

(f) *pass any such other and further order(s) as this Hon'ble Court may deem fit and proper in the circumstances of the present case."*

9. In M.A. No. 22 of 2004 filed by the COAI and Others, the reply has been filed by the DoT opposing the application. It is contended that when the applicants failed in getting any clarification from the Supreme Court, when disputing the interpretation/understanding of DoT, they chose to withdraw their applications unconditionally and without any relief from the Supreme Court and have filed the present application which they are not entitled to and amounts to abuse of the process of the judicial system. It is contended that clarification which the Supreme Court did not deem it necessary to give, as its order was quite explicit, and which was correctly interpreted by the DoT, there is no right or justification to file the present application. Mr. Navin Chawla, learned counsel for DOT, said instead of facing the order of dismissal the applicant chose to withdraw their applications. He said if the Supreme Court had found that the interpretation put by DOT to the order of this Tribunal as modified by the Supreme Court was in any way erroneous the Court would have certainly interfered. The dispute raised was, in effect, to the interpretation of the order of the Tribunal as modified by the Supreme Court and not to the calculation of the amounts falling due to applicants adjustments made on those amounts. When the Supreme Court did not consider that it was a case requiring any clarification now the applicants want this Tribunal to give clarification to the order of the Supreme Court in C.A. No. 5050 of 2002. Mr. Chawla could be right in his submissions and this is particularly so when the applicants themselves approached the Supreme Court seeking clarifications/directions of its order. In Petition No. 8 of 2003 which had been filed by BPL, a member of COAI, adjournments were being taken from the Tribunal on the grounds that application for clarification is pending in the Supreme Court. Now after the application for clarification from the Supreme Court was withdrawn, we are asked to interpret the order of the Supreme Court. It is not for us to speculate what transpired in the Supreme Court during the course of hearings. In Messrs. Associated Tubewells Ltd., vs. R.B. Gujarmal Modi (AIR 1957 SC 742), the Court disapproved the practice of stating in a review application as to what happened in court on prior occasion and what each Judge said in the course of

the argument. The court also said that it was not the practice of the Supreme Court to give reasons for dismissal of an application for special leave.

10. The present M.A. along with Execution Application Nos. 1 of 2004 in Petition No. 16 of 2002, 3 of 2004 in Petition No. 1 of 2003, 4 of 2004 in Petition No. 2 of 2003, 5 of 2004 in Petition No. 3 of 2003, Petition No. 8 of 2003 (with M.A. Nos. 34 & 35 of 2003) and Petition No. 3 of 2004 were filed basically to seek clarification on interpretation of both the orders so that the same can be executed. That withdrawal of the applications in the Supreme Court has no effect; petitioners referred to a decision of the Supreme Court in *Kunhayammed vs. State of Kerala - (2000) 6 SCC 359*, the Court was considering the question of frequent recurrence involving the legal implications and the impact of an order rejecting a petition seeking grant of special leave to appeal under Article 136 of the Constitution. But the present controversy, we are not concerned with this question as application seeking clarification of the order of the Supreme Court could not said to be an application under Article 136 of the Constitution. In Para 44 of the judgement, Supreme Court summed up its conclusions on the question so raised before it. Sub-para 1 of this para is, however, relevant for the purpose which deals with the issue of merger and it is as under:-

“(i) Where an appeal or revision is provided against an order passed by a court, tribunal or any other authority before superior forum and such superior forum modified, reverses or affirms the decision put in issue before it, the decision by the subordinate forum merges in the decisions by the superior forum and it is the latter which subsists, remains operative and is capable of enforcement in the eye of law.”

Reference was also made to another decision of the Supreme Court in *Sarguja Transport Service vs. State Transport Appellate Tribunal, M.P., Gwalior and Others - (1987) 1 SCC 5*, the Court was considering the question whether a petition after withdrawing a petition filed by him in the High Court under Article 226 without permission to institute a fresh petition could file a fresh writ petition in the High Court

under the same Article 226. The Court said the principle underlying Rule 1 of Order XXIII of the Code of Civil Procedure should be extended in the interests of administration of justice in cases of withdrawal of writ petition also, not on the ground of *res judicata* but on the ground of public policy. The Court added that it would also discourage the litigant from indulging in bench-hunting tactics. In any event there is no justifiable reason in such a case to permit a petitioner to invoke the extraordinary jurisdiction of the High Court under Article 226 of the Constitution once again. While the withdrawal of a writ petition may not bar other remedies like a suit or a petition under Article 32 of the Constitution since such withdrawal does not amount to *res judicata*, the remedy under Article 226 of the Constitution should be deemed to have been abandoned by the petitioner in respect of the cause of action relied on in the writ petition when he withdraws it without such permission. In the instant case the High Court was right in holding that a fresh writ petition was not maintainable before it in respect of the same subject-matter since the earlier writ petition had been withdrawn without permission to file a fresh petition. This decision though cited by the petitioners would rather appear to support the stand of the Respondent. It was thus submitted by the petitioners that it is only the TDSAT which is competent to execute its order as modified by the Supreme Court. It was not required of the petitioners to approach the Supreme Court for any clarification or otherwise and the orders of the Supreme Court allowing withdrawal of the applications will not affect the jurisdiction of this Tribunal. But then the question remains as to why the petitioners at all went to the Supreme Court seeking clarification and that too after DoT calculated the amount in terms of the order of this Tribunal as modified by the Supreme Court and again why the applications were withdrawn and only thereafter these applications were filed before us. Nevertheless, we proceeded to examine the matter on merit as well.

11. The learned counsel for the Petitioners while arguing the case submitted that there was now no dispute on the payment issue and refund up to July 1999 i.e. pre-migration. This was also confirmed by the learned counsel for the Respondents that as per the order of this Tribunal the payment with interest up to this period towards excess payment i.e. before Migration has been worked out correct and there was no dispute. Therefore, the

excess amount charged along with interest for the notionally extended period of 6 months stands resolved.

12. The case which now lies before us is for interpretation of the order for refund of excess of licence fees paid by Cellular Operators for the period after 31<sup>st</sup> July 1999.

13. The learned counsel for the Petitioners submitted that since the applicants had paid the licence fee along with interest where applicable and this amount was to their credit with DoT for a long period. He went on to explain the spirit of the judgement of the Hon'ble Supreme Court that the DoT was to modify the Demand Note issued to the applicants to the extent it is found to charge higher amount of licence fee or interest on the principles set out by the Supreme Court. According to him it implied that the higher amount of licence fee or interest was to be clubbed together and the appellants were entitled to refund of this amount with interest accrued thereon as per the judgement of this Tribunal. Only doubt was about the interest rate i.e. whether it should be SBI prime lending rate + 5% as per orders of TDSAT or relevant bank rate as set out by Hon'ble Supreme Court. The learned counsel for the applicants reiterated that the higher or excess amount due to the applicants was to be worked out with interest from the date the payments were made by them to the DoT.

14. The learned counsel for the DoT, however, stated that the Supreme Court judgement takes effect from the date of the judgement. He also stated that the judgement had modified the directions of this Tribunal on the interest part i.e. instead of the prevalent SBI prime lending rate + 5% per annum (compounded monthly) till date of such refund, the refund was to be worked out on relevant bank rate. He also stated that the interest was to be worked out from the date of the Hon'ble Supreme Court's judgement. He submitted that the Demand Notes had been correctly modified in accordance with the Hon'ble Supreme Court's judgement.

15. Second aspect is about adjustment of outstanding/future dues against this higher amount. As per petitioners, the adjustment should be after working out the higher

amount along with interest. DoT, however, refuted the view of applicants and said that there cannot be interest over interest. The adjustment was to be done against the excess credit with DoT and this adjustment of outstanding/future dues will liquidate the higher amount. The petitioners also contended that while DoT was working out dues, they were charging interest whereas they were not allowing/admitting interest on their amount in credit with them.

16. Having heard the arguments of both the sides, we are of the view that as per the Supreme Court Order a higher amount comprises Principal (licence fee) and the interest component paid thereon for the delayed period in cases where payment was not made in time. We see no reason why any operator would pay licence fee more than what is due. As per both the parties, there is no dispute for the period before the migration to Revenue Sharing regime i.e. 31<sup>st</sup> July 1999. All the demands made subsequently comprised of the licence fee and interest in case fee was paid later than the due date. Since the interest is on account of delayed payment, and was avoidable in case payment had been made in time, this cannot be taken as a right by the licensee as an additional payment which should draw interest. The Supreme Court while giving its judgement is quiet on the cut off date for working out the interest on the excess amount. Since this cut off date was not given it would be fair for us to assume that the Court order gives effect to working out of interest from the date of its judgement i.e. 4<sup>th</sup> March 2003. This would be so particularly in view of the order admitting the appeal (CA 5050 of 2002) for hearing. The Supreme Court Judgement in its present form, therefore, means the following:-

(a) outstanding amount and future dues, if any, should be adjusted against the higher amount. The higher amount is the amount in credit with DoT which has been paid by the licensee. This includes Licence Fee and Interest. It is clear from the fact that Supreme Court judgement does not make any mention about interest on this amount.

(b) the balance still due to the licensee to be refunded along with interest at relevant bank rate for the period. This will happen in case of an operator closing his business. Otherwise all the higher amount will be extinguished against outstanding/future dues.

17. Supreme Court is clear in their verdict that interest has to be worked out later on the remaining amount, if any, after adjustment. As far as the rate of interest is concerned it is relevant bank rate and date from which the interest has to be worked out is also very clear that it should be on an amount due to the licensee after adjustment of outstanding dues/future dues and that this is with effect from 4<sup>th</sup> March 2003.

18. As regards interest on outstanding amount, we feel that this interest becomes a liability of the licensee for delayed payment as per license conditions. The contention of the petitioner that DoT should not include this interest on outstanding dues only because they have some credit with DoT is not correct.

19. Some decisions were also cited at the Bar with reference to the payment of interest on interest wrongfully withheld but because of the view which we have taken, those decisions have no relevance.

20. We are convinced that the orders of this Tribunal and the decision of the Supreme Court are to be interpreted as given above and as such M.A. No. 22 of 2004 is disposed off. Along with this Execution Application Nos. 1 of 2004 in Petition No. 16 of 2002, 3 of 2004 in Petition No. 1 of 2003, 4 of 2004 in Petition No. 2 of 2003, 5 of 2004 in Petition No. 3 of 2003, Petition No. 8 of 2003 (with M.A. Nos. 34 & 35 of 2003) and Petition No. 3 of 2004 also stands disposed off.

21. During the course of the argument Mr. Ramji Srinivasan, learned counsel for the applicant AUSPI and Tata Teleservices Limited, made a submission that Petition No. 3 of 2002 and Petition No. 18 of 2002 along with E.A. Nos. 7 of 2004 should be clubbed with this case. He stated that the case was to be executed the same way though his clients, who are basic operators, did not go to the Supreme Court. There was also a difference in the schedule of licence fee to be paid. After hearing Mr. Ramji Srinivasan briefly we

directed him that the case of AUSPI and Tata Teleservices Limited will be taken up separately.

.....J  
**(D.P. Wadhwa)**  
**Chairperson**

.....  
**(D.P. Sehgal)**  
**Member**