

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL

NEW DELHI

Dated August 5, 2011

RA No.4/2011 in Petition No.413/2010

Computer Science Corporation India Pvt. Ltd. ... Petitioner

Vs.

Department of Telecommunication ... Respondent

BEFORE:

HON'BLE MR. JUSTICE S.B. SINHA, CHAIRPERSON

For Petitioner : Mr.Meet Malhotra, Sr. Adovcate
with Mr.Ravi S.S. Chauhan and
Mr.Manjul Bajpai, Advocates

For Respondent : Mr.Ruchir Mishra, Advocate

J U D G M E N T

S.B. Sinha

This application for review has been filed for review of a judgment and order dated 17.3.2011, so far as this Tribunal

directed that the amount deposited by the petitioner in terms of an interim order dated 3.12.2010 for a sum of Rs.14,02,14,415/- need not be refunded.

The petitioner was granted a license commonly known as ISP-I License.

It, however, set up some call centers having been granted registration certificates in relation to its activities as 'other service' provider's situated in Sector 62 at Noida in the State of Uttar Pradesh).

Inter alia on the premise that the petitioner had activated its cables, a demand for sum of Rs.26,76,19,663/- was made, the details whereof are as under:-

License Fee	Interest	Sub Total	Penalty	Penal Interest	Total (INR)
1	2	3 (1 + 2)	4	5	6 (1+2+4+5)
8,63,35,649	5,65,78,766	14,02,14,415	6,69,70,881	6,04,34,371	26,76,19,667

During pendency of this petition, however, the first part of the said demand was corrected in the following terms:-

License Fee	Interest	Sub Total	Penalty	Penal Interest	Total (INR)
1	2	3 (1 + 2)	4	5	6 (1+2+4+5)
7,32,78,499	3,92,35,058	11,25,13,557	4,11,80,704	2,59,30,764	17,96,25,043

By an interim order, this Tribunal directed the petitioner to deposit the aforementioned sum of Rs.14,02,14,415/-.

The core issue which arose for consideration before this Tribunal in the aforementioned matter was as to whether the amount of damages could have been imposed by the respondents treating the ISP registration as an UAS license.

We may notice a few paragraphs of the said judgment dated 17.3.2011, which are relevant for the purpose of disposal of the application:-

"56. Power to claim damages must emanate either from a statute or a contract. In case of breach of the provisions of the contract, damages can be claimed only in terms of Section 73 of the Indian Contract Act. Under Section 73 of the Indian Contract act, the actual damages suffered by a contacting party by reason of breach of provisions of the contract by the other must be alleged and established. No legal fiction in relation thereto can be raised.

For the purpose of claiming damages, the petitioner could not have been treated to be a UASL licensee. If that be so, the penal provision contained

therein could not have been invoked.

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67. It is not, thus, the case of the petitioner that the respondent did not suffer any loss whatsoever.

Question of Damage Issue

68. The same, however, would not mean that the respondent was entitled to the amount claimed.

70. The amount of damages being not certain, the respondent could not have imposed any penalty nor could it levy any interest by way of damages, far less any penal interest.

71. The respondent could not have, it is trite, unjustly enriched itself.

72. It could not have taken recourse to levy interest on a monthly compounded basis.

76. Mr. Malhotra submits that the loss of revenue should be calculated on the NLD basis. I think that the said submission has some justification.

79. Before parting, however, we may notice that by an order dated 03.12.2010, the petitioner was directed to deposit a sum of Rs.14,02,14,415/-. It was without prejudice to its rights and contentions. The said sum may not be directed to be refunded to the petitioner.”

Mr.Malhotra, in support of the review application would contend that keeping in view the aforementioned findings of this Tribunal, it must be held, that the judgment contains errors apparent on the face of the record and, thus, should be reviewed.

The petitioner in the review application has contended that the amount of damages which having regard to the findings of this

Tribunal, the petitioner was to pay, should be computed in the following terms:-

"(a) If the computation is based on the revised demand raised by DoT and keeping in view that only License Fee and the interest would be payable on the revised demand, the actual amount to be paid to the DoT would be Rs.11,25,13,557/- (i.e. the revised amounts of License Fee of Rs.7,32,78,499/- and the interest of Rs.3,92,35,058).

(b) If the amount is calculated on the basis that interest cannot be levied, then the amount to be paid to the DoT on the basis of DoT's revised calculation would be Rs.7,32,78,499/- (i.e. 11,25,13,557/- minus Rs.3,92,35,058)

(c) If the amount of revised License Fee is calculated on the basis of the NLD rates then the amount to be paid to the DoT would be Rs.4,39,67,099/-."

Drawing our attention to the letter dated 8.11.2010 issued by the respondent, Mr.Malhotra would contend that in its demand reference has been made to both the UAS and NLD licenses and in that view of the matter the amount of license fee should be calculated on the basis of the NLD rates and not UASL rates. Mr.Malhotra would further submit that keeping in view the provisions of Clause 1.8.1 of the Standard Interconnection Agreement, even point to point connectivity can be done through NLD.

Mr.Ruchir Mishra, learned counsel appearing on behalf of the respondent, on the other hand, urged that damages granted by this

Tribunal having been fixed on the ground of equity, no review of the judgment is necessary. It was submitted that the NLD license providing for 6% of the AGR in stead and in place of 10% of the AGR payable by the UASL licensee is not applicable in the instant case as the petitioner was an end user.

Having heard the learned counsel for the parties, I am of the opinion that the judgment should be reviewed to the extent mentioned hereinafter.

This Tribunal in its judgment did not take notice of the fact that the respondent itself has revised its demand as a result whereof the amount of license fee which was calculated originally at Rs.8,63,35,649/- has been revised to Rs.7,32,78,499.

The license fee having been reduced, the interest payable thereupon purported to be at the monthly compounded rate was also required to be recalculated. In that view of the matter, the amount of interest claimed by respondent no.1 amounting to Rs.3,92,35,058/- was also not correct. In that view of the matter and furthermore having regard to the fact that the petitioner has deposited the amount as directed by this Tribunal in its order dated 3.12.2010, I am furthermore of the opinion that no interest on the said some was payable.

I am, however, of the opinion that the observations made in the judgment with regard to the calculation of damages on the basis that an NLD license on the basis of grant of NLD license, may not be correct. It was pointed out that the provisions of the NLD license was not applicable in the instant case, although, in terms thereof also a point to point connectivity could have been granted.

For the reasons aforementioned this review application is allowed in part and it is directed that the in stead and in place of Rs.14,02,14,415/- the amount of damages should be calculated at Rs.7,32,78,499/-. The respondent may refund the balance amount to the petitioner within a period of four weeks from the date failing which it shall carry interest @ 9% p.a.

This review application is disposed of on the above terms without any order as to costs.



(S.B. Sinha)
Chairperson

August 5, 2011
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