

**TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL**

**NEW DELHI**

**Dated : October 18, 2011**

**RA No.11 of 2011 in Petition No.16 of 2011**

M/s Tata Communications Ltd. ...Petitioner

Vs.

Union of India ...Respondent

**BEFORE:**

**HON'BLE MR. JUSTICE S.B. SINHA, CHAIRPERSON  
HON'BLE MR.P.K. RASTOGI, MEMBER**

For Petitioner : Mr.U. Hazarika, Senior Advocate  
with Mr.Satya Mitra, Advocate,.

For Respondent : Mr.Ruchir Mishra & Mr. M.K. Tiwari,  
Advocates

**J U D G M E N T**

**S.B. Sinha**

This review application has been filed by the petitioner herein for review of a judgment and order dated 13.7.2011, inter alia, praying

for the following reliefs:

- a. Review the order and judgment dated 13 July 2011 in petition No. 16 of 2011 to the extent stated hereinabove at paragraph 4.
- b. Review the decree dated 25 July 2011 of judgment dated 13 July 2011 to the extent stated hereinabove at paragraph 4.
- c. Direct that the said judgment dated 13 July 2011 is modified and the direction contained at paragraph 51 of the said judgment being made subject to the appeal pending before the Hon'ble Supreme Court be deleted.
- d. Modify/Substitute the amount of Rs.289.87 crores from paragraph 11 of the judgment with Rs.290.36 crores.
- e. Grant interest on the sum of Rs.27.24 crores at the rate of SBI PLR + 5% per annum amounting to a total of Rs.51.67 crores as on 8 January, 2011.
- f. Allow interest on the amount granted at the rate of SBI PLR + 5% on each of the above amounts during the pendency of the petition and until payment is received.
- g. Direct that the decree dated 25 July 2011 is modified and the direction contained therein that the decree is subject to the result of the appeal pending before the Supreme Court of India be deleted."

Out of the said prayers, the petitioner does not press, so far as review of the order as contained in paragraph 52 of the judgement is concerned.

In Paragraph 9 of the judgment under Review, it has been stated as under:

“9. Respondent herein purchased the assets and liabilities of the said VSNL. It's sister concern is Tata Tele Services Ltd., Maharashtra (TTSL). The petitioner herein was asked to pay a sum of Rs.295 crores for the financial year 2002-2003, 2003-2004 and 2004-2005 as TTSL wanted to have an UAS license.”

The petitioner, however, has purchased the assets of VSNL and it is not its sister concern.

The learned counsel for the respondent concedes that a typographical error has crept therein in so far as in stead and in place of Tata Group, the respondent herein has been mentioned. The same is directed to be modified.

In paragraph 11 of the judgment, another typographical error has crept in so far as in stead and in place of Rs.290.36 crores a sum of Rs.289.87 crores was mentioned. The said typographical error is also directed to be corrected.

In support of the Review Application Mr. Hazarika learned senior counsel appearing on behalf of Applicant would contend that having regard to the findings arrived at by this Tribunal in paragraphs 33, 49 and 50, the observations made by it to the effect that “There cannot, however, be any doubt or dispute that this judgment shall be subject

to the result of the appeal pending before the Supreme Court of India” should be directed to be deleted.

Mr. Hazarika has pointed out that the petition was principally based on two grounds namely, that (i) impugned demands were made by way of penalty and/or that (ii) in any event having regard to the factual aspects involved in the matter, the respondent could not have levied the same.

We think that the learned counsel is correct.

In paragraphs 29 and 30 of the judgment under review, noticing that the petitioner had claimed refund of a sum of Rs.65.12 crores and 290.36 crores under different heads for the years 2002-2003, 2003-2004 and 2004-2005; this Tribunal while accepting the said claim of the petitioner, as noticed heretofore, directed that the judgment would be subject to the result of the appeal pending before the Supreme Court of India.

This Tribunal has, inter alia, held that even if the demand impugned in the main petition was not by way of penalty, the same could not have been raised having regard to the fact that the respondent also owed a huge amount to the petitioner, payments whereof had been made only a few months after raising of the demand and had the said amount been paid, the question of the respondent's

invoking Clause 6.5 and 6.8 of the license agreement would not have been arisen.

This Tribunal noticed that while granting a license in favour of the predecessor in interest of the petitioner, the respondent itself had agreed that by way of compensation packages for acquisition of its undertaking, the Government would reimburse to it a sum equivalent to the entry fee and the annual revenue share by way of licensee fee for a period of five years with effect from April, 2001, and thus, the petitioner was entitled to the said benefit.

We, therefore, direct that the sentence "There cannot, however, be any doubt or dispute that this judgment shall be subject to the result of the appeal pending before the Supreme Court of India" be deleted.

We have passed this order keeping in view the fact that the question which is pending before the Supreme Court of India is as to whether the aforementioned provisions of the license can be construed to be a penal clause and not as to whether a petitioner is liable to pay the aforementioned amount, which was the subject matter of the petition in view of the conditions of license granted in favour of the predecessor in interest of the petitioner.

So far as the question as to whether the respondent would be entitled to future interest or not, having regard to the fact that the

same had not been granted, the same would be deemed to have been refused in terms of the provisions contained in Section 34(2) of the CPC.

This Review Application is allowed in part and to the extent mentioned hereinbefore.

The decree drawn up in terms of the said order dated 13.7.2011 is also directed to be modified.

**(S.B. Sinha)**  
**Chairperson**

**(P.K. Rastogi)**  
**Member**

**October 18, 2011**  
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