

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL

NEW DELHI

DATED 29th MARCH, 2012

Petition No.314 of 2011

(M.A. No.s. 17, 18 & 53 of 2012)

Sistema Shyam Teleservices Ltd. ...Petitioner

Vs.

Union of India & Anr. ...Respondents

BEFORE:

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

HON'BLE MR.P.K. RASTOGI, MEMBER

For Petitioner : Mr. Ramji Srinivasan, Sr. Advocate
Ms. Vibha Dhawan, Advocate
Mr. Vivek Paul Oriel, Advocate

For Respondent : Mr. Ruchir Mishra, Advocate

ORDER

This application has been filed for initiating a proceeding under Section 20 of the Telecom Regulatory Authority of India Act 1997 (The Act) against the Respondents herein for alleged violation of the orders of this Tribunal dated 9.8.2011 and 28.9.2011, *inter-alia* on the premise that despite a clear direction contained therein, the Respondent has not only failed and/or neglected to return the bank guarantees in respect of eight circles but also invoked the

Performance Bank Guarantees in terms of a communication dated 9.1.2012 issued by the Respondent No.1 herein.

2. The Petitioner is a licensee in respect of 23 circles.

In terms of the said licenses, it was required to comply with its roll out obligations in two phases; the first phase being to the extent of 10% within one year from the date of allocation of spectrum, subject to exclusion of certain periods, like SACFA clearance; the second phase being roll out obligation to the extent of 50% of the circles within a period of 3 years.

3. It is not in dispute that the other parts of the directions contained in the aforementioned order dated 28.9.2011 have been complied with.

4. The Respondent, however, in respect of 08 circles, namely, Haryana, UP (East), UP (West), Punjab, Himachal Pradesh, Tamil Nadu, Maharashtra, and Gujarat did not return the Performance Bank Guarantees.

In fact as indicated heretobefore by reason of the said letter dated 09.1.2012, the Performance Bank Guarantees were sought to be invoked.

5. Notices have been issued to the Respondents herein. A reply has been filed contending:-

- (i) Respondent have complied with the directions of this Tribunal.
- (ii) The Performance Bank Guarantees were to be released on completion of the roll out obligations by the Petitioner and the same having not been done; the question of return thereof does not arise.
- (iii) Decision has been taken in this behalf by the competent authority of the DOT.
- (iv) Performance Bank Guarantees are to be returned only after the new requirements of the TRAI are met.
- (v) The Petitioner moreover has been served with Show-Cause Notices as to why additional LDs shall not be imposed?
- (vi) In terms of Clause 21.5 of the conditions of license, the Performance Bank Guarantees are not to be returned.
- (vii) In view of the order passed by this Tribunal dated 13.1.2012 in several other matters, the department is required to re-examine the compliance of the roll out obligations afresh.

(viii) The decision of the TRAI's recommendation is under consideration of DOT.

6. Before us, Mr. Ramji Srinivasan, learned senior counsel appearing on behalf of the Petitioner, has filed a detailed chart showing the dates on which the Petitioner has complied with its roll out obligations.

It has been pointed out that in respect of the circles for which the first phase of roll out obligations could not be completed, the Petitioner was called upon to deposit the amount of liquidated damages in cash, which has been complied with.

7. So far as the circles which were the subject matter of the batch of the petitions concerning the question of imposition of LDs is concerned, the directions of this Tribunal by furnishing additional security to the extent of 40% of the amount, apart from depositing 60% of the demand as and directed by interim Orders passed by this Tribunal, have also been complied with.

8. So far as 08 circles are concerned, the Performance Bank Guarantees have been invoked despite the fact that the Petitioner is said to have met 50% of the roll out obligations.

It is not the case of the Respondent that the Petitioner has not got themselves registered with the concerned TERM Cells of the DOT

nor it is its case that the concerned TERM Cells have not issued the Registration Certificate.

9. The Registration Certificate having been issued by the TERM Cells, the same would relate back to the date of Registration in terms of the conditions of license as amended in February, 2009.

10. Additional liquidated damages have been imposed only in respect of 05 circles, namely, UP (East), UP (West), Punjab, Himachal Pradesh and Gujarat. No additional liquidated damages had been demanded from the Petitioner so far as Haryana, Tamil Nadu and Maharashtra circles are concerned.

11. Before us another chart has been filed on behalf of the Petitioner, which reads as under:-

“Status of Performance Bank Guarantees and the payment made by SSTL towards LD Demand

S.N	CIRCLE	LD Demand	STATUS of LD PAYMENT	DETAILS OF PBG'S AMOUNT INVOKED BY DOT	ADDITIONAL LD (DEMAND STAYED)
1.	Haryana	4.35 Cr.	Paid in Cash	10.00 Cr.	
2.	UP(East)	3.55 Cr.	Paid in Cash	10.00 Cr.	3.45 Cr.
3.	UP (West)	1.95 Cr.	Paid in Cash	10.00 Cr.	5.05 cr.
4.	Punjab	0.95 Cr.	Paid in Cash	10.00 Cr.	6.05 Cr.
5.	H.P.	1.15 Cr.	Paid in Cash	2.00 Cr.	5.85 Cr.

6.	<i>T.N.</i>	<i>0.40 Cr.</i>	<i>Paid in Cash</i>	<i>20.00 Cr.</i>	
7.	<i>Maharashtra</i>	<i>5.35 Cr.</i>	<i>Paid in Cash</i>	<i>20.00 Cr.</i>	
8.	<i>Gujarat</i>	<i>4.75 Cr.</i>	<i>Paid in Cash</i>	<i>20.00 Cr.</i>	<i>2.25 Cr.</i>
Total Amount		22.45 Cr. (paid)		102.00 Cr.	22.65 Cr.

We had requested Mr. Ruchir Mishra, learned counsel appearing on behalf of the Respondent to seek instructions.

Learned counsel submits that the dates and figures disclosed in the charts filed by the Petitioner are correct.

12. The petitioner has already paid the amount for initial demand for L.D. and is covered by our order dated 13.01.2012 in Petition No. 1 of 2011 and other connected matters [Unitech Wireless (Tamil Nadu) Pvt. Ltd. & Ors. Vs. Union of India & Anr.], wherein it was directed that any refund of amount of L.D. would be upon furnishing of the Performance Bank Guarantee of an equal amount.

13. Without going into the merit of the respective contentions of the parties and having regard to the fact that even otherwise an order of stay had been granted, so far as the additional demand for LDs are concerned, we are of the opinion that the interest of justice shall be met, if the Petitioners are directed to furnish Performance Bank Guarantees to the extent of Rs. 3.45crores in respect of State of UP (East), Rs.5.05crores in respect of State of UP (West), Rs.6.05crores in

respect of State of Punjab, Rs.5.85crores in respect of State of Himachal Pradesh and Rs.2.25crores in respect of State of Gujarat (Totaling to an amount of Rs.22.65crores).

14. We have passed this order keeping in view the fact that in the other matters additional demands were not made and are governed by the orders already passed by us in the concerned cases. Subject to the aforementioned the Bank Guarantees may be released, within two weeks.

15. This order is being passed without prejudice to the rights and contentions of the parties and subject to any other or further order which may be passed in the connected matters.

This M.A. is disposed of with above said directions.

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(S.B. Sinha)
Chairperson

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(P.K. Rastogi)
Member

HKC/