

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL

NEW DELHI

DATED 03rd MAY, 2012

**M.A. Nos.56 & 90 of 2012
IN**

Petition No.48 of 2011

Sistema Shyam Teleservices Ltd. ... Petitioner

Vs.

Department of Telecommunications & 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
Mr. Mansoor Ali Shoket, Advocate
Ms. Vibha Dhawan, Advocate

For Respondent : Ms. Maneesha Dhir, Advocate
Mr. Abhishek Kumar, Advocate
Mr. K.P.S. Kohli, Advocate

ORDER

Interpretation of the order dated 13.01.2012 in Petition No. 1 of 2011 passed by this Tribunal is involved in these two Miscellaneous Applications, which reads as under :-

“The Respondents are directed to consider the issues afresh in light of the observations made heretofore, wherefor the Petitioners may be given an opportunity of hearing.

The Respondents are further directed for refund of the amount deposited by the Petitioner pursuant to our interim orders with interest at the rate of 12 percent per annum. The Petitioners shall, however, furnish Performance Bank Guarantees within two weeks from date to the extent of the impugned demand, if the same has been reduced or directed to be reduced by orders of this Tribunal in any proceedings. The Respondent should return the amount within four weeks.”

2. A Miscellaneous Petition, marked as M.A. No.56 of 2012, was filed by the Petitioner for modification of the said order, whereupon in our order dated 29.03.2012 a proposal made on behalf of the Petitioner was noticed in the following terms :-

“Keeping in view the changed scenario viz that the respective Banks which have furnished the Bank Guarantees in favour of the Union of India are insisting that the margin money to the extent of 100% be deposited by the Petitioner for furnishing the Bank Guarantees and having regard to the spirit of the order passed by this Tribunal, whereby and whereunder this Tribunal directed that the amount which would be released by the Respondent should be securitized, Mr.Srinivasan has made a proposal today to the effect that the Respondent may deposit the amount in terms of the said order in the

account of the Petitioner, subject to the condition that the concerned banks may be restrained by an order of injunction that the same shall not be released in favour of the Petitioner and the Bank Guarantees be furnished in favour of the Respondent within one week thereafter and the order of injunction would remain operative until furnishing of such Bank Guarantees.”

3. Petitioner has filed the said Miscellaneous Application for modification and/or clarification of the said order, praying for the following reliefs :-

(a) Clarify that the directions contained in paragraph 178 of the Judgment are not only limited to 5 circles namely Orissa, Kerala, Kolkata, Delhi and Mumbai;

(b) Clarify that the DoT is also liable to refund the amount with interest thereof deposited by the Petitioner in respect of 16 circles namely, Andhra Pradesh, Haryana, Karnataka, U.P. (East), U.P. (West), Punjab, Jammu & Kashmir, Himachal Pradesh, Tamil Nadu, Maharashtra, North East, Assam, Gujarat, Madhya Pradesh, Bihar and West Bengal;

(c) Extend the time for compliance of directions contained in paragraph 178 of the Judgment by allowing the Petitioner to submit the required Bank Guarantees, in terms of the Judgment dated 13.01.2012, subject to and within 2 weeks from the date of the receipt of the refund by DoT in this regard.”

4. So far as the first prayer made by the Petitioner is concerned, keeping in view the entirety of the judgment of this Tribunal, it is beyond any doubt or dispute that the said order shall apply in respect of all the 16 circles i.e. Andhra Pradesh, Haryana, Karnataka, U.P. (East), U.P. (West), Punjab, Jammu & Kashmir, Himachal Pradesh, Tamil Nadu, Maharashtra, North East, Assam, Gujarat, Madhya Pradesh, Bihar and West Bengal, as in relation to those circles, the Petitioner has deposited the entire amount of liquidated damages.

We are, thus, left with prayer (c) of the application.

5. Union of India has filed M.A. No. 90 of 2012 in the light of the decision of the Supreme Court of India in Writ Petition No. 423 of 2010 as also the M.A. filed by the Petitioner, praying :-

- “(a) pass appropriate orders that the directions qua Respondent as contained in para 178 of judgment dated 13.01.2012 would be subsequent to the Petitioner furnishing the requisite Performance Bank Guarantees;*
- (b) reiterate that the amount is to be refunded by the Respondent only after the Petitioner furnishes the requisite Performance Bank Guarantee in terms of para 178 of the judgment dated 13.01.2012.”*

6. Both the Miscellaneous Applications were listed for hearing before this Tribunal on several dates.

As noticed heretobefore, on 29.03.2012 learned senior counsel appearing for the Petitioner made an offer to the Respondent. However, the said proposal was not accepted by the Respondent.

7. Mr. Ramji Srinivasan would contend that in view of the changed situation, it would be difficult for the Petitioner to furnish Bank Guarantees inasmuch as the Bankers having regard to the judgment and order dated 02.02.2012 passed by the Supreme Court of India. (Centre for Public Interest Litigation Vs. Union of India) are insisting on deposit of 100% margin money with regard thereto.

8. All the licences held by the Petitioner have been cancelled by the aforementioned order of the Apex Court.

We may notice paragraphs 11 & 12 of the Miscellaneous Application filed by the Petitioner :-

“11. In compliance with the directions given by this Hon’ble Tribunal in Judgment dated 13.01.2012, the Petitioner is in the process of furnishing security against the impugned Demand by way of the bank guarantees in respect of all 21 circles. The Petitioner is accordingly required to submit Bank Guarantees equivalent to remaining 60% in respect of 5 circles (on account of refund) and to the extent of entire liquidated damages imposed in the rest of 16 circles. However, the Petitioner is facing problems in arranging finance for these performance bank guarantees since substantial sums have already been paid in cash to DoT, and Bank Guarantees will be provided by Banks only upon furnishing cash deposits by way of margin money. Therefore, refund of cash deposited with DoT becomes urgent and imperative.

12. In these circumstances, the Petitioner seeks a slight modification of the Order to the extent that the Bank Guarantees to secure the impugned Demand may be directed to be furnished within 2 weeks of the refund of amounts already deposited with DoT.”

9. There cannot be any doubt or dispute that this Tribunal in its judgment dated 13.01.2012, on the one hand, issued a direction upon the Respondent to refund the amount deposited by the Petitioner, but at the same time intended to securtise the same. It is only for that purpose that two weeks’ time was granted to the Petitioner(s) to furnish Bank Guarantees and four weeks’ time was granted to the Respondent to refund the amounts deposited by them.

10. We do not agree with the suggestion of Mr. Ramji Srinivasan that obligations on the part of both the parties were severable and in that view of the matter, the Respondent ought to have refunded the amount with interest within a period of four weeks from the date of passing of the judgment dated 13.01.2012 irrespective of the fact as to whether the Petitioner furnished Bank Guarantee or not.

We agree with the contention of the Respondent that the Petitioner was required to furnish Bank Guarantee two weeks prior to release of the amount by the Respondent in favour of the Petitioner.

11. The question, however, is as to whether in the changed situation this Tribunal should modify its judgment dated 03.01.2012?

The Supreme Court of India indisputably has cancelled all the licences of the Petitioner.

However, the Petitioner has been granted liberty to carry out its operation upto 30.6.2012, which has since been extended to 31.8.2012.

Petitioner has submitted that it has difficulty in providing the Bank Guarantee as bankers are insisting 100% margin money for the purpose of furnishing the bank guarantees.

12. There is no doubt that the situation has changed due to the cancellation of the licences of the Petitioner to the extent that terms and conditions of providing the Bank Guarantees by the bank to the applicant might have been made more difficult, but we cannot ignore the purpose and object of the order of this Tribunal dated 13.01.2012 in these Miscellaneous Applications.

13. We, therefore, are of the opinion that the interest of justice would be subserved if the following directions are issued :-

- (i) These petitions are filed circle-wise. In our view it should not be difficult for the Petitioner to furnish the Bank Guarantee circle wise, and if the Respondent also releases the amount circle wise thereafter;
- (ii) Therefore, we modify our earlier orders to the effect that as and when the Petitioner furnishes the Performance Bank Guarantee in respect of a particular circle or more than one, the Respondent shall refund the amount deposited by the Petitioner for that circle in terms of our order dated 13.01.2012 passed in Petition No.1 of 2011 and other connected matters, within two weeks thereafter.

14. These Miscellaneous Applications are disposed with the aforementioned observations and directions.

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(S.B. Sinha)
Chairperson

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(P.K. Rastogi)
Member

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