

**TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL**

**NEW DELHI**

**DATED 09<sup>TH</sup> OCTOBER, 2012**

**Petition No.472 of 2011**  
**(With M.A. No.321 of 2011)**

M/s. Loop Telecom Ltd. ... Petitioner  
Vs.  
Union of India ... Respondent

**BEFORE:**

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

For Petitioners : Mr. Sharath Sampath, Advocate  
Mr. Manikya Khanna, Advocate  
For Respondent : Mr. Ruchir Mishra, Advocate

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

The Petitioner is a licensee under the Indian Telegraph Act, 1885.

In this petition, the Petitioner seeks to invoke clause 21.2 of the Conditions of Licence against the Respondent herein praying inter-alia for the following reliefs :-

- “a) Declare the failure on the part of the respondent in permitting the petitioner to withdraw the financial bank guarantees for all the telecom Service Areas and replace the same with revised financial bank guarantees as violative of Clause 21.2 of the license;
- b) Direct the respondent to return the financial bank guarantees referred hereinabove.”

2. We may notice the details of the bank guarantees furnished by the Petitioner as contained in the following table :-

S. No.	Service Area	Category	Date of issuance of Bank Guarantee	Amount
1	Delhi	A	10.01.2008	50
2	Kolkata	A	10.01.2008	50
3	Tamil Nadu	A	10.01.2008	50
4	Karnataka	A	10.01.2008	50
5	Maharashtra	A	10.01.2008	50
6	Gujarat	A	10.01.2008	50
7	Kerala	B	10.01.2008	25
8	Punjab	B	10.01.2008	25
9	Andhra Pradesh	A	10.01.2008	25
10	Rajasthan	B	10.01.2008	25
11	UP (East)	B	10.01.2008	25
12	UP (West)	B	10.01.2008	25
13	Haryana	B	10.01.2008	25
14	Bihar	C	10.01.2008	5
15	Madhya Pradesh	B	10.01.2008	25
16	West Bengal	B	10.01.2008	25

17	Orissa	C	10.01.2008	5
18	Jammu & Kashmir	C	10.01.2008	5
19	Himachal Pradesh	C	10.01.2008	5
20	Assam	C	10.01.2008	5
21	North East	C	10.01.2008	5

3. In terms of clause 21.4 of the said conditions of licence, the Petitioner renewed the said bank guarantees, which is to the following effect :-

<i>LSA (Cat)</i>	<i>Bank</i>	<i>Initial Expiry date</i>	<i>Expiry date of renewed FBG</i>	<i>FBG (Rs. Cr)</i>
AP ('A')	SBI	09.1.2011	9.1.2012	50
Mumbai ('A')	SBI	09.1.2011	9.1.2012	50
MH ('A')	SBI	09.1.2011	9.1.2012	50
TN ('A')	SBI	09.1.2011	9.1.2012	50
UP (W) ('A')	SBI	09.1.2011	9.1.2012	25
Gujarat ('A')	SBI	09.1.2011	9.1.2012	50
UP (E) ('A')	SBI	09.1.2011	9.1.2012	25
Haryana ('B')	SBI	09.1.2011	9.1.2012	25
Kntk. ('A')	SBI	09.1.2011	9.1.2012	50
Rajas. ('B')	SBI	09.1.2011	9.1.2012	25
Punjab ('B')	SBI	09.1.2011	9.1.2012	25
Kerala (BA')	SBI	09.1.2011	9.1.2012	25
Delhi ('A')	SBI	09.1.2011	9.1.2012	50
Bihar ('C')	SBI	09.1.2011	9.1.2012	5
MP ('B')	SBI	09.1.2011	9.1.2012	25

The said bank guarantees are, therefore, valid till the respective dates mentioned therein.

4. In this petition, the Petitioner contends that the Respondent was obligated to make review of the quantum of financial bank guarantees furnished by the Petitioner which comes to Rs.540 crores.

5. The only demand, which having been raised by the Respondent being for a sum of Rs.2,07,07,376/- in respect of the licence fees vide its letter dated 07.6.2012, a copy whereof has been handed over to this Tribunal, the Respondent, the petitioner contends, be directed to return the said financial bank guarantees except for such amount which appears to be just and proper to this Tribunal.

6. It is not in dispute that the Petitioner had filed returns on the basis of self assessment for the years 2007-2008 to 2010-2011 for the purpose of payment of AGR.

The Respondent has completed the assessment for AGR in respect of the aforementioned period.

7. It is also not in dispute that on the Petitioner's failure to deposit the said amount, the financial bank guarantee to the extent of Rs.5 crores has been invoked.

It is furthermore not in dispute that the Petitioner although has filed return for the assessment year 2011-2012, so far it has not furnished the audited statement of account.

8. Mr. Ruchir Mishra, learned counsel appearing on behalf of the Respondent would contend that keeping in view the fact that the Petitioner is yet to furnish audited statement of account for the Financial Year 2011-2012 and yet to file return for the Financial Year 2012-13, the financial bank guarantees should not be directed to be returned to the Petitioner.

We may, at the outset, notice clauses 21.2 and 21.5 of the licence agreement :-

*"21.2 Financial Bank Guarantee :*

*The LICENSEE shall submit a Financial Bank Guarantee (FBG), valid for one year, from any Scheduled Bank or Public Financial Institution duly authorised to issue such Bank Guarantee, in the prescribed Proforma annexed. Initially, the financial bank guarantee shall be for an amount of Rs.25 Crores (for Category 'B' service area), which shall be submitted before signing the Licence agreement. Subsequently, the amount of FBG shall be equivalent to the estimated sum payable to license fee for two quarters and other*

*dues not otherwise securitised and any additional amount as deemed fit by the Licensor. The amount of FBG shall be subject to periodic review by the Licensor and shall be renewed from time to time till final clearance of all dues."*

*21.5 Without prejudice to its rights of any other remedy, LICENSOR may encash Bank Guarantee (FBG as well as PBG) in case of any breach in terms & conditions of the LICENCE by the LICENSEE."*

9. The question as regards return of the financial bank guarantees has been considered by this Tribunal in *Siestema Shyam Tele Services Ltd. Vs. Union of India – Petition No.5 of 2012* and other connected matters.

The said decision of this Tribunal has been considered yet again recently in *Petition No.443 of 2011 – Etisalat DB Telecom Pvt. Ltd. Vs. Union of India*.

In terms of an order dated 06.01.2012, we rejected the interim prayer made by the Petitioner in the following terms :-

*"4. On a query made by us as to whether the Petitioner has started its services so as to earn revenue, we are informed at the Bar that in 14 out of 21 circles, it has not started operations.*

*5. Mr. Srinivasan, learned senior counsel would contend that by 15.01.2012, the Petitioner would be able to furnish its return in respect of the circles wherein it has started its operation.*

*If the Petitioner has not filed even the return of its revenue for the purpose of calculating AGR for two quarters, we are of the*

*opinion that the Respondent at this stage cannot be asked to review the Financial Bank Guarantees. Therefore, we are prima-facie of the opinion that no basis has been made out for periodic review of the amount of Financial Bank Guarantee, as prayed for by the Petitioner.*

*6. Mr. Mishra, learned counsel appearing on behalf of the Respondent, however, would contend that in the event the petitioner files its return on AGR basis by 15.01.2012, Respondent would be able to take appropriate decision, in regard to the amount of Bank Guarantee to be furnished by the Petitioner in terms of Clause 21.2 of the Licence Agreement within a period of three months.”*

10. Pursuant to or in furtherance of the said order the bank guarantees had been renewed. It is accepted at the Bar that the Petitioner also, as indicated heretobefore, has filed its returns and the same have been scrutinized.

Only pursuant to or in furtherance of the said return, the orders of assessment have been passed.

11. So far as the assessment year 2011-2012 is concerned, the audited statement of account, it is stated, would be filed soon, if not already filed.

According to the Petitioner, however, it has stopped its operations in the licenced areas in terms of the provisions of licence after the Hon'ble Supreme Court of India passed a judgment on 02.02.2012 in Centre for Public Interest Litigation vs. Union of India reported in (2012) 3 SCC 1.

In this case, the Respondent had not issued any direction to the Petitioner herein to continue to operate in terms of the said licence having regard to the operative part of the judgment of the Supreme Court of India. No other or further demand so far has been raised by the Respondent herein.

12. So far as submission of Mr. Ruchir Mishra that the Petitioner failed to deposit the aforementioned sum of Rs.2 crores and odd is concerned, as a result whereof the bank guarantee had to be invoked, in our opinion, may not by itself constitute sufficient reason not to direct the Respondent to return the FBG.

We, however, are of the opinion that as in terms of the direction of the Supreme Court of India the licences issued to the Petitioner prima facie would remain valid till 10.01.2013, the Respondent should be directed to return fifty percent of the bank guarantees for each of the circles at this stage.

We think that this order shall meet the ends of justice for the present.

This petition is allowed in part and to the extent mentioned heretobefore without any order as to costs.

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

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

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