

**TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL**

**NEW DELHI**

**DATED 9<sup>th</sup> OCTOBER 2012**

**Petition No.558 of 2012**

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 Petitioner : Mr.Navin Chawla, Advocate  
Mr. Sharath Sampath, Advocate  
Mr. Manikya Khanna, Advocate

For Respondent : Mr. Ruchir Mishra, Advocate

**ORDER**

The Petitioner was granted a NLD license.

2. It was, however, not allocated any spectrum and as a result thereof it could not start its services.

It sought to surrender its license on or about 08<sup>th</sup> September, 2010, stating:-

*“In terms of Clause 13.3 of the said license Agreement, we wish to surrender this License Agreement with immediate effect.*

*As per the provisions of the said clause, we are required to notify our subscribers and the Licensor by giving a 30 and 60 days notice respectively in advance for such surrender, however, we would like to draw your attention to the fact that although we had obtained the said License Agreement in 2006, but till date, we have not commenced any service pursuant to this License Agreement and thus, do not have any subscriber. Therefore, we are not required to notify any such subscriber by giving them any notice.*

*In view of the above, since no NLD services were launched by Loop Telecom, we request you to kindly waive off the provisions of 60 days advance notice to the Licensor and treat the said license as surrendered with immediate effect.”*

3. The Respondent did not send any reply to the said communication. The period of 60 days envisaged under the agreement expired on 08.11.2010.

4. The Petitioner, however, despite the same was asked to renew its bank guarantees. It did so on or about 29.9.2010.

5. The Respondent in its reply contends that the offer of surrender of the NLD license made by the Petitioner was not accepted owing to the following circumstances:-

(a) *Upon receipt of request of the petitioner dated 08.09.2010 for surrender of license, WPF wing of the respondent was requested to issue "No Dues Certificate" in respect of the petitioner.*

(b) *During the process of issuing "No Dues Certificate" the spectrum charges were found to be due and payable by the petitioner.*

(c) *Accordingly, demand for the amounting Rs.3,72,72,139/- was raised up to the FY 2007-08 with the interest thereon up to 31.12.2010 and the same was issued vide letter dated 27.12.2010.*

(d) *Pertinently, the demand of Rs.3,72,72,139/- issued on 27<sup>th</sup> December, 2010 was based on AGR finalized upto financial year 2005-06 and audited AGR for financial year 2005-06 and audited AGR for financial year 2006-07 and 2007-08.*

(e) *The petitioner vide letter dated 01.03.2011 (Page 94 of Petition) responded to demand letter dated 27.12.2010,*

*inter-alia, requesting respondent to revise the demand.*

*(f) On 25.04.2011, the petitioner requested for review of demand. A copy of letter dated 25.04.2011 of the petitioner is annexed hereto and marked as Annexure R-1.*

*(g) However, on 26.04.2011 the petitioner submitted a letter stating that we are willing to make this outstanding payment of Rs.3,72,72,139/- provided our bank guarantee pertaining to our NLD license will be released immediately. A copy of the letter dated 26.04.2011 is annexed hereto and marked as Annexure R-2.*

*(h) Though petitioner had undertaken and expressed its willingness to pay outstanding amount of Rs.3,72,72,139/-, however, considering the representation dated 25.04.2011 and in response thereto the petitioner issued letter dated 08/13.06.2011 revising the demand to Rs.6,17,28,635/- and the same was communicated to the Petitioner. A copy of letter dated 08/13.06.2011 of respondent is annexed hereto and marked as annexure R-3”*

6. The short question, which arises for consideration in this petition, is as to whether the offer of surrender of its NLD license made by the Petitioner could have been refused to be acted upon *inter-alia* on the premise that a sister concern of the Petitioner owes certain dues to the Respondent herein?

7. Before, however, advertng to the rival contentions of the parties, we may notice the relevant provisions of the license agreement.

*7.1 LICENCEE shall submit a Financial Bank Guarantee (FBG) valid for one year, from any scheduled bank in India or from any Indian Public Financial Institution (IPFI) duly authorized to issue such Bank Guarantee in the prescribed proforma annexed (in the Licence Agreement for National Long Distance Service). The amount of FBG shall be equivalent to the estimated sum payable for two quarters towards the Licence Fee, and other dues not otherwise securitised. The amount of FBG shall be subject to periodic review by the LICENSOR and FBG shall be accordingly renewed by LICENSEE from time to time for such amount as directed by the LICENSOR. Initially, the FBG, valid for a period of one year, shall be for an amount of Rs. 20 Crores (Rupees Twenty Crores), which shall be submitted within one year from the EFFECTIVE DATE of the LICENCE AGREEMENT but prior to the commencement of service. The service shall not be commenced unless the FBG is submitted in the prescribed format for requisite amount.*

*“14.4 On termination or surrender or expiry of the LICENCE The Financial Bank Guarantees shall be released to the LICENCEE only after ensuring clearance of all dues which the LICENCEE is liable to pay. In case of failure of the Licencee to pay the amounts due to the LICENCOR, the Outstanding amounts shall be realised through encashment of the Financial Bank Guarantee(s),*

*without prejudice to any other action(s) for recovery of the amounts due to the LICENCOR.”*

*“30.3 In the event any sum of money or claim becomes recoverable from or payable by LICENCEE to, the LICENCOR either against this LICENCE Agreement or otherwise in any manner such money or claim can be (without restricting any right of set off for counter claim given or employed by law) deducted or adjusted against any amount or sum of money than due which at any time thereafter may become due to the LICENCEE under this LICENCE Agreement or any other agreement or contract between the LICENCOR and the LICENCEE.”*

8. It is not in controversy that the Respondent by its letter dated 31.3.2011 informed the Petitioner that it owes a sum of Rs.3,72,72,139/- to the Respondent towards spectrum charges.

The Petitioner by its letter dated 26.4.2011 pointed out that the purported dues were not payable by it but by M/s Loop Mobile (India) Ltd., stating:-

*“In this connection, we wish to inform you that we have been continuously following up with the WPF Cell and have represented to them that there is some discrepancies in the calculations done by the WPF Cell while calculating the said outstanding dues. A copy of our last representation made to WPF Cell highlighting the discrepancies and the correct calculation is attached for your ready reference. Hence it is not fair for DoT to link this outstanding amount*

*to the surrender of this NLD License and release of our Bank Guarantee.*

*In spite of the above, we are willing to make this outstanding payment of Rs. 3,72,72,139/0 provided our Bank Guarantee pertaining to our NLD License will be released immediately.*

*Kindly confirm the above. We will immediately clear the outstanding dues upon getting a confirmation from your side.”*

9. By another letter dated 01.3.2011, it in relation to the spectrum charges for 2007-2008, inter-alia stated as under:-

*“Re: Spectrum Charges for 2007-08*

*This has reference to your letter No. 1000-23/2004-05/WR dated 2 your present demand and wish to submit the following:*

*1. In the month of March 2010 we had remitted an amount of Rs 47,33,554/- towards interest post our discussion at your office after considering all payments made till then.*

*2. The statement that has now been received has not been updated for payments made post Jan'08 including the payment made in March 2010.*

*With reference to point no (2) of your letter referring to Assessed AGR for Q1 & Q2 of 2004-05, we wish to bring to your notice that we had contested the additional Licence Fee demanded vide DoT letter no 10-23/2005/LF dated 9<sup>th</sup> April 2007 reassessing the Licence Fee for the year 2004-05. We had remitted this additional demand of Rs 3,40,53,008/- UNDER PROTEST on 13<sup>th</sup> July 2007 since the amount disallowed was under dispute and then pending with TDSAT. Subsequently TDSAT has given their judgement in our favour which is now under appeal by the Department. Copies enclosed.”*

10. It is true that by a letter dated 25.4.2011 the Petitioner asked for re-calculation of the amount demanded; in reply where to, the Respondent demanded a sum of Rs.6,17,28,635/- in terms of its letter dated 8/13 June, 2011.

It may, however, be placed on record that the letter dated 8/13 June, 2011 was not issued to the Petitioner but only to Loop Mobile (I) Ltd.

11. It has not been denied or disputed that the Petitioner has not been able to render any service owing to non-allocation of its spectrum and thus, the question of payment of any spectrum charges or the Annual Gross Revenue does not and cannot arise.

12. Mr. Navin Chawla, learned counsel appearing on behalf of the Petitioner would contend that there does not exist any clause in the license agreement which mandates the Petitioner to pay the dues of another juristic person, even it is its sister concern.

13. Mr. Ruchir Mishra, on the other hand, would submit that keeping in view the provisions contained in Clause 30.3 of the license agreement, the Petitioner is liable to pay the demanded amount. Moreover, it having agreed to pay the amount of spectrum charges due from Loop Mobile (India) Ltd was bound to do so.

14. A Licensee is entitled to surrender its license upon giving a notice of atleast 60 days in advance.

Clause 13.3 mandates that the licensee was to pay all fees payable by it till the date on which the surrender of the license becomes effective.

The conditions of license do not provide for payment of the dues of another juristic person holding a separate licensee. Clause 30.3, whereupon reliance has been placed by Mr. Mishra provides for a 'set off clause'.

The said provision must be construed in terms of the language used therein. If it does not say that the Petitioner has to pay the dues of another licensee, which is a separate Access Service Licensee (UASL) in law it is not liable to do so.

It is not in dispute that the aforementioned Loop Mobile (I) Ltd. holds a separate license. Moreover, the dues, if any, was to be intimated to the licensee till 08.11.2010.

Clause 30.3 may have application only in the event, the Petitioner itself holds another license.

15. The Petitioner had made a representation on 26.4.2011. It undertook to pay the said amount of Rs.3,72,72,139/- provided the surrender of the license is accepted and the bank guarantees are returned forthwith. The Respondent did not do so. It even did not revise the amount of the dues payable by Loop Mobile (I) Ltd. downward as was represented by it.

16. The license agreement is a contract between the parties. The parties hereto have mutual obligations thereunder.

The licensor cannot go beyond the terms of the license to claim a sum payable by another licensee by way of pre-condition to accept the offer of surrender made by the licensee. It should have released the bank guarantees on the expiry of 60 days from the offer of surrender, i.e, by 08.11.2010. It did not do so; it raised a demand only in March, 2011.

17. Even if the offer of the Petitioner was to be acted upon, the licensor should have released the bank guarantee on receipt of the payment offered by the Petitioner. The said offer was made only to expedite release of the bank guarantee. It was to be accepted on its own terms or not at all. Only because at one point of time the Petitioner made the offer, which having not been acted upon by the Respondent, in our opinion, the Respondent in stead and in place of the proceeding against the concerned licensee could not have refused to accept the offer of the surrender made by the Petitioner.

18. For the reasons aforementioned, this petition is allowed. The Respondent is hereby directed to return the financial bank guarantee of the Petitioner furnished by it in respect of the NLD license.

19. In the facts and circumstances of this case, the Respondent shall also pay and bear the costs of this petition to the Petitioner. Advocate's fees assessed at Rs.50,000/-.

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

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

*HKC/*