

**TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL
NEW DELHI**

Dated 14th September, 2012

Petition No.574 of 2012

Dishnet Wireless Ltd.(U.P. East) ...Petitioner
Versus
Union of India ...Respondent

Petition No.575 of 2012

Dishnet Wireless Ltd.(U.P. West) ...Petitioner
Versus
Union of India ...Respondent

BEFORE:

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

For Petitioner : Mr. Meet Malhotra, Sr. Advocate
Mr. Ravi S.S. Chauhan, Advocate
For Respondent : Mr.Ruchir Mishra,Advocate

ORDER

The Petitioners herein by way of interim orders, have prayed for a direction upon the Respondent (DoT) to reduce the amount of Financial Bank Guarantees (FBG) with regard to two circles UP (East) and UP (West).

Admittedly, in terms of the licenses granted in favour of the Petitioner in respect of 20 circles, the Petitioner has furnished bank guarantees to the extent of 25 crores each.

The said prayer has been made, inter alia, relying on or on the basis of clause 21.2 of the license agreement which reads as under:

“The LICENSEE shall submit a Financial Bank Guarantee (FBG), valid for one year, from any Scheduled Bank or Public Financial Institution duly authorized to issue such Bank Guarantee, in the prescribed Performa annexed, initially, the financial bank guarantee shall be for an amount of Rs. 50/25/5 crore (for category “A”/ “B”/ “C” area respectively) which shall be submitted before signing the Licence agreement. Subsequently, the amount of FBG shall be equivalent to the estimated sum payable equivalent to license fee for two quarters and other dues not otherwise securities 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 clearances of all dues.”

The Petitioner although has filed several other petitions, keeping in view the fact that the bank guarantees in respect of UP (East) and UP (West) circles are going to expire on 15th September 2012, these matters were taken up for hearing together, although the other connected matters have been directed to be listed on 28th September 2012.

It is not in dispute that the Petitioner had furnished bank guarantees prior to execution of the license agreements for the aforementioned sum and thereafter continued to renew the same in terms of clause 21.4 of the said license agreement.

Admittedly, as of now no demand has been raised against the Petitioner. The Petitioner has also not been intimated that it is required to securitize any additional amount which has not been securitized.

According to the Petitioner AGR for the two quarters has been estimated in support of the said two circles at Rs. 5,42,19,264/- and Rs. 4,92,01,416/- respectively.

A bare perusal of the provisions of clause 21.2 of the license agreement leads to the conclusion that the bank guarantees to the extent of Rs. 25 crores required to be furnished for the first year,

having regard to the fact that the word 'initially' has been used; followed by "the bank guarantees to be furnished subsequently", being equivalent to license fee for two quarters etc, it is amply clear that FBGs are required to be revised.

It is clear that the Respondent is to ask the licensee to furnish bank guarantees, which would be equivalent to the estimated sum payable towards AGR for two quarters as also the 'other dues'. If any, as specified in clause 21.2 of the license agreement.

The Respondent, therefore, was under a contractual obligations to issue such directions so far as renewal of bank guarantees is concerned whether downward or upward at the end of each financial year or as and when such requirements were felt, it has not been so done.

Mr. Ruchir Mishra would contend that the DoT is in the process of making provisional assessments of AGR from 2006-07 onwards, in the light of the decision of the Supreme Court of India.

The amount of AGR, Mr. Mishra would contend, would be much more than the estimated amount of Rs. 52 crores as suggested by the Petitioner.

It is true as has been submitted by Mr. Malhotra that in terms of Clause 21.2 of the license agreement, keeping in view the word 'estimated' having been used, a provisional assessment is not a pre-condition therefor and in that view of the matter the Petitioner cannot be asked by the Respondent by way of a policy decision or otherwise to renew the FBGs which would run contrary to the conditions of license.

Keeping in view the fact that whereas the mutual obligations of the parties in terms of the license agreement must be given effect to, it is also necessary to taking into consideration the interest of the Union of India.

Mr. Mishra would contend that the Petitioner should be directed to renew the bank guarantee for a period of three months. However, keeping in view the fact that the Petitioner has been in an ongoing concern, interest of justice would be sub served if at this stage the Petitioner is directed to furnish financial bank guarantees to the extent of 50% of the original bank guarantees in respect of the aforementioned circles.

This order is being passed without prejudice to the rights and contentions of the parties and keeping in view the statement made by Mr. Malhotra that the Petitioner undertakes to furnish Bank guarantee of any other amount, if and when any occasion arises therefor.

With the aforementioned observations and directions the Respondent is hereby restrained to take any coercive step to direct the Petitioner to renew the bank guarantees subject to the conditions mentioned heretobefore within a period of one week from date.



(S.B. Sinha)
Chairperson

(P.K.Rastogi)
Member

MM