

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

Dated 18th February, 2013

Petition No. 90 of 2013

Bharti Airtel Ltd. ... Petitioner

Vs.

Union of India ... Respondent

Petition No. 91 of 2013

Bharti Hexacom Ltd. ... Petitioner

Vs.

Union of India ... Respondent

BEFORE:

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

For Petitioner : Mr. Abhishek Manu Singhvi, Sr. Advocate
Mr. N. Ganpathy, Advocate
Mr. Percival Billimoria, Advocate
Mr. A.R. Chowdhury, Advocate
Mr. Rayner Vishal Das, Advocate
Mr. Atul Mennon, Advocate
Mr. Varun Arora, Advocate

For Respondent : Mr. Vineet Malhotra, Advocate

ORDER

This petition has been filed by the Petitioner to challenge the demand dated 08.11.2012 pertaining to special audit for the financial year 2006-2007 and financial year 2007-2008 and licence fee assessment dated 30.11.2012 for financial year 2006-2007 and revised licence fee assessment dated 20.12.2012 for financial year 2006-2007 and 2007-2008. In its prayer, the Petitioner has requested for setting aside and quashing these demands and in its interim prayer prayed this Tribunal for restraining the DoT from taking any coercive action against the Petitioner till the final disposal of this petition.

2. The Petitioner has submitted that it is approaching this Tribunal for determination of dispute between itself and the Respondent on the understanding and interpretation of the terms & conditions of the licence agreement. Further, it approached the Hon. Kerala High Court regarding question of validity of terms & conditions of the licence agreement. According to the Petitioner, the Respondent has raised demand inter alia, for items :-

- (a) pertaining to the activities which are not licence activities;
- (b) income from management support service;

- (c) interest income demand based on wrong computation of gross revenue;
- (d) demand for the goodwill waiver i.e. discounts and rebates, demand for bad debts, income from trading of VSAT equipments etc.

3. It is brought to my notice that large numbers of petitions have been filed in this Tribunal including the Petitioner filing the similar petitions on similar grounds for different periods, for which this Tribunal has issued a direction restraining the Respondent for taking coercive action by the Respondent. Further, these petitions have been reserved for final hearing after completion of the pleadings by the parties. The Petitioner has requested to issue the similar order in this petition also.

4. Mr. Vineet Malhotra, learned counsel appearing on behalf of the Respondent stated that the Petitioner has instituted some parallel proceedings in the High Court as well as in this Tribunal for the same relief.

The demands raised by the Respondent are already covered by the Hon. Supreme Court's order. The Hon. Supreme Court has given findings in favour of the Respondent on the ground raised by the Petitioner.

5. As submitted by the Petitioner, although the proceedings before the High Court and TDSAT are for similar amounts but the petitions before the High Court questions the power of the licensor to have certain terms & conditions in the licence while the proceedings before this Tribunal are for the interpretation of the terms.

6. In petition No.90 of 2013 in its order dated 08.6.2012 the Hon. High Court of Kerala ordered that pending the writ petition, the Petitioner will continue to make payment as it was being done throughout the period of licence for telecom activities.

7. Again, on 23.11.2012 the Kerala High Court passed the following order :-

“Exhibit P 15 (page 7) is concerned, it is seen that the petitioner has been directed to make certain payments for the years 2006-07 and 2007-08. Evidently those are covered by the pleadings in the Writ Petition as well as the interim order already passed by this Court dated 8.6.2012.

The learned Assistant Solicitor General of India opposed the prayers of the petitioner; but in the light of the interim order already passed by this court dated 8.6.2012, there will be a stay as prayed for.

Hand over to both sides.”

8. On 11.01.2013, the Kerala High Court ordered as follows :-

“2. In this writ petition, this Court passed order dated 8.6.12 directing that pending consideration of the writ petition, the petitioner will continue to make payment of the licence fee as it was being done throughout the period of licence for telecom activities. Subsequently, by order dated 17th of December, 2012 in IA No. 17008/12, it was clarified that any demand for non telecom activities will stand stayed.

3. The complaint of the petitioner is that the demand made as per Ext.P19 is in violation of the aforesaid two orders. So long as the aforesaid two orders are in force, the respondents cannot make any demand on the petitioner in respect of the amounts due in respect of the issues covered by those orders.

Therefore, there will be a stay of Ext.P19 subject to the condition that the petitioner shall continue to make payment as ordered in the order dated 8.6.12 and as clarified in the order dated 17th of December, 2012 mentioned above.”

9. It is seen that the demands raised by the Respondent have been covered by the said interim orders issued by the High Court. Therefore, I am of the opinion that there is no need to issue any order by this Tribunal.

10. In Petition No. 91 of 2013, it is stated that the demands raised by the Respondent on similar grounds on 08.11.2012 for financial year 2006-2007 and 2007-2008 and revised special audit demand for financial year 2006-2007 and 2007-2008 dated 18.01.2013 and licence fee assessment demand dated 30.01.2013.

It is informed that Guwahati High Court was pleased to stay the operation of the demand dated 08.11.2012 and 18.01.2013 vide its order dated 01.02.2013. As there is already stay order of the Hon. High Court, there is no need to pass any order by this Tribunal in this petition.

11. Regarding the demand of licence fee assessment for the year 2006-2007 raised on 30.01.2013, it is on similar grounds as in other demands. It is noticed that large number of petitions have been filed in this Tribunal which are on the Board for final hearing, wherein the similar demands have been raised and the final finding is to be given by this Tribunal. The demands raised by the DoT in all these petitions have been stayed by this Tribunal. Therefore, keeping in view the order of Guwahati High Court and this Tribunal in various other petitions, it is directed that pending hearing in these petitions the Respondent will not take any coercive action against the Petitioner.

12. The Respondent will file its reply within four weeks. The Petitioner will file its rejoinder within two weeks thereafter. The petition may be listed on 18.3.2013 under the heading “for directions”.

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(P.K. Rastogi)
Member

rkc