

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL

NEW DELHI

Dated : January 2, 2013

M.A. Nos. 694 & 703 of 2012

in

Petition No. 435 of 2012

Loop Telecom Limited, (Delhi) ...Petitioner
Vs.
Union of India & Anr.. ...Respondents

M.A. No. 695 of 2012

in

Petition No. 436 of 2012

Loop Telecom Limited, (Gujarat) ...Petitioner
Vs.
Union of India & Anr.. ...Respondents

M.A. Nos. 696 & 704 of 2012

in

Petition No. 437 of 2012

Loop Telecom Limited, (Bihar) ...Petitioner
Vs.
Union of India & Anr.. ...Respondents

M.A. No. 697 of 2012

in

Petition No. 438 of 2012

Loop Telecom Limited, (Kolkata) ...Petitioner
Vs.
Union of India & Anr.. ...Respondents

M.A. Nos. 672 & 673 of 2012
in

Petition No. 439 of 2012

Loop Telecom Limited, (Kerala) ...Petitioner
Vs.
Union of India & Anr.. ...Respondents

M.A. Nos. 674 & 675 of 2012
in

Petition No. 440 of 2012

Loop Telecom Limited, (Madhya Pradesh) ...Petitioner
Vs.
Union of India & Anr.. ...Respondents

M.A. Nos. 676 & 677 of 2012
in

Petition No. 441 of 2012

Loop Telecom Limited, (U.P. West) ...Petitioner
Vs.
Union of India & Anr.. ...Respondents

M.A. Nos. 698 of 2012
in

Petition No. 442 of 2012

Loop Telecom Limited, (Karnataka) ...Petitioner
Vs.
Union of India & Anr.. ...Respondents

M.A. Nos. 678 & 679 of 2012
in

Petition No. 443 of 2012

Loop Telecom Limited, (North East) ...Petitioner
Vs.
Union of India & Anr.. ...Respondents

M.A. Nos. 680 & 681 of 2012
in

Petition No. 444 of 2012

Loop Telecom Limited, (Punjab) ...Petitioner
Vs.
Union of India & Anr. ...Respondents

M.A. Nos. 682 & 683 of 2012
in

Petition No. 445 of 2012

Loop Telecom Limited, (Haryana) ...Petitioner
Vs.
Union of India & Anr. ...Respondents

M.A. Nos. 684 & 685 of 2012
in

Petition No. 446 of 2012

Loop Telecom Limited, (Maharashtra) ...Petitioner
Vs.
Union of India & Anr. ...Respondents

M.A. Nos. 686 & 687 of 2012
in

Petition No. 447 of 2012

Loop Telecom Limited, (Assam) ...Petitioner
Vs.
Union of India & Anr.. ...Respondents

M.A. Nos. 688 & 689 of 2012
in

Petition No. 448 of 2012

Loop Telecom Limited, (Orrisa) ...Petitioner
Vs.
Union of India & Anr.. ...Respondents

M.A. Nos. 690 & 691 of 2012
in

Petition No. 449 of 2012

Loop Telecom Limited, (Rajasthan) ...Petitioner
Vs.
Union of India & Anr.. ...Respondents

M.A. No. 699 of 2012
in

Petition No. 451 of 2012

Loop Telecom Limited, (Andhra Pradesh) ...Petitioner
Vs.
Union of India & Ors. ...Respondents

M.A. No. 700 of 2012
in

Petition No. 452 of 2012

Loop Telecom Limited, (West Bengal) ...Petitioner
Vs.
Union of India & Ors. ...Respondents

M.A. No. 701 of 2012
in

Petition No. 453 of 2012

Loop Telecom Limited, (U.P. East) ...Petitioner
Vs.
Union of India & Ors. ...Respondents

M.A. No. 702 of 2012
in

Petition No. 454 of 2012

Loop Telecom Limited, (Tamil Nadu) ...Petitioner
Vs.
Union of India & Ors. ...Respondents

M.A. Nos. 692 & 693 of 2012
in

Petition No. 455 of 2012

Loop Telecom Limited, (Jammu & Kashmir)	...Petitioner
Vs.	
Union of India & Ors.	...Respondents

M.A.No. 705 of 2012
in

Petition No. 329 of 2012

Loop Telecom Ltd.	..Petitioner
Vs.	
Union of India & Anr.	...Respondents

BEFORE:

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

For Petitioner	:	Mr.Navin Chawla,Advocate Mr. Sharath Sampath, Advocate Mr. Manikya Khanna, Advocate
For Respondent (No. 1)	:	Mr. K.P.S. Kohli, Advocate Mr. Abhishek Kumar, Advocate Ms. Debopama Roy, Advocate for Ms. Maneesha Dhir, Advocate
For Respondent (No. 2)	:	Mr. Saket Singh, Advocate

ORDER

The Petitioners have filed miscellaneous applications to pass an order that there is no obligation on the part of the Petitioner to renew the Performance Bank Guarantees and financial bank guarantees for any of the service areas. It has also prayed for restraining the DoT

from taking any coercive steps qua renewal of the Performance Bank Guarantees and Financial Bank Guarantees, including but not limiting to, invocation and/or encashment of the same.

The Petitioner had filed main petition in respect of 21 service areas for release of bank guarantees both performance and financial bank guarantees, repayment of liquidated damages and seeking the compensation for cost and expenses incurred by the Petitioner etc. against the Respondent. On 12.9.2012 this Tribunal had issued order for reduction of performance bank guarantees for West Bengal to the extent of 50% and other petitions are pending for final hearing.

2. According to the Petitioner the licenses of the Petitioners were cancelled and quashed on 2.2.2012 by an order of the Hon'ble Supreme Court of India. In view of the same the Petitioner decided to shut down its operations and now the Petitioner is not continuing with its operation. The Petitioner contends that in view of discontinuing its operation it does not have to fulfill any obligations under the cancelled licenses to renew any performance bank guarantees to the Respondent.

Similarly, the Petitioner is not required to renew any financial bank guarantee. The financial bank guarantees furnished by the

Petitioners will expire on 9.1.2013 and the Petitioner was not legally bound to renew the same.

The Petitioner has further submitted that it apprehends that the Respondent may encash the performance bank guarantees if the same are not renewed beyond 9.1.2013.

3. Mr. Navin Chawla appearing on behalf of the Petitioner contends that in view of the cancellation of license of the Petitioner by the Hon'ble Supreme Court of India dated 2.2.2012 the Petitioner is not bound to renew either the performance bank guarantee or the financial bank guarantee.

4. Mr. Kohli appearing on behalf of the Respondent brought to our notice the order of this Tribunal on 12.09.2012 in Petition No. 468 of 2011 for West Bengal Circle wherein it was held that:

"In this view of the matter, we are of the opinion that the Respondent may reduce bank guarantee to the extent of fifty percent subject to the condition that the Petitioner either pay the demanded amount of Rs. 6.75 crores or scrutinized the same by bank guarantee."

5. The Petitioner has submitted that the Respondent has issued letters dated 2.11.2012, 8.11.2012, 9.11.2012, 9.11.2012, 12.11.2012, 16.11.2012 and 22.11.2012 some of the circles wherein the Respondent has asked the Petitioner to renew the financial bank guarantees and performance bank guarantees in the prescribed format and in case of non-compliance, the bank guarantees will be invoked.

6. It is also noticed that the Respondent has issued show cause notice on 22.11.2012 to the Petitioners for violation of various terms and conditions of the license and propose to impose to liquidated damages in addition to termination of the license. The Petitioners have yet to reply to the show cause notice.

7. The main prayer in these applications is that the applicant has no obligation to renew the performance bank guarantees and financial bank guarantees for any of the service areas in view of the cancellation of its licenses by the Supreme Court.

8. We may read the condition 21.4 related to bank guarantees:

“21.4 Initially, the Bank Guarantees shall be valid for period of one year and shall be renewed from time to time. The LICENSEE, on its own, shall extend the validity period of the Bank Guarantees for

similar terms at least one month prior to date of its expiry without any demand or notice from the LICENSOR on year to date of its expiry without any demand or notice from the LICENSOR on year to year basis. Any failure to do so, shall amount to violation of the terms of the LICENCE and entitle the LICENSOR to encash the Bank Guarantees and to convert into a cash security without any reference to the LICENSEE at his risk and cost. No interest or compensation whatsoever shall be payable by the LICENSOR on such encashment.”

According to this Clause the licensee is bound to extend the validity period of bank guarantees for a period of one year at least one month prior to the date of the expiry of the bank guarantees and it is for the licensor to encash the bank guarantees in case the licensee fails to abide by the conditions provided in this clause.

9. Mr. Navin Chawla contends that once the license of the Petitioner is cancelled by the Supreme Court, the Petitioner is not bound to extend the bank guarantees after the expiry period of of the license. In this regard we may read provision 11.2 of the license agreement.

“11.2 On termination or surrender or expiry of the LICENCE, the Bank Guarantee shall be released to

the LICENSEE only after ensuring clearance of all dues, which the LICENSEE is liable to pay to the licensor. In case of failure of the LICENSEE to pay the amounts due to the LICENSOR the outstanding amounts shall be realized through encashment of the Bank Guarantee without prejudice to any other action(s) for recovery of the amounts due to the LICENSOR without any further communication to the Licensee.”

According to this Clause on termination or expiry of the license the bank guarantee shall be released to the licensee only after ensuring clearance of old dues which the licensee is liable to pay to the licensor. In these petitions, the licenses have been cancelled by an order of the Hon’ble Supreme Court which can be considered as if the licenses are terminated. The validity of the same, it seems, will expire on 14.1.2013.

10. It is seen that the Respondent had issued a show cause notice for violation of certain conditions on 21.11.2012 to the Petitioner. Whether the Petitioner has violated any terms and conditions of the license and whether any penalty is imposed on the Petitioner will be known only after final findings are given by the licensor after the Petitioner files the reply to the show cause notice.

11. In view of the clause 11.2 and 21.4 of the terms and conditions of the license agreement between the parties, the licensee and the licensor and the bank guarantees being valid till 09.01.2013 only, I am of the view that the Petitioners have not made out any case for staying the operations of the impugned letters dated 02.11.2012, 08.11.2012, 09.11.2012, 12.11.2012, 16.11.2012 and 22.11.2012 or issue of mandatory injunction against the Respondent for not taking any coercive action against the Petitioner.

(P.K. RASTOGI)
MEMBER

January 2, 2013
`anu/MM'