TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL
NEW DELHI

Dated 2nd March, 2016

Petition No. 158 of 2013

Reliance Telecom Ltd., …… Petitioner
Vs.
Union of India …… Respondent

BEFORE:

HON'BLE MR. JUSTICE AFTAB ALAM, CHAIRPERSON
HON'BLE DR. KULDIP SINGH, MEMBER
HON'BLE MR. BIPIN BIHARI SRIVASTAVA, MEMBER

For Petitioner : Mr. Navin Chawla, Advocate
Mr. Santosh Sachin, Advocate

For Respondent : Mr. S.S. Shamshery, Advocate
Mr. Vikas Malik, Advocate

O R D E R

Kuldip Singh:

The short question that arises for consideration in this petition is in regard to the interest levied on penalties, imposed on the petitioner, for violation of the norms related to verification of Customer Application Forms (CAFs).

The petitioner is a telecom service provider. It has been granted license under section 4 of the Indian Telegraph Act, 1885 to provide mobile telephone services in Madhya Pradesh Telecom Circle.

This Tribunal has examined the customer verification process in detail in its judgment dated July, 2, 2014 in petition no. 48 of 2012. Paras 4 and 5 of this judgment are as under:

> "4. Clause 41.14 of the License Agreement is a part of security considerations. The objective of this clause is that the identity as well as address details of any subscriber subscribing to the services of the licensee company should be readily available in case of need. We may note that in case of a fixed phone service, the premises where the phone is installed is well known in contrast to mobile service where the subscriber can be anywhere. It is more so in case of prepaid service for which the phone bill is not required to be issued to the subscriber and the subscriber can avail the services by purchasing prepaid vouchers and charging his account. In case of any need by a security agency, the details of such subscribers must be readily and correctly available. Since the matter may involve the security of the country, the importance of these details cannot be over-emphasized.

5. Department of Telecommunications (DoT)-Union of India has been issuing instructions from time to time for compliance with clause 41.14 of the license. It has also provided for a scheme of financial penalty for violation of terms &conditions of the license agreement in respect of subscriber verification. The Department has also been carrying out the audit of the licensees to ensure their compliance with the instructions issued from time to time. Vide letter dated 01.6.2010 the work relating to imposition of penalty has been de-centralized and put on Telecom, Enforcement, Resources and Monitoring (TERM) Cells set up under DOT in various license areas.

Subscribers, while subscribing to the services of a licensee, are required to complete a form which is called as the 'Customer Acquisition Form (CAF)'. The subscribers are also required to submit the proof of identity as well as proof of address, for which certain documents specified by the Department of Telecommunications (DoT) are to be provided. Licensees are also required to follow the guidelines issued in this regard from time to time. To ensure compliance with the instructions in this regard, TERM Cell of the concerned service area conducts monthly audits of the licensees on sample basis. On the total subscriber base of the licensee in that service area, a sample of one percent of the subscribers at random is taken and the licensee is asked to provide copies of the CAF Forms of the subscribers. These copies of CAF forms are checked for compliance with the instructions and guidelines issued from time to time and in cases of non-compliance, the licensees are given a week's time to discuss the cases and make available the original CAFs. The initial report indicating the findings about compliance/non-compliance is also provided to the licensee. Based on the discussions with the service provider (licensee), the report is finalized and jointly signed by both. Based on this final report, the amounts of penalty are calculated in accordance with the telescopic rate that provide for increasing amounts of penalties for higher percentage of non- compliance. The service provider, if he so desires can make a representation to the Deputy Director General (DDG), TERM whose decision is final."

The facts of the present case are brief. The respondent imposed penalties on the petitioner for violation of guidelines relating to subscriber verification from time to time. The details of the penalties imposed and deposited are as under:

S.No.	Month & Year	Notice date	Penalty	Revised [1]Penalty	Date of submission of penalty	Amount deposited
1	April,2009	08.07.2010	3380000	1578000	06.10.2010	1574000
2	May,2009	------do------	805000	269000	------do------	267200
3	June,2009	-------do-----	3150000	1218000	------do------	1211700
4	Sept,2009	16.07.2010	82050000	56227000	------do------	2463600
5	Dec,2009	------do------	14080000	6003000	-------do-----	2556100
6	Jan,2010	27.07.2010	1340000	572000	-------do-----	568600
7	Feb,2010	------do------	6140000	3265000	-------do-----	3262300
8	Mar,2010	------do------	1065000	229000	06.10.2010	226000
9	July,2010	01.11.2010	1285000	301000	13.10.2011	152000

The petitioner is aggrieved by the imposition of interest of Rs. 9,19,06,263/- for delay in payments of the penalties, vide impugned letter of the respondent dated 01.07.2013 . The interest has been imposed from the original date of demand at a rate which is 2% above the Prime Lending Rate of the State Bank of India.

The case of the petitioner is on two grounds:

Firstly, that in terms of the circular of the respondent dated 4.11.2010, if the service provider made a representation against the penalty imposed by DDG TERM Cell, DoT, such penalty was to be deposited, as per decision of the DDG TERM Cell, within one week from the date of decision of the TERM Cell or within 21 days from the date of issue of show cause notice, whichever is later.

Secondly, the various circulars and guidelines issued by the respondent were challenged before the Tribunal in Petition No. 252 of 2011. In any case, the demanded penalty imposed had to be revised and a fresh demand was to be raised in accordance with the judgment of the Tribunal dated 12.4.2012 .

Recently, in the case of Tata Teleservices Ltd. Vs. Union Of India[2], it was decided that since the demand had to be recalculated by the DoT in terms of the Tribunal judgment in petition no. 252 of 2011, the original demand had become non-est and the demand would fructify only when the revised demand was raised. The demands of interest were set aside. The relevant portion of the judgment is as under:

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[1] Revised in terms of the Tribunal Judgment in Petition no. 252 of 2011 delivered on 12.04.2012
[2] Petition no. 345 and 347 of 2014, judgment delivered on 23 November, 2015.

"We may note here that on 26.04.2013, the respondent issued a circular that ,inter alia, provided as under:

> "The demands which have either not been paid at all or have been partially paid by the operators may be recovered as per directions contained in above-said para 332(xi) of TDSAT Judgment dated 12.04.2012 i.e. **calculating financial penalty on the principals as it is followed in the Income Tax System**." (emphasis supplied)."

From the above circular of the respondent, it is obvious that it was aware that the financial penalty had to be recalculated in terms of the judgment of the Tribunal. We also note that though the judgment was passed in April, 2012, the respondent issued the above circular after a year and the respondent took yet one more year to issue the impugned demands. We also note that the short payments calculated in the impugned demands are far less than the amount of interest calculated on these. To take a few examples, against the original demand dated 02.08.2010 for an amount of Rs. 75,56,000/-, the petitioner deposited Rs. 36,06,000/- on 04.07.2011 which, as per the revised demand calculated by the respondent and intimated to the petitioner on 28.07.2014, should have been 36,14000/- resulting in a short fall of Rs. 8000/-. However, since this revised demand is calculated by the respondent after more than two years, the interest on this short payment has in the meanwhile grown to 3,45,741.69/- Similarly interest on short payments of Rs.26000/- and Rs.10900/-, has become 8,55,348.98/- and 2,38,179.93/-

We find that the petitioner had acted bona-fide in calculating and depositing the amounts in terms of the interim order passed by the Tribunal and it was for the respondent to check, calculate and intimate the amounts in terms of the Tribunal judgment. Though the difference on this account is minor, the delay of more than two years on the part of the respondent has resulted in the huge interest which is under challenge.

Be that as it may, we find that the original demands were much more than the revised demand as calculated in terms of the Tribunal Judgment. Further, in view of the fact that the demand had to be recalculated in terms of the Tribunal's Judgment, the original demand had become non-est and the demand would fructify only when the revised demand was raised in terms of the judgment. We, therefore, find that the respondent is wrong in levying the interest from the date of original demand as well as on short payments. The impugned demands to the extent of interest component are accordingly set aside."(emphasis supplied).

We may note from the impugned letter[3] dated 01.07.2013 and the table giving details of the penalties imposed and paid that the respondent had paid substantial part of the revised demand much before the same was even communicated to it.

The respondent, vide its Demand Notice dated 08.07.2010[4], imposed a penalty of Rs. 74,54,000/- on the petitioner. The petitioner protested against the manner of calculation of penalty vide its letter dated 06.10.2010 and based on its own calculations, deposited a sum of Rs. 30,52,900/- on the same date. The revised sum of penalty in regard to this demand, as per the impugned letter of the respondent dated 01.07.2013, is Rs. 30,65,000/-. The difference, which is Rs. 12,100/-, is a minor one and substantial part of the demand was deposited by the petitioner even before the revised demand was raised. The position in regard to the demand raised by the respondent vide its Demand Notice dated 27.07.2010[5] is similar.

The case with regard to demands raised vide Demand Notices dated 16.07.2010[6] and dated 01.11.2010[7] is, however, different. For the Demand Notice dated 16.07.2010, though the petitioner has deposited the amounts

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[3] Pages 18-20 of the paper book.
[4] Annexure P-4 pages 25-26 of paper book.
[5] Annexure P9 pages 60-62.
[6] Annexure P-6 pages 30-31.
[7] Annexure P-11 pages 67-69.

admitted by it, it has represented against 1365 CAFs (Customer Acquisition Form) treated by the respondent as non-compliant on grounds of apparently forged documents for Proof of Identity (POI) and Proof of Address (POA). Similar is the case with regard to the Demand Notice dated 01.11.2010 in which the petitioner has represented against penalty imposed on grounds of apparently forged POI and POA documents on 105 CAFs.

As per the petitioner, as its representation is still pending with the respondent, the penalty demanded from it has still not become final and, therefore, no interest can be charged for the delay in depositing the same.

As per the instructions/guidelines of the respondent dated 04.11.2010, the service providers have a right to make a representation against the penalties imposed on them for violation of CAF norms to the concerned DDG, TERM Cell of the respondent. The relevant part of this circular is as under:

> " (ix) In case , the Service Provider makes the representation to the DDG TERM concerned the representation shall be examined by the DDG TERM and decided preferably in two weeks time. For the examination of the representation, DDG TERM may take assistance of the ADG/Director TERM not involved in the issue of show cause notice for the CAF audit, wherever available.
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> (x) The decision of DDG TERM shall be final. The amount of financial penalty shall be deposited as per decision of DDG TERM within one week from the day of the decision of DDG TERM or within 21 days from issue of show cause notice, whichever is later."

We may note from the letters dated October 6, 2010 and October 21, 2011 addressed by the petitioner to the DDG Security TERM of the respondent that the petitioner represented against the imposition of penalties for 1365 and 105 CAFs respectively. The relevant part of these letters is as under:

" Page 128 of paper book
Xxxxxxxx
October 6, 2010.
DDG Security- TERM
Department of Telecommunications

Kind Attention: Sh, A,K, Mittal

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Our detailed comments against samples where the alleged discrepancy has been wrongly observed by TERM Cell are given in Annexure-1 (CD Enclosed).

In view of the above, we submit that out of the total rejection of 2586, 1365 of forms are in compliance with the license conditions and the extant instructions on the subject and have wrongly been held to be non-compliant."

" Page 142 of paper book
Xxxxxxxx
October 21, 2011.
DDG Security- TERM
Department of Telecommunications
Kind Attention: Sh, A,K, Mittal

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We have prepared details against samples where the alleged discrepancy has been wrongly observed by TERM Cell. Details of the same with our comments will be submitted to them accordingly.

In view of the above, we submit that out of the total rejection of 257, 105 number of forms are in compliance with the license conditions and the extant instructions on the subject and have wrongly been held to be non-compliant."

We have no reason to doubt the veracity of these letters as the admitted amounts as per these letters have been received by the respondent.

As per the respondent, the Demand Notices issued to the petitioner are prior to the instructions/guidelines issued vide its circular dated 04.11.2010 . These instructions are not retrospective in nature and, therefore, the petitioner cannot claim right to appeal against Demand Notices issued prior to these.

In our view, a service provider has a right to represent against the penalties imposed on it and the circular of the respondent dated 04.11.2010 only lays guidelines for the exercise of this right. The petitioner cannot be denied the right to represent to the higher authority against the penalties imposed on it and it was for the respondent to accept or reject the submissions made by the petitioner after duly considering the same.

Mr. Shamshery, Ld. Counsel for the respondent, submitted that the representation made was to DDG Security in DoT Headquarter and not to the concerned DDG TERM Cell in the field. In our view, even if the same was not submitted to the concerned DDG, the respondent should have forwarded

the same to the concerned person or at-least advised the petitioner to send it to the concerned person.

We, therefore, find that the respondent should consider the representations of the petitioner in terms of its circular dated 04.11.2010 and decide the same and till the time it does so, it cannot claim any interest in respect of such demands.

As regards the minor differences in the amounts relating to the demand notices dated 08.07.2010 and 27.07.2010 as calculated by the respondent vide its letter dated 01.07.2013 and as deposited by the petitioner, recently, in case of Reliance Communication Ltd., Mumbai Vs. Union of India[8], we have held that once the revised demands were raised, the petitioner was required to pay the same within 21 days and is, therefore, liable to pay interest on the same from the 22nd day of the date of revised demand and till the same is paid. The relevant part of the order is as under:

> "In our view, the petitioner should have paid the principal amount as soon as it received the revised demands for the various service areas, and in any case, within a period of 21 days from the demand date, which is the time allowed for the payment. We may note here that this is also how the respondent itself has understood in some of the service areas. For example, in the Andhra Pradesh Service Area[9], the revised demand raised as per the letter dated 16 July, 2013 is only for the balance of principal of Rs. 10,27,77,000/- . As per this letter, the

[8] Petition no. 196 of 2013 and other cases in the batch. Order delivered on 23.02.2016.
[9] Petition No. 241 of 2013

amount is to be deposited within 21 days from the date of the letter failing which the amount of penalty shall be recovered with interest at the rate of 2% above the PLR of SBI. From this it appears that the respondent in this case accepted that the demand has fructified from the date of this letter. This is also apparent from the reply of the respondent in this case which is as under:

> "6. It is pertinent to note that the Petitioner has misrepresented and is trying to mislead the Hon'ble tribunal by stating that the Respondent has vide its impugned Demand Letters dated 16.07.2013 and 18.07.2013 has (sic) levied revised Demand on Petitioner seeking to recover the balance amount of penalty along with interest @ 2% above the Prime Lending Rate (PLR) of the State Bank of India existing as on the beginning of the Financial year 2013. **A bare perusal of the impugned Demand Notices dated 16.07.2013 and 18.07.2013 shows that the Respondent has only sought the principal outstanding amount to be recovered from the Petitioner, calculated by the prescribed IT slab method as per the Hon'ble TDSAT judgment**…………………"(emphasis ours)

Be that as it may, once the revised demands were raised, the petitioner was required to pay the same within 21 days and is, therefore, liable to pay interest on the same from the 22nd day of the date of revised demand and till the same is paid."

As regards the rate of interest for the delayed payment, we found that a penalty imposed for violation of CAF verification guidelines does not constitute a payment due under the license and moreover, this itself being a penalty, a penal interest is not justified on delay of payment of the same and keeping in view the prevailing market condition, an interest of 9% per annum is just and fair.

To summarize, in the facts of the case and in light of the discussions made above, we find as under:

1) The petitioner is required to pay the difference of the penalty demand as calculated by the respondent vide its letter dated 01.07.2013 and as deposited by the petitioner, in respect of Demand Notices dated 08.07.2010 and 27.07.2010, along with interest at the rate of 9% with effect from 22.07.2013 till the same is paid.

2) The respondent is required to dispose of the representations of the petitioner in regard to Demand Notices dated 16.07.2010 and 01.11.2010 in terms of its circular dated 04.11.2010 and raise the final demand, if any. Till it does so, it cannot claim any interest on these.

We would have directed accordingly but for another development that goes to the root of the matter. The imposition of penalties for CAF violations was challenged by another licensee namely Dishnet Wireless Ltd. before the High Court of Tripura in Civil Writ Petition no. W.P(C) 422 of 2012. Before the order reserved in the present case could be pronounced, the High Court of Tripura has held[10] the clause 10.2(ii) of the license agreement that provides for the imposition of penalties for violation of the terms and conditions of the

license, as opposed to the public policy, ultra vires and against statutory provisions.

In view of the judgment of the High Court of Tripura above, the Tribunal would refrain from making any order as indicated above until the legal position on the licensor's right to impose penalty is settled.

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(Aftab Alam)
Chairperson

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(Kuldip Singh)
Member

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(B.B. Srivastava)
Member

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[10] Dishnet Wireless Ltd. Vs. UOI and anr. Judgment delivered on 08.01.2016.