

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL  
NEW DELHI

Dated 24<sup>th</sup> May 2016

M.A. No. 502 of 2015 in  
Telecommunication Petition No.296 of 2012

Unitech Wireless (TN) Pvt. Ltd.  
(TamilNaduCircle) .....Petitioner  
Vs  
Union of India  
(Department of Telecommunication) .....Respondent

**ALONG WITH**

Telecommunication Petition No.297 of 2012

Unitech Wireless (TN) Pvt. Ltd.  
(Gujarat Circle) ...Petitioner  
Vs  
Union of India  
(Department of Telecommunication) ...Respondent

Telecommunication Petition No.298 of 2012

Unitech Wireless (TN) Pvt. Ltd.  
(Maharashtra Circle) ...Petitioner  
Vs  
Union of India  
(Department of Telecommunication) .... Respondent

Telecommunication Petition No.299 of 2012

Unitech Wireless (TN) Pvt. Ltd.  
(Madhya Pradesh Circle) ...Petitioner  
Vs  
Union of India  
(Department of Telecommunication) ...Respondent

**Telecommunication Petition No.305 of 2012**

Unitech Wireless (TN) Pvt. Ltd. (Punjab Circle)	...Petitioner
Vs	
Union of India (Department of Telecommunication)	...Respondent

**Telecommunication Petition No.306 of 2012**

Unitech Wireless (TN) Pvt. Ltd. (Rajasthan Circle)	...Petitioner
Vs	
Union of India (Department of Telecommunication)	...Respondent

**Telecommunication Petition No.307 of 2012**

Unitech Wireless (TN) Pvt. Ltd. (U.P. (West) Circle)	...Petitioner
Vs	
Union of India (Department of Telecommunication)	.... Respondent

**Telecommunication Petition No.308 of 2012**

Unitech Wireless (TN) Pvt. Ltd. (North East Circle)	...Petitioner
Vs	
Union of India (Department of Telecommunication)	...Respondent

**Telecommunication Petition No.309 of 2012**

Unitech Wireless (TN) Pvt. Ltd. (Assam Circle)	...Petitioner
Vs	
Union of india (Department of Telecommunication)	...Respondent

**Telecommunication Petition No.315 of 2012**

Unitech Wireless (TN) Pvt. Ltd. (Kolkata Circle) Vs	..... Petitioner
Union of India (Department of Telecommunication)	..... Respondent

**Telecommunication Petition No.316 of 2012**

Unitech Wireless (TN) Pvt. Ltd. (Karnataka Circle) Vs	.....Petitioner
Union of India (Department of Telecommunication)	.....Respondent

**BEFORE:**

**HON'BLE MR. JUSTICE AFTAB ALAM, CHAIRPERSON**  
**HON'BLE MR. BIPIN BIHARI SRIVASTAVA, MEMBER**

For Petitioners	: Mr. Ravi S.S. Chauhan, Advocate Ms.Pallak Singh, Advocate
For Respondent	: Mr.Dhruv Tamta, Advocate

**ORDER**

This order is being passed in continuation of the orders dated 29.03.2016 and 17.05.2016 besides some other orders of even earlier dates.

Yesterday, Mr.Tamta tried to say that the DoT was finding some difficulty in determining and quantifying the One Time Spectrum (OTS) charge that might be levied against the petitioner. The matter was then adjourned for the day asking Mr.Tamta to place before the Tribunal the instructions given to

petitioner and the order was pronounced on 1 June 2012. In paragraph 4 of this order, the Tribunal noted the case of the Union of India as under:

"4. Mr.Ruchir Mishra, the learned counsel appearing on behalf of the respondent submits that licenses of the petitioner has been cancelled by an order of the Hon'ble Supreme Court in February 2012. The FBG not only covers the estimated amount for two quarters for AGR but it also covers other dues of Department of Telecommunication (DOT), if any. As licenses of the petitioners have been cancelled, the DOT has to work out and check up if any dues are outstanding against the petitioners. Besides, in accordance with the Hon'ble Supreme Court order in AGR matter, the respondent has to calculate exactly the amount to be paid by the petitioners in last 4 years. The respondent will be able to calculate all the AGR matters by July 2012."

It also noted that the petitioner had provided bank guarantees for the aggregate amount of Rs.630 crores for all its licences and the guarantees were renewed from time to time and the validity of the guarantees were extended till 9 January 2013. In course of hearing on the interim relief, the counsel for the Union of India clearly conceded that the amounts of the bank guarantees be reduced to 50%, submitting it would not cause any prejudice to the respondent (see paragraph 9 of the order dated 1 June 2012). Nevertheless, the Tribunal did not accede to the request for interim relief made on behalf of the petitioner observing as under:

"10. At this stage, we do not have the full particulars of AGR and dues of the DOT against the petitioner. It is not possible to determine as to how much amount of FBG will cover the amount required for the dues of the respondent. There is a need to have detailed reply from the respondent as FBG is already subsisting and the licenses of the petitioners have been cancelled. Therefore, we are of the opinion that the petitioners have not made out any case for issue of any interim relief at this stage."

The petitioner gave the undertaking as directed which remains fully enforceable as on date.

The matter then remained dormant as the issue of AGR was subject to litigation before the Tribunal and in the absence of any clarity regarding computation of AGR, it would not be possible for the Union of India to determine its dues against the petitioner for realisation. Here it needs to be added that the AGR matter had come back to the Tribunal on remand by the Supreme Court by judgement and order dated 11 October 2011<sup>2</sup> and at the time the interim order dated 2 November 2012 was passed in this batch of petitions, the AGR matter was pending before the Tribunal.

The Tribunal finally decided the AGR matter by its judgement and order dated 23 April 2015. The judgment of the Tribunal holds and affirms as to what elements of pecuniary inputs would or would not go in the computation of AGR and it further directs that having regard to the fact that the very determination of AGR had remained embroiled in litigation for a very long time, it would not be proper and valid to impose any interest, penalty and interest on penalty on any delayed payment of the charges based on the determination of AGR. Against the judgment of the Tribunal, appeals are

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<sup>2</sup> (2011) 10 SCC 543; Union of India Vs. Association of Unified Telecom Services Providers of India and Others.

In order to verify the declaration made in the demand letter Mr.Tamta was asked to produce the relevant departmental files. Mr.Tamta produced the following two files before the Tribunal on 11 February 2016:

- (i) F.No.17-19/2014/L.F.II(Assessment of Licence Fee in respect of M/s Unitech Wireless Pvt. Ltd. for 2012-13); and
- (ii) F.No.12-18/2014-L.F.I (TDSAT Judgment dt.23.04.2015 in Petition No.7 of 2003 and connected matters).

The noting in the two files confirmed that the computation of the licence fee was in fact made in disregard of the Tribunal's judgment.

The petitioner was then directed by order dated 15 February 2016 to file an affidavit giving calculation of licence fee payable by it in all the 19 circles on the basis of the Tribunal's judgement dated 23 April 2015 in the AGR matter.

It was at this stage that the DoT moved the Supreme Court for stay of operation of the Tribunal's judgement in the AGR matter and on 29 February 2016, the Supreme Court passed the following order in CA No.5882 of 2015 along with the connected matters:

"Mr. P.S. Narasimha, learned Additional Solicitor General of India appearing for the Union of India states, that the Union of India will continue to raise demands as per its understanding, however, the same will not be enforced till the final decision of the controversy by this Court.

The statement of the leaned Additional Solicitor General of India is placed on record.

List for hearing after eight weeks, on a non-miscellaneous day.

Liberty is granted to the Union of India to file response to the applications for impleadment filed by Reliance Gio.

it). The order further records that Mr. Tamta produced a chart showing the demands that the DoT might have against the petitioner. The chart tabulated the demands under five heads namely, Licence Fee, Unpaid Penalty in respect of EMR/EMF violation, Spectrum Usage Charge, One Time spectrum Charge and Liquidated Damages. The Tribunal considered the demands under each of the heads and passed the following order on that date:

“Item 1 and item 3 relate to license fee and spectrum usage charges which are relatable to AGR. These two heads are very clearly covered by the Supreme Court order as quoted above. At serial no. 2 is unpaid penalty in respect of EMR/EMF violation. The demands of penalty in respect of EMR/EMF violation are set aside by judgement and order passed by the Tribunal today in Petition No. 271 of 2013. This leaves out item no. 4 which is in regard to one time spectrum charge of Rs. 652.69 crores and item no.5, liquidated damages of Rs. 7 crores.

We direct Mr. Tamta to apprise us on the next date in regard to the one time spectrum charge; what is the stage of the proceedings concerning the demand and whether or not it has yet been crystallized. In case it has not been crystallized, Mr. Tamta will also inform us within what reasonable time the proceeding will be completed and the demand would take a final shape.

Put up under the same head on 21.04.2016.”

Since that date, the Tribunal has not been apprised regarding the quantification of OTS charges that, according to the DoT, the petitioner may be liable to pay.

On 26 April 2016, the Tribunal passed the following order in this regard:

“Today, Mr. Tamta requests for a month’s time for the DoT to come to a decision as regards the demands that it might have against the petitioners.

In our view, the request for such a long time is not reasonable especially in view of the fact that on the issue of OTS, the show cause was issued to the petitioner as far back as on 17.11.2014 and the petitioner had given its reply to the show cause notice on 29.12.2014, that is to say, within the time allowed in the show cause notice.

would be bound by the undertaking furnished by it in pursuance of order dated 2 November 2012.

The petitions thus stand disposed of.

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**(Aftab Alam)**  
**Chairperson**

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**(B.B. Srivastava)**  
**Member**

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