

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

Dated 7th September, 2017

Telecommunication Petition No.78 of 2015

Dishnet Wireless Ltd. ...Petitioner
Versus
S. Tel Pvt. Ltd. ...Respondent

**E.A. No. 21 of 2014 in
Telecommunication Petition No.93 of 2012**

Reliance Telecom Limited ...Petitioner
Vs
S. Tel Pvt. Ltd ...Respondent

**E.A. No. 12 of 2015 in
Telecommunication Petition No.94 of 2012**

Reliance Communications Limited ...Petitioner
Vs
S. Tel Pvt. Ltd ...Respondent

Telecommunication Petition No. 356 of 2014

Sistema Shyam TeleServices Ltd. ... Petitioner
Vs.
Loop Mobile India Ltd. ... Respondent

Telecommunication Petition No. 365 of 2014

Unitech Wireless (Tamil Nadu) Pvt. Ltd. ... Petitioner
Vs.
Loop Mobile India Ltd. ... Respondent

Telecommunication Petition No. 508 of 2014

Bharat Sanchar Nigam Limited ... Petitioner
Vs.
Loop Mobile India Ltd. ... Respondent

Telecommunication Petition No.173 of 2013

Tulip Telecom Ltd. ...Petitioner

Vs

Tata Teleservices Ltd ...Respondent

Broadcasting Petition No. 506 of 2015

Digi Cablecomm Services Pvt. Ltd., Kolkata ...Petitioner

Vs.

Tulip Telecom Ltd. ...Respondent

Broadcasting Petition No.223 of 2016

UCN Cable Network Pvt. Ltd ...Petitioner

Vs.

Tulip Telecom Ltd ... Respondent

Telecommunication Petition No.469 of 2013

(M.A. No.178 of 2017)

Vodafone Mobile Services Limited ...Petitioner

Vs

Tulip Telecom Ltd. ...Respondent

Telecommunication Petition No.266 of 2014

Reliance Communication Limited ...Petitioner

Vs

Tulip Telecom Ltd. ...Respondent

Telecommunication Petition No.280 of 2014

(With M.A. No. 162 of 2014)

Power Grid Corporation of India ...Petitioner

Vs

Tulip Telecom Ltd. ...Respondent

Telecommunication Petition No.334 of 2014

Reliance Infratel Limited ...Petitioner

Vs

Tulip Telecom Ltd ...Respondent

BEFORE:

HON'BLE MR. JUSTICE SHIVA KIRTI SINGH, CHAIRPERSON
HON'BLE MR. B.B. SRIVASTAVA, MEMBER
HON'BLE MR. A.K. BHARGAVA, MEMBER

For Petitioner (DWL in T.P. : Mr. Devesh Mishra, AR
 No.78 of 2015)

For Petitioner(T.P.No.356 : Mr. Mansoor Ali Shoket, Advocate
 of 2014) Mr. Kunal Singh, Advocate
 Ms. Alvia Ahmad, Advocate

For Petitioner(B.P. No.506 : Mr. Diggaj Pathak, Advocate
 of 2015) Ms. Shweta Sharma, Advocate

For Petition (B.P.No.223 of : Mr. Anurup Narula, Advocate
 2016) Mr. Aditya, Advocate

For Petitioner(T.P.No.469 : Mr. Mohit Jolly, Advocate
 of 2013)

For Decree Holder (TP : Mr. Saket Singh, Advocate
 94/12) Mr. Chaitanya Safaya, Advocate
 Mr. Vaibhav Niti, Advocate
 Ms. Mithila Lalit, Advocate
 Mr. Ashish Makhija, Advocate
 Mr. Anurag Bhatt, Advocate

For Respondent(T.P.No.508 : Mr. Saket Singh, Advocate
 & 365 of 2014) Mr. Chaitanya Safaya, Advocate
 Mr. Vaibhav Niti, Advocate
 Ms. Mithila Lalit, Advocate
 Mr. Ashish Makhija, Advocate
 Mr. Anurag Bhatt, Advocate

For Respondent : Mr. Ravi S.S Chauhan, Advocate
 (T.P.No.356/2014)

For Respondent : Mr. Mansoor Ali Shoket, Advocate
 (T.P.No.173 of 2013) Mr. Kunal Singh, Advocate
 Ms. Alvia Ahmad, Advocate

For Respondent : Mr. Abhay Chattopadhyay, Advocate
(T.P.No.280 of 2014)

For Respondent No.2 : Mr. A.P. Sahay, Advocate
(T.P.No.508 of 2014) (For
DoT)

For Official Liquidator : Ms. Tania Sharma, Advocate

ORDER

By S.K. Singh, Chairperson – A look at the common order passed in these matters on 06.07.2017 would show that this bunch of matters was categorised in three groups. One, of cases already disposed of wherein execution applications have been filed and are pending. These matters are against S.Tel Pvt. Ltd. which is facing liquidation proceedings in Punjab & Haryana High Court which has already appointed an Official Liquidator. Since T.P. No.78 of 2015 also relates to S.Tel Pvt. Ltd., that matter also forms part of the first group, although it is not at the execution stage. The second group is of telecom and broadcasting petitions directed against Tulip Telecom Ltd. which is under liquidation as per proceedings in the Delhi High Court which has appointed the Official Liquidator in that matter. The third group consists of telecom petitions directed against Loop Mobile (India) Pvt. Ltd. against which liquidation proceedings are pending in Bombay High Court which has also appointed Official Liquidator. The order dated 06.07.2017 further discloses that as per stand of the Official Liquidator a preliminary issue has arisen:

Whether the petitioners require to take permission of the High Court in the pending liquidation proceedings for proceeding with the present matters in the Tribunal in the light of Section 446 of the erstwhile Companies Act and Section 279 of the Companies Act 2013.

2. After affording opportunity to the petitioners/applicants as well as the concerned Official Liquidator to file their pleadings to make their stand clear on the preliminary issue, learned counsel for the parties concerned have been heard at quite some length on the aforementioned issue. The stand of the Official Liquidator in these matters by way of preliminary objection has already been noted. Learned counsel appearing for the other side in all these matters have taken a contrary stand. According to them, Section 279 of the Companies Act 2013 (Companies Act) will not have any effect on matters which lie within the exclusive jurisdiction of this Tribunal which has been constituted for a special purpose by a special Act i.e. the Telecom Regulatory Authority of India Act, 1997 (the Act). It may be relevant to record at the outset that the stand of petitioners/applicants is common in respect of the matters which as noted above are pending for adjudication. However, in respect of matters pending for execution, their stand is slightly at variance. While some of the learned counsel have urged that even the jurisdiction of this Tribunal to execute its orders and decree under Section 19 of the Act is special and exclusive and, therefore, not affected by provisions in the Companies Act, some of the counsel have almost

conceded that the jurisdiction in the matter of execution may not have the same standing as the adjudicatory jurisdiction under Sections 14 and 14A of the Act.

3. Before advertng to the rival submissions it will be useful to note the salient features and relevant provisions of the Act. The purpose of the Act as provided in the Preamble is as follows:

“An Act to provide for the establishment of (Telecom Regulatory Authority of India and the Telecom Disputes Settlement and Appellate Tribunal to regulate the telecommunication services, adjudicate disputes, dispose of appeals and to protect the interests of service providers and consumers of the telecom sector, to promote and ensure orderly growth of the telecom sector) and for matters connected therewith or incidental thereto.”

4. The telecommunication service has been defined under Section 2(k) which was amended in the year 2000 leading to inclusion of broadcasting service also in its sweep. Provisions for establishment of the Appellate Tribunal (TDSAT) with all incidental matters were introduced through an insertion vide amendment Act of 2000 whereby Chapter IV was introduced along with Section 14, 14A etc. Earlier to this amendment, the appellate power was being exercised by the regulatory Authority itself. That attracted criticism leading to the amendment noted above.

5. A careful perusal of Sections 14 and 14A leaves no manner of doubt that this Tribunal has been vested with exclusive jurisdiction to adjudicate any dispute between a licensor and a licensee; between two or more service providers and between a service provider and a group of consumers, along with

similar exclusive power to hear and dispose of appeal against any direction, decision or order of the Authority under the Act. The Central Government or a State Government or a local authority or any person can make an application for adjudication of any dispute covered by clause (a) of Section 14 only before the Tribunal. By virtue of Section 14M all applications, pending for adjudication of disputes before the Authority before the establishment of Appellate Tribunal got transferred to the Tribunal and under Section 14N, all appeals pending before the High Court, before the commencement of the amendment Act 2000 also got transferred to the Appellate Tribunal on its establishment under Section 14. Section 15 explicitly provides that no civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Appellate Tribunal is empowered by or under the Act to determine and no injunction shall be granted by any court or other authority in respect of action taken or to be taken in pursuance of any power conferred by or under the Act. As per Section 18, notwithstanding anything contained in the Code of Civil Procedure or in any other law, an appeal shall lie against any order, not being an interlocutory order, of the Appellate Tribunal to the Supreme Court on one or more of the grounds specified in Section 100 of that Code.

Section 19 reads as follows:

“Orders passed by Appellate Tribunal to be executable as a decree. – (1) An order passed by the Appellate Tribunal under this Act shall be executable by the Appellate Tribunal as a decree of civil court, and for this purpose, the Appellate Tribunal shall have all the powers of a civil court.

(2) Notwithstanding anything contained in sub-section (1), the Appellate Tribunal may transmit any order made by it to a civil court having local jurisdiction and such civil court shall execute the order as if it were a decree made by that court.”

6. Coming to the other relevant statute, the Companies Act, it is worth noting that in the erstwhile Companies Act 1956, Section 446(1) mandated that upon making of a winding-up order or appointment of a provisional liquidator, no suit or other legal proceedings shall be commenced or if pending, shall be proceeded with, against the company, except by leave of the court. As per sub-section (2), the winding-up court, notwithstanding anything contained in any other law for the time being in force, shall have jurisdiction to entertain or dispose of any suit or proceeding in respect of the company, whether such suit or proceeding has been instituted before or after the order for winding-up. Sub-section (3) provided that any suit or proceeding by or against the company pending in any other court, notwithstanding anything contained in other law for the time being in force be transferred to and disposed of by the winding-up court. Of course, these provisions would not apply to any proceeding pending in appeal before the Supreme Court or a High Court.

7. The relevant provisions noted above have now been split-up in Sections 279 and 280 of the Companies Act 2013(the Companies Act). They are extracted herein below:

“279. Stay of suits, etc., on winding up order

(1) When a winding up order has been passed or a provisional liquidator has been appointed, no suit or other legal proceeding shall

be commenced, or if pending at the date of the winding up order, shall be proceeded with, by or against the company, except with the leave of the Tribunal and subject to such terms as the Tribunal may impose:

Provided that any application to the Tribunal seeking leave under this section shall be disposed of by the Tribunal within sixty days.

(2) Nothing in sub-section (1) shall apply to any proceeding pending in appeal before the Supreme Court or a High Court

280. Jurisdiction of Tribunal

The Tribunal shall, notwithstanding anything contained in any other law for the time being in force, have jurisdiction to entertain, or dispose of,—

- (a) any suit or proceeding by or against the company;
- (b) any claim made by or against the company, including claims by or against any of its branches in India;
- (c) any application made under section 233;
- (d) any question of priorities or any other question whatsoever, whether of law or facts, including those relating to assets, business, actions, rights, entitlements, privileges, benefits, duties, responsibilities, obligations or in any matter arising out of, or in relation to winding up of the company,

whether such suit or proceeding has been instituted, or is instituted, or such claim or question has arisen or arises or such application has been made or is made or such scheme has been submitted, or is submitted, before or after the order for the winding up of the company is made.”

8. For the purpose of deciding the issue at hand, it is noticeable that there is no material change when the contents of Section 446 of the erstwhile Companies Act are compared with conjoint provisions of Sections 279 and 280 of the Companies Act 2013. In any case, the argument advanced on behalf of the petitioners/applicants in support of Tribunal’s jurisdiction is mainly based upon the proposition that the Act is a special statute conferring special and

exclusive jurisdiction upon this Tribunal which cannot be exercised by any other court including the court where the winding-up proceedings are pending and, therefore, the provisions of the Companies Act, being of a general statute must yield to the provisions of the special statute like the Act. It has further been urged that provisions of the Act must be accorded higher priority on the basis of its having a special purpose as evident from its Preamble. The purposive interpretation would make this Tribunal a specialised one whose jurisdiction must be accepted as exclusive and special.

9. In support of the aforesaid propositions, the counsels other than those for the Official Liquidators have placed reliance on the following judgments of the Apex Court:

- (i) **Allahabad Bank Vs. Canara Bank & Anr.– (2000) 4 SCC 406**
- (ii) **Damji Valji Shah & Anr. Vs. Life Insurance Corporation of India & Ors. – (1965) 3 SCR 665**
- (iii) **Cellular Operators Association of India Vs. Union of India – (2003) 3 SCC 186 and**
- (iv) **Union of India Vs. Tata Teleservices(Maharashtra) Ltd. – (2007) 7 SCC 517.**

In the very opening sentence of paragraph 2 in the case of **Allahabad Bank**, it was noticed that the issues in that case related to the impact of the provisions of Recovery of Debts due to Banks and Financial Institutions Act 1993 (the RDB Act) on the provisions of the Companies Act 1956. Similar submissions as in the present case were advanced by learned Attorney General as noted in paragraph 30 of that judgment. Reliance was placed upon judgment

in the case of **Damji Valji Shah** and paragraph 31, it was pointed out that in the LIC of India Act 1956 which was under consideration in **Damji Valji Shah**, there was no provision like Section 34 of the RDB Act giving overriding effect but still the court upheld the exclusive jurisdiction of the LIC Tribunal by observing that the provisions of the special Act, i.e., LIC of India Act will override the provisions of the general Act, viz., the Companies Act which is an Act relating to companies in general. In paragraph 38, the views of High Court that Companies Act is a general Act and does not prevail under the RDB Act was approved. It will be useful to note here the observations in paragraph 39 for deciding whether the execution function of the Tribunal should be treated as special provision or not. Paragraph 39 reads as under:

“39. There can be a situation in law where the same statute is treated as a special statute vis-a-vis one legislation and again as a general statute vis-a-vis yet another legislation. Such situations do arise as held in **Life Insurance Corporation of India vs. D.J.Bahadur [AIR 1980 SC 2181]**. It was there observed:

".....for certain cases, an Act may be general and for certain other purposes, it may be special and the Court cannot blur a distinction when dealing with finer points of law".

For example, a Rent Control Act may be a special statute as compared to the Code of Civil Procedure. But vis-a-vis an Act permitting eviction from public premises or some special class of buildings, the Rent Control Act may be a general statute. In fact in **Damji Valji Shah and Anr. Vs. Life Insurance Corporation of India and Ors. [1965(3) SCR 665=AIR 1965 SC 135]** (already referred to), this Court has observed that vis-a-vis the LIC Act, 1956, the Companies Act, 1956 can be treated as a general statute. This is clear from para 19 of that judgment. It was observed:

"Further, the provisions of the Special Act, i.e. LIC Act, will override the provisions of the general Act, viz;

the Companies Act which is an Act relating to companies in general".

Thus, some High Courts rightly treated the Companies Act as a general statute, and the RDB Act as a special statute overriding the general statute.”

10. From the above, it is clear that views of the Apex Court in **Damji Valji Shah** were in favour of the plea advanced herein on behalf of petitioners/applicants, and the same was followed and affirmed by the Supreme Court in **Allahabad Bank** case. In the case of **Cellular Association of India**, the Apex Court considered Section 14 and other relevant provisions of the Act to hold that the power of the Appellate Tribunal is quite wide even when the original Authority, TRAI, was itself an expert body. It is obvious that under the Act, the Tribunal is also an expert body exercising full appellate jurisdiction over the decisions of another expert body. It also has original jurisdiction over matters which are special in nature, peculiar to the concerned sectors like telecom and broadcasting. These disputes cannot be decided by civil court or any other court in view of provisions in the Act which is clearly a special statute so far as adjudicatory powers and functions of the Tribunal are concerned.

11. This Tribunal had the occasion to address itself to a common issue arising in several matters: whether arbitration proceedings under the Arbitration & Conciliation Act 1996 or under the old Arbitration Act are maintainable after the constitution of the Appellate Tribunal under the Act to adjudicate certain category of disputes and hear appeals against the order of the regulator, the

Authority under the Act. The judgment on this issue was rendered by a Bench of three headed by Justice D.P. Wadhwa, the then Chairperson of the Appellate Tribunal. In this judgment dated 06.01.2005, rendered in the case of **Aircell Digilink India Ltd. Vs. Union of India – (2005) 3 CompLJ 461 TelecomDSAT**, this Tribunal examined the entire scope of the Act to come to a conclusion that Act is a special law which will prevail over the general law i.e. Arbitration Act and, therefore, this Tribunal has the exclusive jurisdiction upon all disputes that arise between the parties, as specified under the Act. Of course, it was also noted that the Act was a later statute of the year 1997 whereas Arbitration Act was of 1996. Therefore, it can be presumed that the Parliament chose not to bring arbitration within the ambit of the Act. However, once it was held that Act is a special statute and the Arbitration Act, like Companies Act is a general one, there was no compulsion to examine which is a later Act. This issue would have been relevant only if both Acts were general or both were special.

12. In view of aforesaid discussions, we hold that the adjudicatory jurisdiction of this Tribunal is exclusive and special under the Act whose provisions conferring such power over the Tribunal must be construed as parts of a special statute. On the other hand, the relevant provisions of the Companies Act are clearly general part of a general statute governing the companies in general. Hence, it is held that the adjudicatory proceedings before this Tribunal will not be affected by the provisions in the Companies Act. As a

consequence, these will be heard and decided by the Tribunal and the petitioners are not required to approach the Winding-up Court for seeking any permission for that purpose.

13. Coming to the execution proceedings, it is notable that there is nothing special or exclusive so far as this jurisdiction of the Tribunal is concerned. Section 19 merely enables the Tribunal under the Act to execute its order as a decree of civil court and for that it can exercise all the powers of civil court. It also enables the Tribunal to transmit any order to a civil court having local jurisdiction and such civil court shall execute the order as if it were a decree made by that court.

14. Clearly the procedure and power relating to execution are in most general terms and there is no requirement of any purposive interpretation to hold or declare this power to be exclusive or special power of the Appellate Tribunal. On the other hand, some of the beneficial provisions under the Companies Act such as provisions for giving priority to the dues of the workers warrant a different view on this issue so that at the stage of execution, the purpose of special provisions in the Companies Act creating priorities in favour of workmen in respect of their dues and also in favour of secured creditors are preserved and promoted. Hence, a purposive interpretation of provisions relating to jurisdiction of this Tribunal in respect of execution, in our considered view requires upholding the contention advanced on behalf of Official Liquidator that proceedings relating to execution pending before this Tribunal

shall be governed by and shall be subject to provisions of Section 279 and 280 of the Companies Act.

15. Hence, in the executions proceedings, the applicants will have to seek leave of the Tribunal under Section 279 or they can seek leave of this Tribunal for transfer of execution proceedings to the execution court/Tribunal which shall have jurisdiction to entertain and dispose of such proceedings under Section 280(a) of the Companies Act.

The preliminary issue is decided accordingly.

16. Applicants in the Executions Applications shall take required steps in the light of this order at an early date and in any case within two months from the date of this order. But the petitions which are still to be adjudicated shall continue to be heard by this Tribunal for that purpose in the light of law clarified in this order.

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(S.K. Singh, J)
Chairperson

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(B.B. Srivastava)
Member

.....
(A.K. Bhargava)
Member