

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

**Dated 30<sup>th</sup> March 2022**

**Telecom Petition No. 10 of 2022**

Hughes Communications India Ltd.	...Petitioner
Vs.	
Union of India	...Respondent

**BEFORE:**

**HON'BLE MR. JUSTICE DHIRUBHAI NARANBHAI PATEL, CHAIRPERSON  
HON'BLE MR. SUBODH KUMAR GUPTA, MEMBER**

For Petitioner	:	1. Kapil Sibal ( Sr. Adv.), 2. Manjul Bajpai (adv.), 3. Mansoor Ali Shoket (adv.) 4. Nitin Kala (adv.), 5. Kunal Singh (adv.) And 6. Nizam Pasha (adv.)
For Respondent	:	Mr. Dhruv Tamta, Advocate

**JUDGMENT**

**1.** This petition has been preferred for the following prayers :

*"In view of the submissions made above, it is most respectfully prayed that this Hon'ble Tribunal may be pleased to:*

*(a)Quash the Impugned Letter dated 07.12.2021 bearing No. 1-20/2021-LFP issued by the DoT to Hughes as being unfair,*

*unjust, unreasonable, arbitrary, discriminatory, without jurisdiction and without justification;*

*(b)Direct DoT to extend the benefit of the Cabinet Decision dated 15.09.2021, including the AGR Moratorium, to Hughes; and*

*(c)Pass such other and further order (s) in favour of Hughes and against DoT as may be deemed fit and proper in the facts and circumstances of the case.”*

**2.** There is also a prayer for interim relief.

**3.** Notice was issued by this Tribunal. Counsel for respondent has appeared and has filed an affidavit, which is also taken on record.

**4.** Learned Senior counsel, Mr. Kapil Sibal appearing for the petitioner has submitted that looking to the decision rendered by Hon’ble the Supreme Court of India in Civil Appeal Nos. 6328 – 6399 of 2015 with M.A(D) No. 9887 of 2020 with other allied matters it has been decided by Hon’ble the Supreme Court of India on **1.9.2020** (Union of India vs. Association of Unified Telecom Service Providers of India etc.) in para 38 as under :

*"38. Resultantly, we issue following directions:*

*(i) That for the demand raised by the Department of Telecom in respect of the AGR dues based on the judgment of this Court, there shall not be any dispute raised by any of the Telecom Operators and that there shall not be any reassessment.*

*(ii) That, at the first instance, the respective Telecom Operators shall make the payment of 10% of the total dues as demanded by DoT by 31.3.2021.*

*(iii) TSPs have to make payment in yearly instalments commencing from 1.4.2021 up to 31.3.2031 payable by 31st March of every succeeding financial year. (emphasis supplied)*

*(iv) Various companies through Managing Director/Chairman or other authorised officer, to furnish an undertaking within four weeks, to make payment of arrears as per the order.*

*(v) The existing bank guarantees that have been submitted regarding the spectrum shall be kept alive by TSPs. until the payment is made.*

*(vi) In the event of any default in making payment of annual instalments, interest would become payable as per the agreement alongwith penalty and interest on penalty automatically without reference to Court. Besides, it would be punishable for contempt of Court.*

*(vii) Let compliance of order be reported by all TSPs. and DoT every year by 7th April of each succeeding year.*

*In the Suo Motu Contempt Petition, in view of the reply filed and compliance reported, and an unconditional apology tendered, which we accept, we discharge notice issued to Shri Mandar Deshpande and drop the proceedings.*

*Before parting with the proceedings, we place on record our appreciation for the fair and able assistance provided by Shri Tushar Mehta, Solicitor General, and the respective senior counsel appearing on behalf of respective parties.*

*Accordingly, the pending interlocutory applications are disposed of in terms of the aforesaid order/directions.*

*All the previous orders stand modified accordingly.”*

**5.** In view of the aforesaid observations by Hon’ble the Supreme Court in aforesaid decision which is annexed as **Annexure P-3** to the memo of this petition, a note was prepared by the respondent and was placed before the Cabinet.

5.1 It is further submitted by the senior counsel of the petitioner Mr. Kapil Sibal that Press Note was released which is **Annexure P-2** to the petition which was posted on 15.9.2021 and it has been mentioned that all the Telecom Service Providers (TSPs) will be entitled to moratorium / deferment of payment upto four years in annual payments of dues arising out of the AGR judgement. Learned senior counsel of the petitioner, Mr. Kapil Sibal has drawn attention of this Tribunal to **Annexure P-2** for getting the benefit of the moratorium / deferment of the payment and has submitted that this petitioner is a TSP and, therefore, as per

Press Note released by the respondent the petitioner is entitled to the moratorium.

5.2 It is further submitted by learned senior counsel for the petitioner that the aforesaid aspect was not properly appreciated by the respondent and the respondent had rejected the extension of the benefit of the moratorium to this petitioner vide communication dated 7.12.2021 annexed **(Annexure P-1)**.

5.3 It is further submitted by learned senior counsel for the petitioner that by virtue of the aforesaid communication which is under challenge **(Annexure P-1)** the respondent have clarified that the grant of benefit of AGR moratorium applies only to the Telecom Service Providers (TSPs) having **"Access Service License"** which are not under CIRP or related litigation or closed down (under liquidation or liquidated).

5.4 Learned senior counsel for the petitioner submitted that the communication which is at **Annexure P-1** is contrary to

the Press Note which is **Annexure P-2** and, therefore, the present petition has been preferred and Cabinet Decision should have been brought on record by the respondent for which an order was also passed by this Tribunal on 28.3.2022. The Cabinet Decision was not brought on record by the respondent and hence, this petitioner may be granted benefit of moratorium / deferment of payment for four years as per Press Note release (Annexure P-2).

**6.** Counsel for respondent submitted that there is no ambiguity on the part of the respondent. The benefit of the moratorium cannot be given to all the TSPs. The benefit of moratorium was restricted to only those TSPs having "Access Service License". The petitioner is not a TSP having "Access Service License". It is further submitted by the counsel for the respondent that a detailed affidavit has been filed by the respondent and in paragraph 6 of the said affidavit it has been stated that Cabinet has approved a note and as per the Note, specific category of licensees - Access Service Licensee was mentioned for providing benefit i.e.

AGR moratorium. Thus, looking to the counter affidavit filed by the respondent and especially paragraphs 5-6 thereof, there is no substance in this petition because AGR moratorium applies only to TSPs having Access Service License. The Petitioner is not falling within this category. Hence, no benefit of moratorium can be extended to the petitioner as mentioned in the memo of this petition.

**7.** Having heard the counsels for both the sides and looking to the facts and circumstances of the case, it appears that **the petitioner is not a Telecom Service Provider (TSP) having Access Service License.**

**8.** Looking to the facts of the present case and also looking to the decision rendered by Hon'ble the Supreme Court which is **Annexure P-3** to the memo of this petition in MA (D) No. 9887 of 2020 in Civil Appeal Nos. 6328 – 6399 of 2015(Union of India vs. Association of Unified Telecom Service Providers of India etc.) with suo motu Contempt

Petition (C) No. 1 of 2020 with other M.As **judgment dated**

**1.9.2020**, it has been observed at para 38 as under :

*"38. Resultantly, we issue following directions:*

*(i) That for the demand raised by the Department of Telecom in respect of the AGR dues based on the judgment of this Court, there shall not be any dispute raised by any of the Telecom Operators and that there shall not be any reassessment.*

*(ii) That, at the first instance, the respective Telecom Operators shall make the payment of 10% of the total dues as demanded by DoT by 31.3.2021.*

*(iii) TSPs have to make payment in yearly instalments commencing from 1.4.2021 up to 31.3.2031 payable by 31st March of every succeeding financial year. (emphasis supplied)*

*(iv) Various companies through Managing Director/Chairman or other authorised officer, to furnish an undertaking within four weeks, to make payment of arrears as per the order.*

*(v) The existing bank guarantees that have been submitted regarding the spectrum shall be kept alive by TSPs. until the payment is made.*

*(vi) In the event of any default in making payment of annual instalments, interest would become payable as per the agreement alongwith penalty and interest on penalty automatically without reference to Court. Besides, it would be punishable for contempt of Court.*

*(vii) Let compliance of order be reported by all TSPs. and DoT every year by 7th April of each succeeding year.*

*In the Suo Motu Contempt Petition, in view of the reply filed and compliance reported, and an unconditional apology tendered, which we accept, we discharge notice issued to Shri Mandar Deshpande and drop the proceedings.*

*Before parting with the proceedings, we place on record our appreciation for the fair and able assistance provided by Shri Tushar*

*Mehta, Solicitor General, and the respective senior counsel appearing on behalf of respective parties.*

*Accordingly, the pending interlocutory applications are disposed of in terms of the aforesaid order/directions.*

*All the previous orders stand modified accordingly.”*

**9.** In view of the aforesaid observations of Hon'ble the Supreme Court, a note was prepared and was placed before the Cabinet of the Union of India(UOI). It appears that the Press Note was released which is at Annexure P-2 Dated 15.9.2021. This Press Note which is at Annexure P-2, has given a cause to the petitioner to file the present petition for getting the benefit of the moratorium which was denied to the petitioner vide communication dated 7.12.2021  
**(Annexure P-1)**

**10.** Much has been argued by learned senior counsel for the petitioner and about the discrepancy between two annexures viz., P-1 and P-2. Much reliance has been placed upon the Press Note **(Annexure P-2)**. Petitioner relied upon the Press Note, whereas, the respondent – UOI is now relying upon **note which is approved by the Cabinet.**

**11.** Notice was issued by this Tribunal and now an affidavit has also been filed by UOI. Looking to the affidavit filed by UOI, paragraphs 5, 6 and 7 of the affidavit by the UOI reads as under :

*"5. That the cabinet decision which has been relied upon by the Petitioner and annexed with its petition is a copy of the press release, which carries only the gist of the decision which has been taken by the Cabinet.*

*6. That it is submitted that the Respondent- DOT had issued a note dated 14.09.2021 to be discussed and decided by the Cabinet for providing moratorium/ deferment of payment of dues arising from the AGR judgement. The said note had mentioned a specific category of licensees – Access Service Licensee, who will be provided such benefit, i.e. the AGR Moratorium applies only to TSP having access service license which are not under CIRP or related litigation or closed down (under liquidation or liquidated). That the Cabinet approved the said note in its entirety without any limitation/ restriction. Thus the note which was provided by the Respondent has been approved in its full vigor and is no way modified by the decision as communicated in the press release.*

*7. That the Petitioners were communicated vide letter dated 7.12.2021 that the decision of the cabinet is restricted only to few Telecom Service Providers. The said communication is in consonance with the cabinet note approved by the cabinet in its decision dated 15.09.2021. Thus the petition needs to be dismissed." (emphasis supplied)*

**12.** In view of this affidavit, it appears that **the Press Note which was released, was not in consonance with, a decision of the Cabinet.**

**13.** Looking to the affidavit filed by the respondent **the benefit of the moratorium** / deferment of the payment of the dues arising out of AGR judgment **is applicable only to this specific category of licenses viz.- Access Service Licensee. As per Cabinet Decision only those TSPs having Access Service License will be entitled to benefit of moratorium/ deferment of payment of dues arising from AGR judgment.**

**14.** In view of this fact, no error has been committed by the respondent in rejecting the claim of the petitioner for getting benefit of moratorium vide communication dated 7.12.2021 (**Annexure P-1** to the memo of this petition).

**15.** **It ought to be kept in mind that the benefit of moratorium can be restricted to a specific category of licensees.** The respondent has **all the power, jurisdiction and authority to restrict the grant of benefit of moratorium to a specific category of licensees viz.- Assess Service Licensee.**

**16.** In view of these facts, we see no reason to entertain this petition and the same is, therefore, dismissed.

.....  
**(Justice D. N. Patel)**  
**Chairperson**

.....  
**(Subodh Kumar Gupta)**  
**Member**

**/NC/**