

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

Dated: 28/11/2022

Telecom Petition No. 9/2021

K Net Solutions Pvt Ltd.Petitioner(s)
Versus
Union of India and Anr.Respondent(s)

BEFORE:

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

**For Applicants/Appellants/Petitioners
Advocate**

Mr. Ajay Kumar

For Respondents Advocate

Mr. Dhruv Tamta

ORDER

1. Counsel appearing for the petitioner submitted that this petition has been preferred for the following prayers: -

- a) "Stay the operation of impugned letter dated 09.02.2021, issued by the respondent No.2 and all its consequential actions till the final adjudication of the present petition by this Hon'ble Tribunal.
- b) Direct the respondent no. 1 to issue acceptance of surrender "as per letter dated 27.12.2019 of the petitioner with respect to its License Agreement No. 20-1101/2019-AS-I dated 04/07/2019 for the access services in Category-B, Chennai.

Or

- c) Pass such other and further order(s) as this Hon'ble Tribunal may deem fit and proper on the facts and circumstances of the case."

2. It is further submitted by counsel appearing for the petitioner that the issues involved in this Telecom Petition are no more res-integra. The issue involved in this petition have already been decided in **T.P. No. Petition No.83 (C) of 2005-Vertec Communications Ltd. Vs. Union of India decision dated 8th September, 2005** and as well as in **Telecom Petition No. 32 of 2021 - The Tata Power Company Ltd Vs. Union of India decision dated 9th March, 2022**. It is further submitted by counsel appearing for the petitioner that these petitions have been upheld by Hon'ble the Supreme Court in Civil Appeal No. 7955 of 2022 vide order dated 18.11.2022.

3. It is further submitted by the counsel appearing for the petitioner that they are relying upon the aforesaid two decisions rendered by this Tribunal and by the virtue of the aforesaid decisions, the decision of the respondent dated 9.2.2021 of the respondent which is at **Annexure P-1**. This decision has already been quashed in the earlier matters in light of **Clause 10.3 of licence agreement** between the parties to this litigation.

4. Counsel appearing for the respondent has submitted that it is true that on the earlier occasions the issue involved in the present Telecom Petition has already been decided in the two different telecom petitions and in a Civil Appeal No. 7955 of 2022 vide order dated 18.11.2022 Hon'ble the Supreme Court has confirmed the decision of this Tribunal looking to Clause 10.3 of the licence agreement.

5. Having heard the counsels for both the sides and looking to the facts and circumstances of the case and the decision rendered by this Tribunal in **T.P. No. Petition No.83 (C) of 2005 -Vertec Communications Ltd. Vs. Union of India decision dated 8th September, 2005** and as well as in **Telecom Petition No. 32 of 2021 - The Tata Power Company Ltd Vs. Union of India decision**

dated 9th March, 2022, it appears that in light of Clause 10.3 of the licence agreement the communication issued by the respondent dated 9.2.2021 which is at Annexure P-1 deserved to be quashed and is hereby quashed and set aside. The decision of this Tribunal has also been confirmed by Hon'ble the Supreme Court in Civil Appeal No. 7955 of 2022 vide order dated 18.11.2022.

6. For the ready reference the relevant part of the decision rendered by this Tribunal in **T.P. No. Petition No.83 (C) of 2005 - Vertec Communications Ltd. Vs. Union of India decision dated 8th September, 2005** reads as under: -

"We cannot accept either of the above arguments advanced on behalf of the Respondents. Term 10.3 which provides for termination for convenience has not provided for the acceptance or non-acceptance of the surrendered licence by the licensor, on the contrary it enables a licensee to surrender a licence by giving an advance notice of 30 days to the licensor. The right of the licensor accepting or rejecting such surrender is not contemplated under this term of the licence condition. The consequence of such surrender or termination envisaged in term 10.5.4 obligates the return of the bank guarantee by the licensor after expiry of six months by making adjustments towards any dues which the licensee is liable to pay as on that date. It is an admitted fact that as on date of expiry of the period of six months i.e. 8.8.2003, no determination of any dues liable to be paid by the Petitioner has been made, hence right of the Respondents over the Performance Bank Guarantee ceases w.e.f. 8.8.2003 and in view of the mandatory language of term 10.5.4 of the terms and conditions of licence there is obligation on the Respondents/licensor to return the guarantee. The provision made in terms of 13.8 on which the reliance has been placed by the learned counsel for the Respondents, in our opinion, does not override the obligation of the Respondents/licensor from returning the performance bank guarantee contemplated under term 10.5.4 on the expiry of six months after termination of the licence. Term 13.8 only provides a right on the licensor to decide the penalty that may be levied for breach of terms and conditions of the licence and if a bank guarantee is current at that point of determination, then such penalty as determined could be appropriated from the bank guarantee if it is current."

(Emphasis Supplied)

7. Moreover in one more Telecom Petition the decision has been rendered by this Tribunal being **Telecom Petition No. 32 of 2021 - The Tata Power**

Company Ltd Vs. Union of India decision dated 9th March, 2022. The relevant part of this judgment reads as under: -

“17. It is also found and held that subsequent correspondences made in the year 2014 or in 2021 requiring the petitioner to submit various documents and accounts are of no help to the respondent because the license could be surrendered by the petitioner and it was in fact surrendered under the authority of Board of Directors which has not been questioned. As a result, it is found that Clause 10.3 stood satisfied and after 30 days of the surrender intimation in 2006, the License Agreement itself came to an end. Six months thereafter, in absence 13 of any demand being raised against the petitioner, the PBG of Rs. 2 crores had to be returned as a consequence of the surrender. This obligation, the respondent failed to honour and caused unnecessary financial burden upon the petitioner who had to keep the PBG renewed for long number of years. The demand for accounts for the period after the surrender is without any authority because the License Agreement had come to an end. Hence, the respondent must now return the PBG which has not been renewed on account of interim orders of this Tribunal, within four weeks from today. In case the PBG is not returned within the time indicated, all concerned shall treat the PBG as cancelled and nullified by this order.”

(Emphasis Supplied)

8. For ready reference Clause 10.3 of the licence agreement between the parties to this litigation which is at Annexure P-2 reads as under: -

“10.3 Exit from Service Delivery (Business by a VNO)

10.3(i) In case a VNO wants to exit/surrender its License/Authorisation(s), it shall notify 60 calendar days in advance to the licensor, TRAI and NSO. VNO shall notify 30 calendar days in advance to its customers.

10.3(ii) For the services other than mobile, all customers of VNO will be migrated to any of the tariff plan of the parent NSO without any extra charges e.g. upfront/activation charges. The mobile services customers of the VNO can port their mobile numbers, using MNP facility, to the service providers of their choice. These provisions shall be built-in as mandatory provisions in the commercial agreement between the NSO and the VNO.”

9. In view of the aforesaid licence agreement especially Clause 10.3 and also looking to the earlier two decisions by this Tribunal also looking to the fact that Hon’ble the Supreme Court has already confirmed the decision rendered by this Tribunal in Civil Appeal No. 7955 of 2021 order dated 18.11.2022, we hereby quash and set aside the communication issued by the respondent

dated 9.2.2021 which is at Annexure P-1 to the memo of this petition and the surrendering of the licence by the petitioner is made effective after 60 calendar days after receiving the copy of the licence by the respondent. The respondent had received the communication from the petitioner on 27.12.2019.

10. The Financial Bank Guarantee (FBG) given by the petitioner has not been encashed by the respondent as submitted by the counsel for the petitioner, hence no question whatsoever arises to return the money by the respondent to the petitioner.

11. With these observations, this Telecom Petition is hereby allowed and disposed of to the aforesaid extent.

(JUSTICE D. N. PATEL)
CHAIRPERSON

(SUBODH KUMAR GUPTA)
MEMBER

/NS/