

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL  
NEW DELHI

Dated: 08/11/2024

R A/3/2022

ARISING OUT OF ORDER DT.14.09.2007

IN

BROADCASTING PETITION/4/2007

With

MISC APPLICATION/284/2022

With

MISC APPLICATION/285/2022

Millenium Delhi Broadcast LLP

....Petitioner(s)

Versus

Union Of India

....Respondent(s)

**BEFORE:**

**HON'BLE MR. JUSTICE DHIRUBHAI NARANBHAI PATEL, CHAIRPERSON**

**HON'BLE MR. SUBODH KUMAR GUPTA (MEMBER)**

**For Applicants/Appellants/Petitioners**

**For Respondents Advocate**

**Advocate**

Ms. Nidhi Raman

Mr. Nikhil Majithia

**ORDER**

**1. M.A. No. 284 of 2022** - This application has been preferred by the Review Applicant (original petitioner) for condonation of delay in filing Review Application. **The delay is of 5343 days.**

**2.** Counsel appearing for the applicant (original petitioner) submitted

that the original petitioner had preferred Petition No.4(C) of 2007 with the following prayers: -

“In the circumstances, it is therefore, prayed that this Hon'ble Tribunal may graciously be pleased to: -

(A) Declare that Petitioners delay in commencing broadcast on 29.8.2002 is condoned due to bonafide reasons as applicable to other broadcasters in Chennai vide order of Union Cabinet dated 13.7.2005.

(B) Hold and declare that the Applicant was not required to deposit the balance of the first year's license fee on 29.8.2002 even before the WPC's intimation that the wireless operational license was ready for being issued.

(C) Hold and declare that the Respondent could not have issued the Deemed Operational Status to the Petitioner on 29.8.2002 which would have reduced the effective license period as stated in the License Agreement.

(D) Hold and declare that the action of the Respondent Union of India to invoke and encash the bank guarantee of Rs. 7.125 crores is arbitrary, high handed and is contrary to the license agreement and the tender document and further restrain the Union of India from encashing the bank guarantee.

(E) Direct the Respondent to return the Bank Guarantee for an amount Rs. 7.125 Crores to the Petitioner.

(F) Direct the Respondent to refund with penal interest, the advance license fee of Rs. 62.5 lacs paid by the Petitioner in March 2000 and the EMD of Rs 2 lacs paid by the Petitioner in October 1999 keeping in mind the condonation of delay due to bonafide reasons as per the order of the Union Cabinet dated 13.7.2005.

(G) Direct the Respondent to compensate the Petitioner to compensate the Petitioner with a sum of Rs. 40 lacs which is the approximate cost incurred by the Petitioner in keeping its Bank Guarantee of Rs. 7.125 crores alive till date and a sum of Rs. 20 lacs in maintaining its' operations from March 2000 till 29.8.2002.

(H) Pass such other relief as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.”

**3. Counsel appearing for the applicant (original petitioner) submitted that the petition preferred by the petitioner was partially allowed by this Tribunal vide judgment and order dated 14.9.2007.**

**4.** It is submitted by counsel for the petitioner that prayer – F which is a refund of the licence fee with final interest was not allowed and, therefore, cross objections was preferred by the original petitioner

before **Hon'ble the Supreme Court of India** in Civil Appeal preferred by the Union of India.

5. The Civil Appeal preferred by Union of India is bearing Nos.2332-2333 of 2008. Both the aforesaid Civil Appeals were admitted by **Hon'ble the Supreme Court of India**. The admission of the Civil Appeals was ordered by **Hon'ble the Supreme Court of India** dated 28.3.2008 which is at **Annexure A-1** to the memo of this **Review Application**.

6. In the admitted appeal the cross objections were preferred by the original petitioner seeking refund of earnest money deposit and advance licence fee.

7. Hon'ble the Supreme Court of India has dismissed the Civil Appeals preferred by Union of India by detailed judgement and order dated 2.5.2022 wherein there are observations about the cross objections preferred by the original petitioner in **paragraph no.14**.

8. Looking to the paragraph no.14 of the judgment and order of Hon'ble the Supreme Court of India dated 2.5.2022 in Civil Appeal Nos. 2332 and 2333 of 2008, it has been observed that Hon'ble the Supreme Court of India rejects the request of the present petitioner seeking direction for refund of the advance licence fee and earnest money deposit.

9. Counsel for the applicant (original petitioner) submitted before this

Tribunal that there is no decision on merits by Hon'ble the Supreme Court of India upon refund of the advance licence fee and Earnest Money Deposit. They have preferred the Review Application before this Tribunal along with the present application of delay condonation having delay of 5343 days.

**10.** Counsel for the applicant has submitted that as there is no decision on merit of the refund of advance licence fee and Earnest Money Deposit, both by this Tribunal as well as Hon'ble the Supreme Court of India, the Review Application has been preferred for review of the decision given by this Tribunal in Petition No.4 (C) of 2007 judgement and order dated 14.9.2007 and this is the main reason for delay of 5343 days because Hon'ble the Supreme Court of India has dismissed the two Civil Appeals preferred by the Union of India along with the dismissal of cross objections given by this applicant by judgment and order dated 2.5.2022.

**11.** Counsel for the original petitioner has placed reliance upon the following decisions:

**(i) Balwant Singh Vs. Jagdish Singh & Ors. (2010) 8 SCC 685 (paragraph 34, 35, 37-38).**

**(ii) Mool Chandra Vs. UOI & Anr. (C.A. No. 4835-36 (2024) INSC 577 (paragraph – 20)**

**(iii) Esha Bhattacharjee Vs. Managing Committee of Raghunathpur**

**Nafar Academy & Ors. (2013)**

**(iv) M.P. Steel Corp. Vs. Commissioner of C.E. (2015) 7 SCC 58  
(paragraph 7 SCC 58 (paragraph nos. 9, 10,21,29,35,38,39,40 and 43)**

**(v) HDFC Bank Ltd. & Ors. Vs. Union of India & Ors. (2023) 5 SCC 627  
(paragraph nos. 30,31,32,34 and 41)**

**12.** We have heard learned counsel appearing on behalf of the Union of India Ms. Nidhi Raman. She has vehemently opposed the delay condonation and has submitted that there is a gross delay on the part of the applicant (original petitioner) and there are no reasons for condonation of the delay much less reasonable reasons for condonation of delay.

**13.** Counsel for the respondent has submitted that judgment was delivered by this Tribunal in original Petition No.4(c) of 2007 on 14.9.2007 and, thereafter and the petitioner has preferred cross objections for getting refund of the advance licence fee and Earnest Money Deposit in Civil Appeals preferred by the Union of India bearing Nos.2332 of 2008 and 2333 of 2008. Both the Civil Appeals were dismissed by Hon'ble the Supreme Court of India and as per paragraph 14 of the judgment of Hon'ble the Supreme Court of India the cross objections preferred by this applicant (original petitioner) has also been dismissed vide judgment dated 2.5.2022 which is annexed with memo of this delay condonation application.

**14.** Counsel for Union of India has placed reliance upon paragraph 14 of the decision rendered by Hon'ble the Supreme Court of India dated 2.5.2022 in Civil Appeal Nos.2332 of 2008 and 2333 of 2008 and has submitted that as Hon'ble the Supreme Court of India has given reasons that the points raised in cross objections were never raised before this Tribunal and for this reason cross objections preferred by the present applicant (original petitioner) were rejected. Thus, the issue of refund of advance licence fee and Earnest Money Deposit cannot be allowed to be reopened and hence, also the Review Application is not tenable at law and there are no reasons for condonation of delay much less there are reasonable reasons and, therefore, the present delay condonation application may not be entertained by this Tribunal.

**15.** It is further submitted by counsel for the respondent that the original petitioner was well aware about the decision rendered by this Tribunal dated 14.9.2007 but they have never preferred the Review Application in the very same year i.e. in the year 2007. The original petitioner was lethargic enough for not to prefer the Review Application before this Tribunal in the very same year of 2007 or within couple of months after the decision is rendered on 14.9.2007 by this Tribunal in original Petition No.4 (C) of 2007.

**16.** It is further submitted by counsel for the respondent that there was already a prayer in the petition about the refund of advance licence fee and Earnest Money Deposit. Other prayers have been granted and no

argument was canvassed for this very prayer.

**17.** It is submitted by counsel for the respondent that if counsel for the original petitioner has given up or not argued out for any of the prayer/prayers and when the cross objections of such petitioner for getting a relief under a prayer which were never argued before this Tribunal, has been rejected and the same cannot be again reopened in a Review Application by this Tribunal.

**18.** Counsel for the respondent – Union of India has placed reliance upon the following decisions: -

**(i) Office of the Chief Postmaster General and Ors. Vs. Living Media India Ltd. And Anr. – Civil Appeal No.2474-2475 of 2012.**

**(ii) Union of India Vs. Sudhir Kumar Ray [AIR 1975 Ori 64] Division Bench (on the proposition that failure to argue a point is not envisageable ground for review under O47 R1, CPC (paragraph -11)**

**(iii) Union of India and Ors. Vs. Mohd. Nayyar Khalil and Ors. (2000) 9 SCC 252.**

**(iv) Subhash Vs. State of Maharashtra and Anr. – (AIR 2002 SC 2537) (paragraph -3) (delay)**

**(v) Zahira Habibullah Sheikh Vs. State of Gujarat (2004) 5 SCC 353 – paragraph 4 and 6 (delay and latches)**

**19.** Having heard the counsel for the respondent and looking to the facts and circumstances of the case, **we see no reasons to condone the delay of 5343 days in preferring the Review Application by this applicant. The reasons for rejection of this delay condonation application are -**

**(i)** Review Application has been preferred by the original petitioner in the year 2022 for review of the decision rendered by this Tribunal dated **14.9.2007** in original petition No.4(C) of 2007. Thus, there is a delay of 5343 days in preferring the present Review Application. Thus, there is delay of approximately one and a half decade, in preferring the review application.

**(ii)** We have perused the reasons given in this delay condonation application. The major reason advanced by the original petitioner is the decision rendered by Hon'ble the Supreme Court of India dated 2.5.2022 in Civil Appeal Nos.2332 and 2333, both of the year 2008. One more reason has been advanced by counsel for the petitioner that this Tribunal has not decided the issue of refund of advance licence fee and Earnest Money Deposit nor the same has been decided by Hon'ble the Supreme Court of India. Counsel for the petitioner has relied up the paragraph 3 of the delay condonation application and we have perused the same. The aforesaid reasons are not the reasonable reason for condonation of delay.

**(iii)** The delay of 5343 days has not been explained, at all by this

applicant.

**(iv)** The petitioner is well aware about the decision rendered by this Tribunal on 14.9.2007 in original Petition No. 4(C) of 2007. The petitioner is not a layman or illiterate. Petitioner knows the fine intricacies of law and they must have argued accurately so that partially the original petition was allowed by this Tribunal. If such a vigilant petitioner has not argued for a particular prayer, in the facts of the present case, the prayer – (F) in the original petition and when it is not granted by this Tribunal (because of no arguments canvassed by the counsel for the petitioner) and when cross objections preferred by the original petitioner seeking the very same relief – (F) has also been rejected by Hon’ble the Supreme Court of India, the delay of 5343 days, in preferring Review Application cannot be condoned.

**(v)** For the ready reference paragraph 14 of judgment rendered by Hon’ble the Supreme Court of India dated 2.5.2022 in Civil Appeal Nos.2332 and 2333 of 2008 and in cross objections preferred by this applicant read as under: -

“14. We are not inclined to entertain the cross objections of the respondent seeking refund of advance licence fee as the said point was not argued before the Tribunal. Thus, we reject the request of the respondent that the appellants should be directed to refund the advance license fee and EMD.

15. For foregoing reasons, the judgment of the Tribunal is upheld. The appeals are dismissed.”

***(Emphasis Supplied)***

**(vi)** In view of the aforesaid decision, it is explicitly clear that Hon’ble the Supreme Court of India has given reasons in paragraph 14 and consequences of the reasons has also been given in the very same paragraph which is a rejection of the claim of refund of Advance Licence Fee and Earnest Money Deposit.

**(vii)** The peculiar facts of the present case that –

(A) out of several prayers in the original petition before this Tribunal no arguments were canvassed for prayer – (F) which is for refund of advance licence fee and refund of earnest money deposit and;

(B) looking to the fact that observations in paragraph 14 of the judgment of Hon’ble the Supreme Court of India in judgment dated 2.5.2022 as quoted hereinabove and;

(C) also looking to the fact of the present case that there are no reasonable reasons for condonation of 5343 days delay makes the present case different then the fact of the cases upon which the reliance is placed by the counsel for the petitioner and hence, the judgements cited by counsel for the petitioner are of no help to the petitioner. Hence, we are not dealing with each and every decision

upon which the reliance is placed by the counsel for the petitioner for rejection of the present delay condonation application.

**20.** Even otherwise also, there are no justifiable reasons for condonation of delay, worth the name in this Miscellaneous Application for condonation of delay. The applicant is lethargic enough, in filing Review Application after 5343 days' delay. There is no explanation for delay of approximately 15 years.

**21.** Counsel appearing for the Union of India has also relied upon the following decisions and it has been held in paragraphs as under:

**(i) Office of the Chief Postmaster General and Ors. Vs. Living Media India Ltd. And Anr. – Civil Appeal No.2474-2475 of 2012.**

**(ii) Union of India Vs. Sudhir Kumar Ray [AIR 1975 Ori 64] Division Bench (on the proposition that failure to argue a point is not envisageable ground for review under O47 R1, CPC (paragraph -11)**

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**(iv) Subhash Vs. State of Maharashtra and Anr. – (AIR 2002 SC 2537) (paragraph -3) (delay)**

**(v) Zahira Habibullah Sheikh Vs. State of Gujarat (2004) 5 SCC 353 – paragraph 4 and 6 (delay and latches)**

**22.** In view of the aforesaid decisions and looking to the memo of this Review Application, there are no reasonable reasons for condonation of delay of 5343 days.

**23.** As a cumulative effect of the aforesaid facts especially that there are no reasonable reasons for condonation of delay, and also looking to the aforesaid decisions rendered by Hon'ble the Supreme Court of India and also looking to the paragraph 14 of the decision rendered by Hon'ble the Supreme Court of India in the matter of present applicant decision dated 2.5.2022 in Civil Appeal Nos. 2332 of 2008 and 2333 of 2008 that cross objections preferred by this applicant have been rejected.

**24.** We see no reason to entertain the present Review Application. Hence, the delay is not condoned, the present M.A. No.284 of 2022 is hereby dismissed.

**25.** As the delay has not been condoned, the Review Application No.3 of 2022 as well as M.A. No.285 of 2022 are also hereby disposed of.

**26.** Vide our order dated 21.7.2022, we had directed this applicant (original petitioner) to deposit Rs.2.5 Lakhs. This amount has been deposited by this applicant (original petitioner) which is deposited before the Registrar of this Tribunal and now the aforesaid amount is deposited in Fixed Deposit in Nationalised Bank.

**27. This application is hereby dismissed with a cost of Rs.5,000/- . The remaining amount of Rs.2,45,000/- and the interest accrued upon Rs.2.5 Lakhs shall be returned to the petitioner by Account Payee Cheque and after getting the proper identification, the cheque shall be handed over.**

**(JUSTICE D. N. PATEL)  
CHAIRPERSON**

**(SUBODH KUMAR GUPTA)  
MEMBER**

/NS/