

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL

NEW DELHI

Dated 18th February, 2013

Petition No.45 of 2013

Sistema Shyam Teleservices Limited (Karnataka) ...Petitioner

Vs.

Union of India ...Respondent

Petition No.46 of 2013

Sistema Shyam Teleservices Limited(A.P.) ...Petitioner

Vs.

Union of India ...Respondent

Petition No.47 of 2013

Sistema Shyam Teleservices Limited(West Bengal) ...Petitioner

Vs.

Union of India ...Respondent

Petition No.48 of 2013

Sistema Shyam Teleservices Limited(Tamil Nadu) ...Petitioner

Vs.

Union of India ...Respondent

Petition No.49 of 2013

Sistema Shyam Teleservices Limited(Bihar) ...Petitioner

Vs.

Union of India ...Respondent

Petition No.50 of 2013

Sistema Shyam Teleservices Limited(Maharashtra) ...Petitioner

Vs.

Union of India ...Respondent

Petition No.51 of 2013

Sistema Shyam Teleservices Limited(Delhi) ...Petitioner

Vs.

Union of India ...Respondent

Petition No.52 of 2013

Sistema Shyam Teleservices Limited(U.P. West) ...Petitioner

Vs.

Union of India ...Respondent

Petition No.53 of 2013

Sistema Shyam Teleservices Limited(Mumbai) ...Petitioner

Vs.

Union of India ...Respondent

Petition No.54 of 2013

Sistema Shyam Teleservices Limited(U.P.East.) ...Petitioner

Vs.

Union of India ...Respondent

Petition No.56 of 2013

Sistema Shyam Teleservices Limited(Kolkata) ...Petitioner

Vs.

Union of India ...Respondent

Petition No.57 of 2013

Sistema Shyam Teleservices Limited(Haryana) ...Petitioner

Vs.

Union of India ...Respondent

Petition No.58 of 2013

Sistema Shyam Teleservices Limited(Gujarat) ...Petitioner

Vs.

Union of India ...Respondent

Petition No.59 of 2013

Sistema Shyam Teleservices Limited(Kerala) ...Petitioner

Vs.

Union of India ...Respondent

BEFORE:

HON'BLE MR. P.K.RASTOGI, MEMBER

For Petitioner : Mr. Ramji Srinivasan, Sr. Advocate
Ms. Vibha Dhawan, Advocate
Mr. Nitin Kala, Advocate
Mr. Saketa Musinipally

For Respondent : Mr. Vineet Malhotra, Advocate

ORDER

The Respondent has raised a provisional assessment of annual licence fee for the financial year 2010-2011 vide its letter dated 24.7.2012 in respect of 15 circles where the Petitioner was/is operating. Vide its letter dated

21.9.2012, the Respondent asked the Petitioner again to make the payment of Rs.12,94,40,753/- within 10 days from the date of issue of this letter. The Petitioner has filed this petition on 04.02.2013 against the demand raised by the Respondent on the ground :-

- (a) That the PSTN charges and roaming charges are not allowed by the Respondent contrary to the condition 19.1 of the licence agreement;
- (b) The Respondent has wrongly included the revenue derived from interest income and miscellaneous income.
- (c) Apart from this, there is a difference in calculation relating to non-reconciliation of the accounts of the circles.

2. Mr. Ramji Srinivasan, learned senior counsel appearing on behalf of the Petitioner states that as far as interest income and miscellaneous income are concerned, the right of the Respondent to include such income as a part of gross revenue has been questioned by the telecom operators. This Tribunal has issued the stay order of such demand in other petitions and are pending for final adjudication in this Tribunal. He further contended that the PSTN charges and roaming charges given to the other operators should be excluded from the gross revenue calculated, but the same has not been done.

3. Mr. Vineet Malhotra, learned counsel appearing on behalf of the Respondent states that in its letter dated 27.8.2012 the Government of India had informed the Petitioner that the deduction in the AGR for Rs.23.6 crores was disallowed as the proofs of such payment were not furnished. We may see the relevant portion of this letter dated 27.8.2012 :-

“2010-11 :- You have claimed deduction in the AGR for Rs.23.6 crores. This was fully disallowed for non-furnishing of proofs of payment. You have furnished proofs of payment only on 08.08.12 after submitting the verification report to the DoT HQ on 16.02.12. Similar is the case for 2011-12.”

Mr. Malhotra further submitted that Petitioner’s licences in all the circles, except Rajasthan, have been cancelled. The Respondent’s interest will be prejudiced, if any stay is granted by this Tribunal.

4. It is not understood whether the proof which was submitted on 08.8.2012 has been considered by the DoT while raising the demand on 21.9.2012.

The issue relating to interest and other miscellaneous income is under adjudication of this Tribunal in various petitions. Whatever findings are made in other petitions, the same will be applicable to this petition also.

5. It is necessary to know whether the PSTN charges and roaming charges for which the proof has been submitted by the Respondent, has been allowed for calculating the demand. It is necessary that the Respondent file reply before considering this matter. Accordingly, it is directed that the Respondent may file its reply within fifteen days. Rejoinder thereto may be filed by the Petitioner within one week thereafter. Put up for hearing on interim prayer on 18.3.2013

6. When inquired about the Financial Bank Guarantee available with the Respondent, no definite record was available with the parties at the time of hearing although the Petitioner informed that Financial Bank Guarantee of Rs.76.00 crore is still valid. Therefore, I am of the opinion that end of justice will be sub-served if following direction is issued ;-

“Pending hearing on the interim prayer, it is directed that the Respondent will not take any coercive action for enforcement of its demand, however the Petitioner will provide a bank guarantee within a week equivalent to the amount of demand in each circle, if the Financial Bank Guarantee to that extent is not subsisting in any circle.”

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(P.K. Rastogi)
Member

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