TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL
NEW DELHI

Dated 23 February, 2016

Petition No. 196 of 2013

Reliance Communication Ltd.,
Mumbai/New Delhi ..... Petitioner
Vs.
Union of India ..... Respondent

Petition No.241 of 2013

M/s Reliance Communications Ltd.,
Mumbai .....Petitioner
Vs.
Union of India, MoC & IT, New Delhi .....Respondent

Petition No.248 of 2013

M/s Reliance Communications Ltd.,
Mumbai .....Petitioner
Vs.
Union of India, MoC & IT, New Delhi .....Respondent

Petition No. 250 of 2013

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

Petition No. 278 of 2013

M/s Reliance Communication Ltd. ..... Petitioner
Vs.
Union of India .....Respondent

Petition No. 352 of 2013
(with M.A. 270 of 2013)

Reliance Telecom Ltd. .....Petitioner
Vs.
Union of India .....Respondent

Petition No.393 of 2013
(With M.A.No.300 of 2013)

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

BEFORE:

HON'BLE MR. JUSTICE AFTAB ALAM, CHAIRPERSON
HON'BLE DR. KULDIP SINGH, MEMBER
HON'BLE MR. BIPIN BIHARI SRIVASTAVA, MEMBER

For Petitioner : Mr. Navin Chawla, Advocate
Ms. Manali Singhal, Advocate
Mr. Santosh Sachin, Advocate

For Respondent : Mr. S.S. Shamshery, Advocate
Mr. Vikas Malik, Advocate

O R D E R

Kuldip Singh: The short question that arises for consideration in these petitions is in regard to the interest levied on penalties, imposed on the petitioner, for violation of the norms related to verification of Customer Application Forms (CAFs).

The petitioner is a telecom service provider. It has been granted license under section 4 of the Indian Telegraph Act, 1885 to provide mobile telephone services in various telecom circles. The facts of the case, unless otherwise stated, have been taken from Petition No. 196 of 2013. However, as the facts in other petitions are similar to these facts, and the issue of dispute in regard to levy of interest is the same, these are being disposed of by this common order.

Petition No. 196 of 2013 pertains to the license of the petitioner for certain areas of Punjab. The respondent has imposed penalties upon the petitioner from time to time for its alleged non – compliance with the subscriber's verification form and not making payments of the same by the petitioner. Though the petitioner has questioned the imposition of the

penalties on merits in these petitions, the only issue pressed during the hearing was with regard to interest component on the demands raised.

The case of the petitioner is on two grounds :

Firstly, that in terms of the circular of the respondent dated 4.11.2010, the service provider made a representation against the penalty imposed by DDG TERM Cell, DoT. Such penalty was to be deposited, as per decision of the DDG TERM Cell, within one week from the date of decision of the TERM Cell or within 21 days from the date of issue of show cause notice, whichever is later.

Secondly, the various circulars and guidelines issued by the respondent were challenged before the Tribunal in Petition No. 252 of 2011. In any case, the demanded penalty imposed had to be revised and a fresh demand was to be raised in accordance with the judgment dated 12.4.2012 of the Tribunal in that case.

Heard Mr. Chawla, counsel for the petitioner and Mr. Shamshery, counsel appearing on behalf of the Union of India.

Recently, in the case of Tata Teleservices Ltd. Vs. Union Of India[1], it was decided that since the demand had to be recalculated by the DoT in terms of the Tribunal judgment in petition no. 252 of 2011, the original demand had become non-est and the demand would fructify only when the revised demand was raised. The demands of interest were set aside. The relevant portion of the judgment is as under:

> "We may note here that on 26.04.2013, the respondent issued a circular that ,inter alia, provided as under:
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> > "The demands which have either not been paid at all or have been partially paid by the operators may be recovered as per directions contained in above-said para 332(xi) of TDSAT Judgment dated 12.04.2012 i.e. **calculating financial penalty on the principals as it is followed in the Income Tax System**." (emphasis supplied)."
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> From the above circular of the respondent, it is obvious that it was aware that the financial penalty had to be recalculated in terms of the judgment of the Tribunal. We also note that though the judgment was passed in April, 2012, the respondent issued the above circular after a year and the respondent took yet one more year to issue the impugned demands. We also note that the short payments calculated in the impugned demands are far less than the amount of interest calculated on these. To take a few examples, against the original demand dated 02.08.2010 for an amount of Rs. 75,56,000/-, the petitioner deposited Rs. 36,06,000/- on 04.07.2011 which, as per the revised demand calculated by the respondent and intimated to the petitioner on 28.07.2014, should have been 36,14000/- resulting in a short fall of Rs. 8000/-. However, since this revised demand is calculated by the respondent after more than two years, the interest on this short payment has in the meanwhile grown to 3,45,741.69/- Similarly interest on short payments of Rs.26000/- and Rs.10900/-, has become 8,55,348.98/- and 2,38,179.93/-
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> We find that the petitioner had acted bona-fide in calculating and depositing the amounts in terms of the interim order passed by the Tribunal and it was for the respondent to check, calculate and intimate the amounts in terms of the Tribunal judgment. Though the difference on this account is

[1] Petition no. 345 and 347 of 2014, judgment delivered on 23 November, 2015.

minor, the delay of more than two years on the part of the respondent has resulted in the huge interest which is under challenge.

Be that as it may, we find that the original demands were much more than the revised demand as calculated in terms of the Tribunal Judgment. Further, in view of the fact that the demand had to be recalculated in terms of the Tribunal's Judgment, the original demand had become non-est and the demand would fructify only when the revised demand was raised in terms of the judgment. We, therefore, find that the respondent is wrong in levying the interest from the date of original demand as well as on short payments. The impugned demands to the extent of interest component are accordingly set aside."(emphasis supplied).

However, in the above case, the petitioner had calculated and deposited the amounts in terms of the interim order passed by the Tribunal even without waiting for the DoT to raise fresh demand. In the present case, it is not so. In some of these petitions, revised demand, after recalculating the penalty in terms of the Tribunal judgment and the circular of the respondent dated 26.04.2013 ,have been raised including interest on the balance remaining unpaid at a rate of 2% above the prime lending rate (PLR) of the State Bank of India (SBI) from the date of original demand. In some other cases, the demand has been raised only for the principal amount. However, the principal amount has also not been fully paid by the petitioner but some partial payments, as per its own calculations, have been made.

In our view, the petitioner should have paid the principal amount as soon as it received the revised demands for the various service areas, and in any case, within a period of 21 days from the demand date, which is the time allowed for the payment. We may note here that this is also how the

respondent itself has understood in some of the service areas. For example, in the Andhra Pradesh Service Area[2], the revised demand raised as per the letter dated 16 July, 2013 is only for the balance of principal of Rs. 10,27,77,000/- . As per this letter, the amount is to be deposited within 21 days from the date of the letter failing which the amount of penalty shall be recovered with interest at the rate of 2% above the PLR of SBI. From this it appears that the respondent in this case accepted that the demand has fructified from the date of this letter. This is also apparent from the reply of the respondent[3] in this case which is as under:

> "6. It is pertinent to note that the Petitioner has misrepresented and is trying to mislead the Hon'ble tribunal by stating that the Respondent has vide its impugned Demand Letters dated 16.07.2013 and 18.07.2013 has (sic) levied revised Demand on Petitioner seeking to recover the balance amount of penalty along with interest @ 2% above the Prime Lending Rate (PLR) of the State Bank of India existing as on the beginning of the Financial year 2013. **A bare perusal of the impugned Demand Notices dated 16.07.2013 and 18.07.2013 shows that the Respondent has only sought the principal outstanding amount to be recovered from the Petitioner, calculated by the prescribed IT slab method as per the Hon'ble TDSAT judgment**……"(emphasis ours)

Be that as it may, once the revised demands were raised, the petitioner was required to pay the same within 21 days and is, therefore, liable to pay interest on the same from the 22nd day of the date of revised demand and till the same is paid.

[2] petition No. 241 of 2013

We now come to the question of rate at which the interest is to be paid for the above period. As per the respondent, the petitioner is required to pay interest at a rate which is 2% above the prime lending rate (PLR) of the state bank of India, in terms of the license agreement. In our view, a penalty imposed for violation of CAF verification guidelines does not constitute a payment due under the license and moreover, this itself being a penalty, a penal interest is not justified on delay of payment of the same. Keeping in view the prevailing market condition, in our view, an interest of 9% per annum is just and fair.

On the facts of the case and in light of the discussions made above, we would have directed the petitioner to pay the revised penalty demands after adjusting the amount already paid ,if any, along with interest at the rate of 9% from 22nd day of the date of the revised demands and till the time the same is paid but for another development that goes to the root of the matter. The imposition of penalties for CAF violations was challenged by another licensee namely Dishnet Wireless Ltd. before the High Court of Tripura in Civil Writ Petition no. W.P(C) 422 of 2012. Before the order reserved in the present case could be pronounced, the High Court of Tripura has held[4] the clause 10.2(ii) of the license agreement that provides for the imposition of

[3] Petition No. 241 of 2013, page 141, para 6 of the paper book.
[4] Dishnet Wireless Ltd. Vs. UOI and anr. Judgment delivered on 08.01.2016.

penalties for violation of the terms and conditions of the license, as opposed to the public policy, ultra vires and against statutory provisions.

In view of the judgment of the High Court of Tripura above, the Tribunal would refrain from making any order as indicated above until the legal position on the licensor's right to impose penalty is settled.

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(Aftab Alam)
Chairperson

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(Kuldip Singh)
Member

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(B.B. Srivastava)
Member

/NC/