

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

**Dated 11<sup>th</sup> December, 2018**

**Telecommunication Petition No.63 of 2018**

**(With M.A. No. 151 of 2018, M.A.No.155 of 2018 and M.A. No.363 of 2018)**

Loop Telecom & Trading Ltd.

... Petitioner

Vs.

Union of India

... Respondent

**BEFORE:**

**HON'BLE MR. JUSTICE SHIVA KIRTI SINGH, CHAIRPERSON**

**HON'BLE MR. A.K. BHARGAVA, MEMBER**

For Petitioner : Mr. Meet Malhotra, Sr. Advocate  
Mr. Chaitanya Safaya, Advocate  
Ms. Pallak Singh, Advocate  
Ms.Madhavi Agrawal,Advocate  
Mr. Ravi S. S Chauhan, Advocate

For Respondent : Ms. Pinky Anand, ASG  
Mr. A. P. Sahay, Advocate  
Mr. Indra Bhushan Prasad, Advocate  
Mr. Sumit Teterwal, Advocate

**ORDER**

**By S. K. Singh, Chairperson** – This petition filed on 25.4.2018 has been heard for final disposal after completion of pleadings. There is no dispute that this is a second attempt by the petitioner for claiming the same relief which the petitioner had sought from this Tribunal through Petition No.329 of 2012 but could not succeed in view of findings in the final Judgment and Order dated 16.9.2015 whereby Petition No.329 of 2012 and some other connected matters

were dismissed subject to some directions in respect of ancillary issues relating to bank guarantees / undertaking furnished by the petitioner. It is also not in dispute that the Judgment and Order dated 16.9.2015 was challenged by the petitioner through Civil Appeal Nos.1447-1467/2016. Those Appeals were heard by the Hon'ble Supreme Court on 13.5.2016 and were finally closed on withdrawal with the liberty sought by the petitioner that it could approach the Apex Court once again if it becomes so necessary.

2. The main prayer of the petitioner is to direct the respondent to refund the entry fees amounting to Rs.1454.94 crores paid by the petitioner to the respondent in respect of 21 UASLs granted to the petitioner and also for liquidated interest along with future interest. Before noticing the main issue(s), it may be noted in brief that the Hon'ble Supreme Court vide a judgment reported in (2012) 3 SCC 1 popularly known as 2G Judgment quashed 122 licenses including 21 licenses of the petitioner because it found the grant of licenses to be illegal. The petitioner's licenses for 21 circles granted on 3.3.2008 came bundled with Spectrum as per then prevailing policy and were valid for 20 years. For those licenses the petitioner had paid, in total, an amount of Rs.1454.94 crores as the entry fees / license fees. Since the licenses got quashed by virtue of the Supreme Court Judgment dated 2.2.2012, on 25.5.2012 petitioner filed Petition No.329 of 2012 as already noted earlier, seeking refund of the aforesaid amount paid by way of entry fee.

3. It is the case of the petitioner that the present petition is required to be filed before this Tribunal on account of findings rendered by this Tribunal in the

Judgment and Order dated 16.9.2015 itself and subsequent acquittal of the petitioner in a related criminal case lodged by CBI against several persons including some licensees and the petitioner. On the other hand, the stand of the learned Additional Solicitor General appearing on behalf of the respondent is unequivocal that on account of findings in the said Judgment of this Tribunal whereby the earlier petition was dismissed and also in view of withdrawal of the Appeal with a liberty that the petitioner could approach the Hon'ble Supreme Court once again if it becomes so necessary, this petition is not maintainable and must be dismissed on this preliminary ground without delving into the merits of other contentions raised on behalf of the petitioner.

4. On-going through the earlier Judgment of this Tribunal dated 16.9.2015 contained in Annexure P-16 at page 374-423 in Volume III, we find that after noticing the contentions and submissions of both the parties, the discussion of the submissions and relevant materials commenced at page 394. The Tribunal did find the soundness of some decisions of the respondent particularly in respect of set off policy to be not free from doubt and some of the defenses to be untenable but it could proceed to record at page 398 that the primary issue "is the entitlement of the petitioner to the refund and, if so, its realization through present proceedings before the Tribunal." The sustainability of the proceedings before the Tribunal was tested as a question of law. At page 399, after observing that restitution may be granted as a public law remedy, it was noted that Supreme Court's decision in 2G case is silent on this aspect (restitution) and it would not be a matter for the Tribunal to pronounce upon. Ultimately, at page 402 this Tribunal appears to have taken a view that the direction for refund as

claimed by the petitioner was outside the purview of the Contract Act and required exercise of Constitutional powers; it was clearly beyond the Authority of this Tribunal and hence the “petitioner must approach the Court that quashed its licenses, i.e., the Supreme Court and seek appropriate reliefs.” Further discussion at page 403 discloses that the Tribunal came to the conclusion that “Restitutionary remedy under section 65 of the Contract Act may not be available to the petitioner before the Tribunal.” At page 405, it was further held that “the exercise of judicial review by the Supreme Court took place far beyond the Contract Act paradigm.”

5. While aforesaid discussions and findings were relied upon by learned Additional Solicitor General in support of its preliminary objection to the maintainability on account of decisions already rendered in the same matter, on the other hand, on behalf of the petitioner the conclusions nos. (iii) & (iv) as recorded by this Tribunal at page 416/417 and a further observation at page 422 have been emphasized to support its stand that this Tribunal had observed that no direction for refund in terms of Section 65 of the Contract Act can be made at least till the petitioner is exonerated of the charges in the Criminal Trial, which was treated to be a cloud over petitioner’s claim for refund and this Tribunal declined to hold parallel proceedings along with Criminal Trial for removal of that cloud. At page 422 the Tribunal did observe that “in light of the discussions made above we come to the firm conclusion no direction for refund as claimed by the petitioner can be given by the Tribunal in its favour at least at this stage.”

6. According to the learned counsel for the petitioner now the petitioner stands exonerated in the Criminal Trial and hence, stage has changed and this Tribunal must consider petitioner's claim for refund denovo on merits in the light of changed factual situation.

7. The aforesaid submission on behalf of the petitioner cannot be accepted and the claim for refund cannot be considered denovo on merits by this Tribunal in view of the findings of this Tribunal highlighted by learned Additional Solicitor General and noted earlier. Conclusion No.1 at page 416 also supports those observations and findings because it has been concluded that petitioner's licenses were quashed in exercise of Constitutional powers and the Supreme Court order is in the realm of a public law remedy. In Conclusion No.2 it has been further held that the order of quashing of licenses by the Supreme Court cannot fit into the provisions of the Contract Act. Had this Tribunal intended to grant another chance to the petitioner to approach this Tribunal after acquittal in the Criminal Trial, some liberty in that regard would have been indicated, but while dismissing the petition no such liberty was granted to the petitioner. Further, in the Appeal before the Supreme Court, the petitioner could not succeed in seeking a liberty to approach this Tribunal again if it became necessary. On the other hand, it sought liberty to approach the Apex Court itself if it became so necessary. Hence, we have no doubt that it is not open for us to enter into merits of the petitioner's claim in view of above discussion.

8. This petition is accordingly dismissed as not maintainable. The remedy of the petitioner may lie in approaching the Hon'ble Supreme Court again if the

petitioner deems it necessary in view of its acquittal in the criminal case. There shall be no order as to costs.

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**(S.K. Singh, J)**  
**Chairperson**

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**(A.K. Bhargava)**  
**Member**

/ pkb/