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

Dated 10th January, 2020

Telecom Petition No.70 of 2019
(with M.A. No. 333 of 2019)

Aircel Ltd.

....Petitioner

Versus

Union of India

....Respondent

BEFORE:

HON'BLE MR. JUSTICE SHIVA KIRTI SINGH, CHAIRPERSON

Petitioner

: Mr. Salman Khurshid, Sr. Advocate
Mr. Chaitanya Safaya, Advocate
Mr. Rishabh Sharma, Advocate
Ms. Azra Rehman, Advocate

Respondent

: Mr. Apoorv Kurup, Advocate
Mr. Baibhaw Gahlaut, Advocate
Mr. Ayush Mishra, Advocate

ORDER

By S.K. Singh, Chairperson – Parties have been heard in detail for the purpose of final disposal of this petition as well as MA No.333/2019.

2. The petition was filed on 16.08.2019 against an order dated 11.07.2019 (**Annexure N**) whereby the petitioner's application for migration of CMTS Licence effective from 31.12.1998 for Tamil Nadu Service Area to Unified Licence (UL) was rejected for the second time by the respondent. Before advertng to the issues, it will be useful to take note of some significant and relevant facts.

3. The historical facts relating to the petitioner company; its wholly owned subsidiary, Aircel Cellular Ltd. (ACL); the details of its licences and also subsequent allocation of spectrum which came to be bundled with the said licence are not in dispute. The petitioner's CMTS Licence for Tamil Nadu Circle was for a period of 10 years and due to expire on 30.12.2008. In terms of National Telecom Policy of 1999, DoT offered a migration package. The migration package, inter alia, changed the "Fixed Fee" policy for Indian Telecom Licences to a "Revenue Share" regime. The period of licence got extended upto 20 years and

as a result petitioner's licence was to be valid till 30.12.2018. In 2010, the petitioner acquired 5 + 5 MHz of 2100 MHz (3G) and 20 MHz of 2300 MHz spectrum (BWA) in the Tamil Nadu Telecom Circle through auction. These are fully paid for and the validity of allotment is of 20 years i.e. till 2030. In 2015, the petitioner further acquired 10 + 10 MHz of 1800 MHz spectrum in the Tamil Nadu Telecom Circle through auction. Petitioner has the right to use the said spectrum for a period of 20 years i.e. till 26.05.2035 and under a deferred payment plan, it claims to have paid 33% of its price.

4. On 28.03.2016 respondent issued the Guidelines for grant of Unified Licence(UL). The Guidelines are available on record. The basic features of UL show that the allocation of spectrum is delinked from the licences and has to be obtained separately as per prescribed procedure. The UL can cover one or more of various services. The broad Guidelines for grant of UL, inter alia, require the applicant company, which should be an Indian company, to submit the application in the prescribed format enclosed at Annexure II. Grant of UL shall be on the basis of the claims, representations and submissions made by the applicant as duly certified by the Company Secretary and authorized Director of the company. The applicant has to be eligible and it must also fulfill "all requisites under the application". Mere filing of application would not accrue any priority. "If deemed

expedient, Licensor may seek clarification before rejecting the application”. The UL is to be issued for a period of 20 years and upon request of the Licensee the period may be renewed by 10 years at a time, if the request is made during the 19th year of the licence period.

5. The Guidelines noted above are largely by way of general conditions and broad Guidelines for grant of Unified Licence contained in Paras 1 to 7. Para 8 of the Guidelines deals with the subject – “Migration/renewal of existing licences”. Paras 9 to 13 again contain general terms and conditions for obtaining Unified Licence but the entire Para 8 consisting of sub-para and various clauses thereunder are special policy provisions applicable only to those who require migration/renewal of their existing CMTS licences. The conditions applicable for migration/renewal also provide that the validity period of the spectrum already held by them shall remain same although the validity of UL may be for a longer period.

6. The petitioner through a letter dated 05.12.2017 wrote to DoT on the subject of renewal of Tamil Nadu Licence. The letter informed the respondent that the petitioner intends for renewal of its Tamil Nadu Service Area(including Chennai) Licence where it serves over 20 million subscribers. It further mentioned that the

process of filing the required documentation for renewal would be initiated in due course after the petitioner completed the internal process of Board approvals etc. It also clarified its intention to continue with the spectrum currently held by it.

7. Due to financial distress, the petitioner company had to move the NCLT under Section 10 of the Indian Bankruptcy Code (IBC) 2016 for initiation of Corporate Insolvency Resolution Process. The application was admitted by NCLT on 12.03.2018, declaring moratorium in respect of the petitioner and appointing an Interim Resolution Professional (IRP). Subsequently a Resolution Professional (RP) was also appointed who has taken charge over the debtor company, the petitioner, and has commenced the Corporate Insolvency Resolution Process. By virtue of provisions of IBC, on appointment of the RP, the powers of the Board of the Directors of the petitioner company got suspended and all such powers including that of management has vested in the RP.

8. Following its declared intention to migrate to UL regime, the petitioner applied to the respondent for migration of its CMTS licence for Tamil Nadu Service Area to UL along with Tamil Nadu Service Area authorization for continuity of expiring licence, through its letter dated 06.12.2018. The letter mentioned that due to circumstances beyond its control, petitioner had filed for

Incorporate Insolvency Resolution Process under the IBC 2016 with NCLT Mumbai Bench to reorganize for maximization of value of assets which is the object and purpose of IBC. The letter highlighted Section 20 which requires the IRP to make every effort to preserve the value of the property of the corporate debtor and manage its operation as a going concern. Section 25 was also referred to highlight the duty of the RP to preserve and protect the assets of the corporate debtor, including the continued business operations. This letter was signed and sent by Director of the company, Mr.Sandeep Vats. The letter contained enclosures containing detailed application along with earlier letter 05.12.2017 and processing fee of Rs.50,000/- in the form of a demand draft dated 27.11.2018 issued by HDFC Bank Ltd. in favour of DoT against the account of the petitioner, Aircel Ltd.

9. On 24.12.2018, Mr.Vijay Kumar V. Iyer, the IRP for the petitioner company wrote another letter dated 24.12.2018 to DoT. It referred to the letters of 05.12.2017 and 06.12.2018 and Para 8 of the DoT Guidelines for grant of UL and thereafter on the basis of relevant facts the IRP requested the respondent to grant a provisional extension of CMTS licence so as to ensure maintenance of status quo by DoT as per an order of NCLT dated 17.05.2018. On 13.01.2019, Mr. Vijay Kumar V. Iyer, RP, again wrote to respondent referring to letters dated 05.12.2017,

06.12.2018 and 24.12.2018 (erroneously typed as 2017) and requested for grant of UL/extension of CMTS licences. In this letter the RP has mentioned that the DoT had sought reasons for not providing Power of Attorney or Board Resolution authorizing Sandeep Vats, Director of the company to file application on behalf of the company. He then submitted that he had authorized Sandeep Vats to file the application and to do all the needful for renewal of grant of Unified Licence for existing Tamil Nadu Service Area vide authorization letter dated 05.12.2018. He reiterated that under the IBC 2016, the powers of Board of Directors stand suspended and are exercised by the RP. This meant that he had the powers of Board of Directors under which he had authorized Mr.Sandeep Vats. He also justified the steps taken for extension of the licence as a step in the financial interest of the company.

10. However, on 16.01.2019 the petitioner received a letter from the DoT(respondent), dated 07.01.2019 whereby the petitioner's application for renewal/migration to UL dated 06.12.2018 was rejected on the ground that the application was incomplete in view of the Guidelines for UL dated 28.03.2017 because – (i) the documents of Board Resolution and Power of Attorney have not been submitted; and (ii) details of CTO, CFO and CEO have also not been provided as required. On receipt of the rejection order dated 07.01.2019 the RP

clarified through letter dated 01.02.2019 to the respondent. He referred to the provisions of the IBC 2016, order of the NCLT dated 12.03.2018 and pointed out that since the Board of Directors stood suspended, he has exercised his powers as per IBC 2016 and had authorized Mr.Vats as clarified through letter dated 13.01.2019 and also the earlier letter dated 24.12.2018. The RP pointed out that the rejection was without application of mind to the peculiar facts relevant for the applicant company on account of insolvency proceedings. It was also communicated that at the time of submitting the application to the DoT, the CEO, CFO and CTO of the applicant company had resigned and hence, it was not possible to provide their details. He sought for reconsideration of the application because it had been rejected only on procedural counts without providing an opportunity to the petitioner company to explain the circumstances in which the application was submitted as well as the reasons for the deviations.

11. Since, the respondent did not respond to the request of the RP, the petitioner preferred a petition before this Tribunal bearing T.P. No.15 of 2019. Through this petition, the petitioner prayed for setting aside the order dated 07.01.2019 with a direction to reconsider its application for renewal/migration after providing an opportunity to justify or rectify the so-called defects in the application and also a further direction that the CMTS licence should continue till the grant of Unified

Licence by the respondent. That petition was heard and this Tribunal, vide order dated 01.04.2019, accepted the plea of the petitioner that the reasons given in the order dated 07.01.2019 disclose no application of mind to the actual state of affairs available on record as well as in the application for migration. It was further held that “insistence on recommendation by the Board of Directors and some other officers of the company after appointment of Interim Resolution Professional renders the impugned order bad in law”. The said order was found unsustainable in law and was set aside. The petition was disposed of accordingly with the following directions and observations:

“The petitioner had made an application seeking migration from CMTS licence when its licence was still valid. Petitioner is entitled to have this application considered properly in accordance with law and that is the responsibility and duty of the respondent after applying its mind to all the relevant facts and in accordance with law. To enable the respondent to do so, the matter is remitted back to the respondent for passing a fresh order in accordance with law at an early date, preferably within two weeks because the petitioner is facing a proceeding under the Insolvency and Bankruptcy Code and the order may have consequences upon its assets if the order is delayed.”

12. The DoT through a letter dated 18.04.2019 wrote to the petitioner/RP that in its view Mr.Vats should have been authorized by the RP to sign the application for migration to UL on or before the date of application which was not done. It was also communicated that authorization letter/power of attorney from the RP should

have been submitted along with the application but this was also not done. The petitioner/RP was requested to clarify as to why the application dated 06.12.2018 for migration should not be rejected.

13. Through his letter dated 26.04.2019, the RP clarified inter alia that Mr.Vats, the signatory, had submitted the application dated 06.12.2018 pursuant to his authorization through Email dated 05.12.2018 which was sent by a member of RP team on directions of the RP. It was also clarified that filing and execution of documents in relation to the migration application by Mr.Vats was under instructions and authority of the RP. The allegation of misrepresentation leveled against the RP was also elaborately replied. A copy of the relevant Emails of 04.12.2018 and 05.12.2018 were also annexed.

14. The DoT on 11.07.2019 again rejected the migration application on the grounds that – (i) Aircel did not submit authorization for the signatory at the time of making the application and (ii) an Email was wrongly described as a letter in a subsequent communication by the RP dated 13.01.2019 which amounts to giving incorrect documents/statements. On both these grounds the migration application dated 06.12.2018 was rejected. Against this rejection order the present petition, T.P. No.70 of 2019, was preferred on 16.08.2019. This Tribunal vide interim order dated 25.09.2019 noted the petitioner's stand that both the grounds are merely procedural and not substantial defects and therefore, given a chance the petitioner

would make corrections and on that basis the competent authority may consider the petitioner's application afresh. This stand was justified by claiming urgency on account of pendency of the insolvency proceedings at an advanced stage. In view of such stand, petitioner was given liberty to file an appropriate representation to DoT for reconsidering its prayer for migration and DoT was directed to consider the matter afresh, expeditiously and preferably within two weeks. The petitioner made a representation dated 09.10.2019. It was clarified that Mr.Vats is authorized by an Email dated 05.12.2018 but in view of liberty granted by this Tribunal and by way of abundant caution a ratificatory power of attorney is also executed by the RP to confirm that Mr.Sandeep Vats had been throughout authorized by the RP to do all necessary things in connection with applying to DoT for migrating petitioner's licence to UL.

15. DoT vide its letter dated 29.10.2019 communicated its observations to the RP that the power of attorney should have been attached with the application form and subsequent authorization amounts to admitting that Mr.Vats was initially not an authorized signatory. It was also claimed, inter alia, that there was no explanation as to why Email dated 05.12.2018 was mentioned as a letter dated 05.12.2018 by the RP in his communication dated 13.01.2019. The RP was asked to clarify as to why the representation should not be rejected in view of such lacunae. The RP submitted a detailed reply and clarified all the issues including

reply to an objection that the power of attorney should have been notarized. It was also pointed out that the Email dated 05.12.2018 was inadvertently referred to as a letter.

16. The DoT again considered the entire matter with reference to the application for migration dated 06.12.2018 and chose to reject the representation on the earlier grounds that the application was incomplete because authorization in favour of the signatory was not annexed. It was highlighted that an incomplete application has to be summarily rejected without any differential treatment between a new and existing licensee. Secondly, it was reiterated that RP has misrepresented that the so called authorized signatory had signed the application under his instructions. Thirdly, it has been held that the ratificatory power of attorney itself showed that Mr.Vats had filed the application without authorization. The description of Email as a letter also has been held to be misrepresentation of facts by the RP. It has been highlighted that DoT has a right to reject the application when it is found that an incorrect information has been furnished.

17. In addition to the above, some new grounds were also added for rejecting the representation of the petitioner by holding that in the Insolvency proceedings the Resolution Plans can be carried out without the UL in question and that the Central Government has enough power/discretion not to consider application from

a company which is in the process of Insolvency Resolution under IBC, 2016. It has been further observed that the Resolution Plans by the RP shows the intention to trade/sell the spectrum but instead of doing that, the petitioner can very well surrender the spectrum if it does not require it. Lastly, another new ground has been added that the migration under the present UL regime ought to have been requested during the 19th year from the effective date whereas the application for migration was made in the last month of 20th year.

18. The petitioner has challenged the above order of DoT dated 11.11.2019 through MA No.333/2019. Pleadings in respect of this MA are already complete. The main issue for deciding the petition as well as the MA is whether the respondent have acted reasonably, fairly and in a lawful manner in rejecting petitioner's application for migration to UL regime vide order dated 11.07.2019 and thereafter its representation, vide order dated 11.11.2019(challenged through MA No.333/2019).

19. On a careful perusal and comparison of orders passed by the respondent to reject the petitioner's application for migration on 07.01.2019, 11.07.2019 and 11.11.2019, it is noticed that the common and consistent grounds and on which alone clarifications were sought before passing the subsequent orders of rejection

are (i) there was no prior authorization by the Board of Directors/RP in favour of Mr.Vats; (ii) details of some of the officers of the company had not been filled in the application; (iii) petitioner did not submit authorization for the signatory at the time of making the application; and (iv) the RP has misrepresented in describing an Email as a letter. The additional grounds in the order dated 11.11.2019 have already been noticed and shall be dealt with appropriately after the above mentioned grounds are considered.

20. The first order of rejection was set aside by this Tribunal on 01.04.2019 and that order has attained finality. Now, DOT is not insisting for Board's authorization for filing of the application on 06.12.2018 or for details of some erstwhile officers, though Annexure II requires these. For the subsequent rejection on 11.07.2019, the main reason assigned is non-attachment of authorization letter/power of attorney from the RP in favour of the signatory with the application form. The inadvertent mistake of describing Email of 05.12.2018 as a letter has been treated to be an act of misrepresentation made by the RP subsequently. So far as the significance of Email is concerned, the stand of the respondent is untenable. They have not disputed the correctness of the Emails supplied to them by the RP. Those are attached with the letter of RP dated 26.04.2019. Mr. Vats made a pointed query on 04.12.2018 from Mr. Vijay Kumar Iyer to confirm whether the

decisions and the directions for making the migration application had been given by the IRP. Against this, a pointed authorisation was sent to Mr.Vats on 05.12.2018 by the Manager(Consulting) Mr.Mridul Verma with copy to Mr.Vijay Kumar Iyer also that Mr. Vats was authorized to file the application. Mr.Mridul Verma, Manager is a part of the team of RP is not in dispute. He is clearly an authorized agent of RP. The payment of processing fee of Rs.50,000/- through account of the petitioner in the form of demand draft dated 27.11.2018 also fully supports the stand of the petitioner that the whole exercise leading to application for migration on 06.12.2018 was duly authorized by the lawful functionaries of the petitioner. Hence on facts, it is found from undisputed documents that Mr.Vats had the required authorization for signing and filing the migration application on 06.12.2018.

21. The other objection which has been highlighted more pronouncedly on behalf of the respondent is that DoT had no option but to reject the migration application as incomplete because the authorization was not attached with the application. For this purpose reliance has been placed upon two documents. Firstly, on the guidelines dated 28.03.2016 which under Para 3 prescribe the broad guidelines for grant of UL and contain the general provision that the application should be in the form at Annexure II. A perusal of Annexure II to the Guidelines

discloses that it is an application not for renewal or migration but for original grant of UL and for authorization for additional services under UL. It is further found that this form requires a power of attorney by Resolution of Board of Directors in favour of the authorized signatory. At the end there is a certificate/undertaking that if the application is found incomplete in any respect and/or if found with conditional compliance or not accompanied with the processing fee then it shall be summarily rejected. Clearly the form in Annexure II does not find any mention in various sub-clauses of Clause 8 of the Guidelines which deals exclusively and especially with the cases of migration/renewal of existing licences. Clause 8.2 leaves it open for the existing licensee to migrate to UL well before the due date of expiry of the existing licence. It is mentioned in clause (a) of Clause 8.2 that on expiry of any of their current licences, the telecom service provider shall have to migrate its licences to UL with relevant authorization at the time of renewal/extension of the licence and obtain spectrum separately, if required. Clause 8.3 lays down the procedure for migration with a clear provision that on migration UL shall be for a period of 20 years from the effective date of UL irrespective of the validity period of the licence already held. This special procedure for migration contains the required conditions of fee etc. also and as such it will have precedence over the general clauses including the format in Annexure II prescribed under the general Clause 3.

22. There is yet another important aspect relevant to the issue at hand. The guidelines framed in March, 2016 for grant of UL and also for migration did not foresee that the format in Annexures I and II to the Guidelines need to be suitably modified/amended in view of objects and purpose of IBC, 2016. As noted earlier and as pointed out in the letter of Mr.Vats dated 06.12.2018, the various provisions of the IBC, 2016 are statutory and require the RP to make every effort to preserve the value of the property of the corporate debtor and manage its operation as a going concern. The Guidelines did not visualize this and the Annexures do not visualize an application by a corporate debtor. Such deficiency cannot be used as an excuse by the respondent for rejecting an application for migration on the ground that the form contained in Annexure II was not filled completely. There is no provision in Annexure II as to how and in what format the authorization of the signatory by the RP acting under IBC, 2016, be furnished to the respondent. Hence, on the ground that the application form was incomplete and not valid due to non-attachment of authorization by the RP, it was not fair and proper for the respondent to reject the migration application, again and again when it had become clear through the Emails supplied by the RP that there was a valid authorization in favour of Mr.Vats. The authorization by the RP, which he admits, need not be communicated to Mr.Vats by him personally. Such communication by a member of his team as an agent can be a subject matter of clarification if any doubt arises

but once the RP clarified his decision and stand, this cannot be a ground for rejection of the application. In this matter the approach of respondent is unfair and displays patent unreasonableness and arbitrariness.

23. The insistence of respondent that the signatory of the application must have been authorized by the RP is a matter of substance and as discussed above that condition stood fulfilled. The fact that it was an authorization not by the Board of Directors as required by Annexure-II to the Guidelines could be a possible and reasonable source of confusion leading to non-attachment of the Email of 05.12.2018. The respondent have time and again hinted that they have unlimited power to reject the application for migration because of the authorization not being attached but the issue is not related to availability of power or its absence but to fair exercise of such powers. The insistence on Annexure II, a form which appears to have been used by Mr.Vats for seeking migration to UL in absence of another appropriate form for that purpose, is referred in Para 3.1.ii of the Guidelines. Although, these are for original grant of license as UL and are of general nature, Clause 3.1.xiii mentions that “if deemed expedient Licensor may seek clarification before rejecting the application.” The respondent have themselves later sought clarifications from the petitioner on more than one occasion. Still, in an apparently unreasonable manner they have elected to ignore the aforequoted provision while applying some of the general provisions in the present case of migration.

24. The action of the respondent in condemning the inadvertent mistake of the RP in describing an Email as a letter is found to be equally unfair and devoid of good reasons. An Email, in the present days has become a good substitute for a letter and such inadvertent mistake cannot be described as a misrepresentation of fact by any prudent and reasonable mind.

25. The additional grounds for rejecting the representation do not deserve any serious consideration for many good reasons. Firstly, these have come belatedly and only for rejecting the representation. These were not deemed good enough for rejecting the application for migration on any of the earlier two occasions. In such important matters governed by the Telegraph Act, the Licensor is a statutory authority and it cannot improve its orders by continuously adding to the same. Such an attitude only shows a degree of desperateness to reject the application for migration on any ground whatsoever. On merits, it is not open for the respondent to substitute its wisdom with that of the petitioner's and to give an opinion that the UL is not of any use to the petitioner and it can do better to surrender its spectrums than to try for revival as a going concern. Such attitude is clearly against the provisions of IBC, 2016.

26. The last ground for rejecting the representation is also a new additional ground based upon a misreading of the provisions in the Guidelines dated 28.03.2016. Para 4 of the Guidelines contains terms of licence which must mean

UL, when granted. This para mentions that the UL shall be for a period of 20 years and the licensor can renew the period of licence by 10 years at a time, upon request of the licensee, if made during the 19th year of the licence period. This clause cannot be applied to the petitioner's case because the petitioner is yet to get a UL through the route of migration governed by Para 8 of the Guidelines. To be fair to learned counsel for the respondent, it was pointed out during arguments by way of rejoinder to the reply of learned counsel for the petitioner that respondent is not relying upon Para 4 discussed above but there is a similar provision mentioned in a letter from DoT to the petitioner dated 29.01.2001 whereby the licences were amended to provide for migration from fixed fee regime to revenue sharing regime under the Telecom Policy, 1999. Admittedly, the period of licence mentioned in that letter was for CMTS licence, as 20 years from the effective date. For that licence, there was a stipulation that the licensor may extend the period of licence by a period of 10 years if requested during 19th year. Such a provision in that migration package cannot apply anymore when the CMTS licences, as per new Policy of 2012 and as per Guidelines of 28.03.2016, have perforce to migrate to UL because the old CMTS licences cannot be renewed. The conditions for renewal of the old CMTS licence are, therefore, of no value now. As a fact, it is worth noting in this regard and there is no denial that petitioner had communicated its intent of continuing with its licence on 05.12.2017 and this letter finds mention

as a reference in the migration application of 06.12.2018. Admittedly, no reply was ever given to the stand of the petitioner in its letter of 05.12.2017 that it shall initiate the process of filing the required documents as per the DoT Guidelines for renewal in due course soon after completing the internal process of Board approvals etc. In the aforesaid background the respondent rightly did not assign such a ground for not accepting the application for migration on two earlier occasions. Such additional ground in the impugned order of 11.11.2019 is found to be not a good reason for rejecting the representation submitted pursuant to order of this Tribunal.

27. Learned senior counsel for the petitioner has rightly placed reliance on a judgment of Hon'ble Supreme Court in the case of **United Bank of India Vs. Naresh Kumar & Ors.; (1996) 6 SCC 660**. Para 10 of this judgment fully supports the case of the petitioner that even in absence of an earlier Resolution of Board of Directors authorizing a person to sign the pleadings on behalf of the company, the action of signing of pleadings by an officer can be later ratified by a corporation. Such ratification can be expressed or implied and the court can, on the basis of evidence come to the conclusion that the corporation has ratified the act of signing by the officer. To same effect is the judgment of Chancery Division in the case **Boston Deep Sea Fishing & Ice Co. Ltd. Vs. Farnham (Inspector of Taxes)** reported in (1957) 1 WLR 1051. All the three conditions for valid

subsequent ratification by a principal of the acts of an agent are made out in the present matter. But the ratificatory power of attorney was made by the RP only by way of abundant caution because as held earlier, Mr. Vats had the necessary authorization to act as a signatory.

28. Learned senior counsel for the petitioner has referred to Paras 79 and 80 of the judgment of Hon'ble Supreme Court in the case of **Committee of Creditors of Essar Steel India Ltd. through authorized signatory Vs. Satish Kumar Gupta; (2019) SCC Online SC 1478**. The observations in Para 80 support the petitioner's stand that the RP could have asked the member of his team a Manager to communicate the decision of the RP authorizing Mr. Vats to file the migration application. The administrative or clerical act of communicating a decision does not amount to delegating a power to take important decisions which must be taken by the RP himself. In the present case, there are enough materials to accept the contention that RP had taken the decision to authorize Mr.Vats.

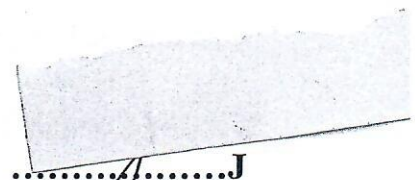
29. Learned counsel for the respondent has justified the decision to reject the migration application on the ground of non-attachment of the authorization in favour of signatory, Mr.Vats by referring to the well recognized and accepted principle of law that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all. The judgments on the above principle brook no caveat but they are not applicable to the facts of the present case

in view of discussions made earlier. He has placed reliance upon a judgment of Madhya Pradesh High Court dated 28.04.2016 in Writ Petition No.5715 of 2016 to support a proposition that an application for affiliation of a medical college must be rejected when it does not conform to mandatory conditions of the relevant Regulations. It has been shown that SLP against that judgment was also dismissed. The mandatory provisions of the regulations stand on a different footing and the said judgment which deserves all respect does not apply to the facts of the case at hand. He has also submitted that unauthorized acts done by an agent on his own behalf cannot be later ratified by the principal. The judgment of Patna High Court to that effect is also not applicable to the facts of the present case. In the present case, Mr.Vats as well as the RP have consistently taken the stand that Mr.Vats was authorized by the RP through Email dated 05.12.2018. Only by way of abundant caution, subsequently the RP executed and furnished a ratificatory power of attorney which helps the case of the petitioner and not vice-versa as held by the respondent in the impugned order dated 11.11.2019.

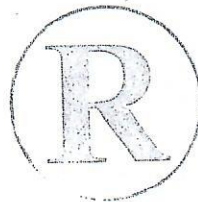
30. In the light of the facts and law discussed above, the impugned orders of rejection dated 11.07.2019 and 11.11.2019 are found to be bad in law and set aside accordingly. Considering the peculiar approach of the respondent reflected in the various orders passed against the petitioner on different occasions, it will be unjust and only a formality to require the respondent to reconsider the matter again.

Hence, the alleged shortcomings notwithstanding the respondent is directed to allow the application of the petitioner for migration to UL on the lines indicated in Para 8 of the Guidelines and such other lawful conditions which have been generally applied in all cases permitting migration of CMTS licenses to UL but with such modifications as may be necessary on account of petitioner undergoing moratorium and insolvency proceedings under the provisions of IBC, 2016. This exercise should be completed as expeditiously as possible and preferably within six weeks from the date of this judgment. Till that is done, the CMTS licence of the petitioner shall be treated as migrated to UL ~~UL~~ as an interim arrangement that shall operate in the meanwhile. *skr*

31. The petition as well as the MA are allowed and disposed of in the aforesaid terms. In the facts of the case, there shall be no order as to costs.



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



sks

10/1/20