

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

Dated 18th August, 2021

Telecom Petition No.26 of 2021
(With MA No.114/2021)

Vodafone Idea Ltd.Petitioner

Vs.

Union of IndiaRespondent

BEFORE:

HON'BLE MR.JUSTICE SHIVA KIRTI SINGH, CHAIRPERSON

For Petitioners : Mr. Maninder Singh, Sr. Advocate
Mr. Manjul Bajpai, Advocate
Mr.Shashwat Bajpai, Advocate

For Respondent (UOI) : Mr. Dhruv Tamta, Advocate

ORDER

By S.K. Singh, Chairperson – Learned Senior Counsel for the petitioner and learned counsel for the respondent have been heard in detail in respect of one of the reliefs sought by the petitioner, for grant of import licence. This order

decides the said issue finally in the light of order dated 03.06.2021 whereby this Tribunal admitted this petition and passed the following order:-

“Admit. No notice need be issued because Mr. Dhruv Tamta, Advocate has appeared on behalf of respondent on advance notice.

2. On behalf of petitioner, it has been submitted that petitioner’s request for an import licence registration ought to have been allowed without putting unnecessary condition relating to matters which are in dispute between the parties and pending in the Apex Court. Other issue relates to petitioner’s request to adjust earlier bank guarantees already furnished which the petitioner claims to be in excess than the requirement in terms of the licence agreement.

3. The import licence issue does not appear to involve any pecuniary interest of the respondent and, hence, it should be decided on the next date in the light of reply and rejoinder. The other issue may await detailed hearing for final adjudication. As prayed, four week’s time is granted for filing reply. Rejoinder, if required, may be filed within two weeks thereafter.

4. Post the matter under the head “For Orders” on 15.7.2021.”

2. After the filing of reply and rejoinder the relevant issues have become more clear. But before considering the same it is useful to note the prayers and interim prayers in this petition which are as follows:

“PRAYER

- i. Direct DoT to make adjustment of the Bank Guarantees of Rs.864.32 crores towards the differential amount between the MW

charges out of the excess Bank Guarantees of Rs.1,602 Crores already lying with DoT;

- ii. Direct DoT to grant/issue necessary instructions to the respective RLOs to grant Import Licenses to the Petitioner for import of Microwave equipment in all pending Import License applications listed in Annexure V herein, as also other/future such applications, without demanding re-assignment of Microwave Frequencies/signing of Frequency Agreements;
- iii. Set aside and quash the DoT letter of Refusal dated 31.07.2020 refusing to make adjustment of the Bank Guarantees of Rs.864.32 crores towards the differential amount between the MW charges out of the excess Bank Guarantees already lying with DoT;
- iv. Set aside and quash the DoT letters dated 27/29.05.2020 and 16.11.2020 of DoT and such demands requiring the Petitioner to first get its Microwave Frequency Spectrum re-assignment from WPC wing of DoT/sign Frequency Agreement, as a conditions precedent for consideration of Petitioner's applications for import licences;
- v. Pass such other and further order(s) as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present case.

INTERIM PRAYERS

- i. Direct DoT for forthwith grant/issue necessary instructions to the respective RLOs to grant Import Licenses to the Petitioner for import of equipment in all pending Import License applications, including listed in Annexure V herein, without demanding re-assignment of Microwave Frequencies/signing of Frequency Agreements, until final disposal of the present Petition;
- ii. Stay the operation of the letters dated 27/29.05.2020 and 16.11.2020 of DoT and such demands requiring the Petitioner to first get its Microwave Frequency Spectrum re-assignment from WPC wing of DoT/sign Frequency Agreement, as a conditions precedent for consideration of Petitioner's applications for import licences;
- iii. Pass ad-interim/interim/ex-parte order(s) in respect of the above prayer(s); and
- iv. Pass such other and further order(s) as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present case."

3. Petitioner has brought on record and challenged three letters of the respondent which are part of **Annexure A(Colly.)**. By the first letter of 31.07.2020 petitioner has been informed on the subject of bank guarantee that Hon'ble Supreme Court in its order dated 08.11.2019 in Civil Appeal No.8232 of

2019 has observed that since an amount of Rs.54,754 crores is recoverable from the petitioner in the light of Hon'ble Supreme Court's judgment dated 24.10.2019 in AGR matter read with Supreme Court's order dated 20.07.2020, and since the above dues have not been securitized by the petitioner his Financial Bank Guarantees(FBGs) available with the Department and claimed to be in excess, cannot be accepted as excess FBGs. Hence, the petitioner was required to securitize the dues payable pursuant to Hon'ble Supreme Court order dated 08.11.2019 in CA No.8232 of 2019. The above issue relating to bank guarantees and prayer relating to that issue in this petition will also be considered at a later stage in view of observations of this Tribunal in the order of 03.06.2021 but a *prima facie* view is required in respect of correctness of the above stand of the respondent for deciding the other issue.

4. The second letter in **Annexure A** is dated 27/29.05.2020. By this impugned letter petitioner was told that in respect of frequency Assignment/Earmarking/Authorization letters dated 17.10.2007 and 06.02.2009 petitioner was still required to provide an undertaking as demanded by an earlier letter dated 12.05.2020 about the validity of the frequency Assignment/Earmarking/Authorization letters and petitioner was also required to obtain a confirmation of the validity of the said Earmarking letters from WPC wing (HQ) and provide copy of the same. The above stand of the respondent is/was in

reference to petitioner's email of 15.05.2020 making a request for issue of WPC for importing material which are undisputedly in line with and will be operated by petitioner in allocated frequency range.

5. The third letter in **Annexure A** is dated 16.11.2020 on the same issue of import licence. Petitioner was informed that a valid frequency earmarking letter for the allocated frequency band issued in the name of petitioner (Telangana Service Area) should be submitted. Action will be taken thereafter.

6. Some relevant facts which are not in dispute disclose that in terms of Supreme Court judgment in AGR matter a demand of Rs.54754 crores has been raised against the petitioner which has not been secured by the petitioner by furnishing any bank guarantees because Hon'ble Supreme Court has not asked for furnishing bank guarantees against these dues nor the respondent has demanded such security. In Para 9 of the reply the respondent has accepted the above fact but has clarified that AGR dues fall in the category of other dues which are not securitized and therefore, the contention of the petitioner that DoT is in possession of excess BGs of Rs.1602 crores is wrong. In other words the stand of the respondent is that in spite of order of the Hon'ble Supreme Court dated 01.09.2020 reported in **(2020) 9 SCC 748** that the concerned companies are required to furnish an undertaking to make payment of arrears of AGR, the respondent is authorized to retain bank guarantees for such dues.

7. The above stand of the respondent is *prima facie* unjustified. This stand will amount to overreaching the order of the Supreme Court by making claim over bank guarantees furnished by the company for any purpose, towards the arrears of AGR for which the companies are obliged only to furnish an undertaking. But nothing further need be said on this issue relating to bank guarantees at the present stage. It is simply noted that as per pleadings the value of bank guarantees which is claimed by the petitioner to be excess is admittedly Rs.1602 crores whereas the differential amount for which bank guarantee is required in view of stay order passed by Hon'ble Supreme Court on 08.11.2019 in CA No.8232/2019 is Rs.864 crores only.

8. The stand in Para 3 of the letter dated 31.07.2020 that BGs for securitization of LF dues cannot be used for securitization for SUCs dues and *vice versa* is not supported by any good reasons or materials. As already indicated above, *prima facie* the views in Paras 4 and 5 of that letter are not tenable, being contrary to Supreme Court's order dated 01.09.2020, particularly, Para 46.4 of that order.

9. So far as issue relating to import licence is concerned, on a careful reading of the impugned letters dated 27/29.05.2020 and 16.11.2020 and on reading Paras 2 and 9 of the reply, it is found that in the impugned letters relating to import licence the respondent has merely asked for certain clarifications and documents without denying the validity of frequency Earmarking/Authorisation letter in respect of petitioner's Micro Wave(MW) frequency. In Para 2 also the stand is

that on a theoretical plane every telecom service provider or any wireless user licensee needs to hold a valid frequency Earmarking/Authorization letter for the purpose of being granted any import permissions for the equipment to use the authorized frequencies/spectrum. Further stand is not that the petitioner does not hold a valid MW frequency authorization but that on the expiry of the authorizations the petitioner has not – “followed the due process for its reassignment.” Thereafter, the respondent has admitted that “presently the matter is under judicial intervention at Hon’ble Supreme Court of India. Therefore they have not been granted permissions.” In addition of the above stand in Para 2, in Para 9 the stand is that since the order of TDSAT dated 13.03.2019 whereby it interfered with the terms and conditions of renewal of authorization has been stayed by the Hon’ble Supreme Court on 08.11.2019 and because petitioner did not submit BG for the differential amount (it claimed for adjustment of existing BG) and since the matter is still pending in the Supreme Court, the respondent is not in a position to treat the earlier frequency authorization letter of MW spectrum as valid because the term has expired and it is necessary for grant of import permission that the frequency authorization letter should not have expired. There is no denial in the reply to the stand of the petitioner noted in the order of 03.06.2021 that the issuance of import licence does not pose any harm to the pecuniary interest of respondent.

10. During arguments, it was shown on behalf of petitioner that respondent has also preferred an appeal against the judgment and order of TDSAT dated 13.03.2019 and that appeal is also pending for hearing. Interim orders according to petitioner need not be passed in all the connected appeals and the interim order in CA No.8232/2019 dated 08.11.2019 must be understood as protecting the interest of both the parties because while granting stay of operation of the TDSAT's order until further orders, the Hon'ble Supreme Court further ordered that – "However, subject to furnishing the bank guarantee by the respondents, within 15 days, recovery shall not be made from the respondent till the next date of hearing." The matter was ordered to be listed in January 2020 but is admittedly still pending.

11. Petitioner has brought on record through its rejoinder grant of import licenses at several places and for different service areas where the earlier Access Service Licences had expired and migration to Unified Licence was carried out in the year 2015. Such statement in Para K of the rejoinder and details of import licences in **Annexure F** show that in similar situation import licences have been issued till 07.11.2019 as per **Annexure F**. Learned counsel for the respondent submitted that after 08.11.2019 when the judgment of TDSAT was stayed, the present stand was taken that MW spectrum assignments unless renewed, should not be treated as valid. To counter this on behalf of petitioner another import licence dated 22.10.2020 issued from the Regional Licensing Office, Chennai has

been produced before the Tribunal on the last date of hearing. Its copy was made available to learned counsel for the respondent who was given permission that after instructions he could file a Short Note in respect of the said document. Such Note filed by the learned counsel for the respondent on 13.08.2021 does not dispute the authenticity of the import licence dated 22.10.2020 but seeks to blame the petitioner by reiterating the stand of the respondent that petitioner does not have a valid authentication/licence for the MW spectrum and it has misled the authority by claiming otherwise. This stand of the respondent is arbitrary, erroneous and contrary to the interim arrangement permitted by the Apex Court and the DoT.

12. There appears merit in the case of the petitioner that before the Apex Court the issue raised is whether this Tribunal was correct in deciding against the petitioner that it was liable to pay enhanced charges at 2006 rates in place of 2002 rates and further, whether the Tribunal erred in deciding against the respondent by holding that the impugned guidelines of 16.10.2015 cannot be applied to the petitioner or similarly situated licensees, and in giving a direction that subject to the payment of the lawful charges for the MWA/MWV frequency carriers, the petitioners are entitled to revalidation/reassignment of such frequency carriers in view of the policy and assurance/promise already noticed. The admitted position is that after the interim order of the Apex Court the petitioner has been allowed to operate its licence including the MW spectrum. On what terms the authorization

shall be renewed for further period remains to be decided by the Apex Court because the terms for renewal determined by this Tribunal have been stayed. In such a situation if the respondent had issues relating to validity of earlier authorization of MW spectrum, it would have either taken a precipitate action by appropriate orders or would have approached the Apex Court for further interim conditions or interim renewal. But when that course is not open, the respondent is not at all justified in refusing to issue the import licence for items the petitioner will operate in allocated frequency range. Till the decision by the Apex Court, under the existing interim arrangement respondent cannot treat the authorization/allocation of MW spectrum to be invalid. Petitioner's telecom operations are being carried out with full knowledge and information of the respondent under the interim conditions as ordered by the Apex Court. Not permitting import of required equipments is illogical and against public interest.

13. Learned counsel for the respondent, during the course of arguments made a submission that in view of interim order of the Hon'ble Supreme Court dated 08.11.2019 this Tribunal has no jurisdiction to consider prayers (i) and (ii) because that would amount to modification of the interim order and revival of the TDSAT's order of 13.03.2019 whose operation was stayed on 08.11.2019. The present issue relating to import licence for certain essential equipments which will only improve the services has arisen only after 08.11.2019 and is unrelated to the issues decided

by this Tribunal in the judgment and order dated 13.03.2019 which is the subject matter of appeal pending in the Apex Court wherein interim order was passed on 08.11.2019. The aforesaid objection has not been raised in the reply and is found to have no merits either in facts or in law.

14. In view of aforesaid discussion and findings, the DoT's letters dated 27/29.05.2020 and 16.11.2020 which are part of **Annexure A(Colly.)** are set aside and main prayer no.(ii) as already noted earlier is allowed. It should be done urgently. As indicated earlier, the prayer relating to adjustment of the bank guarantees will be considered finally at a later stage.

15. The petition is partly allowed to the extent indicated above and it shall be heard further only in respect of the remaining prayers.

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