

(2022) 11 TDSAT CK 0042

In the Telecom Disputes Settlement And Appellate Tribunal

Case No : Telecom Petition No. 30 Of 2022 With Misc Application No. 337 Of 2022

M/s Five Network Solution (india) Ltd

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision : 14-11-2022

Acts Referred:

Citation : (2022) 11 TDSAT CK 0042

Hon'ble Judges : Dhirubhai Naranbhai Patel, Chairperson; Subodh Kumar Gupta, Member

Bench : Division Bench

Advocate : Shikha Sarin, Dhruv Tamta

Final Decision : Disposed Of

Judgement

Counsel appearing for the petitioner submitted that this petition has been preferred for the following prayers: -

"a) Direct the Respondent to withdraw the impugned letter dated 3.8.2022 forthwith;

b) Restrain the Respondent to encash the Financial Bank Guarantee bearing no FBG No.516GOPG201780007 furnished by Petitioner as per the ISP License.

c) Declare that the Petitioner has complied with the letter dated 23.5.2022 issued by Respondent on payment of License Fee along with required document for Q3 & Q4 of the FY 2021-2022

d) Pass order/ direction as this Hon'ble tribunal may deem appropriate in the facts and circumstances of this case."

This petition has been mainly preferred by the petitioner because the respondent is demanding the audited accounts as per the Clause 20 of the Licence Agreement.

The petitioner has to supply the audited accounts for the year 2020-2021. Moreover, as per the counter affidavit filed by the respondent, paragraph 2 of the said affidavit reads as under: -

"2. In reply to paragraph 2 it is submitted that Letter dated 3.8.2022 directing bank to invoke FBG was issued, as licensee had not submitted following documents as required for License Free assessment for F.Y. 2020-21, as per license agreement -

- Audited Revenue and License Free Statements for each Quarter of the financial year.
- Audited Profit and Loss Account and Audited Balance Sheet along with schedules.
- The Annual Reports of the Company.
- The details of LF paid (Pay receipts) periodically along with affidavits submitted for each quarter.
- Details of documents in support of GST/Service Tax billed, collected & paid to the Govt. for which deductions are claimed (if any).
- Audited Reconciliation statement (if applicable).
- Copy of signed License agreement.

It is submitted that the petitioner has paid license fee on self- assessment basis which needs to be verified by the department/ respondent only after examining the various documents which they have asked for and the petitioner is required to provide under the license. It is only after examining of these documents that the respondent will be in a position to establish whether there is any shortfall in payment of license fee and other dues."

Counsel appearing for the petitioner submitted that all the aforesaid documents have been supplied by the petitioner to the respondent. Nonetheless one more copy shall be supplied by the petitioner to the counsel for Union of India. All these copies have been supplied during the course of the hearing to the counsels appearing for Union of India.

In view of these submissions, we see no reason to pass any further orders as the petitioner has already supplied all the documents as stated in paragraph 2 of the counter affidavit filed by the respondent. Even additional copies have been handed over by the petitioner to the counsel appearing for the respondent during course of the hearing of all the documents which are referred hereinabove.

As the aforesaid documents has already been supplied by the petitioner to the respondent, interim relief granted earlier vide our order dated 17.8.2022 is made absolute i.e. the Bank Guarantee given by the petitioner to the respondent shall not be encashed by the respondent for the aforesaid reasons stated in the petition. For the reasons stated in the petition the Bank Guarantee of the

petitioner shall not be encashed by the respondent.

With these observations this petition is hereby disposed of.

In view of the final disposal of the petition, the M.A. No. 337 of 2022 is also hereby disposed of.