ITEM NO.301 COURT NO.2 SECTION XVII

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

MISCELLANEOUS APPLICATION NO(S). 411-482/2020
IN C.A. NOS.6328-6399/2015

UNION OF INDIA PETITIONER(S)

VERSUS

ASSOCIATION OF UNIFIED TELECOM SERVICE PROVIDERS OF INDIA & ORS. RESPONDENT(S)

(FOR FOR APPLICATION FOR PERMISSION ON IA 14007/2020 FOR IMPLEADING PARTY ON IA 14023/2020 FOR INTERVENTION/IMPLEADMENT ON IA 14023/2020 FOR CLARIFICATION/DIRECTION ON IA 14025/2020 FOR PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES ON IA16159/2020
IA NO. 14007/2020 - APPLICATION FOR PERMISSION
IA NO. 14025/2020 - CLARIFICATION/DIRECTION
IA NO. 14023/2020 - INTERVENTION/IMPLEADMENT
IA NO. 16159/2020 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

WITH
Diary No(s). 2450/2020 (XVII)
(FOR MODIFICATION ON IA 11628/2020 FOR PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES ON IA 18291/2020
IA No. 11628/2020 - MODIFICATION
IA No. 18291/2020 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

Diary No(s). 2458/2020 (XVII)
(FOR MODIFICATION ON IA 11657/2020
IA No. 11657/2020 - MODIFICATION)

Diary No(s). 2461/2020 (XVII)
(FOR MODIFICATION ON IA 11674/2020
IA No. 11674/2020 - MODIFICATION)

Diary No(s). 2476/2020 (XVII)
(FOR MODIFICATION ON IA 11730/2020
IA No. 11730/2020 - MODIFICATION)

Diary No(s). 2578/2020 (XVII)
(FOR MODIFICATION ON IA 12036/2020
IA No. 12036/2020 - MODIFICATION)

W.P.(C) No. 238/2020 (PIL-W)
(FOR EX-PARTE STAY ON IA 17942/2020
FOR APPROPRIATE ORDERS/DIRECTIONS ON IA 38673/2020
FOR CLARIFICATION/DIRECTION ON IA 43664/2020
FOR CLARIFICATION/DIRECTION ON IA 45217/2020
IA No. 38673/2020 - APPROPRIATE ORDERS/DIRECTIONS
IA No. 45217/2020 - CLARIFICATION/DIRECTION
IA No. 43664/2020 - CLARIFICATION/DIRECTION
IA No. 17942/2020 - EX-PARTE STAY)

SMC(C) No. 1/2020 (XVII)
(FOR ADMISSION)

MA 725-796/2020 in C.A. No. 6328-6399/2015 (XVII)
(FOR EXEMPTION FROM PERSONAL APPEARANCE ON IA 45607/2020
FOR EXEMPTION FROM PERSONAL APPEARANCE ON IA 45620/2020
FOR EXEMPTION FROM PERSONAL APPEARANCE ON IA 45629/2020
IA No. 45629/2020 - EXEMPTION FROM PERSONAL APPEARANCE
IA No. 45620/2020 - EXEMPTION FROM PERSONAL APPEARANCE
IA No. 45607/2020 - EXEMPTION FROM PERSONAL APPEARANCE)

Diary No(s). 9887/2020 (XVII)
(FOR MODIFICATION ON IA 45207/2020
IA No. 45207/2020 - MODIFICATION)

Date : 18-03-2020 These matters were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE ARUN MISHRA
HON'BLE MR. JUSTICE S. ABDUL NAZEER
HON'BLE MR. JUSTICE M.R. SHAH

For Petitioner(s) Mr. Tushar Mehta,SG
Mr. Vikramjit Banerjee,ASG
Mr. Arijit Prasad,Sr.Adv.
Mr. Raghavendra Rao,Adv.
Mr. Rajat Nair,Adv.
Ms. Binu Tamta,Adv.
Ms. Swati Ghildiyal,Adv.
Ms. Shradha Deshmukh,Adv.
Mr. Gurmeet Singh Makker, AOR
Mr. Dhruv Tamta,Adv.

Mr. Mukul Rohatgi,Sr.Adv.
Mr. Mahesh Agarwal,Adv.
Ms. Shally Bhasin,Adv.
Mr. Victor Das,Adv.
Mr. Prateek Gupta,Adv.
Ms. Saloni Mahajan,Adv.

Mr. E.C. Agrawala, AOR

Dr. A.M. Singhvi,Sr.Adv.
Ms. Vibha Dhawan,Adv.
Mr. Pukhrambam Ramesh Kumar, AOR
Ms. Alvia Ahmed,Adv.
Ms. Anupama Ngangom,Adv.
Mr. Karun Sharma,Adv.

Mr. Kapil Sibal,Sr.Adv.
Mr. Vikas Singh,Sr.Adv.
Mr. Mansoor Ali Shoket,Adv.
Mr. Nitin Kala,Adv.
Mr. Kunal Sharma,Adv.
Mr. Karun Sharma,Adv.
Mr. Pukhrambam Ramesh Kumar, AOR
Ms. Snenira Farid,Adv.
Mr. Manjul Bajpai,Adv.

Mr. Pinaki Mishra,Sr.Adv.
Mr. Ramji Srinivasan,Sr.Adv.
Ms. Manali Singhal,Adv.
Mr. Mansoor A. Soket,Adv.
Mr. Santosh Sachin,Adv.
Mr. Nitin Kala,Adv.
Mr. Deepak Singh Rawat,Adv.
Ms. Aanchal Kapoor,Adv.
Ms. Ranjeeta Rohatgi, AOR

Mr. Brijender Chahar,Sr.Adv.
Mr. M.S. Vishnu Sankar,Adv.
Mr. Anil Kumar Mishra-I,Adv.
Mr. Sriram P., AOR

Mr. Tarun Johri, AOR

Mr. Harsh Kaushik, AOR

For Respondent(s) Mr. Shyam Divan,Sr.Adv.
Mr. Anoop Rawat,Adv.
Mr. Chaitanaya Safaya,Adv.
Mr. Rishabh Sharma,Adv.
Ms. S. Singh,Adv.
Ms. Shreya Sircar,Adv.
Mr. S.S. Shroff, AOR

Mr. Meet Malhotra,Sr.Adv.
Mr. Ravi S.S. Chauhan,Adv.
Mr. Pratap Shanker,Adv.
Ms. Shilpi Srivastava,Adv.
Ms. Palak Singh,Adv.
Mr. Swetank Shantanu,Adv.

Ms. Shikha Sarin,Adv.
Mr. Rahul Narayan,Adv.

UPON hearing the counsel the Court made the following
O R D E R

Learned counsel appearing for the DMRC has prayed to withdraw I.A. Nos.14007/2020, 14023/2020, 14025/2020 and 16159/2020, filed on behalf of DMRC. These applications are dismissed as withdrawn with liberty to avail appropriate remedy, in accordance with law.

After hearing learned counsel for the parties, we are of the conclusive opinion that no self-assessment/re-assessment can be done. When we decided the case bills were raised, amount was crystalized, and reopening of the same is not at all permissible. We take note of the situation that every day incorrect stand in derogation to order is being taken up and full attempt is being made by projecting that all of a sudden this Court has imposed certain dues. As a matter of fact, this Court has in its previous judgment dated 11.10.2011, in the same case, rendered in Union of India and Another v. Association of Unified Telecom Service Providers of India and Others, (2011) 10 SCC 543, settled the propositions and only for limited purpose case was sent back. Thereafter, bills were raised and dues were before us, we settled the issues finally and at the same time ordered that there shall not be any further exercise. But still we see that attempt has been made to scuttle the effect of order of this Court and that is a gross violation of the order of this Court by entering into a process of self-assessment/re-assessment that is virtually re-opening of entire dues, that kind of exercise is not at all

permissible and is tantamount to sitting over the order of the Court. There is no authority with any company to enter into self-assessment/re-assessment and to reopen the dues which have been settled finally by this Court. Learned Counsel for the parties rightly submitted that there cannot be any self-assessment, re-assessment and re-opening of the issues. In our order dated 24.10.2019 we have made it clear that no further exercise to be done and rejected the submission that demand has to be worked out after this Court renders decision. This Court held:-

> **"189. Further, the conduct of the licensees has also to be considered in the backdrop of the fact that the regime of revenue sharing was extremely beneficial than the previous regime of the fixed licence fee, and they have tremendously benefited by it as is apparent from the statistics of the revenue earned by the licensees under the revenue sharing regime. When Government has parted with the privilege as to revenue on sharing basis under the license, and an agreement entered into, it ought to have been precisely followed. The conduct of the licensees was highly unfair, and anyhow and somehow, they had attempted to delay the payment. <u>It passes comprehension how they have contended that the demand has to be worked out after this Court renders the</u> decision. Demand had been raised way-back in the year 2003, which is ultimately the subject-matter of the lis. As the objections are baseless and wholly untenable, it cannot be said that there was a bona fide dispute concerning various items. The disputes raised could not be termed to be bona fide at all. They were justified in order to delay the liability and the payment in accordance with the agreement. In this backdrop and what has been held by us, we have to consider whether the interest, penalty, and interest on penalty can be levied or not. Particularly since it is the revenue sharing regime and the Government has been deprived of the benefit of revenue which it would have earned but for granting the privilege which it has parted with in favour of the licensees.**
>
> **198. Resultantly, we are of the considered opinion that interest and penalty have rightly been levied. Once an amount of shortfall has not been paid, it has to carry 50% of the penalty on defaulted amount, as agreed.**

Thus, we find no substance in the submission that interest, penalty and interest on penalty cannot be realised. It is as per the agreement. In the facts and circumstances, we find no ground to reduce the same, considering the nature of untenable objections raised on behalf of the licensees, which were in fact either barred by res judicata or constructive res judicata but as this Court had remitted the matter to TDSAT to find that demand was based on proper interpretation of licence. Matter was remitted after giving finding on inclusion of the various heads in the definition of gross revenue. Even as per the case of licensees they were not validly included in definition, now reprobating that, stand has been taken that they did not form part of revenue which is not permissible. No litigant can be permitted to reap fruits on such inconsistent and untenable stands and litigate for decades in several rounds which is not so uncommon but is disturbing scenario projected in very many cases. We have examined the matter upon merits and then aforesaid conclusion indicates frivolous nature of objections."

(emphasis supplied)

We order that no exercise of self-assessment/re-assessment to be done and the dues which were placed before us have to be paid as we have affirmed those dues including interest and penalty, as ordered in the judgment. It is shocking and surprising that companies are not paying fraction of revenue earned by them and they are keeping it with them so long.

Shri Tushar Mehta, learned Solicitor General of India, has filed an application with respect to giving reasonable time and to cease the interest after a particular date. With respect to the subject-matter of application, we will consider on the next date of hearing.

There are serious kind of violations which have been committed by the companies. We do not appreciate at all the way in which they are acting. In case they indulge in it any further their

Managing Director shall be personally responsible for further violation of the Court's order.

List immediately after two weeks.

(NARENDRA PRASAD)
ASTT. REGISTRAR-cum-PS

(PRADEEP KUMAR)
BRANCH OFFICER