

THE HIGH COURT OF SINDH, KARACHI

Suit No. 93 of 2023

[Wateen Telecom Limited v. Federation of Pakistan & another]

Plaintiff : Wateen Telecom Limited through Mr. Arshad Tayabaly, Advocate, alongwith Mr. Abdul Ahad, Advocate.

Defendant 1 : Federation of Pakistan through Ms. Sara Malkani, Assistant Attorney General for Pakistan.

Defendant 2 : Pakistan Telecommunication Authority through Mr. Ahsan Imam Rizvi, Advocate alongwith Mr. Ali Akbar Sahito, Deputy Director (LAW), P.T.A.

Date of hearing : 12-07-2024

Date of order : 12-07-2024

ORDER

Adnan Iqbal Chaudhry J. - Mr. Ahsan Imam Rizvi, Advocate for the Defendant No.2 requests for an adjournment so as to file a counter-affidavit to CMA No. 9870/2024. The Assistant Attorney General too states that she has yet to receive instructions from the concerned Ministry. However, while passing order dated 05-07-2024, this Court had categorically observed that the Defendants should be ready today with submissions failing which the Court will pass an appropriate order on said application. Therefore, I do not adjourn the matter.

2. The Plaintiff (Wateen Telecom Ltd.) is the licensee of the Defendant No.2 (Pakistan Telecommunication Authority-PTA) under a Long Distance International License dated 26-07-2004, issued under section 21 of the Pakistan Telecommunication (Re-Organization) Act, 1996 [the **LDI License**]. Said license is set to expire on 26-07-2024.

3. On 24-01-2022, the Plaintiff applied for renewal of the LDI License as contemplated in clauses 1.2.2 and 1.2.3 of the license. At such time a dispute was pending between the Plaintiff and the

Defendants in Suit No. 915/2011 over the amount payable by the Plaintiff as 'Access Promotion Contribution for Universal Service Fund' [APC for USF]. By letter dated 13-09-2021 (page 87), the Defendant No.2 stipulated that renewal of the LDI License shall be subject to "clearance of all outstanding dues. In case of any dispute, the amount shall be paid/deposited in escrow accounts." Accordingly, the Plaintiff made a deposit in 'PTA-Wateen Escrow Account No. 3000942446' with the National Bank of Pakistan, the balance of which was Rs. 804,493,907 as on 09-07-2022 (page 189). Nonetheless, the Defendant No.2 required the Plaintiff to settle the APC for USF as a condition for renewing the LDI License; hence this suit.

4. Pending suit, the Ministry of Information Technology and Telecommunication, Government of Pakistan [MoITT] issued a notification dated 29-04-2024 to constitute a Steering Committee for an amicable solution of disputes over the APC for USF. The Committee was to submit its recommendations by 17-05-2024, however, that has not happened to-date. Learned counsel for the Plaintiff submits that by the time the Steering Committee gives its recommendations, the Plaintiff's LDI License will have expired, giving ground to the Defendant No.2 to stop the Plaintiff's operations, thus resulting in irreparable loss to the Plaintiff who has invested billions in infrastructure and human resource. On the other hand, learned counsel for the Defendant No.2 submits that the amount deposited by the Plaintiff in escrow is far less than its actual liability of Rs. 5,698,730,816/-.

5. Heard learned counsel and perused the record.

6. Apparently, the APC for USF is not a charge under the Plaintiff's LDI License. It is a contribution payable by a LDI Licensee to a fund maintained by the Federal Government under the Universal Service Fund Rules, 2006, and computed under the Access Promotion Rules, 2004, both of which are framed by the Federal Government under the Pakistan Telecommunication (Re-organization) Act, 1996.

7. It is a fact that a dispute over the APC for USF was (and is) pending between the Plaintiff and the Defendants when the Defendant No.2 represented by its letter dated 13-09-2021 that for the purposes of renewal of the LDI License any amount in dispute between the parties shall be deposited in an escrow account. Though it is not disputed by the Defendant No.2 that the Plaintiff had deposited in escrow an amount as APC for USF (Rs. 804,493,907 as on 09-07-2022), the case of the Defendant No.2 appears to be that such deposit does not cover the entire liability of the Plaintiff towards APC for USF. But then, there is nothing to show that such an issue was taken by the Defendant No.2 at the time the deposit was made. There is also no determination on the record made the Defendant No.2 under the Access Promotion Rules, 2004 as to the quantum of APC for USF payable by the Plaintiff.

8. As the matter stands today, a Steering Committee constituted by the Federal Government is trying to resolve the dispute between LDI licensees (including the Plaintiff) and the Defendants over the APC for USF. It seems unlikely that such dispute will be resolved before 26-07-2024 when the Plaintiff's LDI License expires. Therefore, there is force in the Plaintiff's submission that it will suffer irreparable harm and loss if its renewal application remains hostage to the disputed APC for USF.

9. In view of the foregoing, CMA No. 9870/2024 is disposed of in the following terms. The Defendant No.2 shall decide the Plaintiff's application for renewal of its LDI License before 26-07-2024 without imposing the condition of a further deposit towards APC for USF. However, this order shall not come in the way of the Steering Committee constituted by the MoITT for resolving the dispute over the APC for USF and shall be subject to the decision of said Committee.

JUDGE