

Non-Reportable

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

**M. A. No.83 of 2021
In M. A. (Diary) No.9887 of 2020
In Civil Appeal Nos. 6328-6399 of 2015**

Union of India

.... Applicant(s)

Versus

**Association of Unified Telecom Service
Providers of India and Ors.**

.... Respondent (s)

With

**M.A. No.115 of 2021
In M. A. (Diary) No.2450 of 2020
In Civil Appeal No. 5882 of 2015**

**M. A. No.116 of 2021
In M. A. (Diary) No.9887 of 2020
In Civil Appeal No. 6328-6399 of 2015**

O R D E R

1. These Miscellaneous Applications have been filed for modification of paragraph 38 (i) of the judgment dated 01.09.2020 passed in M.A. (D.) No.9887 of 2020 in C.A. Nos.6328-6399 of 2015 with connected matters and for clarification that the said judgment does not bar the Union of

India from considering and rectifying the clerical/arithmetical errors in computation of AGR dues.

2. Though it is not necessary to refer to the historical facts in detail, it is relevant to recall the brief background in which the above applications have been filed. The definition of 'gross revenue' as defined in Clause 19.1 of the licence agreements between the Government of India and the Telecom Service Providers (for short, '*the TSPs*') was considered in a judgment of this Court dated 24.10.2019 in Civil Appeal Nos.6328-6399 of 2015¹ with connected matters. In M.A. (D) No. 9887 of 2020 in C.A. Nos. 6328-6399 of 2015, this Court passed an order on 20.07.2020 in which it was observed that an attempt was made by the TSPs to wriggle out of the judgment dated 24.10.2019 in the guise of seeking reassessment and recalculation of AGR dues. This Court was of the firm opinion that there was no scope for raising any further dispute with respect to AGR dues. It was made clear that a new round of litigation is prohibited. It was also mentioned in the order that the calculations made and the amount to be recovered as stated at page Nos. 180-181 of the aforesaid M.A. shall be treated to be final and no recalculation and self-assessment can be undertaken.

¹ (2020) 3 SCC 525

3. The particulars of the amounts recoverable from major TSPs as per preliminary assessment have been mentioned in the order dated 20.07.2020. On 01.09.2020, M.A. (D.) No.9887 of 2020 in C.A. Nos.6328-6399 of 2015 was disposed of² in the following terms: -

“38. Resultantly, we issue following directions:

- (i) That for the demand raised by the Department of Telecom in respect of the AGR dues based on the judgment of this Court, there shall not be any dispute raised by any of the Telecom Operators and that there shall not be any re-assessment.*
- (ii) That, at the first instance, the respective Telecom Operators shall make the payment of 10% of the total dues as demanded by DoT by 31.3.2021.*
- (iii) TSPs have to make payment in yearly instalments commencing from 1.4.2021 up to 31.3.2031 payable by 31st March of every succeeding financial year.*
- (iv) Various companies through Managing Director/Chairman or other authorised officer, to furnish an undertaking within four weeks, to make payment of arrears as per the order.*
- (v) The existing bank guarantees that have been submitted regarding the spectrum shall be kept alive by TSPs, until the payment is made.*
- (vi) In the event of any default in making payment of annual instalments, interest would become payable as per the agreement along with penalty and interest on penalty automatically without*

² (2020) 9 SCC 748

reference to Court. Besides, it would be punishable for contempt of Court.
(vii) Let compliance of order be reported by all TSPs, and DoT every year by 7th April of each succeeding year."

4. The grievance of the Applicants is that the judgment dated 01.09.2020 needs clarification as even calculation errors cannot be rectified by the Union of India in view of the judgment of this Court.

5. We have heard Mr. Mukul Rohatgi, Dr. Abhishek Singhvi, Mr. Arvind P. Datar and Mr. Ramji Srinivasan, learned Senior Counsel appearing for the Applicants. It was contended on behalf of the Applicants that accounts pertaining to several years had to be scrutinized to arrive at the amounts payable by the Applicants towards AGR dues. A scrutiny of the accounts revealed that certain arithmetical errors have arisen due to inadvertence on the part of the Department of Telecommunications while computing these dues. They made it clear that there is no intention on the part of the Applicants to reopen the issues that have already been decided by this Court in its judgment dated 01.09.2020 in the guise of these applications for clarification/modification. Mr. Rohatgi referred to a note filed on behalf of the Applicant in M.A. No.115 of 2021 to demonstrate certain glaring errors in

the demand raised by the Union of India wherein amounts that have already been paid by the Applicant were not taken into account for computing outstanding AGR dues. Dr. Abhishek Singhvi submitted that errors committed in computation of AGR dues of the Applicant in M.A. No.83 of 2021 arose due to double counting of some revenue items, payments made but not accounted for and accrued deductions not being given effect to. It was reiterated by Dr. Singhvi that the Applicant should not be made to suffer for certain calculation errors made by the Union of India. Mr. Datar appearing in M.A. No.116 of 2021 argued that paragraph 38 (i) of the judgment dated 01.09.2020 prohibits the telecom operators from raising any dispute in respect of AGR dues on the basis of the judgment. It was made clear in para 38 that there shall be no reassessment. Mr. Datar submitted that there is no prohibition from seeking rectification of inadvertent errors committed in calculation of AGR dues. Mr. Ramji Srinivasan, supporting the submissions made on behalf of the other Senior Counsel, stated that it would be a travesty of justice if the Applicants are not permitted to get arithmetical errors in the computation of their AGR dues rectified. The learned Senior Counsel were in unison in submitting that the Applicants are not seeking any

positive direction, except to permit the Union of India to verify their accounts and rectify the defects in computation of AGR dues, if any.

6. The Union of India had filed M.A. (D.) No.9887 of 2020 in C.A. Nos.6328-6399 of 2015 seeking approval of this Court on the mode and timeline of recovery of AGR dues from the TSPs. In the said application, it was pointed out that several TSPs were undergoing insolvency proceedings under the Insolvency and Bankruptcy Code, 2016. As elaborated above, the order passed on 20.07.2020 in the said M.A. made it clear that no dispute can be raised in respect of AGR dues that had been arrived at, on the basis of calculations made by the Union of India and mentioned at page nos.180-181 of the M.A. The actual amounts payable by the TSPs have been mentioned in the said order. Issues concerning the ambit of proceedings under Section 18 of the Insolvency and Bankruptcy Code, 2016 in relation to spectrum, the manner in which payment has to be made by and liabilities apportioned between the TSPs in case of spectrum sharing and spectrum trading, with which we are not concerned in these Applications, were also dealt with in the judgment dated 01.09.2020. While disposing of the M.A., this Court at paragraph 38 reiterated that no telecom operator shall raise

any dispute in respect of the demand raised by the Department of Telecommunications pertaining to AGR dues, based on the judgment of this Court dated 24.10.2019. It was also held that there cannot be any reassessment.

7. Though these Applications appear to be innocuous at first blush, the end result of the relief sought by the Applicants in the guise of correction or rectification of the defects or arithmetical errors in calculation of AGR dues, would be recalculation which would amount to the AGR dues, as specified in the order of this Court dated 20.07.2020, being altered. The dispute relating to AGR dues had remained pending in courts for a very long period of time and bearing this in mind, this Court was at pains to emphasize, at the cost of repetition, that the AGR dues payable by TSPs cannot be the subject matter of any future litigation. The order dated 20.07.2020 makes it clear that there is no scope for any recalculation/re-computation of AGR dues. Even at the time of passing of the order dated 20.07.2020, an attempt was made to seek recalculation and reassessment, as recorded in the order, which was rejected by this Court outright. There is no room for any doubt, from the perusal of para 38 (i) of the judgment dated 01.09.2020, with respect to

this Court entertaining any application for altering the AGR dues of the TSPs.

8. For the aforementioned reasons, the Miscellaneous Applications are misconceived and therefore, dismissed.

.....J.
[L. NAGESWARA RAO]

.....J.
[S. ABDUL NAZEER]

.....J.
[M. R. SHAH]

**New Delhi,
23rd July, 2021**