

THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION (L) NO. 1892 OF 2017

IN
SUIT (L) NO. 508 OF 2017

Mahanagar Telephone Nigam Ltd. Applicant / Ori. Plaintiff

In the matter between

Mahanagar Telephone Nigam Ltd. Plaintiff

V/s

United Forum of MTNL Unions & Associations

Defendants

MTNL., Mumbai & Ors.

AFFIDAVIT IN REPLY ON BEHALF OF DEFENDANT NO.5

I, Ankur Kumar, Joint Controller of Communication Accounts, of Department of Telecommunication, Government of India, having my office at Office of Principal Controller of Communication Accounts, 'C' Wing, 3rd Floor BSNL Administrative Building, Juhu Road, Santa Cruz(West), Mumbai - 400 054 do hereby solemnly affirm and state as under:-

1. I am filing the present Affidavit for compliance with the direction contained in the Order dated 7th November, 2017 passed by this Hon'ble Court, on behalf of Defendant No. 5.
2. The revision of pay and wages of non-executives of Plaintiff with effect from 1st January, 2007 with Dearness Allowance (IDA) neutralization at the rate of 68.8% on the basic pay was done in accordance with the Tripartite Memorandum of Settlement signed by the Plaintiff with the majority of the Unions of Delhi and Mumbai under Wage Negotiation before the Regional Labour Commissioner (Central) New Delhi. At the time of entering into above Tripartite Agreement, the

Office Memorandum issued by the Department of Public Enterprises (DPE) dated 2nd April, 2009 for neutralization upto 78.2% DA was already in operation. The Parties to the Tripartite Agreement conscious after negotiations agreed for 68.8% DA neutralisation. It was also decided that as and when the Management of the Plaintiff decides to apply 78.2% DA neutralisation, the same benefits shall be extended to both executives and non-executives of the Plaintiff.

3. The Unions/Associations of the Plaintiff are now demanding benefits of merger of 50% DA effectively amounting to 78.2% as on 1st January, 2007 citing that Department of Telecommunications has extended same benefits to BSNL. The Department of Telecommunications (DoT) while issuing the Presidential Directive of BSNL had ordered that BSNL has to bear the additional financial implications on account of revised fitment benefit for pay revision from its own resources and no budgetary support will be provided by the Department. This is in line with the DPE OM dated 2nd April, 2009, which states that the revision of pay scales of pay w.e.f. 01.01.2007 can be provided by Presidential Directive depending upon affordability, capacity to pay and sustainability of the concerned CPSE.

4. The DoT has already received a proposal from the Plaintiff by letters dated 4th March, 2016 and 15th December, 2016 requesting financial support from the DoT to extend benefit of merger of 50% DA effectively amounting to 78.2% neutralisation as on 1st January, 2007 to the employees of the Plaintiff.

5. The Plaintiff has mentioned in its proposal to the DoT that its financial position is not conducive to take burden of the increase and it will have adverse impact on its financial position. The Plaintiff has informed that the additional burden will be about Rs. 1276 Crore for additional yearly expenditure and expenditure of payment of arrear w.e.f. 1st January, 2007.



- 6. This proposal of the Plaintiff was examined by Financial Wing of Department of Telecommunications which has suggested that the proposal of the Plaintiff may be considered as per DPE OM dated 2nd April, 2009.
- 7. Based on the financial results of the Plaintiff for the financial year 2015-16, the Plaintiff has been classified as "Incipient sick CPSE" as per DPE OM dated 29.10.2015. As per financial results the Plaintiff's expenditure was three times higher than its income. The Plaintiff is indebted for about Rs. 17662.96 Crores as on 31st March, 2017. It is pertinent to note that in Financial Year 2016-17, the Plaintiff has incurred a loss of about Rs. 2,941.08 Crores and its net-worth has turned negative i.e. Rs. '- ' 2701 crore.
- 8. The Plaintiff has engaged a Consultant for providing "Advisory Services" for its own revival plan. One of such plan has been prepared by the Consultant and has been sent for consideration to the Department of Telecommunications.
- 9. The issue of financial support as sought by the Plaintiff regarding extending benefit of merger of 50% DA effectively amounting to 78.2% as on 01st January, 2007 cannot be decided in isolation and has to be examined in light of financial position of MTNL and its sustainability and ability to pay.
- 10. It is humbly prayed that the delay in filing the present affidavit due to procedural reasons may kindly be condoned by this Hon'ble Court.

Solemnly affirmed at Mumbai

Dated this ^{24th} 23rd day of November, 2017

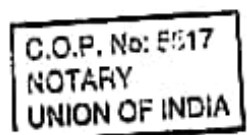


A handwritten signature of the Advocate for the Defendant No. 5.

Advocate for the Defendant No. 5,

24 NOV 2017

This document is noted at Sr. No. 838/17 in the Notarial Register Pg 98



A handwritten signature of the Deponent.

Deponent

Jt. Controller of Communication Accounts (Pen & Legal), Of Pr. Controller of Communication Accounts, Alpha Centre Circle, C.T.O. Bldg., 2nd Floor, Fort, Mumbai - 400 001.

BEFORE ME

HRS 24/11/17
SMT. HINA P. SHAH
 ADVOCATE & NOTARY, UNION OF INDIA
 B-2/50, 2nd Floor, Teacher's Colony,
 Bandra (East), Mumbai - 400 051.
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