

**TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL  
NEW DELHI**

**Dated: 16/07/2020**

TELECOM APPEAL/1/2020

IN

MISC APPLICATION/134/2020

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IN

MISC APPLICATION/135/2020

Petitioner Name: Vodafone Idea Limited

Versus

Respondent Name: Trai

**BEFORE**

**HON'BLE MR. JUSTICE SHIVA KIRTI SINGH ,CHAIRPERSON**

**For Applicants/Appellants/  
Petitioners Advocate**

Mr. Meet Malhotra, Sr. Advocate Mr. Saket Singh,  
Mr. Ravi S.s. Chauhan

**For Respondents Advocate**

Mr. Rakesh Dwivedi, Sr. Advocate Mr. Arjun Natrajan  
Mr. N. Sasank Iyer, Mr. Mayank Sapra, Mr. Eklavya Dwivedi, Mr. Arjun Khazanchi  
And Mr.arya Tripa  
Mr.ramji Srinivasan, Sr. Advocate Mr. K.r. Sasiprabhu, Mr. Raghav Shankar  
Mr. Tushar Bhardwaj, Advocates

Amicus Curiae:

For Impleader(Pet.):

For Impleader(Res.):

**ORDER**

**By S.K. Singh, Chairperson** – Heard Mr. Meet Malhotra, learned Senior Counsel for the appellant, Mr. Rakesh Dwivedi, learned Senior Counsel for the respondent(TRAI) and also Mr.Ramji Srinivasan, learned Senior Counsel who has appeared to press M.A. No.134/2020 filed on 14.07.2020 by Reliance Jio Infocomm Ltd. seeking impleadment as a party respondent on the ground that as per its understanding TRAI had acted upon letter of the applicant leading to holding of inquiry in respect RedX Plan of the appellant and passing of the order impugned in this appeal, dated 11.07.2020.

2. The appeal was taken up for the first time on 14.07.2020 when it was indicated that appellant may bring on record some further documents, the respondent(TRAI) may file a short reply and that prayer for interim relief made on behalf of appellant and also MA filed on behalf of Reliance Jio shall be considered on the next date.
3. Parties have been heard on the basis of records available before the Tribunal in respect of interim relief as well as the MA.
4. So far as the appeal is concerned, it is admitted for hearing. No notice is required to be issued as concerned parties have already appeared. So far as prayer on behalf of Reliance Jio is concerned although no relief is sought against it but it is clear that inquiry has commenced on the basis of a letter of the applicant dated 08.07.2020. This is corroborated by several materials including TRAI's letter which is mentioned as a reference in the impugned order also. During arguments also, Mr.Malhotra has imputed bias and has argued that the interim

order has been passed only to help the cause of Reliance Jio. Mr. Malhotra has submitted that although Reliance Jio is not a necessary or even a proper party but he would not object to its being heard in this matter. No objection to impleadment has been raised on behalf of TRAI. In the facts of the case, prayer made in MA No.134/2020 for impleadment is allowed. Appellant should file an amended Memo of Parties and furnish a copy of the Memo of Appeal upon learned counsel for Reliance Jio within one week from today. MA No.134/2020 stands disposed of.

5. Detailed reply/counter affidavit may be filed by TRAI if it wants to add to the short reply, within two weeks from today. Reliance Jio may also file reply within two weeks. Rejoinder, if any, may be filed within two weeks thereafter.
  
6. So far as interim relief is concerned, the appellant wants stay of the direction in the order dated 11.07.2020. The impugned order is a short order and not final. It consists of two paragraphs. In the first paragraph a *prima facie* satisfaction has been recorded that the terms and conditions of Vodafone RedX offer require a detailed review to ensure consistency with the existing regulatory framework and for that purpose a questionnaire has been prepared by the Authority and attached. The appellant has been directed to submit its response to the questionnaire within seven days of receipt of the letter. In the second or last paragraph an interim direction has been issued to withhold with immediate effect and until further orders, the Vodafone RedX offer “to facilitate detailed examination by TRAI”. The subscribers already enrolled are required to be protected in accordance with law and the Regulations.
  
7. It is obvious that the *prima facie* satisfaction is only for an inquiry for the purpose of a detailed review. The questionnaire indicates the concern of the Authority for transparency or lack of it which might have misled consumers into subscribing to the plan in contravention of directions of the Authority dated 26.03.2012. On behalf of appellant, the issues of bias and malafide have been raised against the Authority but more emphasis is on lack of any finding even *prima facie* that what has been offered in the RedX Plan originally on 11.07.2020 and more importantly in the modified RedX Plan dated 09.05.2020/13.05.2020 contravenes any particular direction governing tariff formulation.
  
8. The stand of the respondent and also Reliance Jio is that higher or any pre-determined speed for data transfer is technically not feasible to be assured in the wireless system which is used for mobile telephony and therefore, till the inquiry is completed it would not be proper to permit the appellant to take advantage and acquire subscribers on the basis of advertisements of its scheme assuring higher speed; hence, during inquiry the scheme has been rightly directed to be kept under suspension. On behalf of TRAI, it has been additionally submitted that the inquiry can be completed in 15 days’ time if the response of the appellant is received in time and therefore, interim order will not have much effect in this short period.
  
9. There is no lack of power in the Authority to review and modify a tariff for any telecommunication service from time to time. The objection of the appellant is against keeping the review proceeding pending and still issuing a modification as an interim arrangement without even a *prima facie* satisfaction that the Authority has found a case of non-compliance of any of the directives issued earlier. According to learned Senior Counsel for the appellant, the short reply of TRAI itself shows that the plan of 07.11.2019 has already been modified on 13.05.2020, and the complaint has come thereafter. In the Comparative Chart in Paragraph 9 of the reply, it has been shown that the earlier RedX Plan claimed upto 50% higher data speed as compared to other post-paid plans but as per the revised plan dated 13.05.2020 that claim has been modified and it now mentions – “priority 4G network on RedX Plan as compared to other Vodafone post-paid plans.” This modified plan has also worked for about two months but now it has to be suspended in view of impugned interim order of the Authority dated 11.07.2020.

10. Since the inquiry does not require any interference, no interim stay needs to be passed in respect of directions in Paragraph 1 of the impugned order. In order to avoid any adverse effect upon the contemplated inquiry it would not be proper to deal with the submissions touching the merit of the subject matter of inquiry except to note that now the assurance in the modified plan is only for priority 4G network on the RedX Plan and not of any higher data speed. As to what would be the meaning of the assurance of priority 4G network will have to be considered by the Authority. But such assurance of priority 4G network has not been found so far, even *prima facie*, to violate any of the directives already issued by the Authority to govern framing of tariffs. Even during arguments the criticism on behalf of the respondents was only against assurance of a higher data speed but that assurance appears to have been modified and omitted in the revised plan of 13.05.2020.

11. In view of aforesaid discussions it is found that the direction for suspension of the RedX Plan which, understandably, would apply only to the existing revised plan, lacks even *prima facie* reasons. The only justification that suspension would facilitate detailed examination by TRAI is found to be devoid of any merits. During submissions also it has not been shown that for detailed examination by TRAI it is necessary to withhold/suspend the Vodafone RedX offer forthwith. Hence, the interim direction in Paragraph 2 of the impugned letter dated 11.07.2020 is stayed until further orders. But it is made clear that it would be open for TRAI to proceed with the inquiry and pass final orders in accordance with law at the earliest after ensuring that requirements of natural justice are satisfied and the appellant is given opportunity to explain any alleged contravention of extant directions of the Authority. If the appellant has not filed its response to the questionnaire, it may do so by 22.07.2020. Such response, if filed within the extended period, shall be duly considered by the Authority for the purpose of further inquiry.

2. Post of the matter “for directions” on 17.08.2020.

**( S.K.SINGH )**  
**CHAIRPERSON**