

## SUPREME COURT OF INDIA

Aircel Ltd. & Ors.

Vs.

Bharti Aircel Ltd.

C.A.No.7526of2012

(Phoolan Wati Arora and Stish Kumar Yadav,JJ.)

05.12.2012

### ORDER

#### **Phoolan Wati Arora,J.**

This is an application by appellants - M/s. Aircel Ltd. and others for stay of judgment dated 24.09.2012 passed by the Telecom Dispute Settlement Appellate Tribunal (for short, 'the Tribunal') in TDSAT Petition No.130/2012 and for issue of a direction to the respondent not to disconnect the SMS services provided to the appellants' network. It has been further prayed that the circles in which disconnection has already been done, the respondent may be directed to restore the SMS services.

2. Shri Harish N.Salve, learned senior counsel appearing for the appellants relied upon an order dated 23.11.2012 passed by the Tribunal in Petition No.843 of 2012 - Aircel Limited & Ors. vs. Vodafone India Ltd. and Ors. and argued that even though while admitting the appeal on 17.10.2012 this Court did not entertain the appellants' prayer for stay of the judgment of the Tribunal, the prayers made in this application may be entertained because SMS services were disconnected after 17.10.2012.

3. Dr.A.M.Singhvi, learned senior counsel appearing for the respondent relied upon interim order dated 23.03.2012 passed by the Tribunal in the appellants' case and submitted that the Court may not direct reconnection of the SMS services without insisting on payment of 10 paise per SMS by the appellants to the respondent along with the arrears.

4. We have considered the respective submissions. In our opinion, the applicants have failed to make out a case for stay of the impugned order. It is not in dispute that while admitting the appeal on 17.10.2012, this Court did not accept substantially similar prayer for stay made by the appellants. Therefore, we do not find any justification to issue an interim order in terms of the prayer made in the application and direct the respondent to restore the SMS services without charging anything. The application is accordingly dismissed.

5. Before the aforesaid order could be typed and signed, Shri Salve made a statement that his clients are willing to pay the arrears to the respondent in terms of Demand Letter dated 25.10.2012 and 10 paise per SMS for the future and, therefore, the respondent may be directed to

immediately reconnect the SMS services. Dr. Singhvi submitted that in view of the statement made by Shri Salve, his client would reconnect the SMS services within 24 hours.

6. By taking cognizance of the statements made by the learned counsel, we direct the respondent to reconnect the SMS services to the appellants within 24 hours. This would be subject to the condition that within two weeks from today the appellants shall pay the arrears to the respondent in terms of demand letter dated 25.10.2012 and also pay at the rate of 10 paise per SMS from the date of reconnection of SMS services.

7. It is needless to say that the payment to be made by the appellants to the respondent would remain subject to final adjudication of the appeal.