

ADJUSTED GROSS REVENUE

As recently reported on 24th January 2020 by The Economic Times, approximately 15 telecom companies were supposed to pay around INR 1.47 lakh crores to the Department of Telecommunication (“DoT”) as per the Adjusted Gross Revenue (“AGR”) dues deadline set by the Supreme Court vide an order dated 24th October 2019 of which only one such company has adhered to the deadline.

According to the order, the Supreme Court adverted to its 2011 decision in *Union of India v. AUSPI* as per which, in the year 1999, telecom licensing companies, accepted that the license fee levied by the DoT, would be a percentage of the **Gross Revenue**. As per the Order, the licensees agreed to submit to the Government for determination of percentage of “**Revenue Share**” as well as definition of “**Revenue**” for this purpose. Therefore, the Supreme Court held that the decision would act as a res judicata against the licensees.

The concept of AGR was introduced through the New Telecom Policy, 1999 which allowed the migration of the licensees from a Fixed Licence Fee Regime to a Revenue Arrangement Scheme with effect from 1st August 1999. Under the new scheme, a license fee was collected as a proportional tax on the service provider’s **Revenue**. The service providers had to pay 15% of their **Adjusted Gross Revenue**. The circle operators also had to pay a spectrum usage charge. Clause 19 of the License Agreement between the DoT and the telecom companies defines **AGR** as follows:

19.1 Gross Revenue:

The Gross Revenue shall be inclusive of installation charges, late fees, sale proceeds of handsets (or any other terminal equipment, etc.), revenue on account of interest, dividend, value added services, supplementary services, access or interconnection charges, roaming charges, revenue from permissible sharing of infrastructure and any other miscellaneous revenue, without any set-off for related item of expense, etc.

19.2 *For the purpose of arriving at the “Adjusted Gross Revenue (AGR)”, the following shall be excluded from the Gross Revenue to arrive at the AGR:*

- I. PSTN/PLMN related call charges (Access Charges) actually paid to other eligible/entitled telecommunication service providers within India;*
- II. Roaming revenues actually passed on to other eligible/entitled telecommunication service providers and;*
- III. Service Tax on the provision of service and Sales Tax actually paid to the Government if gross revenue had included as a component of Sales Tax and Service Tax*

19.3 *Applicable AGR in respect of Spectrum usage charge shall be as given under Part VII of this agreement.*

This definition of AGR has been contested by telecom companies and associations regarding the facets included under AGR since 2005 such as intercorporate loan, income from interest and dividend, discount and commissions etc.

However, the Supreme Court Order dated 24th October 2019 clearly states that the definition of 'gross revenue' in clause 19.1 is inclusive, and it explicitly includes (i) installation charges, (ii) late fees, (iii) sale proceeds of handsets, (iv) sale proceeds of any other terminal equipment, etc., (v) revenue on account of interest, (vi) revenue on account of dividend, (vii) value-added services, (viii) supplementary service as fixed charges, (ix) access or interconnection charges, (x) roaming charges, (xi) revenue from permissible sharing of infrastructure; and (xii) any other miscellaneous revenue.

The deadline for payment of AGR as set by the Supreme Court was 23rd January 2020, and it has been reported that Reliance Jio Infocomm is the only telecom company to adhere to the deadline by paying INR 195 crores on 23rd January 2020. Other major players in the industry have sought an extension to the deadline as they hope to obtain a favourable order in the modification plea filed by them in the near future. It would be interesting to see how the matter unfolds.

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