D R A F T

NOTES ON RULE 37A

I. Why payment of pension from Pension Trust under Rule 37A will not bring any financial relief to MTNL as an organisation on this account.

The provisions of Rule 37 will enable Government of India to go for ONE TIME CONTRIBUTIONS towards pension liability to its employees who have worked for a longer period in the Government. The absorbed employees worked in MTNL only a few years before retirement. While MTNL, despite availing only shorter period of service of these employees, is liable to discharge permanent liability of the Pension, family pension and other pensionary liabilities for them, the Government took a comfortable position with one time limited contributions to the Pension fund. This as a policy, is unfair and anti PSU. Pension is a huge liability. This will cripple financially the telecom PSU that the Givernment has created with a proclaimed objective to compete with private telecom companies. For better understanding of this aspect, let us have a close at certain provisions of Rule 37A :-

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Rule 37 A

Sub-Rule 16

The Government shall **discharge its pensionary liability by paying in lump sum as a one time payment to the Pension Fund** the pension or service gratuity and retirement gratuity **for the service rendered till date of absorption** of the Government servant in the Public Sector Undertaking.

Sub-Rule 18

Lump sum amount of the pension shall be determined with reference to Commutation table laid down in Central Civil Services (Commutation of Pension) Rules 1981.

Sub-Rule 19

The Public Sector Undertaking shall make pensionary contribution to the Pension Fund for the period of service to be rendered by the concerned employees under the undertaking **at the rates as may be determined by the Board of Trustees so that the Pension Fund shall be self-supporting.**

Sub-Rule 20

If for any financial and operational reason, the Trust is unable to discharge its liabilities fully from the Pension Fund and Public Sector Undertaking is also not in a position to meet the short fall, the Government shall be liable to meet such expenditure and **such expenditure shall be debited to either the Fund or to Public Sector Undertaking.**

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The plain meaning and implications of all those Sub-Rules of Rule 37 A can be listed as follows :

(1) Even though the most of the absorbed employees of MTNL have worked for a longer period in the Government Department (DOT) and for a far less period in MTNL, The Government's liability for financing the Pension Fund is ONE TIME and that too, amount to be paid by the Government to the Fund is limited to the amount accrued on the basis of Commutation Table for the period till the date of absorption.

(2) MTNL's liability to finance the Pension Fund is not that way limited. MTNL's contributions to the Pension Fund is **at the rates that will make Pension Fund self-supporting.** The rates are not predetermined. The rates will be determined by the Pension Trust and the amount will be as required to pay for the pension, family pension and other pensionary entitlements.

(3) This is a permanent noose around the neck of MTNL in form of the pension liability. This should be carefully understood under the background of an imminent scenario where input to the Pension Fund in form of the pension contributions will be a fast diminishing factor consequent upon higher rates of retirements in each of the following months and years and at the same time stiff hike in pay out to meet the pensionary settlements including service gratuity etc. as well the payment of monthly pension and family pension. To meet the pension claims of one pensioner, pension contributions from 3.8 working employees are needed. The same is not expected as apparent from the table below.

YEAR	No.OF WORKING EMPLOYEES COUNTED FOR PENSION CONTRIBUTIONS	No.OF PENSIONERS/FAMILY PENSIONERS
Jan – Dec 12	28899	16903
Jan – Dec 13	27386	18416
Jan - Dec 14	25497	20305
Jan - Dec 17	19714	26088
Jan - Dec 22	7171	38631
Jan - Dec 30	305	45497

(4)Once the initial deposit to the Pension Fund and the earnings out of its investment is exhausted, the responsibity to feed the essential fund to the Trust to meet pension liability squarely lies on MTNL. MTNL needs to be a virtual **'Consolidated Fund of India**' thereafter to take the burden. It is naïve to think that pension under Rule 37A will bring any ultimate financial relief to MTNL. MTNL is already in red and will remain hard-pressed on this account further and further. Therefore, by succumbing to the pressure of DOT and accepting the scheme of pension to be paid by the Pension Fund under Rule 37A, a great disservice has been done to MTNL as an organization. By proposing that even the pension for the non-executive cadres also will be governed by Rule 37A, the entitlement of the secured pension for the non-executive cadres has been diluted.

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II. <u>Why guarantee given under Sub-Rule 20 is a pseudo guarantee and not a sovereign guarantee.</u>

(1) As per Sub-Rule 20, Government shall be liable to meet the expenditures of pension and other related pensionary benefits only when Pension Trust will fail to discharge its liabilities fully from the Pension Fund and MTNL also is no more in a position to meet the shortfall. But with the same breath, it states :

> **"and such expenditures shall be debited to either the Fund or to the Public Sector Undertaking."**

Thus it is clear that even at this stage the Government is unwilling to take the absolute responsibility of ensuring uninterrupted pension and related pensionary benefits. The Government still needs insolvent "heads" like Pension Fund or bankrupt MTNL to debit to

More important question is, how long can such default process continue under such distressed situation?

(2) Then there may arise a situation of **disinvestment of MTNL to the extent of fifty-one per cent or more.** This is within the policy of the Government and there is such indication in Sub-Rule (26) etc. Unlike BSNL, MTNL is very closed to 51% so far as disinvestment is concerned. In such cases, where will Government find the "head" to debit the expenditures of payment of pension after collapse of Pension Fund. If not for other reason, at least on this account, MTNL employees need more security and solid guarantee for their pension and other related issues from the Government.

(3) This apart,the Government seems to be blind to the fact that apart from arranging fund to feed the Pension Fund, MTNL has other operational and functional responsibilities. As a service provider, it is to provide and promote the services to the customers and for that, the investment for developmental and maintenance work is needed. MTNL is not created only to arrange necessary pension fund. Then there are working employees including those recruited by MTNL.

MTNL will have to take care of the legitimate financial claims and career aspirations of the working employees.

(4) But the Government, unmindful of this, does not want to relieve MTNL of this undue burden even when MTNL is on deathbed.

THUS THERE IS NO SOVEREIGN GURANTEE IN THE ARRANGEMENT PRESCRIBED IN RULE 37A (EXECPT THE EXCEPTIONS MADE FOR BSNL).

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Amendment suggested

By way of inserting statutorily the following Sub-Rule (28) below the existing Sub-Rule (27) :

“ **(28) Not withstanding whatever stated herebefore, the Government shall be liable to meet the expenditures for payment of pension, family pension and other Related pensionery benefits in the event of failure of Pension Trust to discharge such liability or in the event of the disinvestment of the Public Sector Undertaking to the extent of fifty-one per cent or above.”**