

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

**DATED 25<sup>th</sup> MARCH, 2009**

**Petition No. 168 of 2007**

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Spectrum Softech Solutions(P) Ltd.,  
Mahakavi G Road  
Cochin -682011  
Kerala  
Represented by its Chief Executive Officer  
Shri Manoj Padmanabhan

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Petitioner

Versus

General Manager,  
Bharat Sanchar Nigam Ltd.  
Kollam, Kerala.

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Respondent

**BEFORE :**

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**HON'BLE MR. JUSTICE ARUN KUMAR, CHAIRPERSON**  
**HON'BLE DR. J.S. SARMA, MEMBER**  
**HON'BLE MR. G.D. GAIHA, MEMBER**

For Petitioner : Mr. Joy Thattil, Advocate

For Respondent : Mr. Yoginder Handoo  
Mr. Kunal Sood, Advocates for  
Mr. Maninder Singh Advocate

**ORDER**

By this petition the petitioner, a company registered under the Companies Act, 1956 as an IT company has sought relief against the demand raised by the respondent for the lease charges of a 2 MBPS data circuit from its premises at Kollam to Alleppey from 14.8.2003 to 24.12.2004. The final bill was issued on 4.11.2004 by which the petitioner was liable to pay only up to 24.12.2004 i.e. the date up to which the leased circuit has been operative.

2. The contention of the petitioner is that the bill raised on 24.06.2003 before the provision of leased line by respondent for an amount of Rs. 595872/- has been paid to the extent of Rs. 595631/- which has been arrived at by calculating the service tax at 8% (which is the prevailing rate) by it and, therefore, the alleged final bills, totaling to Rs. 985060/-, creating a net liability of Rs. 389429/- after 15 months from the date of commissioning of the lease circuit is illegal, non-sustainable in law and arbitrary. The initiation of coercive steps against the petitioner on account of non-payment of the net demand of Rs. 389429/- by the petitioner is contested as being against the principle of natural justice.

3. It has been brought to our notice that after the respondent submitted the bills on 4.11.2004. The petitioner filed a writ petition W.P.{c} no. 35206/04 before the Kerala High Court. It is submitted by respondent that Hon'ble Kerala High Court vide order dated 3.12.2004 granted interim stay on the condition that the petitioner pays the advance rent for the period from 1-11-2004 to 31-1-2005 demanded by respondent and also 50% of the amount covered for the period from 14.8.2003 to 30.10.2004 within one week. The respondent has brought to our notice that the petitioner had not complied with the directions of the Hon'ble Kerala High Court dt. 3.12.04. However, on 18.3.2005 petition was dismissed as withdrawn without any permission having been obtained by the petitioner for filing any fresh petition for the same subject matter. It has been pleaded that the petitioner has not placed on records the orders of the writ petitions and the details of the writ petitions filed by the petitioner before the Hon'ble Kerala High Court.

4. It is also submitted by the respondent that another writ petition was filed before the Hon'ble Kerala High Court being W.P. {c} no. 13616/05 by the petitioner. The petitioner states that the Hon'ble Kerala High Court vide order dt. 30.5.3005 dismissed the writ petition filed by the petitioner at the time of admission itself. Aggrieved by the order dated 30.5.2005 petitioner preferred a writ appeal before the Hon'ble Kerala High Court W.A. No. 1214/2005. It is submitted that vide order dt. 15.6.2005 the learned Division Bench of the Hon'ble Kerala High Court disposed of the writ appeal by observing that this Tribunal would independently decide the dispute between the parties, untrammled by the observations of the learned single Judge in the judgment. It is important to note that the petitioner did not approach this Tribunal immediately thereafter.

5. The respondent further submitted that the petitioner woke up in the year 2007 and again filed a writ petition before the Hon'ble Kerala High Court being WP(C) No. 18619 of 2007. However, the same was dismissed vide order dt. 18.6.2007 by the learned single Judge observing that "the petitioner is in this court with the fourth writ petition, one of which ended up in Writ Appeal. It is seen from judgment of this court in W.A. No. 1214/2005 dated 15.6.2005 that this court left the matter to be settled by the Tribunal under Section 14 of the Telecom Regulatory Authority of India Act, 1997". Thereafter, the petitioner filed a Writ Appeal being W.A. No. 1655 of 2007 against the order dt.

18.6.2007 which was dismissed by the Learned Division Bench of the Hon'ble Kerala High Court vide order dt. 9.7.2007.

**6.** The respondent has brought to our notice that the petitioner has filed the present petition after a period of approximately 3 years from the date of issuance of the bills in question. The respondent states that besides delay, the petitioner is also not entitled for any indulgence on the ground of concealment of material fact, as mentioned above.

**7.** The respondent BSNL, a corporation fully owned by the Govt. of India, had pleaded that the appellant had approached the respondent with an application for a four wire leased line circuit. In pursuance of the said application, the respondent issued a provisional demand note dated 24.6.2003 for a sum of Rs. 5,95,872/-. On the top of this demand note, it is clearly mentioned that it is a provisional demand being made for leasing out the 2 MBPS data circuit to the petitioner. It is admitted by both the parties that on 14.8.2003, the petitioner was provided the 2 MBPS leased line circuit from its premises at Kollam to its premises at Alleppey. The respondent has pleaded and argued that there are three segments of a leased circuit as follows :

- (a) Two 2-wire local leads at Kollam of distance of 2 KMs between petitioner's premises and Kollam LDCC on copper cable.
- (b) Main circuit (channel) which is on the optical fibre cable supported at both ends by optical fibre system for a distance of 96 KMs between Kollam, LDCC and Alleppy LDCC.
- (c) Two 2-wire local leads at Alleppey of distance 2 KMs between petitioner's premises and Alleppey LDCC.

**8.** A set of two modems are used on both sides of the local leads for the purpose of carrying 2 MBPS data on copper cable. These modems are provided by the customer. The petitioner has admittedly installed 4 wire modems at both ends. For using 4-wire modems the respondent has provided 2 number of cable pairs (i.e.4 wires) at both ends of the circuit to the petitioner.

**9.** The final bills raised by the respondent show that the respondent has been charged on provisional basis for one year, 14.8.2003 to 13.8.2004 and one quarter (14.8.2004 to 31.10.2004). Further bill for next quarter (1.11.04 to 31.1.2005) was issued on 4.11.2004. The petitioner's liability has been projected only upto 24.12.2004 when the leased circuit has been discontinued. The facility stood withdrawn on 24.12.2004 and there is no dispute about this fact.

**10.** As per the tariff circular 4/99 dated 13.4.99 issued by Deptt. Of Telecom in accordance with the TRAI notified Tariff Order 1999 in the Official Gazette vide no. 301-4/99-TRAI(Econ.) dated 15.3.99, the tariff for high speed data circuit for 95 KMs distance for 2 Mbps for a distance of 5 Kms or multiple thereof have been used to arrive at the lease charges for the facility given by the respondent to the appellant. The minimum slab for these lease rentals is of 5 Kms and beyond 5 Kms for any distance between two slabs the tariff has been indicated in the circular to be charged on prorata basis. While calculating the leased charges for issuing the final demand on the petitioner, the respondent has rightly calculated the amounts for the period upto which the facility has been used by the petitioner on the basis of first year on a complete year basis and for second year on quarterly basis. The demand has been raised on 4.11.2004, payable upto 30<sup>th</sup> April, 2005 vide two bills.

**11.** The legitimacy of the demand raised by respondent is based upon the tariff notification issued by DOT, which was being followed by BSNL as a fully owned Govt. Corporation. It is also a fact that when the leased lines are requisitioned by the Internet Service Providers, there is an element of uncertainty in regard to the type of modem which is actually used at the time of commissioning of the lease circuit depending upon the availability of the same as per the approval of the Telecom Engineering Centre. Telecom Engineering Centre is an extended arm of Deptt. Of Telecom for prescribing the technical standards for utilization of systems/network elements not only to DOT but also to some extent to the private sector, so that the international standards for Telecom circuits is adhered to for providing telecom facilities. The duration of these lease circuits after one year is also uncertain depending on the viability of business of the Internet Service Provider and, therefore, except for the bill for 1<sup>st</sup> year, the bill in the subsequent year is realized in quarterly slabs on the basis of actual time for which circuit has been utilized. This practice has been followed by the respondent in the instant case.

**12.** There appears to be no reason to accede to the request of petitioner for reduction of lease charges, however, the petitioner has pleaded that since it had already distributed the service for a nominal commission to its customers after purchasing the same from respondent and, therefore, after 15 months, the additional amount claimed is not possible to be realized by the petitioner from its subscribers. This appeals to the logic of natural justice. The petitioner in no way can claim the additional amount from its subscribers and, therefore, the burden of the finally billed amount beyond the provisional amount has to be borne by it only.

**13.** The petitioner has also expressed that it could have used a 2-wire modem vis-à-vis 4-wire modem in case the same was available as per the TEC type approval in the markets, at the time when it used the leased circuits from the respondent. We cannot make any assessment about this fact on the basis of the material available in this case for the year 2003 and, therefore giving a concession on

the basis of this contention by the petitioner is not unreasonable. The respondent, however, does not agree. We may consider some rebate to the petitioner. BSNL in a letter issued on 10<sup>th</sup> Jan, 2008 has mentioned the methodology for charging the local circuits of 2 Mbps on 2 wire- 4 wire basis. This circular authorizes the concerned Chief General Managers to take decision on waivers of these charges on account of charging of local circuits of 2 Mbps 4 wire on 2 wire basis on case to case basis for the period from 1.4.99 to 30.4.2005. The local lease charges can be taken on the basis of 2 wire circuit in case the 4 wire modem has to be used by the recipient of the leased circuit from BSNL in view of the contingency that 2 wire modem as per the approval of TEC is not available in the market. Giving the benefit of doubt to the petitioner, the respondent is directed to charge the petitioner for local leads on 2 wire basis rather than on 4 wire basis. This is still short of the net liability of Rs. 389429/- as per the final bills raised by BSNL. The respondent is supposed to issue the final bill atleast for the first year as soon as the circuit is commissioned, so that the client is aware of its liability much in advance. In this case because of the delayed issuance of the bill after 15 months from the date of commissioning, the petitioner appears to be in difficulty because it has in turn sold out the facility to its customer based upon the cost paid by him on the basis of provisional bill. Besides charging on the basis of two wire circuit, we also direct that the additional concession of Rs. one lakh may be given to the petitioner in this case because the petitioner has billed its customers only on the basis of provisional demand note of respondent. In future for all such circuits, we direct that the final bill for the first year should be issued to the client by BSNL in a period of one month from the date of commissioning, so as to promote healthy business environment amongst the stakeholders.

**14.** The petition is disposed of with no costs.

.....J  
**(Arun Kumar)**  
**Chairperson**

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**(J.S. Sarma)**  
**Member**

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**(G.D. Gaiha)**  
**Member**