

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

**Dated 11<sup>th</sup> February, 2010**

**Petition No.134 of 2007**

Tata Teleservices (Maharashtra) Ltd. ...Petitioner

Versus

Bharat Sanchar Nigam Ltd. ...Respondent

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**BEFORE:**

**HON'BLE MR. JUSTICE S.B.SINHA, CHAIRPERSON**

**HON'BLE MR.G. D. GAIHA, MEMBER**

For Petitioner : Mr.Ramji Srinivasan, Senior Advocate  
with Ms.Simran Brar, Mr.Vedant Verma,  
Advocates

For Respondent : Mr.Maninder Singh, Senior Advocate with  
Mrs.Prathiba M. Singh,Mr.Yoginder Handoo,  
Mr.Tejveer Singh Bhatia, Ms.Nitya Thakur,  
Mr.Arjun Natarajan, Advocates

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## **JUDGMENT**

### **S.B. Sinha**

Interpretation of clause 6.4.6 of the interconnect agreement entered into by and between the parties hereto is in question in this petition wherein the petitioner has inter alia prayed for the following reliefs:

- “(a) hold and declare that the action of the respondent BSNL in raising these demands is unilateral, arbitrary and impermissible in law,
- (b) hold and declare that the action of the respondent BSNL in raising these demands is without any jurisdiction whatsoever and contrary to its own agreement and conduct;
- (c) hold and declare that the action of the respondent BSNL in resorting to coercive methods even after acknowledging such non-CLI calls as being technical and unintentional in nature is bad in law;
- (d) set aside the impugned demands raised by the respondent including Demand Notes dated 13.11.06 as revised on 6<sup>th</sup> January, 2007 and Disconnection Notices dated 4.5.07 and 4.6.07 and/or any other Demand Note raised by the Respondents in this regard;
- (e) Refund any excess amount already paid by Petitioner under protest to avoid disconnection of its Points of Interconnection in respect of supplementary bills raised by respondent;
- (f) Direct the respondent to maintain reciprocity with the petitioner in respect of the terms of Interconnect Agreement;

(g) Declare that clause 7.6.3 to the extent it is not reciprocal, is bad in law”

The factual matrix involved herein is as under:

An interconnect agreement by and between the parties hereto was entered into on or about 30.09.1997 for the Maharashtra Service Area. It was modified by an agreement dated 28.04.2006, the relevant clauses whereof are as under:

## “2.5 CALLING LINE PRESENTATION

2.5.1 BSNL’s and UASL’s network shall wherever technically possible, transmit and receive Calling Line Identification (CLI). The Calling Line Identification from UASL’s fully mobile/ CMTS network shall contain mobile subscriber number including 92 and from its basic services network the CLI shall contain Access code, Area code and subscriber number. The Calling Line Identification from BSNL shall contain area code and subscriber number depending on the technical feasibility.

2.5.2 Malicious call line identification shall be transported across the network as required by Law Enforcing Agency.

2.5.3 Disclosure of identity of calling line will be subject to provisions of law and this facility will be made use of for technical, commercial and administrative requirements as prescribed by the Government of India/ any other competent authority from time to time.

2.5.4 No tampering/alteration of CLI of calls handed over at the POI with BSNL shall be done by UASL. Instructions of Licensor in this regard shall be followed by UASL failing which the concerned POI of UASL shall be disconnected under misuse after giving one week notice in addition to other actions prescribed in this agreement elsewhere.

2.5.5 The switches of BSNL, which do not have CLI based call barring capability or are not having CDR based offline-billing capability, shall be technically non feasible for provision of point of interconnection. However, UASL undertakes that in the absence of such capabilities in BSNL’s switches, it shall abide by all terms and conditions including MCU based arrangements for the purpose of measurement and billing of interconnect traffic as mutually

agreed and thus mentioned in this agreement and that this arrangement will not be a matter of dispute, then BSNL shall provide POIs to UASL in such switches, if otherwise feasible to do so.

It is further agreed that in case of any regulatory/judicial intervention on the above matters, the UASL shall be entitled to and be extended the same relief/benefit given to any other operator to the extent it is applicable to the UASL under this agreement.

#### **6.4.6 WRONGLY ROUTED CALLS**

- (a) Unauthorised calls i.e. calls other than specified for that trunk group if detected, for which the applicable IUC is higher than the IUC applicable for calls prescribed in that trunk group, then BSNL shall charge the UASL the highest applicable IUC, as applicable for such unauthorized calls, for all the calls recorded on this trunk group from the date of provisioning of that POI or for the preceding two months whichever is less.
- (b) The CLI based barring facility shall be activated at the PoIs wherever technically feasible to ensure that the traffic handed over to BSNL is in the appropriate trunk groups only. Wherever it is technically not feasible to activate CLI based barring, periodic monitoring of the incoming trunk groups shall be done by BSNL to ensure this objective. The calls received by BSNL without CLI or modified/ tampered CLI from UASL shall be charged at the highest slab i.e. as for ISD Calls. In case such calls are received by BSNL on any trunk group, then all the calls recorded on this trunk group shall be charged at the rates applicable for IUC of incoming ISD Calls from the date of provisioning of that POI or for the preceding two months, whichever is less.
- (c) When CDR based billing is introduced in BSNL's network some of the trunk groups shall be merged. In such cases also, in case unauthorized or Incoming International call, without CLI call, call with tampered CLI is handed over

to BSNL at the merged trunk group, then BSNL shall charge the UASL the highest applicable IUC, as prescribed in clauses 6.4.6 (a) above for unauthorized calls & 6.4.6 (b) above for Incoming International call, without CLI call, call with tampered CLI, for all calls recorded on this merged trunk group from the date of provisioning of that POI or for the preceding two months whichever is less.

- (d) In addition, BSNL shall also have the right for taking other legal actions including disconnection of POIs or temporary suspension of the Interconnection arrangements under misuse.

## **7.2 ISSUE OF BILLS**

7.2.1 Bills for IUC will be issued on monthly basis by the designated unit of BSNL to the UASL and such bills shall be payable within 15 days from the date of issue, the UASL for the IUC, if any, due to it, may also issue similar bills.

7.2.2 Bills for telecom resources and other support facilities, such as connection charges, charges for leased facilities, charges for value added services and charges for enhancement of features, if availed by the UASL will be issued by BSNL and paid by the UASL at the intervals specified in this agreement.

## **7.6 SETTLEMENT OF DISPUTES REGARDING WRONG/ EXCESS BILLING:**

7.6.1 The bills issued by BSNL based on bulk record shall be final. In case of difference upto 0.25% +/- with the billing record of UASL, the amount billed by BSNL shall be treated as final. If the difference is more than +/- 0.25% but upto +/- 2%, payment shall be made by UASL. However, reconciliation of variance shall be carried out by both parties and will be subject to dispute resolution mechanism. Variance beyond this limit also shall be subject to dispute resolution mechanism as specified in the Interconnect Agreement. However, UASL shall pay to BSNL the undisputed amount plus 50% of the disputes amount subject to a minimum of an amount equal to previous month's billed amount immediately.

- 7.6.2 In the event UASL disputes the accuracy of a bill delivered by BSNL pursuant to this Agreement, it will, as soon as practicable, but in any case before the pay-by-date notify the billing liaison contact of BSNL of the nature and extent of the dispute along with all details reasonably necessary to substantiate its claim, which shall be reasonably capable of being verified by BSNL.
- 7.6.3 In case of calculation or clerical error in the bill, the bill issuing authority after verifying the bill, if it finds the errors genuine, will correct the relevant bill accordingly within three days of the receipt of the complaint.
- 7.6.4 In cases other than those referred in clause 7.6.3, UASL shall immediately obtain a provisional bill from BSNL before the pay by date or the original bill on the basis given in clause 7.6.1. The provisional bill shall be paid by the UASL before the pay by date indicated in the provisional bill. Thereafter, within 7 days of the issue of the provisional bill, the UASL shall approach the designated authority of BSNL along with all his relevant records based on which the UASL disputes the bill issued by BSNL. The UASL shall, in consultation with the designated authority of BSNL, settle the dispute within 15 days of the issue of the provisional bill referred in this clause. In this consultation, the records made by the measurement devices located at the BSNL interface point shall have precedence over the records of the UASL. If after consultation, it is found that the bill issued by BSNL is correct, the balance amount of the bill, which was kept under dispute after the issue of the provisional bill, will also have to be paid by the UASL within 7 days of the settlement of such dispute.
- 7.6.5 After the settlement of the dispute, if balance of the due payment is not made within the period referred to in clause 7.6.4, the BSNL shall discontinue the use of its facilities by the UASL immediately on occurrence of this default. Restoration of the facility will be made only on clearance of the dues payable by the UASL.
- 7.6.6 (i) Notwithstanding anything provided herein above, if the dispute over the accuracy of the bill fails to be resolved, in the manner already provided, the dispute shall be referred to the CMD BSNL, for resolution. The decision of the CMD BSNL shall be final.
- (ii) Each party shall continue to fulfill its obligations under the Interconnect Agreement during the pendency of dispute and while dispute resolution process invoked under sub Para (i) above except that BSNL shall not be

obliged to continue to provide and/or restore the interconnect services when all payments are not made by the UASL.

- (iii) Any party shall not use any information obtained from other party during the course of dispute resolution process under this clause for any purpose other than to resolve the dispute such information shall not be used in any litigation.”

Indisputably the Telecom Regulatory Authority of India framed IUC Regulations 2003 whereby and whereunder the rates for termination charge as also the Access Deficit Charges(ADC) were fixed. The details of the said charges are specified in Appendix A to the agreement some of the relevant portions whereof are as under:

**“A. POI of BSO at SDCC Tandem**

| S.N.  | Type of Calls  | Charges payable by BSO to BSNL (Rs.per minute) | Charges payable by BSNL to BSO (Rs.per minute) | Trunk Group Required |
|---|--|--|--|----------------------|
| <b>Originated from subscriber of BSO in same SDCA</b> |  |  |  |                      |
| 1   | BSO to BSNL (F,M), ISPs, Pagers, Level 1 services like 131, 141 etc except emergency services (100, 101, 102)  | 0.30   | 0.00   | AA                   |
| 2   | BSO to Emergency services (100, 101 & 102) of BSNL   | 1.20   | 0.00   | AA                   |
| 3   | Local Traffic originated in network of BSO, handed over to BSNL (F,M) for transit to other BSO or to Cellular (POI of cellular network at below Level II TAX level (in exiting cases)) | 0.49   | 0.00   | AA                   |

**B POI of BSO at Level II TAX of BSNL**

| S.N. | Type of Calls  | Charges payable by BSO to BSNL (Rs.per minute) | Charges payable by BSNL to BSO (Rs.per minute) | Trunk Group Required |
|------|--|--|--|----------------------|
|      | <b>Traffic Originated from subscriber of BSO and handed over by BSO to BSNL at Originating end</b> |  |  |                      |
| 1    | BSO to STD for upto 50 km  | 0.50   | 0.00   | BA                   |
| 2    | BSO to STD for > 50 km   | 0.95   | 0.00   | BA                   |
| 3    | BSO to BSNL for transit to Cellular  | 0.49   | 0.00   | BA                   |

”

Indisputably in terms of the said provision, termination charges for local call was 30 paise per call, whereas carriage charges for long distance was to be 95 paise per call. It is furthermore not in dispute that the calls originating from the exchange of the petitioner is required to be transferred to the parallel exchanges maintained by the respondents namely, from TAX to TAX, Tandem to Tandem or SDC to SDC.

For the period July and August 2006, inter alia on the premise that the petitioner has routed its calls on a wrong trunk group as also delivered the calls at the exchange of the respondent without any caller line identification (CLI) a demand for a sum of Rs.14,46,31,750/- was made in terms of a bill dated 13.11.2006.

The petitioner inter alia raised a contention that the said bill did not satisfy the requirements of the circular letter dated 13.06.2005 issued by the respondent in terms of a letter dated 29.11.2006. It was urged that the calls in question being related to alleged wrong routed calls, sub-clause (a) of Para 6.4.6 of the agreement shall apply and not the sub-clause (b) thereof.

By another letter dated 15.12.2006 the petitioner pointed out that so far as non-CLI calls are concerned, upon analysis of its CDRs and other records it was found that only two calls did not bear CLI which being very insignificant, no bill should have been raised relying on or on the basis of clause 6.4.6(b). It is not denied and disputed that no response thereto was received by the petitioner from the respondent. Yet again on 29.05.2006 and 13.01.2007 the petitioner raised a contention that both wrong routed calls and non-CLI calls cannot be clubbed together.

Before us, it has been pointed out that in fact the respondent itself has raised bills claiming the difference of payment in IUC charges at the highest applicable rate: the calls being intra circle in nature at the rate of 75 paise and the most of the same had been paid and only some amounts are yet to be paid. It has, therefore, been contended that the respondent was wholly incorrect in raising its bill at the rate of 2.55 paise per call which is meant for the international calls in which event only the provisions of 6.4.6(b) of the agreement would get attracted.

The respondent, however, by its letters dated 16.02.2007 and 20.02.2007 reminded the petitioner that the amount of bill has not been paid.

According to the petitioner a presentation was also made before the appropriate authorities of the respondent, a copy whereof has been annexed to the petition and marked as Annexure-II.

Mr.Ramji Srinivasan, learned counsel appearing on behalf of the petitioner would contend that from a perusal of the said presentation, the correctness whereof has not been denied or disputed, it would appear that wrong routing of calls took place because of human error as would appear from of the fact that in all the respective areas at which the calls were meant to be terminated; the petitioner had the requisite infrastructure including exchanges.

Our attention in this connection has been drawn to the following:

| TTML POI | BSNL Exchange | Wrong routing  | Actual IUC payable to BSNL | IUC to wrong routing | Remarks   |
|----------|---------------|--|----------------------------|----------------------|---|
| Kohlapur | Kolhapur Tax  | Calls from TTML Sandhli were handed over at Kolapur TAX                                    | 0.95                       | 0.95                 | TTML Kolhapur MSC has connectivity from BSNL Sanghli Tax and BSNL Kolapur Tax. The calls to be handed over on Sanghi Tax POI were handed over on Kolhapur Tax POI |
| Solapur  | Solapur Tax   | Calls to BSNL Karad local were handed over at Kolhapur Tax                                 | 0.3                        | 0.95                 | TTML has POI at BSNL Karad local exchange, but the calls were routed on Kolhapur Tax instead of to Karad local thereby paying higher IUC charges                  |
| Pen      | Pen Tax       | Calls originated from Ahmednagar, Aurangabad, Beed, Jalna and Pune Handed over at Pen Tax. | 0.95                       | 0.95                 | TTML Pune MSC has connectivity from BSNL Ahmednagar Tax, BSNL Aurangabad Tax, BSNL  |

|  |  |  |  |  |  |
|--|--|--|--|--|--|
|  |  |  |  |  | Beed Tax, BSNL Jalna Tax and BSNL Pune Tax and BSNL Pen Tax. The calls to be were handed over on Pen Tax instead of respective LDCA POI on the same TTML exchange. |
|--|--|--|--|--|--|

Mr.Maninder Singh, learned senior counsel appearing on behalf of the respondent, on the other hand, submitted that the very fact that the calls originated at a given exchange of the petitioner was handed over to the BSNL's exchange which was not specified in terms of the National Routing Plan and, thus, the same would be deemed to be wrongly routed calls. Wrong routing of calls, it was urged, having been admitted; the respondent was at liberty to raise bills either in terms of sub-clause(a) or sub-clause(b) of clause 6.4.6 of the agreement at its discretion.

It was vehemently submitted that as wrongly routed calls and non-CLI calls would give rise to raising of bills under two different heads, and in view of the fact that the respondent cannot raise bills twice over; only because some calls in a period of two months are wrongly routed and some are non-CLI calls, the bill dated 13.11.2006 must be held to be legal and valid.

Clause 6.4.6 principally is in two parts. Clause (a) refers to unauthorized calls and clause (b) refers to non-CLI calls or modified/tampered CLI calls. In terms of clause (a) the respondent is entitled to charge a UASL licensee the highest applicable IUC as applicable for such unauthorized calls; whereas in terms of clause (b) the respondent is entitled to charge the rate of IUC

applicable for incoming ISD calls. Clause (a), therefore, speaks of a call which is not to be treated ISD calls and clause (b) provide for treating the calls as ISD calls.

It may be true that in a given case where the calls in question considered both unauthorized calls as also non-CLI calls and/or modified or tampered CLI calls, it may be difficult to give effect to both the sub-clauses at the same time, but as would appear from the discussions made heretofore, it is not necessary to dwell upon the same.

Clause 6.4.6, we would assume for the purpose of disposal of this case contains a strict liability clause and not a penal one. A strict liability clause as contended by Mr.Singh also deserves strict construction. Even for the said purpose, the preconditions therefor must be fulfilled.

In a given case where an act of omission on the part of a party to the agreement would amount to a breach thereof, the promisee is entitled to obtain damages.

As the validity of clause 6.4.6 is not in question, we would furthermore assume that although no genuine pre-estimated sum is named in the contract, in a case of this nature where a machinery provision has been laid down for quantification of damages, it would attract provisions of Section 74 of the Indian Contract Act. (However, another view is also possible to be taken in the light of the decision of the Supreme Court of India in Fateh Chand Vs. Balkishan Das – AIR 1963 SC 1405).

The contention that all calls were intra-circle calls is not in dispute. The presentation made on behalf of the petitioner and as contained in Annexure-II to the petitioner categorically goes to show that all calls were wrongly routed calls. If that be so, we have no doubt in our mind that sub-clause (a) of clause 6.4.6 would be attracted in this case and not the sub-clause (b) thereof.

So far as the non-CLI clauses are concerned, we may notice that according to the petitioner only two such calls were detected. We have been taken through the reply filed by the respondent. The allegations to the aforementioned effect made in the petition have not been specifically traversed by the respondents. In that view of the matter, the statements made in the petition to the aforementioned extent would be deemed to have been admitted that only two calls were not having CLI. They should, in the facts and circumstances of the case, in our opinion, should be ignored.

For the reasons aforementioned we are of the opinion that in this case the respondent would be entitled to charge the petitioner only at the rate of 95 paise per call and thus in the cases where payment has not been made the difference therefor would be required to be paid. The petitioner is directed to pay the deficit amount (which is stated to be about Rs.18 lakhs) within a period of 30 days from date, failing which interest @ 18% per annum shall be payable.

The respondent, it goes without saying, shall be entitled to, if no actual bill has been raised, to raise the same, in which event payment must be made within a period of two weeks from the date of receipt of a copy of the bill after making adjustments of all payments made. This petition is allowed with the aforementioned direction. No costs.

....., J  
**(S.B. Sinha)**  
**Chairperson**

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

