

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

**Dated 16<sup>th</sup> November, 2011**

**Petition No. 423 of 2010**

(M.A. 349 of 2010, M.A.Nos.128, 178 and 196 of 2011)

M/s. Tata Communications Ltd. ....Petitioner  
Vs.  
Bharat Sanchar Nigam Ltd. ....Respondent

**BEFORE:**

**HON'BLE MR. JUSTICE S.B. SINHA, CHAIRPERSON  
HON'BLE MR. P.K. RASTOGI, MEMBER**

For Petitioner : Mr.U. Hazarika, Senior Advocate with  
Mr.Neeraj Malhotra, Advocate  
Mrs.Dharitry Phookan, Advocate  
Mr.Shaurjyo Mukherjee, Advocate  
Mr.Paul Roy Paske, Advocate

For Respondent : Mr.Maninder Singh, Senior Advocate  
Mr.Prathiba M. Singh, Advocate  
Mr.Tejveer Singh Bhatia, Advocate  
Mr.Vadivelu Deenadayalan, Advocate

**JUDGMENT**

**P.K.Rastogi, Member**

This petition has been filed by the petitioner for setting aside demand notices of the respondents dated 28<sup>th</sup> October 2010 and 12<sup>th</sup> November 2010 relating to a demand of Rs. 1,36,74,762/- containing an amount of Rs. 1,29,89,326/- ; Rs. 3,11,950/- and Rs. 3,73,486/- on three counts. The

relevant portion of the impugned notice dated 28.10.2010 is reproduced below:

"Sub : Short payments made to BSNL from Sep 2005 till Oct 2009

*Kindly note the following:*

- 1) *As per clause No.7.3.1(iii) of the interconnect agreement all payments due to BSNL will be paid without set off (netting) or counter claim and shall be free and clear of any withholding or deduction. While settling the IUC claims netting has been done by your office between the Receivable invoices of BSNL and Payable invoices of Tata Communications Limited. This is against the interconnect agreement. This has resulted in less payment being made by your office to the tune of Rs.1,29,89,326 (detail given as per annexure I).*
- 2) *As per the worksheet given by your office, while making the payment for the month of July 2009 deduction has been made for Rs.311950. This amount is also payable from your end.*
- 3) *As per the worksheet given by your office, while making the payment for the month of April 2009 Rs.373486 has been deducted. There is no basis for the same. Thereafter the amount of Rs.373486 is also payable from your end.*

*Therefore you are requested to make the payment of Rs.13674742\* immediately otherwise action will be taken as per the interconnect agreement.*

*\*All record/CDRs are available with BSNL.*

*\*\* Last date of payment is 11.11.2010. Hence any day wise summary or CDR data required to verify must be got collected and necessary action acted before the pay by date."*

2. The Petitioner is engaged in providing National, International Long Distance Telecommunication and Internet services under separate licenses granted by the Government of India. The Petitioner has changed its corporate name from Videsh Sanchar Nigam Limited (VSNL) to Tata Communications Limited on 13<sup>th</sup> February 2008.

3. According to the petitioner, the petitioner and the Respondent No.1 entered into an Interconnect Agreement on 27<sup>th</sup> September 2004 whereby each party agreed to interconnect its network to the network facilities of the other. Petitioner being an International Long Distance Operator (ILDO) and the respondents being the Access Provider the petitioner would carry calls to and from the network of the respondents. In terms of the IUC Regulations, 2003 the agreement provided for payment of IUC charges of the petitioner to the respondents for calls handed over by the petitioner to the respondent and vice versa. The petitioner is entitled to payment of calls originating from the respondents and carried on its network, for which respondents pay the petitioner for carriage of such calls. Correspondingly for calls originating international, carried by the petitioner for termination in

the respondents' network, termination charges and ADC are payable to the respondents.

The procedure of netting between the parties had been followed until October 2009. From October 2009 onwards respondents insisted that the Interconnect Agreement between the parties had clause 7.3.1(iii) which required that respondents will be paid without set off. Since then parties have made full payment on a monthly basis by either party to the other party without any netting.

4. The respondents suddenly and without any advance intimation addressed a demand notice on 28<sup>th</sup> October 2010 to the petitioner seeking an amount of Rs.1,36,74,762/- on an immediate basis otherwise threatening coercive action in terms of the Interconnect Agreement. The petitioner by detailed communication of 29<sup>th</sup> November 2010 refuted the contentions in the respondents' communication of 28<sup>th</sup> October 2010 and 12<sup>th</sup> November 2010. It was pointed out that payments had been settled on a monthly basis for the period July 2005 to October 2009 and that the same was accepted without any demur, the netting, in settlement always been accepted at that point of time. It was furthermore pointed out that Interconnect Agreement and clause 7.1.2 provides that in case of a dispute,

BSNL or the ILDO will have a right to inspect the records of the other party for the period not exceeding one year prior to such date. Furthermore it was pointed out that the time lines indicated in Interconnect Agreement for realization of charges which have been omitted from the bills issued, shall be issued within 12 months from the date of issue of relevant bill, which period had long expired.

Regarding the amount of Rs.3,11,950/- claimed towards alleged short payment in July 2009, it was pointed out that certain excess deduction towards TDS of IUC receivables of petitioner had been made and hence this was adjusted from July 2009 payment and in which regard a communication of 23<sup>rd</sup> October 2009 stating these facts was enclosed with the reply.

As regards certain alleged dues of Rs.3,73,486/- claimed for the month of December 2008, January and February 2009, this amount was adjusted by the petitioner as the respondents had deducted such amount from the receivables from the petitioner without assigning any reason and despite repeated communications in this regard, no response was forthcoming.

5. The petitioner has questioned the demand raised by the respondent on two principal grounds: -
- a). Firstly, the demand raised was clearly time barred having been raised after five years and which was also explicit from the provisions of the interconnect agreement.
  - b). That the parties to the Interconnect Agreement, i.e. the petitioner and the respondents had themselves agreed for the sake of convenience to settle the mutual dues by setting off one another's claims, which practice was followed until October 2009, only after which this practice was discontinued. Therefore the alleged infraction agreement provision in this regard was contrary to the practice and conduct of the respondents herein.

In terms of the interconnect agreement there was an express bar of limitation upon the Respondents from raising the impugned demand, which has been raised after five years. This is made explicit in the agreement in clause 7.3.1(iv) and other clauses in the agreement which specify maintenance of records upto a maximum of two years. This clause was an express bar upon the Respondents from raising the impugned claim. Even the other allied clauses of the agreement expressly prohibit the Respondents from the raising the impugned demand.

Clause 7.1.2 clearly provided for either party, in the event of a billing dispute to inspect the books and records of the other relating to a period not exceeding one year for the purpose of verifying the billing information for such period. Clause 7.1.3 requires each party to preserve records in respect of IUC for a period of one year from the end of the Billing Period. Billing Period is defined in the definition clause to mean one calendar month.

The agreement further provided for bills to be issued on a monthly basis and payable within 15 days.

6. The petitioner further submitted that the entire demand of the respondents was clearly barred in terms of the Interconnect Agreement. Even if the outer limit of three years limitation period was taken, the respondents could raise claims only in respect of the period from November 2007 and not before that. The amount claimed by the respondents from September 2005 till October 2007 was Rs. 1,11,98,025/- and amount for the period November 2007 to October 2009 was Rs.17,28,919/-.

Even assuming that the petitioner had a liability in respect of the period November 2007 and thereafter, however the same could not be

realized as under clause 7.1.2 and 7.1.3 the records required to be maintained only for a period of one year prior to the dispute being raised.

7. Regarding the claim of Rs.1.36 crores is founded on alleged variations in the rate charged by the petitioner for calls carried on its network as well as variation in the quantity i.e. number of calls carried, the petitioner submitted that no information whatsoever had been furnished by the respondents, some details furnished for four months on 10<sup>th</sup> December 2010 were without supporting CDRs.

8. In view of the above circumstances, the petitioner prayed for quashing and setting aside the impugned demand notices dated 28.10.2010 and 12.11.2010 of the Respondents.

9. On the other hand, the respondent submitted that the notices dated 28.10.2010 and 12.11.2010 of the respondent BSNL did not raise any fresh demands as alleged by the petitioner. In the notice dated 28.10.2010, it was clearly stated that there were short payments made by the petitioner to the BSNL for the period July 2005 till October 2009. Further, BSNL had called upon the respondent to clear its liability having come into existence by

deliberate short payments withholding the IUC amounts payable by the petitioner to it.

The BSNL had also communicated the issue of short payments being made by Tata. Some of such communications issued by BSNL by way of example written to Tata on 18.11.05, 26.2.08 and 12.1.10 were annexed. It is relevant to point out here that these letters have been deliberately concealed by the petitioner while filing the present objection. When the petitioner-Tata never raised any dispute about the bills that were issued from time to time it could not be permitted to raise any disputes and demand CDRs from BSNL towards computation of the said demands.

10. The respondent submitted that the amount to be paid by the petitioner to the respondent as pointed out in the BSNL communication dt. 28.10.10 was the amount accumulated during the period July 2005 till October 2009 in the running account maintained by the parties. Further, in the said communication dt. 28.10.10, BSNL clearly stated that all records/CDRs were available with BSNL and petitioner was free to inspect the same.

Both the petitioner and the respondent were obliged to carry out their obligations under the Interconnect Agreement dated 27.9.2004 and in terms

thereof including for payment of interconnection charges on continuous and running basis and by operating their accounts accordingly. The contention of the petitioner of settlement on monthly basis etc. were without any merit or sustainability. Further, BSNL not being the claimant, the provision of Article 112 of the Limitation Act would extend the requisite protection to it.

11. The respondent further submitted that the bills were to be paid as per clause 7.3 of the Interconnect Regulations. Besides, as per clause 7.5.1 and 7.5.4, the records made by the measurement devices of BSNL would have precedence over the records of the petitioner. All the conditions laid down under the terms and conditions of the interconnection agreement including clause 7.5.1 to 7.5.4 were required to be meticulously and mandatorily complied with by the private operator. There was no such claim and compliance with these mandatory conditions.

As per clause 7.5.1, in case of any dispute in billing which results in difference up to 0.25% +/- between the devices of the petitioner and the respondent the bill raised by the respondent would be final. That the said clause further provided that in case the difference in billing was more than 0.25% but less than +/- 2%, the petitioner shall pay the entire bill amount, the bill would be reconciled after payment. The petitioner was only to retain

the bills raised by the respondent in one scenario when the difference in the billing was beyond the variation of +/- 2%, the petitioner in such cases has to make payment of 50% of the disputed amount over and above the total undisputed amount. Further, the petitioner was to further raise the dispute regarding accuracy of bills delivered by BSNL as soon as possible but in any case before the due date of such bill as per clause 7.5.2.

The petitioner never raised any dispute regarding accuracy of bill delivered by BSNL and in such a scenario, the action of the petitioner to withhold lawful dues of the respondent in a completely impermissible manner was contrary the agreement between the parties.

12. The respondent further pointed out that the alleged practice of netting of monthly basis was done by the petitioner-Tata only in Punjab Circle and not in any other Circle of BSNL. However, when in the year 2009 the respondent had pointed out the same to the petitioner, the petitioner had immediately stopped making such unauthorized and impermissible deductions in the bills raised by BSNL.

13. According to the respondent, clause 7.2.1 is totally different from clause 7.3.1 (iii) in as much clause 7.2.1 permits both the parties to net off the minutes of usage of the network of the petitioner and the network of the respondent and thereafter to raise bills for such minutes of usage that are outstanding between the parties. However clause 7.3.1(iii) pertains to mode of payment after raising of the invoice/bill which provides that once a bill has been raised following the procedure prescribed in clause 7.2.1, the petitioner has to make the entire payment of the said invoice without any further set off, counter claim or deduction.

While clause 7.2.1 relates to raising of invoices / bills, clause 7.3.1(iii) pertains to payments to be made to BSNL by the petitioner which, has to be made without setting-off any amounts whatsoever.

Further, the clause 7.3.1(iii) was applicable only to the petitioner and not to the respondent and the respondent BSNL was fully entitled to set off any amount that was payable to BSNL from the petitioner in the IUC charges payable by BSNL to the petitioner. Even as per the interconnect agreement between the parties, Tata could not set-off any amount payable to BSNL. However, the BSNL was fully entitled to set-off amounts payable by it to

Tata. The payment of Rs.10,56,423/- was made to Tata by BSNL in May 2009 on the same basis for which, admittedly, the worksheet was also made available to BSNL by Tata. Even though the said worksheet was provided to BSNL by the petitioner, the petitioner in the subsequent month of July 2009, deducted an amount of Rs.1,19,693/- for the month of May 2009 without assigning any reason and stating that TDS for the month of May 2009 was deducted by BSNL in excess.

14. The petitioner in its rejoinder submitted that the respondents in their counter affidavit has sought to give an impression that the notices dated 28<sup>th</sup> October 2010 and 12<sup>th</sup> November 2010 are not fresh demand but have already been raised with the petitioner earlier and to prove the same three letters dated 18.11.05, 26.02.08 and 12.1.10 were placed on record. These three letters are independent of the claims raised in the impugned notices challenged herein and all of them have been settled. The respondents have sought to mislead the Court by placing on record only part of the documents without annexing the responses of the petitioner.

The letter dated 29 August 2005 and 18 November 2005 (same letter) relate to the amounts allegedly adjusted from the respondents for the month of July 2005 to September 2005. The CDR's for the said period was sent by

the petitioner to the respondents on 23<sup>rd</sup> November 2005 but there was no response from the respondent. The dispute was therefore treated as closed and no amount is therefore payable to the respondent.

By letter dated 26<sup>th</sup> February 2008 the respondents had asked the petitioner to remit the excess amount adjusted from the respondents bills. The petitioner has reverted by letter dated 10<sup>th</sup> March 2008 and provided the CDRs to the respondent for reconciliation. Since there was no response from the respondent another letter was sent to the respondent office on 21<sup>st</sup> January 2009 stating that as no response was received on CDRs for reconciliation the dispute shall be treated as closed. No communication thereafter has been received from the respondent and as such the issue with regard to letter dated 26<sup>th</sup> February 2008 was closed. No amount was therefore payable to the respondent.

The letter dated 12<sup>th</sup> January 2010 was issued with reference to invoice No. NPB/200911/88/IN/O dated 10<sup>th</sup> December 2009. On receipt of the letter from the petitioner released the payment in full to the respondent. This is evident from the communication dated 29<sup>th</sup> December 2009 and 22<sup>nd</sup> January 2010 which were attached.

15. Regarding the variations in rates and in minutes, the petitioner has submitted that the respondent has given only sample details of 4 months only instead of giving CDRs. In fact, for the month of December 2008, there was a rate and minute variations for which the respondent short paid the petitioner. The BSNL applied wrong rates for the month of December 2008 which was communicated to the respondent No. 2 on many occasions. BSNL's Punjab office has made payment to the petitioner on set off basis for the month of December 2008. By applying the rates of October 2008 in stead of the revised rates of December and which is why there is a difference in short payment by the respondents to the petitioner. BSNL Punjab, respondent No.2 herein, therefore, made a short payment for Rs. 2,54,023/-. The respondent has also enclosed sample analysis in their e-mail of 10<sup>th</sup> December 2010 but no CDRs were supplied. The petitioner has undertaken an analysis with its own CDRs which showed that billing was correct.

16. Although, large number of issues were framed for our adjudication, main issues for our consideration are:

- i) Whether the claims of the respondent made in the year 2010 for the period 2005 to 2009 are time barred ?
- ii) Whether the petitioner had any right to set off its dues from the dues of the petitioner?

17. As per records produced before us, the respondent had issued a letter to the petitioner on 28.10.2010 demanding an amount of Rs. 1,36,74,762/-, which include less payment of Rs. 1,29,89,326/- due to set-off ; Rs. 3,11,950/- deduction for the month of July 2009; Rs. 3,73,486/- for the month of April 2009 by the petitioner.

18. The amount of Rs. 1,29,89,326/- is due to less payment made by the petitioner from July 2005 to October 2009. This letter has enclosed the details of the amount ranging from July 2005 to October 2009 which may be reproduced below :

"Month	BSNL Receivable	Amount payable as per Tata Communications	Amount payable as per BSNL	Difference	Amount less paid by Tata Communications
Jul-05	70948889	10623146	10510702	112444	112444
Aug-05	104965121	13633604	11872676	1760928	1760928
Sep-05	80179534	12804034	12668313	135721	135721
Oct-05	67477011	13181379	12987363	194016	194016
Nov-05	69497324	12664928	11706919	958009	958009
Dec-05	65747507	12657896	10243499	2414397	2414397
Jan-06	67187912	12811636	12672487	139149	139149
Feb-06	49387566	11230027	10799913	430114	430114
Mar-06	36666050	11986208	10772742	1213466	1213466
Apr-06	44393214	10335667	10354739	-19072	0
May-06	24613665	9379484	9336774	42710	42710
Jun-06	35771363	9848731	9846718	2013	2013
Jul-06	45818247	10108691	10134456	-25765	0
Aug-06	33867942	1314766	1254998	59768	59768
Sep-06	21617292	7669012	7526970	142042	142042
Oct-06	25030174	9295009	9208676	86333	86333
Nov-06	21954003	10325470	10266598	58872	58872

Dec-06	31794232	10801623	10795687	5936	5936
Jan-07	30634440	11150754	10967827	182927	182927
Feb-07	26273600	8893989	8492198	401791	401791
Mar-07	20553383	10902401	10989681	-87280	0
Apr-07	20998926	12012245	11130743	881502	881502
May-07	25255950	12567969	11337714	1230255	1230255
Jun-07	20923143	11277494	10652605	624889	624889
Jul-07	18795965	9146428	9505580	-359152	0
Aug-07	16737773	2293778	2173035	120743	120743
Sep-07	19582723	412078	346696	65382	65382
Oct-07	29809416	6027379	6257952	-230573	0
Nov-07	23387788	7904798	7881406	23392	23392
Dec-07	18745409	7974073	7816854	157219	157219
Jan-08	14116085	3497024	3378170	118854	118854
Feb-08	16914310	2508536	2508819	-283	0
Mar-08	19951225	3480494	3482957	-2463	0
Apr-08	8035013	3092572	3097305	-4733	0
May-08	11386691	1968539	1957932	10607	10607
Jun-08	11267509	2661276	2638851	22425	22425
Jul-08	12290281	3705404	3695928	9476	9476
Aug-08	14351594	2644855	2615720	29135	29135
Sep-08	10136463	1000689	993907	6782	6782
Oct-08	5069964	9982763	954659	43614	43614
Nov-08	3515993	818661	701029	117632	117632
Dec-08	3909134	6209942	5955919	254023	254023
Jan-09	3440152	3374198	3303120	71078	71078
Feb-09	1819390	2478189	2418997	59192	59192
Mar-09	1978457	2309824	2296884	12940	12940
Apr-09	1992637	1249553	1249637	-84	0
May-09	1784127	2840560	2843766	-3216	0
Jun-09	1154297	5241109	5003647	237462	237462
Jul-09	1867504	1260512	1438792	-178280	0
Aug-09	2085020	1296238	1287750	8488	8488
Sep-09	2021452	1033330	618386	414944	414944
Oct-09	1797350	1437124	1308468	128656	128656

Total				12989326	12989326"
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According to the respondent, the petitioner did not have any authority to set off any amount which is payable from the respondent to the petitioner. It is seen from the records shown above that the respondent has not taken into consideration of any amount which is payable by the respondent to the petitioner. The statement produced at page 86 and reproduced above shows that in many cases the amount is payable by the respondent to the petitioner while calculating Rs. 1,29,89,326/- , the amount payable by respondent to the petitioner has not been set off.

The petitioner has contended that the respondents' contention in the impugned demand notice that netting being in violation of Interconnect Agreement was illegal, has no basis, as such netting was carried out by the parties and the respondents themselves accepted and made payments until October 2009 on such basis.

19. The interconnection agreement between the petitioner and the respondent was signed on 27.09.2004. Chapter 7 of the said agreement provides for the obligation of the respective parties for Interconnect Billing

System. Clause 7.1 relates to bill information, 7.2 relates to issue of bills and 7.3 relates to terms of payment. The relevant clauses are reproduced below:

**"7.2 Issue of Bills**

7.2.1: The bills shall be issued at each POI by BSNL for the net traffic after deducting the charges payable for the out bound traffic. The bills shall be issued on monthly basis and shall be payable within 15 day of the date of issue. The payment shall be by way of cheque/demand draft in favour of the designated authority of BSNL, drawn at the local branch of any scheduled bank at the place where such designated authority of BSNL is located. This clause shall be revised whenever dynamic carrier selection for ILD is introduced and subscriber billing is carried out by the ILDO.

**7.3. Terms of payment**

.....

7.3.1 (iii) All payments due to BSNL will be paid without set off (netting) or counter claim and shall be free and clear of any withholding or deductions.

**7.3.1 (iv)** If the bill issuing authority subsequently finds that some charges have been omitted from the bills issued, he will include the omitted charges in the subsequent bills at any time but within 12 months from the date of issue of the relevant bill except in cases where additional billing becomes necessary due to the tariffs/rates changes notified subsequently with retrospective effect by the appropriate authority.

7.5.2 In the event ILDO 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 billing liaison contact of BSNL of the nature and extent of the dispute alongwith all details reasonable necessary to substantiate its claim, which shall be reasonable capable of being verified by BSNL."

20. In accordance with clause 7.2.1 of the interconnect agreement the bills are prepared at each POI by BSNL for the net traffic after deducting the charges payable for the outbound traffic. The bills shall be issued on monthly basis and shall be payable within 15 days of the date of issue. Further, if the bill issuing authority subsequently finds that some charges have been omitted by the respondent, he will include the omitted charges in the subsequent bills, but within 12 months from the date of issue of the relevant bill except in cases where additional billing becomes necessary due to tariff/rates changes notified subsequently with retrospective effect by the appropriate authority.

In the present case, the demand has been raised for the period July 2005 to October 2009.

21. The petitioner has submitted the record to show that till October 2009, the payments were being made by the respondent to the petitioner on net amount basis by setting off the dues of either party. Admittedly, in the month of June 2006(24.06.2006), Rs.10,56,423/- was paid by BSNL to the petitioner where the BSNL bill amount of Rs. 17,84,127/- and Tata Comm. bill amount of Rs. 28,40,560/- for May 2009 was considered and net amount

after adjustment was paid to the petitioner. The details of the bill are as follows :

"Payment details for the month of May 2009	
BSNL bill amount	Bill passed
1824205	1824205
Service tax @10%	182421
Education cess @ 2%	3648
Higher ed. And secondary cess @ 1%	1824
Gross amount	2012098
TDS @ 11.33%	227971
Settled amount	1784127
Tata Comm bill amount July 2009	2575304
Service tax @10%	257530
Education cess @ 2%	5151
Higher ed. And secondary cess @ 1%	2575
Gross amount	2840560
TDS @ 11.33%	-
Settled amount	2840560
Net receivable	(1056433)"

If the respondent has paid the amount Rs. 10 lakhs in the month of June 2009, it is not understandable that how the balance of Rs. 1,29,89,326/- was payable by the respondent to the petitioner in the month of October 2009 pertaining to the period prior to June 2009. It is clear from the record and as admitted by the respondent that the setting off the dues of each party was a practice in Punjab Circle. If this practice was accepted by the respondent till October 2009, it is estopped to question the same in this petition. Suddenly after 5 years of lapse of time, the respondent cannot

reject the amount to be paid to the petitioner. As soon as the respondent pointed out the setting off the dues of the petitioner payable by the respondent should not be done, the practice was immediately stopped. Therefore, in our opinion, the respondent is not right in raising the issue of setting off the amount for a period prior to October 2009.

22. The bills are to be settled on a monthly basis but if such a situation is there, how the bills related to period as old as July 2005 can be raised with a delay of more than 5 years by the respondent. These are covered by limitation period of 3 years.

This Tribunal in Petition No. 186 of 2010 between the same parties has held on 27.01.2011 :

“36. However, when the petitioner questioned the impugned letter threatening withdrawal of inter connection services, evidently the question has to be considered keeping in view the provisions of Section 28 of the Indian Contract Act and not for the purpose of lodging a claim.

Mr. Bhatia, however, would contend that the agreement being of inter connection and both the parties having been raising bills on each other, the provisions of Article 1 of the Schedule appended to the Limitation Act, 1963 shall apply.

37. The aforementioned contention of Mr.Bhatia, in our opinion, is wholly without any basis.

38. BSNL has not filed any suit for accounts. Indisputably, it was to raise the bill either within a period of six months or file a suit for recovery of interconnection charges within a period of three years. It cannot raise a bill after the period of limitation is over, seeking to enforce its contractual right to disconnect the POIs. The bill has been raised for the months of April and May, 2004.

39. The said bill has been raised only during the pendency of these proceedings. The respondent, as was accepted in this case, had been raising bills on a wrong premise.

40. If it was maintaining the records electronically, the billing advice should have been contained all the informations relating to the digital number plan of the receiver of services. The respondent could not have, in any event, invoked a penal clause without any rhyme or reason.

41. The instance given by Mr.Hazarika, namely, Malleswaran POI at Bangalore should have been an eye opener for the respondent.

42. The provisions of the agreement clearly state the bills raised by the parties hereto be settled within a period of one month. It is, therefore, not a case where the account between the parties is not only mutual but also open and current.

43. This aspect of the matter has been considered at some details recently by this Tribunal in **Idea Cellular Ltd. vs. MTNL**, Petition No 33/2009, wherein a similar contention was rejected.

44. Submissions of Mr.Bhatia, however, was as noticed heretobefore, is that period of limitation is 30 years in terms of Article 112 of the Schedule appended to the Limitation Act.

45. The said submission of Mr.Bhatia is based on an observation made by a learned Single Judge of Andhra Pradesh High Court in the case of Paras Das (supra) wherein it was opined

“I am unable to agree with this submission of the petitioner. The respondent – plaintiff being a Central Government company is entitled to the benefit of Article 112 of the Limitation Act, 1963....”

46. With utmost respect to the learned Judge, the distinction between a `State' within the meaning of Article 12 of Constitution of India and Article 112 of the Limitation Act has not been brought to his notice.

47. In fact, the State of West Bengal for the same reason had to amend Article 112 of the Limitation Act to include a suit by Government Company.

48. If Article 112 was to be attracted in all the cases filed by the State, it would not have been necessary for the State of West Bengal to take recourse to the exercise of its legislative power to amend the said provision.

49. We may, in this connection, refer to a decision of the Calcutta High Court in the case of **West Bengal Agro Industries Corporation Ltd vs. UOI** (2001) Vol 3 Calcutta Law Times 315 wherein the effect of the aforementioned amendment of the Calcutta High Court has been considered.

50. Mr.Bhatia would urge that the provisions of the Limitation Act, being a shield and not a sword, only the remedy is barred thereby but the right is not extinguished except in the case of immovable property, having regard to the provisions of Section 27 of the Limitation Act, 1963.

51. Mr.Bhatia may be correct that Limitation Act being a statute of repose, bars a remedy and not the right what in a situation of this nature should be held is that any remedy to realize a bill keeping in view the contractual provisions contained in the agreement would be barred. The bill should have been raised within a period of three years.”

23. Regarding the payment relating to July 2009 for an amount of Rs. 3,11,950/-, the petitioner had replied to the respondent on 23.10.2009 that the amount of Rs. 3,11,950/- was not paid as there was excess TDS deducted by the BSNL. In its above said letter it mentioned :

“With reference to May’09 to June’09 IUC bills, we would like to inform you that BSNL has twice adjusted TDS amount while making payment to TataComm. We once again request you to please check the payment details at our end.”

“Payment details for the month of July 2009	
BSNL bill amount	Bill passed
1693114	1693114
Service tax @10%	169311
Education cess @ 2%	3386
Higher ed. And secondary cess @ 1%	1693
Gross amount	1867505
TDS @ 11.33%	211588
Settled amount	1655916
Tata Comm bill amount July 2009	1142803
Service tax @10%	114280
Education cess @ 2%	2286
Higher ed. And secondary cess @ 1%	1143
Gross amount	1260512
TDS @ 11.33%	142816
Settled amount	117696
Net receivable	538221
Less : TDS twice deducted by BSNL on there bill of June 2009	130782
Less : excess TDS deducted on April 2009	61475
Less : excess TDS deducted on May 2009	119693
Cheque amount	226270”

24. Regarding the respondent claim for an amount of Rs.3,79,486/- which was deducted by the petitioner from the respondent for the month of April 2009. The petitioner replied on 29.11.2010 itself that they had adjusted this amount as the respondent had deducted this amount from the IUC dues payable to the petitioner for December 2008 and January and February 2009 without assigning any reasons thereof.

25. Although, the petitioner has contended that it had deducted certain amount from the bills to be paid to the respondent due to wrong deduction by the respondents of certain amount, we feel that there is need of reconciliation of accounts for the deductions made by the petitioner for July 2009 and April 2009.

26. In view of our findings in Petition No. 186 of 2010, the respondent cannot raise the demand for a period more than 3 years as per the Limitation Act. Therefore, we are of the opinion that the demand raised prior to period October 2007 will not be admissible. Further, in view of the rival contentions about the different bills after October 2007, there is a need for reconciliation of account between the petitioner and the respondent for the period November 2007 to October 2009. If any amount is outstanding,

the petitioner will be liable to pay the same amount to the respondent and vice versa. Both the parties are directed to reconcile the amount within four weeks.

27. This petition is disposed of with the abovementioned directions. In the facts and circumstances of the case, there shall be no order as to costs.

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

.....  
**(P. K. Rastogi)**  
**Member**

/NC/