TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL
NEW DELHI

Dated 1st July, 2015

Petition No.94 of 2012

Reliance Communications Limited …Petitioner

Versus

S. Tel Pvt. Ltd ...Respondent

BEFORE:

HON'BLE MR. JUSTICE AFTAB ALAM, CHAIRPERSON
HON'BLE MR. KULDIP SINGH, MEMBER

For Petitioner	:	Mr. Chetan Sharma, Sr. Advocate Mr. Lakshmeesh S. Kamath, Advocate Ms. Sadapurna Mukherjee, Advocate Mr. Ruchir Bisaria, Advocate for Mr. Mahesh Agrawala, Advocate
For Respondent – S. Tel	:	Mr. Dayan Krishnan, Senior Advocate Mr. Amit Gupta, Advocate

ORDER

By Aftab Alam, Chairperson – This petition is filed by the petitioner, Reliance Telecom Limited for recovery of Rs.23.26 crores from the respondent, S. Tel Private Limited. The dues are in respect of (i) E-1 Capacity Services, (ii) Co-location Services and (iii) Bulk Band-width Services rendered by Reliance to S. Tel and pertain to the period July 2009 to July 2011.

The basic facts of the case are simple and incontrovertible. Reliance holds Unified Access Service (UAS)licence and National Long Distance (NLD) licence granted by the Central Government under section 4(ii) of the Indian Telegraph Act, 1885. At the relevant time S. Tel also held UAS licences granted under section 4(ii) of the Act. It may, however, be stated at the outset that the licences held by S.Tel were part of the 122 licences quashed by the Supreme Court by judgment dated 2 February 2012 in *Centre for Public Interest Litigation v. Union of India*[1].

The claim of Reliance, however, relates to the period prior to the quashing of S. Tel's licences and is based on the three agreements executed by the two sides in respect of five (5) telecom circles[2] for which S. Tel held the licences. The three agreements are: (i) E-1 Capacity agreement dated 26 august 2009, (ii) Bulk Band-width agreement dated 26 august 2009 and (iii) the Term Sheet Re. Co-location Service dated 19 September 2009.

E-1 Capacity Agreement:

Clause 1.29 of the agreement defined "Service Charges" as under:

> "1.29 "Service Charges" means the service charges/payments which are due and payable by the Customer to Reliance, in connection with provision of Capacity to Customer, as specified in Annexure 2 hereto"

[1](2012) 3 SCC 1

[2] (i) Bihar (including Jharkhand), (ii) Himachal Pradesh, (iii) Orissa, (iv) Assam, (v) North East and (v) Jammu and Kashmir

Clause 3 of the agreement contained the Special Terms and Conditions and sub-clauses 1, 2 and 3 of clause 3 provided as under:

> **"3. SPECIAL TERMS AND CONDITIONS**
>
> 3.1 The Parties hereby agree that Reliance shall provide the Capacity for connecting Shared BTS Sites to the Customer's BSC within each circle which BSC can be either co-located with Reliance BSC Location or can be a stand-alone Customer's BSC, at other location;
>
> 3.2 Reliance undertakes to provide the Capacity from all Shared BTS Sites to the respective Customer's BSC co-located with the Reliance BSC or Customer's BSC at another location than Reliance, as the case may be, as per the terms and conditions specified herein and as per the Acceptance procedure detailed in Annexure 3 to this Agreement;
>
> 3.3 The Service Charges for the provisioning of Capacity are specified in Annexure 2 titled as "Service Charges";
>
> 3.4 xxxxxxxxxx
>
> 3.5 xxxxxxxxxx
>
> 3.6 xxxxxxxxxx
>
> 3.7 xxxxxxxxxx"

The service charges were specified in annexure 2 to the agreement. Clause 2 of the annexure dealt with invoicing and clause 3 with payments which is as under:

> "**3. Payment**
>
> 3.1 All invoices are due and payable in Indian Rupee (INR) and within fifteen (15) days of date of invoice or by 20th of invoiced month ("Due Date"), whichever is later.
>
> 3.3 Customer shall pay the gross invoiced amount. The settlement of Debit/ Credit notes shall be done within fifteen (15)

days of raising the same and shall be done independently and not adjusted against the invoice payment. Both Parties shall carry out a reconciliation of invoicing and payment at the end of every quarter for the previous quarter.

3.4 In case the Due Date is falling on a day which is not a Business Day, then the payment shall be effected by Customer on the immediately succeeding Business Day.

3.5 In case the Capacity is suspended in accordance with Clause 10.7 of the Agreement, the Customer shall be liable to make payment of Service Charges for the suspension period."

Clause 4 contained provisions regarding *payment mode* and sub-clauses 3, 4 and 5 stipulated as under:

"4.3 If there are invoicing discrepancies and the variation is below 5% of the invoice value, then the invoiced Party will pay the billing party's invoice in full on the Due Date. However, the invoiced Party will have the right to consider this discrepancy as a dispute and take it up for discrepancy resolution as per defined process in clause 4.4 to 4.6 herein. The invoiced Party shall be entitled to raise disputes with regard to the non-receipt of credit notes which are due to the invoiced Party. The invoiced Party should communicate the reasons for such discrepancy with supporting/evidence explaining the variations and the other Party shall provide all information as required by the invoiced party. This discrepancy must be communicated by the invoiced Party on or before the Due Date. If there is no communication within the aforesaid period as per the provisions mentioned above, it shall be concluded that there is no discrepancy and the invoice value is due and payable. Should no material discrepancy be found in the invoice, customer shall be liable to pay interest @ 1.5% PM on such amount for which the payment is delayed beyond the original due date of payment.

4.4 If the discrepancy is greater than the threshold detailed in paragraph 4.3 above, or the invoiced Party decides to treat the discrepancy as a dispute even though within threshold mentioned in paragraph 4.3 above, a request for recalculation together with the supporting evidence of such discrepancy should be sent within ten (10) days of the invoice date from the invoiced Party to the invoicing

> Party which shall resolve the issue within seven (7) days from such communication. If no resolution is found with the period of seven (7) days then issue shall be referred to the AJWC, which should meet within four (4) Business Days and resolve it within seven (7) days.
>
> 4.5 Based on the outcome of the resolution mentioned in clause 4.4 hereinabove, interest shall be payable by the Party who shall be required to make payment as per the resolution on the outstanding amount specified in the resolution from the Due Date of such payment and until the payment has been made."

Bulk Band-width agreement:

Clause 1.26 of the agreement defined "Service Charges" in the same way as defined in the E-1 Capacity agreement and clause 1.29 stated that the annexures to the agreement would form part of the agreement. Annexure 2 contained the provisions regarding service charges and invoicing which were, in all material respects the same as the corresponding provisions in E-1 Capacity agreement.

Term-sheet Re. Co-location Service:

Clause 1 of the agreement contained the "commercial offer", over which the parties had agreed and clause 3.2 stipulated as under:

> "3.2 Rates have been offered for services as listed in Sr.No.1 of commercial offer above. All incremental services over the offered ones will be charged extra. The rates for the same will be provided on case to case basis."

It is the case of Reliance that it gave services to S. Tel in terms of the agreements and raised invoices for the three services regularly and as provided in the respective agreements but S. Tel was quite irregular in making payments. As a

result, the dues against it accumulated to Rs.23.26 crores till it finally folded up and ceased operations in February 2012.

In paragraph 34 of the petition, the break-up of the total dues is given as under:

i.	E-1 Capacity Services:	Rs.12.60 crores
ii.	Co-location Service:	Rs.2.08 crores
iii.	Bulk Band-width Service:	Rs.6.30 crores
iv.	Interest on delayed payment:	Rs.2.27 crores
	Total:	Rs.23.26 crores

However, the break-up of the amount of Rs.23.26 crores, along with invoices raised by Reliance for the interest payable by S. Tel are enclosed with the Petition as Annexure P-31(Colly) (from pages 318 to 337 of the plea). In this annexure the break-up of Rs.23.26 crores is shown as under:

1.	Bulk	Rs.6.30 crores
2.	Co-location	Rs.2.08 crores
3.	Deficit charges	Rs.2.81 crores
4.	E 1	Rs.2.27 crores
	Grand total	Rs.23.26 crores

S. Tel does not outright deny the claim of Reliance. It does not also deny having executed the E 1 Capacity agreement, the Bulk Bandwidth agreement and

the Co-location Term-sheet and having received services under those agreements. But it seems to take the stand that its liability to pay for those services would arise only subject to substantiation of the invoices issued by Reliance and reconciliation of accounts by the two sides. The defense of S. Tel is mainly contained in paragraphs 6.4, 6.6 and 6.7 of its Reply. In paragraph 6.4 of its Reply S. Tel states that at various stages it had categorically informed Reliance that the amounts claimed by it required "substantiation and mutual reconciliation" and goes on to cite four (4) emails in support of the averment. The emails cited in that paragraph are dated (i) 21 September 2011, (ii) 13 October 2011, (iii) 15 October 2011 and (iv) 19 October 2011. We shall presently advert to the emails but before that we may refer to paragraphs 6.6 and 6.7 of the reply in which it is stated as under:

> "6.6 It is submitted that according to Clause 3 of Annexure-2 of the E1 Capacity Agreement, the reconciliation of invoicing and payment had to be carried out at the end of every quarter for the previous quarter. Likewise, Clause 3.3 of Annexure-2 of the Bulk Bandwidth Agreement also required the reconciliation of invoicing and payment at the end of every quarter. However, no such reconciliation ever took place and, therefore, the amounts being claimed by the Petitioner cannot be said to be admitted dues by the Respondent.
>
> 6.7 That it is submitted that till the time the Petitioner does not reconcile the accounts to the mutual satisfaction of the parties there can be no question of any admission on part of the Respondents in paying any amount whatsoever to the Petitioner.
>
> It is further submitted that any amount offered by the Respondent during the course of correspondence to arrive at a compromise for continuation of business and as a gesture of

goodwill is not admissible as evidence and thus, no reliance can be made on the same by the Petitioner."

Further, S. Tel took the plea that as against the dues claimed by Reliance, it has assets in the form of equipment, security deposits and advance payments, aggregating in value to the sum of Rs.78,57,67,500/- lying with Reliance, the details of which are stated in paragraph 6.9 of the Reply.

On the basis of the pleadings of the two sides, a number of issues were framed for adjudication which are as follows:

i) Whether the Respondent has discharged its obligations to pay for the services / facilities availed from the Petitioner under the Agreements dated 26.08.2009, term and purchase order dated 19.09.2009 relating to bulk bandwidth?

ii) Whether the Respondent has failed and / or neglected in objecting to the invoices raised by the Petitioner, as per the procedure for raising objections prescribed in the Agreements dated 26.08.2009, amounts to an admission of liability to pay the outstanding due as per the invoices? If so, what would be the consequences thereof?

iii) Whether the security amount / advance amount paid by the Respondent can be adjusted towards the liability of the Respondent?

iv) Whether the advance amount paid by the Respondent towards bulk bandwidth services having been paid as per agreement can be adjusted in view of the subsequent event?

v) Whether the Petitioner is entitled to receive the Respondent a payment of Rs.23.26 crores along with interest of 18% per annum on the said amount from 1.2.2012 till the date of payment?

vi) Whether the Respondent by offering a payment schedule to satisfy the outstanding dues payable to the Petitioner has admitted its liability?

vii) Whether the Petitioner is entitled to the reliefs as prayed for in the Petition?

viii) Whether the petition is maintainable on the ground of misjoinder of cause of action?

ix) What relief, if any, the Petitioner is entitled to?

The two sides led evidences in support of their respective cases. Reliance examined one Prabhat Pranjpe who is the Vice President (Customer Life Cycle Management), Career Business and the authorised representative of the company. He fully supported the claim of Reliance against S. Tel. He identified and proved the E 1 Capacity agreement dated 26.8.2009 that was marked as Exhibit PW 1/2. He also identified the invoices raised for services under the E 1 Capacity agreement that were marked as Exhibit PW 1/4 (at pages 79 to 130 of the brief). He identified and proved the Term-sheet dated 19.9.2009 for Co-location of services; the Term-sheet was marked as Exhibit PW 1/6. He identified and proved the invoices for Co-location of services that were marked as Exhibit PW 1/16. He identified and proved the Bulk Bandwidth agreement dated 26.8.2009 that was marked as Exhibit PW 1/17. He also identified the Customer Application Forms (CAF) issued by S. Tel in regard to bulk bandwidth services as per the Bulk Bandwidth agreement. Copies of some of the CAFs were marked as Exhibit PW

1/18. He identified the invoices under the Bulk Bandwidth agreement that were marked as Exhibit PW 1/19 and PW 1/20.

Mr. Pranjpe stated that Reliance rendered full services to the respondent under the three agreements but S. Tel defaulted on payments in terms of the agreements and the petitioner's dues thus accumulated to Rs.23.26 crores. In paragraph 59 of the evidence affidavit he gave a break-up of the total dues of Rs.23.26 crores which is the same as stated at paragraph 45 of the petition. However, in cross examination, he slightly modified the break up, as would appear from his answer to question No.6, and went on to explain the change in the break up, in answer to Q No.7, as under:

> " Q.6 Can you please specify the amounts that are being claimed by the Petitioner from the Respondent in respect of each of the heads specified by you in your previous answer?
>
> A. In respect of E 1 capacity, the amount being claimed is Rs.13.95 crores; for bulk band width it is Rs.4.95 crores; for colocation, it is Rs.2.08 crores; and as interest on delayed payment, Rs.2.27 crores.
>
> Q.7 Can you please tell as to why in your affidavit dated 26.7.2012, the figures of Rs.12.60 crores under the head of E 1 and Rs.6.30 crores towards bulk bandwidth have been mentioned?
>
> A. The bulk band width and E 1 capacity services are both bandwidth services being provided by the Petitioner to the Respondent. During compilation of the numerous invoices into these two categories, an inadvertent mistake had occurred leading to a wrong figure being mentioned in my Affidavit. However, the total amount of the claim of the Petitioner over the Respondent remains unchanged."

We will consider in due course what effect, if any, the differences in the break-up of the total dues might have on the claim of Reliance.

Here it may be noted that an entire section (marked VII) of the evidence affidavit of Mr. Pranjpe deals with the exchange of emails between the parties in regard to the dues of Reliance against S. Tel. In this section of the evidence affidavit, the witness identifies the large number of emails exchanged between the two sides that were duly marked as exhibits. In those emails Reliance appears to be demanding payment of the outstanding dues and S. Tel seems to explain the reasons for the delay in payment and give re-assurances that payments would be made of Reliance's dues. Some of the mails sent by S. Tel to Reliance are of considerable importance as they show the respondent's stand in regard to the dues at the relevant time and we shall presently advert to those mails.

S. Tel, on its part, examined one Navin Chandra who was the AGM(Legal) and Regulatory of the company, as its witness. The witness articulated the case of S. Tel that that its liability to pay would arise only subject to the substantiation of the invoices issues by Reliance and reconciliation of the accounts by the two sides and the statements made in paragraphs 16 and 17 of the evidence affidavit are almost verbatim reproduction of the statements made in paragraphs 6.6 and 6.7 of S. Tel's Reply. Further, in paragraphs 13 to 15 of the evident affidavit the witness stated as under:

> "13. I state that the Respondent again wrote to the Petitioner on 19.10.2011 stating that invoices to the tune of Rs.18,171,410.13 are not in S. Tel and required to be reconciled. It was further mentioned that the Petitioner should reconcile the difference in the absence of which it is difficult to proceed further. The email dated 19.10.2011 is exhibited as Exhibit RW-1/5.
>
> 14. I state that even from the documents annexed on record by the Petitioner, it is clear that the Respondent has throughout conveyed to the Petitioner that there are huge differences in the amounts being claimed by the Petitioner and actually payable to it and the same cannot be quantified till the time reconciliation is done with mutual satisfaction of the parties.
>
> 15. I state that the following documents filed by the Petitioner clearly show that the petitioner cannot legally claim any amount till reconciliation is done:
>
> i) Email dated 27.06.2011 from the Respondent (Page 283 of the Paper Book)
>
> ii) Email dated 22.07.2011 from the Respondent (Page 287 of the Paper Book)
>
> iii) Email dated 13.12.2011 from the Respondent (page 296 of the Paper Book)."

In paragraphs 21 to 25 of the evidence affidavit the witness gave details of the S. Tel's equipment installed at Reliance's sites and the deposits and advances made by S. Tel under the terms of the agreements, the aggregate value of which amounts to Rs.78,57, 67,500/-. The witness concluded by saying that Reliance did not render proper services under the agreements and does not deserve any relief.

The witness was subjected to cross-examination and the relevant extracts from his cross-examination are reproduced below:

"Q.4 Is timely payment of invoices a material term of the Agreements between the parties?

Ans. No

Q.5 On what basis do you say so?

Ans. The process of reconciliation and payment of bills by practice of the parties always exceeds the time limits contractually prescribed.

Q.6 Therefore, are we to understand that, according to the Respondent, the so called practice would override the terms of the agreements between the parties?

Ans. Yes.

Q.7 Can you point out any specific instance when the Petitioner agreed in departure of any material terms of the agreements:\

Ans. It is a matter of record.

Q.8 Can you please show from the record any such instance?

Ans. It is a matter of record. The record is bulky and may be seen for this purpose.

Q.9 I put it to you that there is not a single document on record to show that the Petitioner ever acquiesced on any such practice.

Ans. I deny the suggestion.

Q.10 In your understanding are the payment terms in the present agreements similar to those agreements which are the subject matter of in Petition No.93 and 95 of 2012?

Ans. They are different.

Q.11 Would you be in a position to tell us as to what are the differences?

Ans. I do not offhand recollect the exact terms of payment. However, I do remember that they are different.

Q.12 I put it to you that the terms relating to payment are identical.

Ans. I deny.

Q.13 Is your company faced with any other litigation apart from those with the Petitioner, pertaining to seeking recovering of monetary dues?

Ans. Yes.

Q.25 Is it true that the respondent was dependent upon the disbursal of amounts by the consortium of banks for liquidating the payables to the petitioner:

Ans. Yes.

Q.27 Can you point out from the record any objection or dispute that you have raised to the invoices within the time stipulated in terms of clause 3.1, 3.2, 3.3, 4.3 and 4.6 of the Agreement dated 26.8.2009?

Ans. I refer to Pages 398, 297 and 298 which all indicate that the reconciliation of accounts was going between the parties.

Q.29 Did you ever place any evidence in support of "discrepancy as a dispute relating to the invoices, if so please show me from the record?

Ans. There is no specific evidence of discrepancy placed on record by the Respondent. (Vol. These must have been placed during the course of discussions which are shown above was on going between the parties.

Q.31 Did you ensure payments of "undisputed amounts" within the stipulated period in the agreement? If so, can you show from the record?

Ans. The very process of payment was not adhered to by the parties, in terms of the agreement.

Q.35 Did you ever point out to the Petitioner which specific clause of the agreement was not adhered to by it while invoicing the Respondent?

A. I do not recollect particulars.

Q.36 I draw your attention to the answer given by you in Q.31 above. Would the Respondent still maintain that you abided by the agreement in question strictly?

A. I will maintain the respondent had adhered to its obligations under the agreement.

> Q.37 Should I take it, therefore, that the Respondent, according to you strictly abided by its obligations under the agreement and performed the same?
>
> Ans. Yes. (Vol. to the extent that the Petitioner cooperated)
>
> Q.38 Now please see you answer to Question No.6 where you said that market practice overrides the terms of the agreement. Which of yours answers is correct?
>
> A. Both are correct.
>
> Q.39 Is it correct that you repeatedly pleaded with the Petitioner for indulgence in making payments in view of the tight financial position of the Respondent?
>
> A. Yes. (Vol. These payments were to be made in the interest of business cooperation and pending reconciliation which was never completed."

From a perusal of the cross examination it is evident that the witness persistently made statements that are in teeth of the express provisions of the agreements and when pressed for specifics he tried to be evasive. He knows that his statements are less than wholly truthful.

S. Tel has tried to support its case that its liability to pay would arise only subject to the substantiation of the invoices issues by Reliance and reconciliation of the accounts by the two sides on the basis of a few emails. The witness, as seen above made a reference to email dated 19.10.2011 (Exhibit RW-1/5) and three emails dated 27.6.2011, 22.7.2011 and 13.12.2011 that are enclosed with the Reliance's petition. But it would be misleading to arrive at any conclusion on the basis those three emails alone. In order to get the full picture it is necessary to

examine collectively the whole bunch of emails exchanged between the two sides. It is indeed true that in its email dated 19.10.2011, S Tel told Reliance that the difference in outstanding was huge and it was, therefore needed to make a reconciliation of accounts. But there are a number of emails both prior to and after that date and it is necessary to take a look at those emails as well.

By email dated 27.6.2011 (Exhibit PW 1/24), S. Tel provided the payment plan and outlook for the outstanding amount payable by it. In this email S. Tel stated that a statement of account had already been forwarded by Reliance to it for an amount of Rs.7,80,27,631/. It also acknowledged receipt of invoices of Rs.5.02 crores and Rs.3.1 crores from Reliance. In this email S. Tel stated that an amount of Rs.2.7 crores was to be reconciled and the final amount to be adjusted in the attached payment outlook. S. Tel also confirmed that pay out status will be available in November 2011.

In the email dated 28.6.2011 (Exhibit PW 1/25), in order to pay out its outstanding dues, S. Tel revised the pay-out for the month of June to Rs.1.5 crores. It further assured Reliance that it would make payment of Rs.2 crores till the end of July of that year.

On 22.7.2011 Reliance wrote an email (Exhibit PW 1/26) complaining that only Rs.57 lakhs (instead of Rs.2 crores) had been released. In reply, S. Tel by

email of the same date (Exhibit PW 1/27) again assured Reliance and gave its commitment that payment of Rs.2 crores would be made by the July month-end, out of which Rs.87 lakhs had already been paid. It was further stated in this email that unfortunately the respondent was unable to release any further funds in that month in the absence of the anticipated improvement in the situation.

In the email dated 26.8.2011, (Exhibit PW 1/30) S. Tel stated as under:

> "As we discussed and deliberated on the concall, I would like to reiterate our commitment to clearing the outstanding, as soon as the fund position improves.
>
> S. Tel is in constant touch and rigorously following for early disbursement of funds from the Banks, however given in current uncertainty in the environment it may take few more weeks for Banks to disburse the funds and hence we earnestly request you to kindly bear with us. We will revert to you with a payment schedule as soon as we have visibility of Banks plan with respect to fund release.
>
> We sincerely seek your cooperation in the matter and thank you for your patience. We reiterate, that you are one of the most esteemed vendors for S Tel and look forward to an unhindered relationship."

On 09.12.2011, Reliance gave a disconnection notice (Exhibit PW 1/34) to S. Tel for non-payment of its dues amounting to Rs.12.88 crores. In reply to the disconnection notice S. Tel by its email dated 13.12.2011 (Exhibit PW 1/35) informed Reliance that it would be able to arrange funds and further assured that part payment of Rs.3 crores will be made by the end of December. In this email S. Tel requested Reliance that till then no steps should be taken for disconnection. In

this email the S. Tel indeed stated that there was a substantial difference between the amount claimed at Reliance's end and the information and documents available with it and it was further stated that its team was following up with the team of Reliance to reconcile the outstanding claim and arrive at the final payable amount. A request was made that the Reliance's team should be advised to address this and close the issue at the earliest.

The next two emails from S. Tel are dated 29.12.2011 and 30.12.2011 (Exhibit PW 1/36) and, being important for the present controversy, are being reproduced hereunder:

Dated 29.12.2011:

> "I would be grateful if I am given a day to give the total payment outlook on the outstanding amounts, in the second half of tomorrow ie 30 Dec. will share the details.
>
> Thanks for your consideration & understanding and request you again not to disconnect the services."

Dated 30.12.2011:

> "We have now confirmed with the major bank that had caused the delay in disbursement of our already sanctioned loan that the approval for disbursement will be thru on Jan 6th and the disbursement will commence around Jan 10th.
>
> We have received the statement of accounts from you and our team is engaged in reconciling the same. By mid Jan we would be able to pay the promised Rs. 3 cr. The total of the balance reconciled dues and the month on month accruals of the next six months will be paid

> over six months from Feb at 10% 10%,20%,20%20%,20% of the total.
>
> We look forward to your confirmation of the above stated payment outlook and proposal. We greatly appreciate your kind cooperation in ensuring that we are able to resolve the current issues and further a mutually beneficial and profitable business association."

The last email from S. Tel on the issue was sent on Jan 18, 2012 (Exhibit PW 1/40); it reads as under:

> "The meeting of key bank that was the stumbling block for disbursal, as informed, did take place on the 12th of January, 2012 wherein approval for disbursal has been accorded. The process for disbursal is currently underway.
>
> We hope to receive the first disbursed amount by this weekend or early next week and our efforts are to ensure that the first payment is made to you are expeditiously on receipt of the same. In any case, please be assured that our projection of liquidation of unpaid and reconciled dues and the month accruals of the next six months payable over six months from Feb at 10%, 10% 20%,20%20%,20% of the total is likely to remain unchanged.
>
> We will be drawing up a schedule that includes payments to both Infratel and the bandwidth services on the above lines, as soon as we have a sharper fix on the actual disbursal from the banks.
>
> As explained before, our objective is to ensure that the twin issues of reconciliation and liquidation of established dues are addressed and completed.
>
> We are grateful for your support and the spirit of partnership that you have displayed and would seek your indulgence in incorporating the above developments to the payables plan underway. We would appreciate your re-establishing the bandwidth connectivity and the\ Infratel's passive Infra services wherever they have been disconnected."

Unfortunately for S. Tel, however, at this juncture when it was on the threshold of resolving its financial difficulties, the Supreme Court decision came on 2 Feb 2012 cancelling 122 licenses including those held by S. Tel and by letter dated 9 Feb 2012 intimated Reliance that it was compelled to shut down its services.

A holistic reading of the emails exchanged between the two sides makes it clear that at the relevant time S. Tell was in acute financial difficulties. It was in negotiations with some bank and hoped to get financial assistance from it. It repeatedly assured Reliance that as soon as it gets the financial assistance it would clear all its dues. In the meanwhile it gave payment schedules to Reliance, projecting the time frame and the manner in which it proposed to clear its dues. It is true that in the exchange of mails, S Tel from time to time brought up the issue of the differences in the due amounts at its end and as claimed by Reliance and called for reconciliation of accounts. But reconciliation of accounts was never made the precondition of payments of the admitted dues, which by no means appeared small. In a relationship of the kind that existed between S. Tel and Reliance on the basis of the three agreements, the request for reconciliation of accounts would be quite normal and routine. S. Tel was receiving from Reliance three kinds of services for which Reliance was raising invoices on it. It might happen that some time some of the invoices did not reach S. Tel or were not put at

its end in the relevant accounting record, resulting in a mismatch of figures at the two ends that could be resolved through reconciliation of accounts. But that would not wipe off S. Tel's liability to make payment against the invoices unless it is shown that the invoice(s) suffered from any errors. It is important to note here, that though requests were made by S. Tel, more than once, for reconciliation of accounts, there is nothing to show that S. Tel raised objection against any particular invoice, much less within the time and in the manner as prescribed under the agreements.

In the present proceedings too, S. Tel did not produce its own statement of account to show that it had made payments for all the services received by it from Reliance and had fully discharged its liabilities under the three agreements. No attempt was made to discredit the statement of account submitted by Reliance and no error was shown in the computation of the dues as claimed by Reliance. Though, as noted above, there is some difference in the break-up of the total dues, there is nothing to show that the computation of dues by Reliance is bad on that account or the explanation given by Reliance's witness for the difference is bad and unacceptable. In the course of hearing, counsel for S. Tel indeed pointed out that different break ups of the total dues are given at different places but no argument was further built up that that should discredit the figure of the total dues that remains consistent.

S. Tel sought to resist the Reliance's claim on the sole ground that its liability to pay would arise only subject to the substantiation of the invoices issues by Reliance and reconciliation of the accounts by the two sides. But as seen above there is no basis to support the plea.

As regards S. Tel's assets lying with Reliance, nothing was shown to us that would permit adjustment of the liability arising under the three agreements against the assets allegedly in possession of Reliance. In case S. Tel has any claim against Reliance on that score, it is free to seek its remedies in accordance with law.

In light of the discussion made above the issues may be answered as under:

i. In the negative and against S. Tel; the respondent failed to discharge its obligations to pay for the services/facilities availed from the petitioner under the agreements dated 26.08 2009 and the term and purchase order dated 19.09.2009 relating to bulk bandwidth.

ii. In the affirmative and against S. Tel; the respondent never raised any objection to any specific invoices, either as provided under the agreements, or otherwise. Rather, as would appear from the emails exchanged between the parties, it acknowledged its dues and repeatedly promised to pay off the dues. The claim of the petitioner stands established against it.

iii & iv In the negative and against the respondent.

v. In the affirmative and in favour of the petitioner, subject, however, to a much lower rate of interest.

vi. In the affirmative and against the respondent.

vii. In the affirmative and in favour of the petitioner.

viii. Not pressed by the respondent.

ix. Not pressed by either side.

In view of the findings recorded above the petitioner is held entitled to realise the sum of Rs23.26 crores from the respondent and the petition is decreed in favour of the petitioner. The decretal amount will also carry interest at the rate of 8% per annum from the date of filing of the petition before the tribunal till the date of payment.

The office is directed to prepare the decree accordingly.

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(Aftab Alam)
Chairperson

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(Kuldip Singh)
Member

sks