

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL

NEW DELHI

DATED 19TH OCTOBER 2012

PETITION No.733 of 2012

Loop Telecom Ltd. (Punjab) ... Petitioner

Versus

Bharat Sanchar Nigam Ltd. ...Respondent

PETITION No.737 of 2012

Loop Telecom Ltd. (Bihar) ... Petitioner

Versus

Bharat Sanchar Nigam Ltd. ...Respondent

BEFORE:

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

For Petitioner

Mr. Navin Chawla, Advocate
Mr. Sharath Sampath, Advocate
Mr. Manikya Khanna, Advocate

For Respondent

Mr. K.P.S. Kohli, Advocate
Mr. Abhishek Kumar, Advocate
Mr. Tarveen Singh Nanda, Advocate
Ms. Debopama Roy, Advocate for
Ms. Maneesha Dhir, Advocate

ORDER

These petitions have been filed by the Petitioner herein inter-alia for grant of an ad-interim order of injunction directing the respondent not to take any coercive step pursuant to/under/in respect of the bills/letters/demands dated 21.3.2012, 3.5.2012 and 6.6.2012.

2. Whereas a consolidated bill dated 21.3.2010 has been raised levying all the charges for a sum of Rs.3,71,155/-, in Petition No. 733 of 2012 bill for a sum of Rs.3,18,511/- towards Port charges and infrastructure charges has been raised. The bills and invoices, however, have also been raised towards lease circuit charges and emergency calls terminated at Level One Tax.

Similar questions raised by the Petitioner have been dealt with by this Tribunal in the petition inter parties marked as 669 of 2012, judgment whereof has been pronounced today.

3. Mr. KPS Kohli, learned counsel appearing on behalf of the Respondent, however, submits that having regard to the directions made by the DoT, a broader question arises for consideration herein that treating all the operators

on a non-discriminatory basis would mean that everybody should be charged at the same rate.

4. Interconnect agreement, it is trite, is governed by the terms of the contract entered into by and between the parties thereto.

5. In Petition No. 669 of 2012 it has been held that it is incorrect to contend that the DoT has asked the Respondent to alter its commercial agreements. In fact, from a bare perusal of the order dated 15.6.2010, it will appear that therein also the words as 'Mutually agreed agreements' have been used.

The Respondent also in the interconnect agreement while inserting the Addenda II has used similar words.

The interconnect agreement being a contract within the parties, this Tribunal is of the opinion that prima facie the Respondent cannot insist on deposit of the Port charges beyond the date of disconnection thereof inter-alia on the premise that it has kept the port reserved for the Petitioner.

6. There is no dispute with regard to the IUC charges or the lease circuit charges which are to be paid till the date of disconnection.

7. In that view of the matter, this Tribunal by an order dated 17.10.2012 has passed the following order :-

“Having heard the learned counsel for the parties and keeping in view the fact that in similar matter, being Petition No.669 of 2012, the interim order prayed for by the Petitioner has been heard and order reserved, let the order on the interim prayer made by the Petitioner be also reserved in this case.

However, it is stated by Mr.Navin Chawla, learned counsel appearing on behalf of the Petitioner on instructions that apart from the port charges and the emergency charges for calls at level-1, all other amount have been paid and if not, shall be paid within one week. Mr.Kohli submits that to the aforementioned effect the Petitioner may affirm on affidavit.

The Petitioner is directed to do so.

It is made clear that in the event no interim order is granted, the Petitioner would be bound to deposit the amount of demand.”

“Having heard the learned counsel for the parties and keeping in view the similar matter, being Petition No.669 of 2012, had been heard and order has been reserved, let the order on the interim prayer made by the Petitioner be also reserved in this case.

Mr.Chawla states that apart from the annual port charges as also emergency charges, all other dues have been paid.

It is also stated that IUC charges have been paid, and if not already paid, shall be paid within one week.

It is made clear that the Petitioner shall deposit, if not already deposited, the lease line charges till the date of disconnection.

To the aforementioned effect, the Petitioner shall affirm an affidavit.

On the Petitioner fulfilling the aforementioned conditions, the bank guarantee may not be invoked.”

8. The prayer for interim order of injunction would be governed by the order dated 19.10.2012 passed in Petition No. 669 of 2012 also an interim order dated 17.10.2012.



(S. B. Sinha)
Chairperson

rkc