

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

**Dated: - 2<sup>nd</sup> May, 2014**

**Petition No. 93 of 2012**

Reliance Telecom 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, Sr. Advocate  
Mr. Amit Gupta, Advocate

**ORDER**

**By Aftab Alam, Chairperson** – This petition is for recovery of Rs.1,11,70,648=00 from the respondent as dues of Inter-connect Usage Charges for the period January 2010 to January 2012.

The basic facts of the case are simple and incontrovertible. The petitioner is the holder of licence granted by the Central Government under section 4(ii) of the Indian Telegraph Act, 1885. At the relevant time the respondent too held a licence under section 4(ii) of the Act. It

may, however, be stated at the outset that the respondent's licence was one of the 122 licences cancelled by the Supreme Court vide its judgment dated 2 February 2012 in *Centre for Public Interest Litigation v. Union of India*<sup>1</sup>.

In regard to the period to which the petition relates, the parties entered into an Inter-connection Agreement for the telecom service areas Bihar, Orissa and Himachal Pradesh on 29 October 2009 and another Inter-connection Agreement for the telecom service areas Assam and North East on 12 December 2009. The two agreements are in identical terms.

The agreement defined "Inter-connect or Inter-connection", "Inter-connection Seeker", "Inter-connect Provider" and "IUC" in clause 1 as under:

**"Interconnect or Interconnection** means the commercial and technical arrangements under which S TEL and RTL connect their Networks, equipment and services to enable their customers (as applicable) to access the customers, services and network of other service providers.

**Interconnection Seeker** means S TEL who has sought the interconnection to the network of RTL

**Interconnection Provider** means RTL to whose network the interconnection is sought by S TEL for providing telecommunication services.

**IUC** means Interconnect Usage Charge as prescribed by TRAI"

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<sup>1</sup> (2012) 3 SCC 1

The expression “Licence” was defined in the two licences with reference to the respective licences held by the parties in the telecom service areas covered by the two licences.

Clause 2.14 dealt with damages for breach of the agreement and provided as under:

“2.14 In case of any kind of breach of any of the terms of this Agreement by either Party, the other Party shall be entitled to levy damages. This is without prejudice to any other remedy available to both Parties for fulfillment of their rights.”

The provisions relating to “Inter-connection Charges and Billing” were contained in clause 12 of the agreement that provided as under:

**“12. INTERCONNECTION CHARGES AND BILLING**

12. 1. The Parties agree that all payments and rates for routing of calls, Access Charges, Interconnection Charges, revenue sharing, rates of Space, Port Charges and other related issues shall be in terms of Schedule 1. The aforesaid charges may be amended from time to time in case of change arising out of mutual discussions, amendment by TRAI or by any judicial or Statutory Authority.

12.2. Bills for call charges will be raised by the Party concerned on a calendar month basis. Each Party shall raise bills for the total number of calls terminated in its network based on accumulated conversation seconds converted into nearest minutes at the end of the month and send to the other Party within 15 days of the end of each month. Detailed Bill Information shall be provided by one Party on request of the other Party and as per Schedule 1. All billing and payments are subject to applicable taxes. The settlement between the Parties, for the Charges payable for the traffic terminating in each other’s network, will be done on a monthly basis for the net traffic imbalance between the Parties. The Party terminating higher traffic in the other Party’s network will make payment for the net excess calls terminated, at the rate per minute as mutually agreed. It is agreed between the Parties that payments against the said bills shall be made within 15 days of receipt of invoice (“Due Date”). In case of any delay in payment beyond Due Date, an interest at the rate equal to SBI PLR plus 200 basis points prevailing on the relevant Due Date shall be payable by the defaulting Party from the Due Date to the date of actual payment.

12.3 In case of difference up to 0.25% (+/-) with the billing record of either Party, the amount billed by invoicing Party shall be treated as find a payment shall be made in accordance with Schedule 1. If the difference is more than 0.25% (+/-), the debtor Party will pay to the invoicing Party an amount equal to undisputed amount by Due Date and differences with regard to disputes amounts shall be resolved as provided in the following paragraph.

Provided however for a period not exceeding seven (7) days from the date of receipt of the invoice, the Parties shall make a good faith attempt to reconcile their respective CDRs to resolve all differences on account of disputed amounts. If the Parties are still unable to resolve the differences with respect to the disputed amounts within the said period of seven (7) days, dispute shall be subject to dispute resolution mechanism, as more particularly detailed in Clause 18 below. Further, if any amount is payable/ refundable upon reconciliation, the same shall be paid/refunded immediately along with applicable interest from the Due Date till date of actual payment. The rate of interest shall be equal to SBI PLR prevailing on the relevant Due Date plus 200 basis points.

12.4 In case there is a dispute on the accuracy of the bill, Call Detail Records (CDRs) shall be exchanged.

12.5.1 Payment shall be made to by the Parties for charges and rates stated in Schedule 1, notwithstanding any non-payment by the subscriber to respective Party.”

The petitioner raised monthly invoices for Inter-connection charges as provided in clause 12 of the agreement and duly sent the monthly invoices to the respondent. As the respondent was in default in making payments against the invoices, the petitioner sent emails and reminders demanding payment of its dues. The petitioner has brought on record a large number of emails and reminders sent to the respondent demanding payment but there is no need to refer to all of them separately. Suffice here to say that as the respondent failed to make payments, the petitioner finally filed the present petition for recovery of its dues.

Along with the petition, it also submitted as annexures, apart from the two agreements, the monthly invoices of which payments were due, a table containing details of payments due and receivable from the respondent, the statement of account of the amount receivable by the respondent and copies of a large number of emails and reminders.

The aforesaid materials and documents are duly proved and marked as exhibits. The two agreements are marked as Exhibit PW-1/2 and 3, the invoices as PW-1/4, the table containing the details of payments due and receivable from the respondent as PW-1/5 and the statement of account as PW-1/6; the emails sent to the respondent demanding payments are similarly marked as Exhibit- PW-1/7, PW-1/8 and PW-1/9. The reminders are marked as Exhibits PW-1/10, PW-1/11, PW-1/12, PW-1/13, PW-1/14, PW-1/15, PW-1/16, PW-1/17, PW-1/18 and PW-1/19.

On behalf of the respondent the execution of the two agreements is admitted. It is also not denied that the petitioner's monthly invoices were received at the respondent's end. However, the liability to make payment in terms of the table (Exhibit PW-1/5) and the statement of account (Exhibit PW-1/6) is denied on the **sole** ground that the monthly invoices raised by the petitioner did not contain the relevant details forming the basis of the charged amount. Mr. Krishnan invited our attention to clause

13.5 of the agreement. Clause 13 deals with ‘charging principles’ and clause 13.5 reads as under:

“13.5 CONTENT OF INVOICES

Any invoice rendered by the billing Party to the other Party for Services provided must include reasonable information in accordance with normal commercial practice between the interconnected Parties to enable each Party to ascertain the month in which invoiced Calls occurred and to check the accuracy of all amounts charges.”

Mr. Krishnan also invited our attention to one of the monthly invoices as a sample. In the invoice dated 2 November 2010 for the billing period 01.10.2010 to 31.10.2010, the Interconnection Usage Charges are stated as under:

Particulars	Total Amount (INR)
Calls Terminating on Cellular Network	631,776.68
Service Tax	63,177.67
Education cess	1,263.55
Secondary & Higher Education cess	631.78
Total	6,96,849.68

Below the table, it is stated within parenthesis as under:

“(Details as per Annexure-A)”

Mr. Krishnan submitted that no invoice sent by the respondent enclosed the details as annexure and argued that the invoices were thus raised in contravention of clause 13.5 of the agreement.

He also invited our attention to the statements of one of the petitioner's witness, namely, Mr. Prabhat Paranjpe, who, in answer to the questions put to him in cross-examination, stated as under:

“Q.9 Is it correct that the invoices were required to contain information to enable the other party to ascertain the months in which the invoiced calls had occurred so that the accuracies of the amount could be checked?

A. The invoices were supposed to represent the charges for a given period. The provisions in relation to raising of invoices are contained in the Inter-connection Agreement and the same may be referred to.

Q.11 Do these invoices contain the details that are required by clause 13.5 of the Inter-connection Agreement?

A. Yes. It shows the billing period and the amount invoiced. The rates are determined by the TRAI. (Vol. These details are sufficient for the Respondent to verify the amount invoiced as the Respondent itself has the detailed CDRs at its own end for verification).

Q.12 Can you please tell if these invoices indicate the number of calls that are invoiced?

A. No. However, the number of calls are not a matter of any importance as the billing is done on a cumulative minutes over the billing period.

Q.13 What is meant by “details as per Annexure-A” mentioned in each of these invoices?

A. I do not have these details. These details are not required.

It is incorrect to suggest that these invoices are false and fabricated.

It is incorrect to suggest that these invoices are not in accordance with the terms of the Inter-connection Agreement.”

Mr. Krishnan contended that from the omission to enclose the “details” along with the invoices and the deposition of the petitioner's witness it is evident that the invoices that were raised by the petitioner were not in due

compliance with clause 13.5 of the agreement. Those were thus no invoices at all and the petitioner was, therefore, not liable to make any payment.

We are unable to accept the contention. It is significant to note that though the respondent admits receiving each of the monthly invoices in question, there is not an iota of evidence, documentary or oral, that on receipt of the invoice the respondent disputed the invoiced amount or called for the details from the petitioner. It is evident to us that at the time the invoices were received by the respondent, there was no dispute in regard to the invoiced amounts and the respondent felt no need for any further details or materials in support of the invoices. For some reasons, it was unable to make payments and now as an afterthought a case is set-up that is completely untenable.

It needs to be noted that apart from the liability to make payment, the respondent does not dispute the amount shown as due in the statement of account (Exhibit-PW-1/6) and as claimed by the petitioner.

In light of the discussions made above, we find no substance of merit in the defence taken by the petitioner.

Had the respondent taken steps for making the due payments when the petition was filed in March 2012 and avoided going through the rigmarole of filing the reply, getting the rejoinder and adducing

evidences, it would have perhaps saved two years' interest on the principal.

The claim of the petitioner must be allowed and it is accordingly allowed. The office is directed to prepare a decree for a sum of Rs.1,11,70,648=00.

In view of the stand taken by the respondent, it should have been liable to payment of interest on the decretal amount at a higher rate but having regard to the fact that its licence has been cancelled by the Supreme Court, we direct that the decretal amount will carry interest @ 10% per annum from the date of filing of the petition till payment is received by the petitioner.

In the result the petition is allowed with costs quantified at Rs.50,000/- (Rupees Fifty Thousand only).

.....J  
(Aftab Alam)  
Chairperson

.....  
(Kuldip Singh)  
Member

/sks/