

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

Dated 19th March, 2015

Petition No.747 of 2012

Reliance Communications Ltd.

...Petitioner

Vs.

Bharat Sanchar Nigam Ltd.

...Respondent

BEFORE:

HON'BLE MR. JUSTICE AFTAB ALAM, CHAIRPERSON

HON'BLE MR. KULDIP SINGH, MEMBER

For Petitioner

: Mr. Navin Chawla, Advocate
Mr. Santosh Sachin, Advocate for
Ms. Manali Singhal, Advocate

For Respondent

: Ms. Maneesha Dhir, Advocate
Mr. K.P.S. Kohli, Advocate
Ms. Neha Singh, Advocate

ORDER

By Aftab Alam, Chairperson – Reliance Communications Ltd.

(Reliance) is a telecom service provider. It is in inter-connection arrangement with Bharat Sanchar Nigam Ltd. (BSNL) on the basis of an agreement executed by the two sides for provision of basic telephone service in Gujarat circle.

In this petition filed under section 14(A)(1) of the Telecom Regulatory Authority of India Act, Reliance challenges the disconnection notice dated 27 September 2012 issued by BSNL for non-payment of its bill of Rs.2,93,85,974/-. The bill for the non-payment of which the impugned disconnection notice is issued, is dated 1 April 2010. It is for the period 1 May 2003 to 14 November 2003 and it relates to basic services. It reads as under:

“Short amount of Penalty for violation of Trunk Group during 01.05.2003 to 14.11.2003	29385974
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As per attached calculation sheet

TOTAL	29385974
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BILL AMOUNT	29385974
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GRAND TOTAL OF THE BILL	29385974”
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There are some admitted mistakes both in the bill and the disconnection notice. In the bill it is stated:

“This is a provisional demand subject to further/final demand to be raised by the BSNL depending upon the final outcome of the litigation before the Hon’ble TDSAT/Supreme Court”.

However, in the “short reply” filed by BSNL, it is stated (vide para 9) that the statement is due to inadvertence and is to be ignored.

Similarly, the disconnection notice refers to NLD service instead of basic service but again in para 10 of the short reply, it is

stated that the invoice dated 01.04.2010 was related to basic service and NLD service mentioned in the disconnection notice was a typographical error.

The impugned bill is admittedly raised on the basis of an audit objection, a copy of which is enclosed with the reply as Annexure-R/1, the relevant extract from which reads as under:

“As per clause 6.4.6 of IUC agreement unauthorized calls i.e. calls other than specified for that trunk group is detected, for which the applicable IUC is higher than the IUC applicable for calls prescribed in that trunk group, then BSNL shall be free to charge the UASLs the higher IUC, as applicable for unauthorized calls for all the calls recorded on these Ports from the date of provisioning of that POI as for the preceding two months, whichever is less.”

Here it needs to be stated that for the period in question (01.05.2003 to 14.11.2003), BSNL had issued bills in due course that were duly paid by Reliance. Later on, however, audit took the view that for calls terminating on the wrong trunk group, BSNL had raised the bills at lower rates and not at the higher rates as provided under clause 6.4.6 of the IUC agreement. Hence, the impugned bills.

Mr. Navin Chawla, learned counsel appearing for the petitioner submitted that the impugned bill was bad and unenforceable because (i) it was for a period, over nine years behind the date of

the bill and hence, the demand was barred by limitation and (ii) clause 6.4.6 of the IUC agreement alluded to in the audit report and forming the basis of the impugned bill came into existence following the amendment of the agreement on 28 February 2006, that is to say, long after the period for which the demand was made.

On hearing Mr. Chawla, counsel for the petitioner and Ms. Maneesha Dhir, learned counsel appearing for BSNL, we find that the petition is fit to succeed on both grounds advanced on behalf of the petitioner.

The issue of limitation is decided by the Tribunal in at least three cases against BSNL and in favour of the petitioner. The Tribunal has tested submissions made on behalf of BSNL based both on articles 1 and 112 of the schedule appended to the Limitation Act, and rejected all contentions that the bills raised by BSNL under the inter-connect agreement would not be governed by the three year limitation period.

The first decision is dated 27 January 2011 in Petition no.186 of 2010 (M/s Tata Communication Ltd. Vs. BSNL & Anr.) and the relevant paragraphs are 36, 37 and 44 to 53 of the judgment. The second decision dated 19 April 2012 is in a series of analogous

petitions by Reliance itself. The relevant paragraphs in this judgment are 116 to 122. The third in the series is the decision dated 17 July 2012 in Petition 417 of 2012 (Systema Shyam Teleservices Ltd. Vs. BSNL) and the relevant paragraphs in the judgment are 39 to 42 and 61 to 63.

Ms. Dhir accepted that the Tribunal has taken the view against BSNL but submitted that appeals against those decisions were pending before the Supreme Court.

So far as we are concerned, we are bound to follow the earlier decisions of the Tribunal as long as those are not overturned by the Supreme Court.

Coming now to the second ground, we find that it is equally forceful and on this ground alone, the impugned bill is liable to be set aside.

Mr. Chawla invited our attention to the inter-connect agreement executed between the parties on 18 March 1997, a copy of which is Annexure-P4 at page 71 of the brief. In the original agreement, clause 6.4.6 (at page 97 of the brief) was materially different. The agreement was amended on 28 February 2006 following the grant of UASL licence to Reliance on the basis of the

migration package. It is this clause 6.4.6 that has been referred to in the audit note and that forms the basis for raising the impugned bill. It is evident that the amendment of the inter-connect agreement and the incorporation of the amended clause 6.4.6 was not retrospective and it shall not apply to the past period for which the impugned bill is raised.

Looked thus from any point of view, the impugned bill dated 1 April 2010 must be held to be bad and invalid and unenforceable. It is accordingly set aside and as a consequence, the disconnection notice dated 27 September 2012 too stands set aside.

The petition is allowed but with no order as to costs.

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(Aftab Alam)
Chairperson

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(Kuldip Singh)
Member