

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL NEW DELHI

Dated 27th May, 2015

Petition No. 518 of 2012

Vodafone India Limited

... 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 Respondent

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

ORDER

Kuldip Singh:

It is a recovery petition for an amount of Rs.10,58,00,328/- which as per the Petitioner is due on account of short payment of Interconnect Usage Charges (IUC) to be paid by the Respondent.

The Petitioner is also claiming interest at the rates as prescribed in the Interconnect Agreement from the due date of payment till the same is made.

2. The Petitioner has a license granted under section 4 of the Indian Telegraph Act, 1885 for provision of Unified Access Service in the Service area of Mumbai Telecom Circle. The Respondent is a Public Sector Undertaking having telecom network in the entire country and providing telecom services in India excepting Mumbai and Delhi.

For the purpose of interconnection between services of the Petitioner and the Respondent, the parties entered into an Interconnect Agreement No. 114-10/2003-Regin/Mumbai dated 19.12.2003 as modified by various addendums.

3. During the pendency of the petition, the parties were able to resolve some of their disputes before the Mediation Centre of the Tribunal. However, disputes with regard to the following four issues still remain:-

Issue I: An amount of Rs.4,32,01,052/- withheld by the Respondent vide its impugned letters dated 21.03.2012 and 20.06.2012 on account of signaling charges. This amount has been withheld from the IUC bills raised by the Petitioner for the months of December, 2011 to April, 2012 on the ground that the Petitioner had failed to pay the signaling link charges raised upon it vide invoice of the Respondent dated 29.03.2010 for an amount of Rs. 14,37,52,782/-.

Issue II: A claim of Rs.55,08,823/- pertaining to the period from May, 2008 to July, 2009. This claim has been rejected by the Respondent on the

grounds that (i) the same is barred by the period of limitation

(ii) It does not have CDRs for this period.

Issue III: A deduction of Rs.45,81,045/- made by the Respondent for non-payment of its invoice dated 21.08.2007 which was for interest on delayed payment of IUC charges by the Petitioner for the bills dated 13.04.2004 and 13.09.2004.

Issue IV: An amount of Rs.9,51,981/- which the Respondent refused to pay stating that it has not received any invoice for the same.

5. In regard to the first issue pertaining to the amount withheld due to signaling charges, Ms. Dhir, learned counsel appearing for Respondent submitted that the said amount was withheld against invoices dated 29.03.2010 issued by the Petitioner for Rs.14,37,52,782/- towards signaling

charges. Ms. Dhir submitted that in terms of the Interconnect Agreement, if a dispute is raised with regard to a bill, 50 per cent of the disputed amount is required to be paid. Further, as per clause 7.3.1 (iii) of the Interconnect Agreement, though the Petitioner is required to make all payments without netting off, BSNL can resort to netting off.

6. Mr. Navin Chawla, learned counsel appearing on behalf of the Petitioner submitted that the Respondent-BSNL could not have withheld any amount on account of signaling charges in view of the judgment of the Tribunal in Petition No.57 of 2010 -Aircel Limited Vs. BSNL and another, and other petitions in the batch. The matter in regard to signaling charges was challenged before the Tribunal in that petition and the Tribunal vide judgement dated 01.09.2010 had allowed the petitions and therefore the bill dated 29.03.2010 issued by the Respondent in this regard was not enforceable.

7. In the case of Aircel Ltd. Vs. BSNL above, the petitioners therein had come to the Tribunal challenging the bills raised by BSNL on account of signaling charges. The Tribunal in that case had concluded as under:

“We, therefore, are of the opinion that this Tribunal, keeping in view the purpose for which it has been established, which includes the public interest, should issue a direction as mentioned hereinbefore, namely, all the petitioners shall supply to the respondent their respective CDRs for a period of three years prior to issuance of the bill and the

respondent shall supply the details of SSTP (Standalone Signaling Transfer Point) information to the Petitioners since 2008 (i.e., date of

commissioning of this equipment) so as to enable the respondents to raise fresh bill(s) and petitioner to cross verify the details of their CDRs and for the aforementioned purpose, the provisions of clause 7.3.4 of the Interconnect Agreement will have no application. By this process, the bills can be raised with mathematical exactitude to eliminate possibility of dispute and unnecessary litigations.” (emphasis supplied).

In terms of this judgment, fresh bills were to be raised by the respondent - BSNL keeping in view the CDRs of the petitioners and the SSTP¹ data. We, however, note that on 21.3.2012, a letter was written by the Respondent to the Petitioner reminding it for the payment of the invoice dated 29.03.2010 and further intimating it that its IUC bill was withheld on that account. This letter is as under:-

“To

M/s Vodafone India Ltd.

Skyline Icon, 1st Floor, 86/92

Andheri (E), Mumbai - 400 059

Sub:- Non-payment of signaling link charges of BSNL from CMTS Providers (CMSPs) for National and International Roaming- reg.

Ref: This Office letter No. DGM-TAX/100/2011-12 dated 22nd Feb 2012 and No. DGM/NT/TAX/ROAMING/2009-10 dated 29.3.2012, 27.12.2010

¹Standalone Signaling Transfer Point is an equipment that routes the signaling information between different exchanges.

Please refer to the above cited letters. Payment for the invoice dated 29.03.2010 issued for Rs.14,37,52,782/- towards signaling link charges has not yet received from you. Since the amount is shown in our books of accounts as "Accounts Receivable", it is once again requested to arrange for the payment at the earliest and intimate the details of payment to this office.

Further, it is intimated that your IUC bills payment are withheld till the above payment is received.

Yours truly Sd/-

Chief Accounts Officer (TAX)

DGM (TAX), Mumbai- 400 001."

We note that when this letter was issued, the invoice dated 29.03.2010 was no longer enforceable in view of the judgement of the Tribunal above. We fail to understand how the Respondent could have withheld this amount from the IUC bills of the Petitioner on 21.03.2012 when the new invoice in terms of the judgment was not yet issued to it. We, therefore, find that the Respondent was wrong in withholding this amount of Rs. 4, 32,01,052/- on account of signaling charges.

8. With regard to the second issue, though Mr. Chawla argued that the Respondent could not have rejected this claim as it is also raising bills after the limitation period, we may note that the law relating to limitation is well settled vide judgments' of the Tribunal dated 27.01.2011 and 16.11.2011 in Petitions No. 186 of 2010 and Petition No. 423 of 2010, which have since attained finality.

Para 22 of the judgement of the Tribunal dated 16.11.2011 is reproduced below:-

“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.”

In view of the above, we do not find any merit in this claim of the Petitioner.

For the same reasons, we do not find any merit in the claim of the Petitioner for Rs.9,51,981/- for which the Respondent claims that it has not received any invoice. No proof was shown to us in support of the delivery of this invoice and further we find that this is also barred by limitation.

9. With regard to issue III, the invoice raised on 21.8.2007 pertains to interest on short payment for bills between 13.4.2004 to 13.09.2004 . Mr.

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Chawla submitted that the said invoice was sent to a wrong address by the respondent and not received by the petitioner during the relevant period. He argued that if the period of three years limitation is to be imposed, then the Respondent cannot press for this claim. Ms. Dhir, however, submitted that the Respondent has not adjusted any amount against this bill. Noting the statement

of Ms. Dhir, this issue does not survive.

10. Coming to the issue of interest, we may note that Clause 7.5 of the Interconnect Agreement between the parties provides that interest will be charged in the event of delayed payment by the UASL (petitioner in this case). Clause 7.5 of the interconnect agreement reads as under:-

“7.5 (i) In the event of delayed payment by the UASL, interest will be charged on the due amount at the following rates:

<i>Period of Delay</i>	<i>Interest Rate (Per annum)</i>
<i>For delay upto 15 days</i>	<i>3.5 % above the PLR</i>
<i>For delays beyond 15 days but upto 30 days</i>	<i>6.5% above the PLR</i>
<i>(E.g. In case of delay of 18 days in making the payment to BSNL, for the period of first 15 days interest shall be charged @ 3.5% above the PLR and for balance 3 days interest shall be charged @ 6.5% above the PLR.</i>	

**Note: The above mentioned interest rate shall be applicable for the entire period of delay. No claim shall be entertained for lower rate of interest for the part period of the delay.*

(ii) The interest charges referred above will also be applicable in case the bill is disputed by UASL but subsequently the billing is found to be in order by the appropriate authority i.e, the dispute raised was not correct. Delay in this case shall be calculated from due date to date of actual payment to BSNL by UASL of the outstanding amount.

Interest rate to be charged to UASL for this delay period shall be calculated on the outstanding amount received beyond due date and shall be @6.5% above the PLR upto 30 days and @24% beyond 30 days from due date.

(iii) In case of disputed and delayed bills, where it is found that billing dispute raised is correct then interest shall be charged to UASL at the specified interest rate for the entire period of delay from the due date of bill on the undisputed portion only of the outstanding amount. This specified interest rate being @ 3.5 % above the PLR upto 15 days, @6.5 % above the PLR beyond 15 days but upto 30 days and @24% beyond 30 days from due date. However, no interest shall be applicable on the disputed portion of the outstanding amount till the dispute is settled.”

Sub-clause (iii) of the clause 7.5 is relevant for disputed and delayed bills.

Mr. Chawla submitted that though the Interconnect Agreement provides for payment of interest only by the Petitioner, the Tribunal has held

that the same is to be paid on a reciprocal basis. With regard to his submission, Mr. Chawla relied on judgements of this Tribunal dated 11.11.2005 in Petition No. 48 of 2004; dated 11.07.2006 in Petition No. 111 of 2005 and dated 01.06.2012 in R.A. No. 4 of 2012 in Petition No. 324 of 2010.

11. In case of Cellular Operators Association of India Vs. BSNL² the issue of interest was considered by the Tribunal and it was directed that the same should be on a reciprocal basis. The relevant paras in this regard are as under:-

“24. The next point of Petitioners was on the issue of interest on delayed payments. Mr. Vaidyanathan stated that on delayed payments BSNL is charging 24% interest from them whereas they pay no interest on dues to the petitioners and stated that this has to on a reciprocal basis and on all outstanding amount BSNL should pay the same interest rate which they are charging from them.”

52 (c) Reciprocity in Interest - The petitioners have pointed out that large amounts of bills are not paid in time by the respondents and when paid after considerable delay there is no payment of interest whereas an interest of 24% per annum compounded quarterly is charged from them on their dues. We direct that this should be on reciprocal basis.

Both parties are directed to enter into agreement regarding the

² Judgment dated 11.11.2005 in Petition No. 48 of 2004

rate of interest which will be applicable for both the parties on reciprocal basis.” (Emphasis supplied)

12. In case of BPL Mobile Cellular Ltd. Vs. BSNL³, the Tribunal had confirmed that this principle of reciprocity is to be from 11.11.2005 being the date of order in Petition No. 48 of 2004.

Para 9.1 of this judgement is as under:-

“9.1 We are also inclined to agree with the arguments advanced on behalf of BSNL that this reciprocity of interest is to be achieved with prospective effect. In the context of the judgment given by us in Appeal No.11 of 2002 (BSNL vs TRAI), now known as the RIO matter, BSNL has tried to conclude this from our observations in the said judgment that BSNL will provide opportunity to the service providers with whom interconnect agreements have already been entered into to migrate to the new regime which provides inter alia reciprocity in payment of interest. We however in the light of our order dated 11/11/2005 in Petition No.48 of 2004 see no reason why the formality of migrating to a new RIO based interconnect agreement should hold up implementation of reciprocity in regard to interest on delayed payments to either side. We do see merit in the argument of the petitioner that while BSNL wants to enjoy various advantages of the January 2003 IUC regime, many of which do not find mention in the interconnect agreement of 2002 between BSNL and the petitioner, it wants to rely on the agreement of 2002 for stating that the same does not stipulate payment of interest by BSNL on delayed payments of terminating charges. We accordingly hold on consideration of

³ Order dated 11.07.2006 in Petition No. 111 of 2005

level play field and equity that it would be unfair if the principle of reciprocity is not adhered to from the date of our order dated 11/11/2005 in Petition No.48 of 2003 and we hold that BSNL is liable to pay the same interest with effect from 11/11/2005 on delayed IUC charges as it seeks to impose on other operators for delayed payments to itself.

(Emphasis Supplied)

13. Ms. Dhir submitted that an Appeal against the order of the Tribunal is pending in Hon'ble Supreme Court of India but she admitted that there is no stay granted in the matter.

14. In accordance with the foregoing facts and circumstance of the case, we direct that an amount of Rs.4,32,01,052/- wrongly withheld by the Respondent shall be paid to the Petitioner within four weeks. Further, this amount will also carry interest in accordance with Clause 7.5 of the Interconnect Agreement between the parties from the date the amount became due till 30.07.2012, the date of filing of this petition. This interest will, however, be subject to the outcome of the appeal pending in this regard before the Hon'ble Supreme Court. The amount so calculated will also carry interest @ 10 per cent per annum from 30.07.2012 till the time the same is paid to the Petitioner.

The petition is partly allowed as above with no order as to costs.

(Aftab Alam)
Chairperson

(Kuldip Singh)
Member

HKC