

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL
NEW DELHI

Dated 2nd June, 2016

MA No.48 of 2016 in
Telecom Petition No.613 of 2015

Bharat Sanchar Nigam Ltd.

...Petitioner

Versus

M/s Idea Cellular Ltd.

...Respondent

BEFORE:

HON'BLE MR. JUSTICE AFTAB ALAM, CHAIRPERSON

HON'BLE MR. B.B. SRIVASTAVA, MEMBER

For Petitioner : Ms. Maneesha Dhir, Advocate
Mr. Abhishek Kumar, Advocate
Mr. K. Vijay Kumar Advocate
Mr. Ashwin Rakesh, Advocate

For Respondent : Mr. Navin Chawla, Advocate
Mr. Santosh Sachin, Advocate
Mr. Anurup Narula, Advocate

ORDER

By Aftab Alam, Chairperson – This application (MA No.48 of 2016) is filed on behalf of the respondent for rejection of the petition under Order 7 Rule 11 of the Code of Civil Procedure 1908 on the ground that the claim of the petitioner is barred by limitation.

The petitioner has filed this petition for recovery of Rs.83,78,432/- as dues of signaling link charges under clause 6.6 of the interconnect agreement between the two sides. The claim is based on the bill, a copy of which is at page 23 of the brief. The date of the bill is 2 August 2013 and the bill period is

1 January 2010 to 31 May 2012. The bill also gives the break up for each month commencing from January 2010 and ending in November 2011.

The petition was filed before the Tribunal on 9 November 2015.

Mr. Chawla submitted that though the bill was raised on 2 August 2013, the last period to which the bill pertained was the month of November 2011. He further submitted that under the provisions of the interconnect agreement, the bills for the signaling link charges were required to be issued on a monthly basis. The claim of the petitioner for the last billing period had thus accrued in December 2011 and the delay in raising the bill would not in any manner affect or extend the period of limitation.

Mr. Chawla invited our attention to clause 7.2 of the interconnect agreement which provides as under:

“7.2 ISSUE OF BILLS

7.2.1 Bills for access charges will be issued on monthly basis by the designated unit of BSNL to the CMTS PROVIDER and such bills shall be payable within 15 days from the date of issue. The CMTS PROVIDER for the access charges, if any, due to it, may also issue similar bills.

7.2.2 Bills for telecom resources and other support facilities, such as connection charges, charges for leased facilities, charges for value added services and charges for enhancement of features, if availed by the CMTS PROVIDER will be issued by BSNL and paid by the CMTS PROVIDER at the intervals specified in this agreement.”

It is to be noted that clause 7.2.1 stipulates issuance of bills on “monthly basis” but clause 7.2.2 says bills would be issued by BSNL and paid by the CMTS Provider “at the intervals specified in this agreement”.

Mr. Chawla accepted that the bills for signaling link charges do not fall under 7.2.1 but fall under 7.2.2.

Mr. Chawla also referred to item 18 of the schedule to the Limitation Act that provides for three years period of limitation for the price of work done by the plaintiff to the defendant where no fixed period of credit is agreed upon.

Mr. Chawla also relied upon a decision of the Tribunal dated 19 April 2012 in Petition No.324 of 2010 and analogous cases. Paragraphs 100 to 109 of the judgment on which reliance is placed by Mr. Chawla are based on clause 7.2.1 of the agreement and that decision, therefore, is of not much help to the respondent in this case.

It also cannot be lost sight of that the issue of signaling charges had earlier come to the Tribunal in a host of petitions which were disposed of by judgment and order dated 1 September 2010 in Petition No.57 of 2010 and analogous cases. In that judgment, the Tribunal made the following directions:

“72. 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.

73. We also hold that construction of clause 6.6 should be as propounded by the petitioner and not by the respondent.

74. This Tribunal should, therefore, grant a relief to the petitioners only in part. We direct accordingly. For the reasons aforementioned, these petitions are allowed in part and to the extent mentioned hereinbefore and with the aforementioned observations and directions.

In view of the divided success, the parties shall pay and bear their own costs.”

It is the case of the petitioner that though the claim for signaling link charges forming the subject matter of the present petition was not specifically before the Tribunal in the earlier round of litigation but the bill is raised following the Tribunal’s direction in the earlier round of litigation.

It is thus clear that the issue of limitation in this case is not completely free from controversy and the petition cannot be rejected on the threshold on the ground that it is barred by limitation. The issue of limitation indeed requires serious consideration and a separate issue on limitation is clearly warranted to be framed but a decision on that issue may be taken after giving the parties the opportunity to adduce their evidences after the completion of pleadings.

The MA No.48 of 2016 is accordingly rejected.

✓ (Aftab Alam)
Chairperson

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(B.B. Srivastava)
Member