

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL  
NEW DELHI

Dated 22<sup>nd</sup> September, 2017

Telecommunication Petition No. 45 of 2017

Bharti Airtel Ltd. & Anr.

...Petitioners

Versus

Reliance Communication Ltd.

...Respondent

**BEFORE:**

**HON'BLE MR. JUSTICE SHIVA KIRTI SINGH, CHAIRPERSON**  
**HON'BLE MR. B.B. SRIVASTAVA, MEMBER**  
**HON'BLE MR. A. K. BHARGAVA, MEMBER**

For Petitioners

: Mr. Gopal Jain, Sr. Advocate  
Mr. Abhay Chattopadhyay, Advocate  
Ms. Kriti Awashthi, Advocate

For Respondent

: Mr. Saket Singh, Advocate  
Mr. Chaitanya Safaya, Advocate  
Mr. Vaibhav Niti, Advocate

**ORDER**

By **S.K. Singh, Chairperson** – Parties have been heard in respect of an interim relief, particularly prayer (a) whereby petitioners have sought a direction upon the respondent to forthwith make payment of Rs.34.80 crores to the petitioners, being the admitted outstanding ILD IUC dues said to be

admittedly payable but not paid till date. The other interim prayers have not been pressed at this stage.

2. Although it is not necessary to go into all the details for adjudicating the interim relief, it will be useful to note that both the petitioners have filed the present petition for recovery of dues amounting to Rs.66.79 crores approximately. All the parties are licensees and service providers for the purpose of Telecom Regulatory Authority of India Act 1997 (hereinafter referred to as the "TRAI Act"). The dues have allegedly arisen under the concerned Interconnect Agreements, on account of termination of respondents ILD calls on the network of the petitioners.

3. The interim relief was sought on the very first day of hearing i.e. 26.05.2017 when the petition was admitted. No notice was required to be issued as the respondent had already appeared on advance notice. When the interim relief noted above was pressed, this Tribunal recorded that such a direction must await a reply from the respondent. Time was granted for reply and rejoinder and the same have been filed.

4. On behalf of the petitioner, strong reliance was placed upon a letter from the petitioners to the respondent, dated 10.04.2017(Annexure – P7) whereby a request was made for release of an amount of Rs.19.4 crores for the month of January 2017 and Rs.26.5 crores for the month of February 2017 as outstanding amount towards IUC dues for voice (NLD and ILD). The reply of respondent to the aforesaid letter of petitioner, dated 11.04.2017(Annexure – P8) is the

sheet anchor of petitioners' claim for the interim relief. In this reply, the respondent has referred to petitioners' letter dated 10.04.2017 whereby it was advised to pay Rs.45.9 crores and thereafter it has made five submissions. The submissions are as follows:

“1. As per our records, the total outstanding for the traffic period of January 2017 and February 2017 Billing is only Rs.34.46 Crs. (Refer Annexure I for Details).

2. An Amount of Rs.7.76 Crs. Due to Reliance from Bharti NLD/ILD division has not been considered by Bharti in their claim.

3. Except for an amount of Rs.2.83 Crs which is payable for NLD traffic for the month of February 2017, all amounts towards NLD has been settled by RCom. This amount of Rs.2.83 Crs will be exchanged against receipt from Bharti NLD/ILD division towards payment of Reliance NLD for February 2017.

4. An Amount of Rs.3.40 Crs pertains to TDS has not been considered by Bharti.

5. An Amount of Rs.0.37 Cr claimed by Bharti pertains to dispute for the traffic period January 2017 and February 2017.”

5. In the first submission respondent had admitted that as per respondent's records, the total outstanding for the traffic period January and February 2017 Billing is only Rs.34.46 crores. The details of the records have been annexed as Annexure-I to that letter. It was shown from the Annexure-I that particulars of ILD and NLD traffic were separately recorded for both the months and after recording the figures claimed by petitioners, separate deductions have been recorded on the grounds that (a) TDS not considered by Bharti; (b) amount under dispute, and (c) further deduction has been made on the ground that there

was an amount due from Bharti, payable to Reliance. In the bottom line of Annexure I, against the *Particulars*, “*payment due for January and February 2017 ILD Traffic*”, the total outstanding payable to the petitioners has been shown as Rs.34,46,20,473/-. According to learned counsel for petitioners, a joint reading of the letter dated 11.04.2017 and Annexure-I thereto clearly reveals that while respondent has admitted dues payable to the petitioners in its first submission, in the later submissions, it has criticised or found fault with the remaining claim of the petitioners; the statement of account in Annexure-I has been appended to the letter only to support the respondent’s stand that its accounts showed an outstanding of only Rs.34.46 crores payable to the petitioners till February.

6. Learned counsel for the petitioner has also placed reliance upon an Email dated 28.04.2017 sent by the respondent to the petitioner in which the IUC outstanding for ILD traffic till date was shown by the respondent to be only Rs.34.8 crores, net of TDS. The Email mentions that respondent shall make the payments as per schedule between July to October by releasing the indicated payments at the end of the respective months(in total Rs.35 crores). Further reliance has been placed upon letter of the respondent dated 12.05.2017 (Annexure – P15). This letter is by way of reply to a letter of the petitioners dated 10.05.2017. After referring to several details and in the context of various letters of the respondent including the one dated 11.04.2017 (Annexure – P8). Towards the end this letter mentions that as regards the ILD, the amounts for

period prior to December 2016 are disputed and for traffic period January 2017 and February 2017, the respondent has already provided the payment schedule to Bharti on 28.04.2017. The communication of 28.04.2017 (Annexure – P11) has already been noticed earlier. This letter goes on to say that in respect of the outstanding for March 2017 traffic period, the respondent shall shortly share the payment schedule with the petitioner. In the end the letter contains a request that in view of facts mentioned in the letter, no coercive action should be taken by the petitioners.

7. Learned counsel for the petitioners has indirectly placed reliance upon the provisions in Order XII Rule 6 of the CPC but at the same time he has maintained that as per TRAI Act, this Tribunal is not bound by the provisions of the CPC rather it has to only observe principles of fairness and natural justice. Nonetheless, he has placed reliance upon a judgment of the Hon'ble High Court of Delhi dated 18.07.2017 in the case of **Deepali Designs & Exhibits Pvt. Ltd. Vs. PICO Deepali Overlays Consortium & Ors.** for the purpose of highlighting that in paragraph 17 of that judgment the law in respect of Order XII Rule 6 of CPC has been noted in the following terms:

“17. The legal position on admission is well settled. The Division Bench of this Court in the decision reported as 2007 (142) DLT 483 Vijaya Myne vs. Satya Bhushan Kaura noting the law laid down by the Supreme Court held:

*“12. It is not necessary to burden this judgment by extracting from the aforesaid authoritative pronouncement as the learned Single Judge has accomplished this exercise with prudence and dexterity. Purpose would be served by summarizing the legal position which is that the purpose*

*and objective in enacting the provision like Order 12 Rule 6, CPC is to enable the Court to pronounce the judgment on admission when the admissions are sufficient to entitle the plaintiff to get the decree, inasmuch as such a provision is enacted to render speedy judgments and save the parties from going through the rigmarole of a protracted trial. The admissions can be in the pleadings or otherwise, namely in documents, correspondence etc. These can be oral or in writing. The admissions can even be constructive admissions and need not be specific or expressive which can be inferred from the vague and evasive denial in the written statement while answering specific pleas raised by the plaintiff. The admissions can even be inferred from the facts and circumstances of the case. No doubt, for this purpose, the Court has to scrutinize the pleadings in their detail and has to come to the conclusion that the admissions are unequivocal, unqualified and unambiguous. In the process, the Court is also required to ignore vague, evasive and unspecific denials as well as inconsistent pleas taken in the written statement and replies. Even a contrary stand taken while arguing the matter would be required to be ignored."*

8. In reply, learned counsel for the respondent has taken a stand that the figures shown to have been admitted by the respondent in its communications are not final and are based upon rough estimation. According to learned counsel, this stand is based upon paragraph 1 of the reply wherein the respondent has disputed the amounts and has asserted that on the basis of documents available with it, the ILD IUC dues need to be ascertained finally after reconciliation of accounts. Further stand of the respondent is that ultimately petitioners effected disconnection in respect of ILD services of the respondent on 15.05.2017 and that fact by itself indicates and explains that

respondent had admitted some amount as dues payable to the petitioner due to coercion, only under threat and duress of disconnection.

9. Learned counsel for the respondent has cited before us a judgment of the Hon'ble Supreme Court in **Himani Alloys Ltd. Vs. Tata Steel Ltd. – (2011) 15 SCC 273**. In para 11 of that judgment, the Apex Court has opined that –

“.....The court, on examination of the facts and circumstances, has to exercise its judicial discretion, keeping in mind that a judgment on admission is a judgment without trial which permanently denies any remedy to the defendant, by way of an appeal on merits. Therefore unless the admission is clear, unambiguous and unconditional, the discretion of the Court should not be exercised to deny the valuable right of a defendant to contest the claim. In short the discretion should be used only when there is a clear “admission” which can be acted upon.....”

10. By way of rejoinder, learned counsel for the petitioner has referred to clauses 15.2 and 18.2 of the Agreement to highlight that payment against bills is required to be made within 30 days and even in case of dispute over part of the claim in an invoice, the payment for undisputed amount is required to be made within the stipulated time of 30 days. In respect of the judgment in case of **Himani Alloys Ltd.**, learned counsel for the petitioner submitted that the principle of law laid down in that judgment is unquestionable and he also sought to place reliance upon the same. He reiterated that under Section 14A(4) of the TRAI Act once the parties have been heard in respect of any issue, the Tribunal enjoys larger powers than under CPC. In any case, according to him, there is no difficulty in drawing inference from the documents and letters of the defendant that its admission for the amount claimed by way of interim relief is clear,

unambiguous and unconditional. He pointed out that respondent's explanation is quite vague, general and not based upon any disclosed or specific material; and there is no denial of its own letters and accounts maintained in usual course of business between the parties.

11. In the facts noted above, the issue falling for determination is whether it is a fit case where the admission appearing from the documents and accounts of the respondent should be held to be clear, unambiguous and unconditional and further whether this court should deny to the respondent its valuable right to contest the entire claim of the petitioners including the one in respect of Rs.34.80 crores.

12. The letter dated 11.04.2017 read together with the statement of account appended as Annexure-I to that letter shows that respondent has clearly, unambiguously and unconditionally accepted its liability to Rs.34.46 crores as the total outstanding for the traffic period January and February 2017. In the subsequent communication of 28.04.2017 (Annexure – P11) the amount of Rs.34.8 crores, net of TDS has been referred as the IUC outstanding till date for ILD traffic. The statement is followed by an assurance to make the payments as per schedule, according to which Rs.35 crores was to be paid between July to October 2017. This is further confirmed by the respondent in its correspondence dated 12.05.2017 (Annexure – P14). This last letter shown to us on this subject mentions that there is further outstanding for March 2017 traffic period but the amount is not specified, although there is an assurance that with respect to such

outstanding also the respondent shall share payment schedule shortly. These correspondences are not denied or disputed and leave no manner of doubt that respondent has clearly and categorically admitted the amount in question as payable to the petitioners. The pleadings also do not adversely affect the admission on this score as they do not refer to any specific material. The effort made in the reply to create vague and evasive denial deserves to be ignored.

13. No doubt there was a disconnection effected against the respondent by the petitioners on 15.05.2017 on account of dues but the respondent appears to have accepted such disconnection and has chosen not to pay even the admitted dues. The disconnection came much later in the middle of May 2017 whereas the first categorical and clear admission was made by the respondent in its letter dated 11.04.2017. In the facts of the case, we find no merit in the submission advanced on behalf of respondent that the admission, if at all, must be taken to be under coercion. Considering the standing of the parties and all the relevant facts, this plea must be rejected as absolutely a frivolous plea based upon equally vague and evasive reply in the pleadings of the respondent.

14. One of the purposes for creation of this Tribunal under the TRAI Act is to ensure orderly and proper growth of the telecom sector to which the present dispute relates. If the parties are allowed to violate their obligations under the contract with impunity and permitted to delay payment of even admitted dues, it would have serious negative impact in general. Such a situation has to be avoided. Apparently, it is for such reasons that the Tribunal has been made free

of technicalities of CPC. Rarely one comes across such a case of clear admission followed by stubborn denial of liability to pay even the admitted dues.

15. Considering all these aspects, we allow the interim prayer made on behalf of petitioners, as already noted earlier. As a result, the respondent is directed to make immediate payment of an amount of Rs.34.80 crores to the petitioners. Such payment must be made within one month from today. Any claim for interest over this amount will be decided at the time of final hearing of this petition. If the respondent fails to pay the amount of Rs.34.80 crores to the petitioners within one month, an interim decree for that amount will be prepared for execution in accordance with law. The petitioners' claim is allowed to the aforesaid extent only at this stage. Now the claim of the petitioner will be confined to the residual amount after deducting Rs.34.80 crores from the total amount claimed.

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(S. K. Singh, J)  
Chairperson

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(B.B. Srivastava)  
Member

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(A.K. Bhavaga)  
Member

