

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

**Dated 18<sup>th</sup> February, 2013**

**M.A. No. 46 of 2013**  
**In**  
**Petition No.946 of 2012**  
With  
(M.A. No. 662 of 2012)

Loop Mobile Ltd.

...Petitioner

Vs.

Bharti Airtel Limited & Ors.

...Respondents

**BEFORE:**

**HON'BLE MR. P.K.RASTOGI, MEMBER**

For Petitioners

:Ms. Shally Bhasin, Advocate  
Mr. Shrath Sampath, Advocate  
Mr. Manikya Khanna, Advocate

For Respondent

:Dr. Abhishek Manu Singhvi, Sr. Advocate  
Mr. Ankur Sood, Advocate  
Mr. Aman Avinav, Advocate

**ORDER**

The respondent has raised a demand on 7<sup>th</sup> February 2013 for an amount of Rs. 114.71 cr against the petitioner for net SMS traffic for the period April 2011 to December 2012. In the said letter, the respondent has also asked the petitioner to take immediate action for payment of SMS dues; failure to do so shall be followed by an appropriate action including disconnection of SMS services.

2. The petitioner has filed this application as the respondent has not filed the reply on the interim prayer made by the petitioner earlier and requested for adjournments on different dates whenever the matter was posted for hearing on the interim matter before TDSAT.

3. It is noticed that this Tribunal had issued an order dated 2.1.2013, which states as under :

*"Regarding the interim order, as prayed for, I am of the opinion that in absence of any reply of the respondent, it is not possible to issue any order at this stage. However, the respondent may file its short reply within a week and a rejoinder, thereto within three days.*

*The matter may be put up for hearing on the interim matter on 21.01.2013."*

It is noticed that when the matter was called on 21.01.2013, the respondent sought further time to file reply and the matter was posted for 28.02.2013.

The respondent after seeking adjournment on 21.01.2013 issued a notice on 7.2.2013 demanding amount for SMS termination charges based on the agreement between the petitioner and the respondent, which is being impugned in this petition.

4. Although this Tribunal did not pass any order on interim prayer on that day as it was to peruse the reply of the respondent and rejoinder of the petitioner.

The respondent should not have issued any disconnection notice without the leave of this Tribunal, when the matter is pending in this Tribunal for hearing on the interim prayer.

5. The respondent has filed its reply only on 16.02.2013. Still a view is to be taken whether the petitioner has signed the interconnection agreement with the respondent under duress or not. It is of significance that this Tribunal had issued order in case of Bharti Hexacom Ltd. in Petition No. 822 of 2012 staying the disconnection of SMS services of the petitioner's network till the next date of hearing and the impugned agreement has been signed by the petitioner with the respondent on 10.11.2012, wherein, the petitioner has agreed to pay an amount @ 10 paise per SMS for SMS interconnection service. There is need to examine this aspect as to in what circumstances the petitioner signed the said agreement when it got one stay order in its favour against its sister concern of the respondent.

6. In the notice of demand issued to the petitioner by the respondent, it

has raised the demand starting from April 2011 to December 2012 in respect of Loop Mobile as well as Loop Telecom's network.

While Loop Mobile, the petitioner herein is working in Mumbai circle, Loop Telecom was working in various other circles. It is not understood as to how the respondent has raised the demand pertaining to Loop Telecom to the petitioner. The respondent has not shown the demand against the petitioner separately.

The petitioner is not liable to pay any dues relating to the Loop Telecom and it is not understood what is the basis on which the bills have been raised from April 2011 to October 2012 when the agreement between the parties have been executed only in November 2012.

It is necessary to go through the aspect of signing the agreement in duress which can only be seen after pleadings are complete and evidences are lead.

7. According to the petitioner, the arrangement between the parties before 9.11.2012 was on 'bill and keep' basis. The interconnection charges and billing as mentioned in the agreement are reproduced below :

*"In consideration of whatsoever stated in this clause, the parties agree that each party is solely responsible for all costs, expenses and charges arising from its provision of the interconnect services. The parties shall mutually agree on charges payable to the other party for services under this Agreement on "Bill and Keep basis" for the present."*

Dr. Abhishek Manu Singhvi, learned senior counsel appearing on behalf of the respondent denies the arrangement between the petitioner and the respondent on "*Bill and Keep basis* " and further informs that the respondent has issued the demand to the petitioner for payment of 10 paise per SMS and the invoices were raised to that effect. However, there is not agreement to that effect.

8. Keeping in view the various aspects as aforementioned, I am of the opinion that interest of justice would be sub-served if following directions are issued:

"Pending final hearing, it is directed that SMS services of the petitioner shall not be disconnected, subject to the condition that petitioner will start paying 50% of the amount demanded by the respondent @ 10 paise per SMS on net inflow of traffic basis. This amount will be calculated and paid with effect from 9.11.2012 and will be applicable only for demand relating to the petitioner i.e. Loop Mobile Limited for Mumbai Circle.

This payment will be without prejudice to the rights and contentions of the parties and equities will be adjusted between the parties at the time of final hearing."

9. The petitioner may file its rejoinder to the reply filed by the respondent within the period of two weeks.

10. Put up the matter under the heading "for framing of issues" on 18.03.2013.

.....  
**(P.K.Rastogi)**  
**Member**

/NC/

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For Respondent	: Mr. Abhishek Manu Singhvi, Sr. Advocate Mr. Ankur Sood, Advocate Mr. Aman Avinav, Advocate

**ORDER**

Heard learned counsel for the parties on M.A. No. 46 of 2013.

Order reserved.

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**(P.K.Rastogi)**  
**Member**

MM