

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

**Dated 2<sup>nd</sup> September, 2013**

**Petition No.173 of 2013**  
**With M.A.Nos.96, 167 & 168 of 2013**

Tulip Telecom Ltd.  
Versus

...Petitioner

Tata Tele-services Ltd.

...Respondent

**BEFORE:**

**HON'BLE MR. JUSTICE AFTAB ALAM, CHAIRPERSON**  
**HON'BLE MR. KULDIP SINGH, MEMBER**

For Petitioner

:Mr. G. L. Rawal, Senior Advocate  
Mr. Jagjit Singh, Advocate for  
Mr. Kuljeet Rawal, Advocate

For Respondents

:Mr. Ramji Srinivasan, Senior Advocate  
Mr. Mansoor Ali Shoket, Advocate  
Mr. Nitin Kala, Advocate  
Mr. Saketa Musinipally, Advocate

**ORDER**

M.A. No. 168 of 2013 is allowed.

The respondent, on appearing in response to the notice, has filed the present application (M.A. No. 167 of 2013) for "setting aside" the *ad-interim* order passed in the case on July 12, 2013.

By the order dated July 12, 2013, the respondent was directed to reconnect the petitioner's links disconnected on or after 6.7.2013

subject to payment of Rs.81 lakhs by the petitioner to the respondent by July 17, 2013. As may be seen, the direction for reconnection of the links was in the nature of mandatory injunction to the respondent, passed *ex parte* at the first presentation of the petition before the Tribunal. The order in its material part is as under:

"As an ad-interim measure the Respondent is directed to reconnect the links disconnected on or after July 6, 2013 and to restore the status-quo as on the aforesaid date. The direction is subject to payment of *Rs. 81.00 lakhs* by the Petitioner to the Respondent by July 17, 2013, failing which it will be open to the Respondent to once again disconnect the links.

The aforesaid payment by the Petitioner will be without prejudice to its rights and contentions and shall be subject to reconciliation of accounts by the two sides and the final order that may be passed in this petition.

*The aforesaid payment shall, however, be in addition to the regular payment which the Petitioner may be obliged to make to the Respondent in terms of the agreement."*

(Emphasis added)

The reconnection of the links was directed subject to payment of Rs. 81 lakhs. Where does the aforesaid figure come from? The answer lies in the email dated 8.7.2013 from the respondent to the petitioner (enclosed to the petition as annexure P3) informing that the two cheques given by the petitioner for the sums of Rs.22,50,000/- and 58,50,000/- were on presentation dishonoured for "insufficient funds". The communication was presented before the Tribunal in the manner

as if the amounts of the two dishonoured cheques comprised all the dues against the petitioner and it was on that basis that by the *ad-interim* order the respondent was asked to reconnect the petitioner's links on payment of Rs.81 lakhs.

In the application filed by the respondent it has claimed that on July 12, 2013 the dues against the petitioner were as high as Rs.16,51,55,000/-. It is further alleged that the *ad interim* order was obtained by the petitioner by making many misrepresentations of facts and by suppressing a large number of relevant materials and documents.

At this stage, we may not undertake the exercise to determine the exact amount which the petitioner may be liable to pay to the respondent but from the materials brought before us, it is evident that the dues against the petitioner are much higher than what we were given to understand and it runs into several crores.

Further, the allegation of suppression of relevant materials and documents made against the petitioner is equally well founded.

The petition filed by the petitioner encloses (as Annexure P-2) an email dated June 4, 2013 in which certain disputes were raised by the petitioner with regard to the invoices and bills raised by the respondent. One of the objections, in regard to 164 bills amounting to Rs.83,01,079/- was that those were "dual bills". At the stage of

preliminary hearing when the *ad-interim* order was passed, considerable reliance was placed on this communication and it was contended that the respondent's bills were subject to disputes and no liability of payment would arise against the petitioner until those disputes were satisfactorily resolved.

We now find that the petitioner's aforesaid email dated June 4, 2013 was responded to by the respondent by its email of June 11, 2013. (a copy of which is annexed at Annexure R-4 to the M.A). In its response to the petitioner's objection the respondent had asked for the invoices of the bills amounting to Rs.83,01,079/-that were alleged to be "dual bills".

More importantly, the respondent had sent another email to the petitioner on July 9, 2013 in which it was clearly stated that the dues against the petitioner, as on that date, amounted to Rs.13.45 crores. Here it needs to be noted that the present petition was filed before the Tribunal on July 12, 2013 and yet the aforesaid email dated July 9, 2013 does not find mention anywhere in the petition. When asked for an explanation, learned senior counsel for the petitioner said that the petition was prepared on July 9, 2013 and it was verified on July 10, 2013 and hence, the email received on July 9, 2013 at 5 past seven pm failed to get any mention in the petition. In our view, the explanation is so facetious that it only lends support to the

respondent's allegation the email was deliberately withheld from the Tribunal.

In regard to the respondent's email of June 11, 2013 sent in reply to the petitioner's email dated June 4, 2013 on which heavy reliance was placed in the petition, we did not get any explanation at all for its omission to be mentioned in the petition.

It needs to be made clear that these two emails are cited here only by way of instance. There is a whole lot of emails exchanged between the two sides and in some of those the petitioner appears to acknowledge the dues and ask for some accommodation in making payments; the respondent appears to ask for at least part payments while giving the petitioner more and more time to clear off all the dues and complaining about the cheques given by the petitioner getting dishonoured.

All these materials were completely withheld from the Tribunal in the petition filed by the petitioner on the basis of which the *ad interim* order was obtained.

For this reason alone, the order is fit to be recalled. But there is another strong reason that disentitles the petitioner from enjoying any further protection by this Tribunal.

As noted above, the interim protection was granted to the petitioner subject to payment of Rs.81 lakhs by the stipulated date

and further making regular payments in terms of the agreement.

In the application filed by the respondent, it is stated that on July 3, 2013 it sent the invoice for Rs.4.2572 crores (Rs.4.03 crores after adjustment) for the quarterly payment for the months of July, August and September 2013. The agreement between the parties, in clause 20.3.1 stipulates that the invoices raised for quarterly payments are to be paid in advance within 30 days from the date of the invoice. Clause 20.3 has the marginal heading: "Due Date Of Payments" and clause 20.3.1 reads as under:

"The Service Fee alongwith applicable taxes, duties and levies, shall be payable quarterly in advance within 30(Thirty) days from the date of the Invoice by Cheque drawn on a bank at New Delhi and payable at par at Delhi. One time upfront charges for end link investment cost alongwith first quarter payment shall be payable with purchase order."

Hence, in terms of the agreement and as per the direction contained in the order dated July 12, 2013, the petitioner was obliged to make payment of the invoice by August 25, 2013 (the invoice dated July 3, according to the respondent, was received by the petitioner on July 25). Admittedly, no payment has been made by the petitioner after passing of the interim order, apart from the sum of Rs.81 lakhs. On a question from us the counsel stated, on receiving instructions from the petitioner's representative who is present in court, that the petitioner was *not sure* about the receipt of the invoice of July 3,

2013. It was further contended that the relevant clause in the agreement, if properly construed, would cast an obligation upon the petitioner to make payments of only the due amount which the petitioner should be reasonably liable to pay. In other words, the liability to make advance payment of the invoice for the months of July, August and September is completely denied by the petitioner. It is, thus, clear to us that the petitioner has no intention even to comply with the condition subject to which the *ad-interim* order was passed in its favour.

We are not unconscious of the consequences of recalling the interim protection granted to the petitioner. The delinking of the connection is bound to impact the petitioner very hard and is also likely to cause much dislocation and inconvenience to its subscribers. But that cannot be a ground for putting a completely unjustified and very heavy financial burden upon the respondent (according to the petitioner's representative present in court, the respondent's quarterly bill should be somewhere between Rs.3 to 3.5 crores!).

We may also note here that in order to help the petitioner out of this dire situation an offer was made by the respondent and some suggestions were also made by us but at the end of the day, neither the offer made by the respondent nor the suggestions made by the Tribunal was acceptable to the petitioner.

We are, thus, left with no option but to allow the M.A. and to recall the *ad-interim* order dated July 12, 2013. We order accordingly.

The M.A. is disposed of.

The respondent is directed to file its reply within four weeks from today. The petitioner, if so advised, may file its rejoinder to the respondent's reply within two weeks from the date of receipt of a copy of the reply.

Put up on 24.10.2013 before the Registrar for getting the case ready for hearing.

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**(Aftab Alam)**  
**Chairperson**

.....  
**(Kuldip Singh)**  
**Member**

**/NC/**