

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

**Dated 14<sup>th</sup> October, 2014**

**M.A. No. 276 of 2014  
In  
Petition No. 322(C) of 2013**

Idea Cellular Ltd. ...Petitioner

Vs.

Bharat Sanchar Nigam Ltd. ...Respondent

**M.A. No. 277 of 2014  
In  
Petition No. 324(C) of 2013**

Vodafone India Limited and Ors. ... 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

For Respondent : Ms. Maneesha Dhir, Advocate  
Ms. Neha Singh, Advocate

## O R D E R

**Kuldip Singh** : The present applications have been filed seeking clarification in the judgment and order dated 20.08.2014 passed in the above petitions. The clarifications sought are as under:

(a) That in terms of the Judgment and order dated 20.08.2014 passed in the above petitions, the rate of infrastructure charges for Active Links of Licensed Telecom Service Providers in Circular dated 12.06.2012 shall become effective from 01.04.2013 instead of 01.04.2009 and without any increase of 10 per cent per annum between 01.04.2009 to 31.03.2013.

(b) That interest shall be paid at the rate specified in the Interconnection Agreement till the date of filing of the petition and at the rate of 9 per cent from the succeeding day after the date of filing of petition up to final payments in terms of the judgment.

2. The challenge in the above petitions was to a circular dated 12.06.2012 by which the respondent had increased the infrastructure charges w.e.f. 01.04.2009. The Tribunal vide its judgment/order dated 20.08.2014 had held that though the respondent-BSNL has a right to revise the rates of infrastructure facilities in question, the revised rates as per the circular dated 12.06.2012 shall be applicable w.e.f. 01.04.2013.

The relevant para of the judgment is as under:-

*“In view of the aforesaid circumstances, while upholding the right of the respondent-BSNL to revise the rates of the infrastructure facilities in question, we direct that the revised rates as per the circular dated 12.06.2012 of the respondent shall be applicable with effect from 01.04.2013 which is the next financial year. Up to 31.03.2013, the infrastructure facilities provided by the respondent to the petitioners shall be charged at the rates and as per classification of cities as prescribed in the circular dated 30.05.2006. The excess rates, wherever realized from the petitioners, shall be refunded back to the petitioners alongwith interest at the rate as is prescribed in the interconnect agreements for delayed payments from the date of realization of these amounts and till the time of filing of the petitions alongwith pendente lite and future interest @ 9 % till the payment is made. The refunds shall be made within a period of four weeks. If any amount is found payable by the petitioners in terms of this order, the same shall also be paid alongwith interest, as payable in case of refunds, and shall be paid within four weeks.”*

3. In our view, the judgment is very clear and the direction that the revised rates as per the circular dated 12.06.2012 of the respondent shall be applicable w.e.f 01.04.2013 was on the basis that the arrangement between the parties being contractual in nature a circular/letter issued by one side, providing for any fiscal liability cannot be given retrospective effect. Our attention is drawn to a letter dated 05-09-2014 referring to certain bills raised by the respondent [Annexure –C, page 33 of the M.A. folder, M.A. no. 277 of 2014]. As per this letter, the rates charged in the bills are worked out by notionally increasing the rates mentioned in the circular dated 12-06-2012 with effect from 01-04-2009. Further as per the letter, this notional increase is as per the Tribunal judgment. The relevant part of the latter is as under:

“ Your kind attention is invited to the judgment given by TDSAT on 20-08-2014 in Petition No, 578 of 2012 that there will be notional increase in Infrastructure charges w.e.f. 01-04-2009 and actual recovery of differential w.e.f. 01-04-2013.”

We, however, do not find any such direction in the judgment. On the contrary, if the rates mentioned in this circular are to be taken w.e.f. 01.04.2009 and then notionally increased by certain percentage every year to arrive at a rate to be applicable from 01.04.2013 , it will be contrary to the letter and spirit of the judgment. The direction in the judgment is clear that revised rates as per the circular dated 12.06.2012 shall be applicable w.e.f. 01.04.2013 and, therefore, the rate which was applied as per the circular w.e.f 01-04-2009 is to be applied w.e.f. 01.04.2013 without any notional increase. We, however, make it clear that this will be without

prejudice to the right of the respondent-BSNL to revise the rates prospectively, and in accordance with the agreement between the parties.

4. With regard to the interest, we may clarify that all payments related to the infrastructure charges in question whether refunds by the respondent to the petitioners/applicants or payable by the petitioner/applicants to the respondent shall carry interest at the rate as specified in the Interconnection Agreement for delayed payments till the date of filing of the petition and thereafter at the rate of 9 per cent. However, needless to say, fresh billings with prospective dates of payment shall carry interest as per Interconnection Agreement for delayed payments.

5. Miscellaneous Applications are disposed of in terms of the above clarifications.

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

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

*HKC/10.10.2014*