IN THE COURT OF O. P. SAINI: SPL. JUDGE, CBI (04)
(2G SPECTRUM CASES), NEW DELHI

1. **CC No**: 01/11

2. **Case RC No**: 45 (A) 2009, CBI, ACB, New Delhi.

3. **Title**: CBI Vs. (1) A. Raja (A-1);
(2) Siddhartha Behura (A-2);
(3) R. K. Chandolia (A-3);
(4) Shahid Usman Balwa (A-4);
(5) Vinod Goenka (A-5);
(6) M/s Swan Telecom (P) Limited (now M/s Etisalat DB Telecom (P) Limited) (A-6);
(7) Sanjay Chandra (A-7);
(8) M/s Unitech Wireless (Tamil Nadu) Limited (A-8);
(9) Gautam Doshi (A-9);
(10) Surendra Pipara (A-10);
(11) Hari Nair (A-11);
(12) M/s Reliance Telecom Limited (A-12);
(13) Asif Balwa (A-13);
(14) Rajiv Agarwal (A-14);
(15) Karim Morani (A-15);
(16) Sharad Kumar (A-16); **and**
(17) Kanimozhi Karunanithi (A-17).

4. **Date of Institution**	:	02.04.2011
5. **Date of Commencement of Final Arguments**	:	15.04.2015
6. **Date of Conclusion of Final Arguments**	:	26.04.2017
7. **Date of Reserving Order**	:	05.12.2017
8. **Date of Pronouncement**	:	21.12.2017

Presence/ Appearance:

Sh. Anand Grover Sr. Advocate/ Special PP with Sh. K. K. Goel & Sh. A. K. Rao Sr. PPs, Ms. Sonia Mathur Advocate, Sh. Nikhil Borwankar; Ms. Chitralekha Das & Sh. Mihir Samson Junior Counsel and Inspector Manoj Kumar for CBI.

Sh. R. S. Cheema & Ms. Rebecca John Sr. Advocates with Sh. Sushil Bajaj, Ms. Tarannum Cheema, Ms. Hiral Gupta and Sh. Manvendra Singh Advocates for accused Sanjay Chandra;

Sh. Amarendar Sharan Sr. Advocate with Sh. Balaji Subramanian Advocate for accused Kanimozhi Karunanithi;

Sh. Amit Desai Sr. Advocate with Sh. Sandeep Kapur, Sh. Vir Inder Pal Singh Sandhu, Sh. Mayank Datta and Sh. Abhimanshu Dhyani Advocates for accused Karim Morani;

Sh. Sidharth Luthra Sr. Advocate with Sh. Pramod Jalan, Sh. Vibhor Kush and Sh. Akhil Kumar Advocates for accused Siddhartha Behura;

Sh. S. V. Raju Sr. Advocate with Sh. Majid Memon & Sh. Rajneesh Chuni Advocates for accused Vinod Goenka;

Sh. Saurab Soparkar Sr. Advocate with Ms. Manali Singhal and Sh. Gaurav Srivastav Advocates for accused Reliance Telecom Limited;

Sh. Hariharan Sr. Advocate with Sh. A. K. Dua

Advocate for accused Surendra Pipara;

Sh. Manu Sharma & Sh. Babanjeet Singh Advocates for accused A. Raja;

Sh. Vijay Aggarwal, Sh. Mudit Jain, Sh. Ashul Aggarwal, Sh. Ehtesham Hashmi & Sh. Rohan Gupta Advocates for accused R. K. Chandolia, Shahid Usman Balwa, Asif Balwa and Rajiv Agarwal;

Sh. D. P. Singh, Ms. Sonam Gupta and Ms. Ishita Jain Advocates for accused Unitech Wireless (Tamil Nadu) (P) Limited;

Sh. H. H. Ponda and Sh. Mohit Auluck Advocates for accused Gautam Doshi;

Sh. Sidharth Aggarwal Advocate for accused Hari Nair;

Sh. Balaji Subramanian, Ms. Ridhima Mandhar and Sh. Siddharth Nath Advocates for accused Sharad Kumar; and

Sh. Vijay Sondhi, Sh. Varun Sharma and Ms. Deeksha Khurana Advocates for Swan Telecom (P) Limited (now Etisalat DB Telecom (P) Limited).

JUDGMENT:

Registration of FIR

The instant case was registered on 21.10.2009 against unknown officials of Department of Telecommunications (DoT), Government of India, unknown private persons/companies and others for the offences punishable

under sections 120-B IPC read with 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988, (hereinafter to be referred as the "PC Act") on allegations of criminal conspiracy and criminal misconduct, in respect of allotment of Letters of Intent (LOI), Unified Access Services (UAS) Licences and spectrum by the Department of Telecommunication. Following allegations were leveled in the FIR :-

(a) The entry fee for the new pan India UAS licences in the year 2008 was kept by Department of Telecommunications (DOT) as Rs.1658 Crore, at which price the Cellular Mobile Telephone Service (CMTS) licences were awarded by DOT after auction in the year 2001. These UAS licences, issued in 2008 were issued on first-come first-served basis without any competitive bidding.

(b) A press release was issued by DOT on 24.9.2007, which appeared in the newspapers on 25.9.2007, mentioning that the new applications for UAS licences will not be accepted by the DoT after 1.10.2007 till further orders. However applications received up to 25.09.2007 only were considered, which was also against the recommendations of Telecom Regulatory Authority of India (TRAI) that no cap should be placed on the number of Access Service Providers in any service area.

(c) Even First-Come First-Served policy was implemented by the DOT in a manner which resulted into wrongful gain to certain companies. Further, there are allegations that the

suspect officials of DoT had selectively leaked the information to some of the applicants regarding the date of issuance of letter of intent on 10.01.2008. In the letter of intent, an arbitrary condition was incorporated that whosoever deposits the fees (as per conditions in Letters of Intent, i.e. LOIs) first, would be the first to get license. Since some of the applicants, who had this prior information, were ready with the amount and they were able to deposit the fee earlier than others. Thus, favour was allegedly shown to some applicants by way of leaking the information about the date of issuance of letter of intent.

(d) Although, the FDI limit was increased from 49 to 74% in December, 2005, but there was no lock-in period or restriction imposed on sale of equity or issuance of additional equity. As a result of this M/s. Swan Telecom Pvt. Ltd. (A-6), which paid to DOT Rs. 1537 Crore for UAS Licences of 13 circles, offloaded its 45% equity to M/s Etisalat of UAE for Rs. 4200 Crore. Similarly, M/s. Unitech Wireless (Group of 08 companies), which paid to DOT Rs.1658 Crore for UAS Licences of all 22 circles, offloaded its 60% equity to M/s Telenor of Norway for Rs. 6100 Crore. These stakes were sold by the said companies even before the roll out of services by them. The estimated loss to Government by grant of licences to these two companies alone comes to Rs. 7105 Crore. On pro rata basis, the estimated loss for all 122 UAS Licences issued in

2008 was more than Rs. 22000 Crore.

Charge Sheet: Brief facts thereof

2. On completion of investigation, CBI filed charge sheet in the Court on 02.04.2011 against twelve accused persons, that is, A-1 to A-12 and a supplementary charge sheet was filed on 25.04.2011 against five additional accused, that is, A-13 to A-17. Vide order dated 24.05.2011, supplementary charge sheet was ordered to be tagged with the main charge sheet as it was the result of further investigation in the case and, as such, now there is practically one charge sheet/ case before the Court.

Background of the case

3. Consequent to liberalization policy of 1991 of the Government of India promoting participation of private sector into the service sector, National Telecom Policy (NTP), 1994 was announced by the Central Government in 1994. Two Licences for Cellular Mobile Telephone Service (CMTS) each in the four Metro Cities were granted to private operators in 1994 itself. A license is required to be obtained by a company or legal person under Section 4 of Indian Telegraph Act, 1885 for the commission of telephone services in India. Department of Telecommunications (DOT) has classified whole territory of India into various telecom circles / service area (as of now numbering 22) and has been issuing separate telecom licences for each service area.

4. Subsequently, in 1995 Department of Telecommunications (DOT) invited tenders for inducting 2 CMTS Operators each in all Telecom Circles of the country, other than four Metros. In 1996, two licences in each of the Telecom Circles were granted to private operators in 18 telecom circles. The license fee was to be paid over a period of 10 years, as per the terms of licences. In addition, right of the Government was reserved to operate the services as third operator. Tenders were also invited in January 1995, for award of Basic Service Licences for Telecom Circles and the licences were finally granted only to six companies in six telecom circles.

5. The Telecom Regulatory Authority of India (TRAI) Act, 1997 was enacted by Government of India. As per section 11 (1) of the Act (amended in 2000), the functions of TRAI are:

> *"Notwithstanding anything contained in the Indian Telegraph Act,1885, the functions of the Authority shall be to-*
>
> *(a) make recommendations, either suo motu or on a request from the licensor, on the following matters, namely:-*
>
> *(i) need and timing for introduction of new service provider;*
>
> *(ii) Terms and conditions of license to a service provider.*
>
> *Provided further that the Central Government shall seek the recommendations of the Authority in respect of matters specified in sub-clauses (i) and (ii) of clause (a) of this sub-section in respect of new license to be issued to a service provider and the Authority shall forward its recommendations within a period of sixty days from the*

date on which that Government sought the recommendations:

6. Subsequently, a Group on Telecom (GoT) was constituted by the Government of India, which recommended changes in Telecom policy. The Union Cabinet considered and approved New Telecom Policy, 1999 (NTP-99) effective from 1.4.1999. NTP-99 has been the bedrock regarding issuance of licences and allocation of spectrum for achieving the objective of availability of affordable and effective communication for the citizens which is at the core of the vision and goal of the telecom policy. The para 3.1.1. of the NTP 99 mentions, inter-alia :-

"Availability of adequate frequency spectrum is essential not only for providing bandwidth to every operator but also for entry of additional operators"

"It is proposed to review the spectrum utilization from time to time keeping in view the emerging scenario of spectrum availability, optimal use of spectrum, requirements of market, competition and other interest of public. The entry of more operators in a service area shall be based on the recommendations of the TRAI who will review this as required, and not later than every two years."

"CMSP operators would be required to pay a one-time entry fee. The basis for determining the entry fee and the basis for selection of additional operators would be recommended by the TRAI. Apart from the one time entry fee, CMSP operators would also be required to pay license fee based on a revenue share. It is proposed that the appropriate level of entry fee and percentage of revenue share arrangement for different service areas would be recommended by TRAI in a time-bound manner, keeping in view the objectives of the

New Telecom Policy".

7. In July, 1999 the Government decided in favour of migration of existing licencees to the Revenue Share Regime of NTP 1999. Accordingly, a migration package for migration from fixed license fee to revenue share regime was offered to existing licencees, effective from 1.8.99. Under the migration package existing licencees had to forego their duopoly rights and additional operators were inducted in a multipoly regime. All the existing Basic and Cellular Operators migrated to Revenue sharing regime of NTP-99 w.e.f. 1.8.1999. Accordingly, Government PSUs viz. MTNL and BSNL were also given CMTS Licences as 3rd Cellular / CMTS operators.

8. The guidelines for issue of licence for Basic Services under NTP 99 was announced based on the recommendations of TRAI, wherein the licensing of Basic Telephone service was opened on continuous basis on receipt of application and subject to fulfillment of eligibility conditions. As per para 26 of the guidelines, the licencees were to be allocated spectrum for wireless access system in local area on first-come first-served basis. Based on these guidelines, 25 additional Basic Telephone Service licences were issued in 2001 to Reliance, Tata, HFCL etc.

9. Based on TRAI's recommendations and on the basis of competitive bidding process, one CMSP license each in four Metro Cities and in 13 Telecom Circles (17 Licences) were granted as 4th Cellular Operators in the year 2001. Bids were for upfront entry fees only and annual license fee was to be paid as per specified percentage of Adjusted Gross Revenue (AGR).

Spectrum charges were also payable as AGR percentage.

10. TRAI, in its recommendation dated 20.02.2003, regarding introduction of 5th & 6th CMTS Operators recommended that : *"TRAI is of the opinion that induction of additional mobile service providers in various service areas can be considered if there is adequate availability of spectrum for the existing service providers as well as for the new players, if permitted."*

11. On 10.09.2003, a Group of Ministers (GoM) on Telecom matters was constituted by the Government of India under the chairmanship of the then Finance Minister with the approval of Hon'ble Prime Minister vide Cabinet Secretariat Memo dated 10th September 2003. One of the 8 Terms of Reference of GoM was "to chart the course to a Universal Licence".

12. In the mean time TRAI initiated consultations on the issue of Unified Licensing and vide recommendations dated 27.10.2003, recommended Unified Licensing Regime. TRAI recommended that for fixing the entry fee for migrating to UASL Regime, the entry fee for fourth cellular operators shall be the entry fee for migration to UASL Regime. Para 7.19 of the recommendations provided that : "It is recommended that the 3rd alternative as mentioned in para-7.18 above may be accepted for fixing the entry fee for migration to Unified Access Licensing regime for Basic and Cellular services at the circle level." Para 7.18 of the recommendations provided that "The 3rd

alternative is that the existing entry fee of the fourth Cellular Operator would be the entry fee in the new Unified Access Licensing Regime. BSOs would pay the difference of the fourth CMSP's existing entry fee and the entry fee paid by them. It may be recalled that, even in the past, entry to cellular and basic services has been on fixed fee basis, e.g., for metros in the case of cellular and for the second BSO".

13. In para 7.39 of the recommendations dated 27.10.2003, TRAI mentioned that: "The induction of additional mobile service providers in various service areas can be considered if there is adequate availability of spectrum. As the existing players have to improve the efficiency of utilization of spectrum and if Government ensures availability of additional spectrum then in the existing licensing regime, they may introduce additional players through a multi-stage bidding process as was followed for the 4th cellular operators."

14. The GoM accepted the TRAI recommendations on Unified licensing on 30.10.2003 and asked the DoT to place the matter before the Union Cabinet. Subsequently, on 31.10.2003 the recommendations of GoM were considered by the Union Cabinet. As per the Cabinet decision dated 31.10.2003, the recommendations of Group of Ministers (GoM) on Telecom matters chaired by the then Hon'ble Finance Minister, inter-alia, on issues as quoted below was approved:

> *".....The scope of NTP-99 may be enhanced to provide for licensing of Unified Access Services for basic and cellular licence services and unified Licensing comprising all telecom services. Department of Telecommunications may be*

authorised to issue necessary addendum to NTP-99 to this effect.

The recommendations of TRAI with regard to implementation of the Unified Access Licensing Regime for basic and cellular services may be accepted.

DoT may be authorised to finalise the details of implementation with the approval of the Minister of Communications & IT in this regard including the calculation of the entry fee depending on the date of payment based on the principle given by TRAI in its recommendations."

15. Based on the above Cabinet decision, an addendum to NTP-99 was notified on 11.11.2003. Also on 11.11.2003, "Guidelines for Unified Access (Basic & Cellular) Services Licence" were issued by DoT wherein it was decided to move towards a Unified Access Services Licensing regime. The guidelines, inter-alia, stipulated that "With the issue of these Guidelines, all applications for new Access Services Licence shall be in the category of Unified Access Services Licence."

16. As a consequence to amendment of NTP- 1999 and issue of UASL guidelines on 11.11.2003, and clarification dated 14.11.2003 of Chairman, TRAI, certain new UAS Licences were issued in 2003-04 at entry fee discovered through auction for 4th cellular operator in 2001, which was also the fee for migration of basic telecom operators to UASL regime in 2003. In the circles where no price was discovered by auction of CMTS licences in 2001, the fee applicable to Basic Telephone licences in such service areas was considered. The amount of entry fee for all 22 telecom circles / service areas, in this manner, comes

at Rs. 1658 crore. This practice was continued by the DOT in the years 2005-06 also.

17. After enhancement of FDI in telecom sector from 49% to 74%, DoT on 14.12.2005 issued Guidelines for Unified Access Services (UAS) licences. These guidelines, inter-alia, stipulated that :-

> "Licences shall be issued without any restriction on the number of entrants for provision of Unified Access Services in a Service Area."

18. With view to check the hoarding of Spectrum and to promote healthy competition in telecom business by telecom companies, a provision under clause 8 was made in UASL guidelines dated 14.12.2005. Clause 8 of the said UASL guidelines dated 14.12.2005 provides that "no single company / legal person either directly or through its associates, shall have substantial equity holding in more than one LICENSEE Company in the same service area for the access services namely, Basic, Cellular and Unified Access Service. Substantial equity herein will mean an equity of 10% or more. A promoter company / legal person cannot have stakes in more than one licensee company for the same service area. A certificate to this effect shall be provided by the applicant's Company Secretary along with applications". The guidelines issued for UAS Licences on 14.12.2005 are the extant guidelines for grant of new UAS licence. All UAS licences issued in 2008 are governed by these detailed guidelines.

19. Since introduction of UAS licensing regime in 2003, 51 new UAS licences were issued till March 2007 based on the

policy of continuous award on First-Come First-Served (FCFS) basis. As per this policy the applications which were received first in Department of Telecommunications were issued Letter of Intent first. The applications received later were not considered till the applications received earlier were decided and allocated Letter of Intent (LOI). In case approvals for more than one LOI in the same telecom circle was received simultaneously, the earlier applicant was issued LOI first and the latter one was issued LOI at least a day after, in order to maintain the same priority for signing of UAS Licence as well as allocation of spectrum.

20. On 13.04.2007, when Sh. Dayanidhi Maran was MOC&IT, DOT sought recommendations of TRAI on the issue of limiting the number of Access providers in each service area and review of the terms and conditions of the Access provider license keeping in mind that 159 licences of Access Services (CMTS/Basic/UASL) had so far already been issued and these were increasing demand on spectrum in a substantial manner.

21. TRAI provided its recommendations dated 28.08.2007 on aforesaid issues, inter-alia, mentioning below in its Summary of Recommendations :-

(i) No cap be placed on the number of access service providers in any service area.

It was recommended in the background of observation of TRAI in para 2.36 that – "Having considered all the above aspects and considering the implications of having to suggest a framework covering other issues

that have been referred by the Government; the Authority is not in favour of suggesting a cap on the number of access service providers in any service area. It is not advisable to exogenously fix the number of access service providers in a market which is in a dynamic setting."

In para 2.99 it was also mentioned that "There is a need to ensure availability of adequate spectrum, to ensure efficient utilization of the spectrum, and making the processes of spectrum allocation completely transparent, and based on a road map and well-researched plan."

(ii) In future all spectrums excluding the spectrum in 800, 900 and 1800 bands (i.e. 2G spectrum) should be auctioned so as to ensure efficient utilization of this scarce resource.

In the 2G bands (800 MHz/900 MHz/1800 MHz), the allocation through auction may not be possible as the service providers were allocated spectrum at different times of their license and the amount of spectrum with them varies from 2X4.4 MHz to 2X10 MHz for GSM technology and 2X2.5 MHz to 2X5 MHz in CDMA technology. Therefore, to decide the cut off after which the spectrum is auctioned will be difficult and might raise the issue of level playing field.

TRAI also observed in its recommendations dated 28.08.2007, in para 2.73, that :–

"The allocation of spectrum is after the payment of entry fee and grant of license. The entry fee as it exists today is, in fact, a result of the price discovered through a market based mechanism applicable for the grant of license to the 4th cellular operator. In today's dynamism and unprecedented growth of telecom sector, the entry fee determined then is also not the realistic price for obtaining a license. Perhaps, it needs to be reassessed through a market mechanism. On the other hand spectrum usage charge is in the form of a royalty which is linked to the revenue earned by the operators and to that extent it captures the economic value of the spectrum that is used. Some stakeholders have viewed the charges / fee as a hybrid model of extracting economic rent for the acquisition and also meet the criterion of efficiency in the utilization of this scarce resource. The Authority in the context of 800, 900 and 1800 MHz is conscious of the legacy i.e. prevailing practice and the overriding consideration of level playing field. Though the dual charge in present form does not reflect the present value of spectrum it needed to be continued for treating already specified bands for 2G services i.e. 800, 900 and 1800 MHz. It is in this background that the Authority is not recommending the standard options pricing of spectrum, however, it has elsewhere in the recommendation made a strong case for adopting auction procedure in the allocation of all other spectrum bands except 800, 900

and 1800 MHz."

Association of accused and beginning of conspiracy

22. It is alleged that in May 2007, accused Andimuthu Raja (A. Raja) (A-1) took over as Minister of Communications & Information Technology (MOC&IT). Accused Ravindra Kumar Chandolia (R K Chandolia) (A-3) also joined as Private Secretary (PS) to MOC&IT at the same time. On 1st January, 2008 accused Siddhartha Behura (A-2) joined Department of Telecommunications in Ministry of Communications & Information Technology as Secretary (Telecom). Accused Siddhartha Behura and R. K. Chandolia had earlier also worked with accused A. Raja, as Additional Secretary and Private Secretary, respectively, when accused A. Raja was Minister of Environment & Forests, and were acquainted with each other in such manner. It is also alleged that accused A. Raja was also already familiar with accused Shahid Balwa (A-4), Vinod Goenka (A-5) and Sanjay Chandra (A-7) in context of various clearances of Ministry of Environment & Forests to various real estate projects of their companies – M/s DB Realty Ltd. and M/s Unitech Ltd. respectively, operating in real estate projects, during the tenure of accused A. Raja as Minister of Environment & Forests.

I. Fixation of cut-off date

23. It is alleged that receipt of applications for new Unified Access Services Licences (UASL) in DOT, situated at

Sanchar Bhawan, 20 Ashoka Road, New Delhi, has been a continuous process. The applications had been processed in the order in which these were received. However, after accused A. Raja took over as MOC&IT in May 2007 and TRAI recommendations dated 28.08.2007 were received, there was a spurt in the number of applications for new UAS Licences.

At this time accused A. Raja entered into a conspiracy with other accused persons & companies with a purpose to issue UAS Licences to M/s Swan Telecom Pvt. Ltd., which had already applied, and companies promoted by M/s Unitech Ltd., which were yet to apply for UAS Licences, by manipulating the priority list on the basis of LOI compliances instead of existing guidelines / practice of deciding applications on the basis of date of application as per availability of spectrum.

Monitoring of applications by R. K. Chandolia

24. It is alleged that during this period accused R. K. Chandolia, PS to MOC&IT had been continuously monitoring the status of the receipt of applications in Access Services (AS) Cell of Department of Telecommunications. He was continuously updating himself with the status of applications and names of applicant companies. On 24.9.2007, he enquired from the concerned officer of Access services cell as to whether applications of Unitech Ltd. for new UAS Licences had been received and directed that no applications should be accepted after the receipt of applications from M/s Unitech Limited, which were expected to be received on the same day. When

informed that the receipt of applications could not be arbitrarily stopped, DDG (AS-I) was asked to put up a note in this regard. A note dated 24.9.2007 was put up by Access Services cell mentioning that if receipt of applications is to be discontinued, it needed to be told to the public through press release and proposed 10.10.2007 as the date till which applications may be received, till further orders.

Filing of applications by Sanjay Chandra

25. It is alleged that in the meantime accused Sanjay Chandra, Managing Director, M/s Unitech Ltd., as authorized by the said company to take care of the telecom affairs, caused to make applications by 8 group companies formulated for this purpose, viz. M/s. Aska Projects Ltd., M/s. Nahan Properties Pvt. Ltd., M/s. Unitech Builders & Estates Pvt. Ltd., M/s. Unitech Infrastructures Pvt. Ltd., M/s. Azare Properties Ltd., M/s. Adonis Projects Pvt. Ltd., M/s. Hudson Properties Ltd., and M/s. Volga Properties Pvt. Ltd. Later, these companies were renamed after these got UAS licences from DOT, as M/s Unitech Wireless group companies. Subsequently, all the said 8 companies were merged into M/s Unitech Wireless (Tamilnadu) Pvt. Ltd. (A-8) Hereinafter, M/s Unitech Wireless (Tamilnadu) Pvt. Ltd., has been considered as representing all the 8 Unitech group companies later merged into it.

Cut-off date and Reference to Law Ministry

26. It is alleged that accused A. Raja, in pursuance to

the conspiracy and for ensuring better prospects for his favoured companies cut it short and decided the cutoff date to be 01.10.2007. A press release was issued to this effect on 24.09.2007, which appeared in newspapers on 25.9.2007. It is further alleged that even though this cutoff date of 01.10.2007 had been announced, accused A. Raja, in conspiracy with other accused persons, had already taken a view to keep the cutoff date as 25.09.2007, as earlier conveyed to Access Services cell officer by accused R. K Chandolia. This was also manifest when he approved an amended draft letter to be sent to Ministry of Law & Justice, wherein the alternatives proposed mentioned that applications upto 25.09.2007 would be considered. Accused A. Raja approved to issue this letter, even though, his attention was drawn by the DOT officers to para 3.1.1 of NTP99 which mandates adequate availability of spectrum for allocating new licences and TRAI's repeated recommendations about giving new licences subject to availability of spectrum for existing operators and for new operators. Accused A. Raja, however, decided to send this letter dated 26.10.2007 to Ministry of Law & Justice for its opinion on the various options indicated for allocation of new licences.

Review of spectrum

27. It is alleged that on receiving said reference Ministry of Law & Justice opined vide note dated 01.11.2007 that the matter being very important, needed to be considered by Empowered Group of Ministers. It is alleged that accused A.

Raja, instead of referring this important matter to Empowered Group of Ministers, stuck to this decision on cutoff date, which was decided in conspiracy with other accused persons including accused Sanjay Chandra of M/s Unitech Ltd. and accused Shahid Balwa & accused Vinod Goenka, with a purpose to rope in the applications of M/s Unitech Wireless (Tamilnadu) Pvt. Ltd. (representing all the 8 Unitech group companies later merged into it) within the consideration zone despite there being no sufficient spectrum in many telecom circles and with a design to shuffle the priority list to unduly benefit especially M/s Swan Telecom Pvt. Ltd. by allowing it to get priority over other applicants in the prime telecom circle of Delhi for scarce spectrum. In pursuance to the said conspiracy accused A. Raja did not review the availability of spectrum circle wise, despite being so advised by the concerned DOT officers who advised to decide the number of LOIs to be issued in each service area and also put up the details of spectrum availability circle wise indicating that spectrum available in many circles was inadequate to accommodate applications received till 25.09.2007. Accused A. Raja instead went ahead to decide the cutoff date as 25.09.2007, in conspiracy with aforesaid accused persons. The availability of spectrum in each circle, and number of new licencees that could be accommodated in each circle, as per spectrum availability as in November 2007, and subsequently in January, 2008, as per DOT records put up to the accused A. Raja are as follows :-

S. No.	Service Area	Spectrum available (November 2007)			Spectrum available (January 2008)	
		Total (MHz)	Total (MHz)*	New Operators to be accommodated for initial spectrum allotment	Total (MHz)	New Operators to be accommodated for initial spectrum allotment
1.	Delhi	15	15	03/03	08	01
2.	Mumbai	25	25	05/05	20	4
3.	Chennai	30	60	06/>10	45	10
4	Kolkata	25	45	5/10	40	09
5.	AP	25	55	5/11	45	10
6.	Karnataka	25	55	5/11	40	09
7.	Kerala	30	65	6/>10	50	>10
8.	Tamil Nadu	30	60	6/>10	50	>10
9.	Maharashtra	25	45	5/>10	30	6
10.	Gujarat	20	20	4/4	9	2
11.	Rajasthan	10	10	2/2	1	0
12.	Punjab	25	25	5/5**	15	3
13.	Haryana	25	25	5/5**	8	1
14.	J&K	25	25	5/5	10	2
15.	UP (E)	25	25	5/5**	13	2
16.	UP (W)	20	20	4/4	10	2
17.	MP	25	55	5/>10	40	9
18.	West Bengal	20	20	4/4	13	2
19.	Bihar	30	30	6/6	18	4
20.	HP	30	30	6/6	12	2
21.	NE/Assam	25	25	5/5	10	2
22.	Orissa	30	60	6/>10	45	10

** Without considering defense usages in the band (1735-1775 MHz)*

*** Some earlier commitment for allotment of spectrum in certain districts in the service area of 2001 licensee were to be met first.*

Need and timing

28. The DOT officers, including then Secretary (Telecom), also drew attention of accused A. Raja, vide note dated 25.10.2007, to para 3.1.1 of NTP-99 which requires DOT to seek TRAI recommendations on introduction of new operators in a service area. As per the NTP-99 and section 11 of

the Telecom Regulatory Authority of India Act, 1997 (amended in 2000), TRAI's recommendations were required for, and TRAI was obliged to recommend, either suo motu or on a request from the licensor, the need and timing for introduction of new service provider and also the terms and conditions of license to a service provider. However, accused A. Raja, in pursuance to the said conspiracy brushed aside the legal position & the mandate of the TRAI on need and timing for introduction of new service providers; and instead arbitrarily decided on 02.11.2007 on file the cutoff date to be 25.9.2007, thereby benefitting M/s Unitech Wireless (Tamilnadu) Pvt.Ltd. (representing all the 8 Unitech group companies later merged into it) for many telecom circles and M/s Swan Telecom Pvt. Ltd. for Delhi circle.

Correspondence between A. Raja and Hon'ble Prime Minister

29. In furtherance to the conspiracy, accused A. Raja, later on the same day, i.e. 02.11.2007 itself, wrote a letter to the Hon'ble Prime Minister, misrepresenting the facts & fraudulently justifying his decision regarding the cutoff date of 25.9.2007 on the ground that on this date the announcement of cutoff date appeared in newspapers. He also misled the Hon'ble Prime Minister and incorrectly stated the opinion of the Ministry of Law & Justice to refer the matter to EGOM to be out of context. It is alleged that accused A. Raja was already in criminal conspiracy with accused Sanjay Chandra, Managing Director of M/s. Unitech Ltd. and accused Shahid Balwa & Vinod Goenka of

M/s Swan Telecom Pvt. Ltd. before the publication of cutoff date in newspapers. He knowingly misrepresented the facts and misled the Hon'ble PM, while mentioning that the department was not deviating from the existing procedure in as much as the overriding principle of introducing new cellular operators subject to availability of sufficient spectrum was flouted. He also suppressed the design he already had in mind regarding the manner in which he, in conspiracy with other co-accused persons, and for benefitting his favoured companies, intended to allocate the licences, which was clearly indicated in various options mentioned in the letter dated 26.10.2007 written to Ministry of Law & Justice.

30. It is alleged that while this communication from MOC&IT to Hon'ble Prime Minister was in transit, Hon'ble Prime Minister sent a letter to A. Raja on 2.11.2007. This letter appropriately flagged the issue of "processing of large number of applications received for fresh licences against the back drop of inadequate spectrum to cater to overall demand." Para 3 of the Annexure to the Hon'ble Prime Minister's letter also referred to NTP 99 and mentioned that "since spectrum is very limited even in the next several years all the licencees may never be able to get spectrum." The suggestion from the high office of Hon'ble Prime Minister, that availability of spectrum had to be assessed before committing to issue licences, and that a licence without requisite spectrum meant nothing to a telecom operator, were, however, brushed aside by the accused A. Raja, as adherence to these directions would have foiled his design to

unduly favour the applicant companies, he was in conspiracy with.

31. On receipt of this letter dated 02.11.2007 from Hon'ble Prime Minister in late evening, and having been caught on the wrong foot, even before his letter dated 2.11.2007 could reach PMO, accused A. Raja immediately called accused R. K. Chandolia, his PS at his residence in the night itself. Accused A. Raja, with the help of co-accused R K Chandolia, and other staff, drafted a response to the letter of Hon'ble Prime Minister and finalized it on the night of 02.11.2007 itself at his camp office at his residence. This important matter relating to the policy decisions of the Department of Telecommunications, which required a serious consideration by the Department of Telecommunication in terms of the policy issues, was not even dealt with in the files of the department, and was decided by the said accused persons in furtherance to their conspiracy with private persons / companies aforesaid. In his response, accused A. Raja misrepresented, with a dishonest intention, the fact stating that "there was, and is, no single deviation or departure in the rules and procedures contemplated in all the decisions taken by my Ministry and as such full transparency is being maintained by my Ministry and further assure you the same in future also".

32. It is further alleged that accused A. Raja, in conspiracy with accused R K Chandolia, decided the cutoff date for consideration of applications to be those received upto 25.09.2007, to wrongly benefit accused Sanjay Chandra,

Managing Director, M/s Unitech Ltd., M/s Unitech Wireless (Tamilnadu) Pvt. Ltd. (representing all the 8 Unitech group companies later merged into it), accused Shahid Balwa, Vinod Goenka and M/s Swan Telecom Pvt. Ltd., by accommodating applications of M/s. Unitech group of companies and M/s Swan Telecom Pvt. Ltd. into consideration zone for all circles applied for, despite inadequate availability of spectrum in many circles including Delhi (one of most lucrative) for the companies standing in queue ahead of these companies.

II. Violation of first-come first-served

Policy of first-come first-served

33. It is alleged that the DOT had been following the principle of first-come first-served basis for allocation of UAS Licences since the year 2003 and this principle was adopted from the procedure followed for the allocation of spectrum for WLL services of Basic telephone operators. The first-come first-served principle meant that the applicant which applied first shall be allocated LOI, Licence and spectrum first. This existing procedure was also described, almost correctly, as Alternative I in the DOT letter dated 26.10.2007 addressed to Ministry of Law & Justice, which was approved by the MOC&IT himself.

34. It is alleged that under the existing procedure / policy for allocation of licences on first-come first-served principle, LOI was issued first to an applicant who had applied first. Then sufficient time was given for compliance of LOI conditions. The LOI prescribed a time of seven days for

acceptance / compliance of the LOI and fifteen days to deposit Entry Fee and Performance Bank Guarantee (PBG) / Financial Bank Guarantee (FBG). Licences were, then, also issued on the same priority as per dates of application. After issuance of licence, the licencee was required to make an application before Wireless, Planning & Coordination (WPC) Wing of DOT for allocation of spectrum. This gap facilitated time lead to an applicant to retain his date of application seniority at all stages.

Manipulation of first-come first-served by A. Raja

35. However, in furtherance to the criminal conspiracy, the said procedure was manipulated by accused A. Raja in conspiracy with accused Siddhartha Behura (Telecom Secretary w.e.f. 01.01.2008)and R K Chandolia and was redefined to benefit the Sanjay Chandra, Managing Director, M/s Unitech Ltd., M/s Unitech Wireless (Tamilnadu) Pvt.Ltd. (representing all the 8 Unitech group companies later merged into it), accused Shahid Balwa, accused Vinod Goenka and M/s Swan Telecom Pvt. Ltd. The first indication of such ill conceived design of A. Raja, in collusion with other accused persons, including accused Siddhartha Behura who joined this conspiracy on 01.01.2008, was manifest in the letter dated 26.10.2007 sent by DOT to Secretary, Ministry of Law & Justice. This letter mentioned that "--- In the present scenario the number of applications are very large and spectrum is limited and it may not be possible for the Government to provide LOI / Licence / Spectrum to all applicants at all if the existing procedure is followed. Moreover

the existing procedure of sequential processing will also lead to inordinate delays depriving the general public of the benefits which more competition will bring out".

Deletion from Draft LOI and View of LF

36. It is alleged that on 02.11.2007, Director (AS-I), DOT put up a note seeking orders on issuing LOIs as per existing policy which was approved by MOC&IT, while also approving the cutoff date as 25.09.2007. However, then Secretary (Telecom) observed on 5.11.2007 that - " action may be initiated after orders of the MOC&IT are obtained on the above issues. He had expressed his desire to discuss this further". A note was again put up on 07.11.2007 by the Director(AS-I) mentioning therein that as per the existing policy, the LOIs were granted based on date of applications to satisfy the principle of first-come first-served basis. In this context he also referred to the policy reported to Parliament in Rajya Sabha Question No. 1243 answered on 23.8.2007. Accused A. Raja although approved the note, but with dishonest intention and in furtherance to the conspiracy deleted para 3 of the draft LOI, which was also put up vide this note. The said para 3 mentioned that "the date of payment of entry fee would be the priority date for signing of licence agreement. If the date of payment of entry fee in more than one case is same then license will be first signed with the applicant company whose application was received earlier".

The aforesaid change in the LOI draft was the

manifestation of the malicious design, first indicated in the letter dated 26.10.2007 written to Ministry of Law & Justice, by accused A. Raja with an aim to benefit accused private persons / companies by deviating from the existing policy in a manner to be beneficial to the said accused private persons / companies.

37. It is alleged that when the file went to the Licensing Finance (LF) branch of DOT for vetting of the LOI, the DOT officers objected to the changes made in the draft LOI and mentioned on 23.11.2007 that "LOI making the payment of Entry Fee as the priority date has been deleted. However, it would be appropriate to clarify as to what the priority date would be. It appears logical to keep the date of application as date of priority provided the applicant is able to establish that he is eligible as on the date of application and is also eligible when the LOI is being issued. It is suggested that this should be clarified to the applicants by inserting a suitable para in the LOI for the sake of clarity especially in view of the large number of applications received".

38. In this note itself it was also mentioned that "in para 5 of the Draft LOI it has been clarified that the payment of entry fee shall not confer right on the licensee for the allocation of radio spectrum which shall be allotted as per existing policy/ guidelines as amended from time to time subject to availability. In this regard it is pointed out that the present occasion is unique in the sense that a large number of applications are being processed simultaneously and it would be appropriate for all concerned to know the likelihood of allotment of spectrum to

them. NTP 99 already stipulates that 'availability of adequate frequency spectrum is essential' … particularly in these days when it is the wireless services that are the order of the day and these services cannot be provided without spectrum. Hence, it would be appropriate that the prospective licencees know the approximate time within which they will get spectrum. In any case for spectrum allocation also, the date of priority should also be the same as the date of his application provided he is found eligible on the date of application and he deposits the Entry Fee and complies to the LOI within the stipulated time".

39. It is alleged that the aforesaid note clearly spelt out not only what was the policy of first-come first-served but also the manner in which it was being implemented till such time by the Department of Telecommunications. This note was further endorsed by Member (Finance), Telecom Commission and Secretary (Telecom) thereby also suggesting revision of the entry fee for new licences in line with the revision of fee for dual technology spectrum as suggested by Ministry of Finance in its letter dated 22.11.2007. However, finding this note, and other suggestions of DOT officers, an impediment in his ill-conceived design, accused A. Raja deliberately condemned not only the observations in the note but also the officers attempting to put the things in correct perspective.

40. It is alleged that, in aforesaid manner the DOT officials tried to prevent accused A. Raja to proceed ahead with his design to delete a clause which would have resulted in reshuffling of the priority from the date of application to time of

submission of compliance of LOIs. Accused A. Raja, therefore, had no option but to clarify that LOIs in previously used proforma may be issued, because the revision of LOI proforma as suggested by DOT officers would have thwarted his design prematurely. He, therefore, directed that a separate letter seeking duly signed copies of all the documents submitted at the time of applying for UASL as per existing guidelines may be obtained, thereby mandating that eligibility on the date of application was essential requirement. Such letters were thereafter issued to each applicant during December, 2007 asking for the certificates that the companies met various eligibility parameters as on date of application and thereafter.

Letter to PM by A. Raja

41. In furtherance to the conspiracy that accused A. Raja had entered into with R K Chandolia, Sanjay Chandra, Managing Director, M/s Unitech Ltd., accused Shahid Balwa and accused Vinod Goenka for favouring M/s Unitech Wireless (Tamilnadu) Pvt.Ltd. (representing all the 8 Unitech group companies later merged into it) and M/s Swan Telecom Pvt. Ltd., he wrote a letter dated 26.12.2007 to Hon'ble PM, with the help of accused R K Chandolia. In this letter he intentionally and deliberately misrepresented the facts about first-come first-served policy and wrote, in the context of 'Issue of New Licences' that:-

> "DoT has been implementing a policy of First- come-First Served for grant of UAS licences. The same policy is

proposed to be implemented in granting licence to existing applicants. However, it may be noted that grant of UAS licence and allotment of Radio Frequency is a three stage process.

1. Issue of Letter of Intent (LOI): DoT follows a policy of First-Come First-Served for granting LOI to the applicants for UAS licence, which means, an application received first will be processed first and if found eligible will be granted LOI.

2. Issue of Licence: The First-Come First-Served policy is also applicable for grant of licence on compliance of LOI condition. Therefore, any applicant who complies with the condition of LOI first will be granted UAS licence first. This issue never arose in the past as at one point of time only one application was processed and LOI was granted and enough time was given to him for compliance of conditions of LOI. However, since the Government had adopted a policy of 'No Cap" on number of UAS licence, a large number of LOIs are proposed to be issued simultaneously. In these circumstances, an applicant who fulfils the conditions of LOI first will be granted licence first, although several applicants will be issued LOI simultaneously. The same has been concurred by the Solicitor General of India during the discussions.

3. Grant of Wireless Licence: The First-Come First-Served policy is also applicable for grant of wireless licence to the UAS licencee.

Wireless licence is an independent licence to UAS licence for allotment of Radio Frequency and authorizing launching of GSM/CDMA based mobile services. There is a misconception that UAS licence authorizes a person to launch mobile services automatically. UAS licence is a licence for providing both wire and wireless services. Therefore, any UAS licence holder wishes to offer mobile service has to obtain a separate wireless licence from DoT. It is clearly indicated in clauses 43.1 and 43.2 of the UAS Licence Agreement of the DoT.

Since the file for issue of LOI to all eligible applicants was approved by me on 2.11.2007, it is proposed to implement the decision without further delay and without any departure from existing guidelines."

42. It is alleged that the aforesaid letter was drafted by accused A. Raja and accused R. K. Chandolia at the camp office-cum-residence of accused A. Raja, and was not a result of the deliberations of the Department of Telecommunications in its files as such. It is alleged that there were no discussions with the then learned Additional Solicitor General. The position reflected in this letter as above, was in stark deviation from the existing procedures, and was fraudulently adopted as the procedure for grant of UAS licences in conspiracy with accused Sanjay Chandra, Managing Director, M/s Unitech Ltd., accused Shahid Balwa and accused Vinod Goenka with an intention to favour M/s Unitech Wireless (Tamilnadu) Pvt.Ltd. (representing all the

8 Unitech group companies later merged into it) and M/s Swan Telecom Pvt. Ltd.

Role of Siddhartha Behura and R. K. Chandolia

43. It is alleged that on 01.01.2008 accused Siddhartha Behura joined DOT as Secretary (Telecom) and joined the ongoing conspiracy between accused A. Raja, R. K. Chandolia and other private persons / companies. In furtherance to the said conspiracy on 7.1.2008, accused R.K. Chandolia gave a copy of letter dated 26.12 2007, sent by accused A. Raja to Hon'ble PM, to DDG(AS-I) in the office chamber of A. Raja and followed it up with a written forwarding letter dated 07.01.2008 enclosing therewith copies of letter exchanged between MOC&IT and Hon'ble PM. Accused R. K. Chandolia asked DOT officers to treat these letters as policy directives and accordingly put up note regarding processing of files for allocation of new licences.

44. It is alleged that while putting up a note dated 07.01.2008 for processing UASL applications received upto 25.9.2007, Director (AS-I) reiterated the existing policy and noted that "sequence of granting LOIs/UAS Licence has been maintained till now according to the date of respective application for a particular service area". In his note he raised the issue of date of eligibility and DDG (AS-I) clarified that the eligibility on the date of application needs to be considered. However, he reproduced the parts of the letter dated 26.12.2007 addressed by MOC&IT to Hon'ble PM on policy

matters regarding grant of UAS Licences and mentioned that these are to be treated as policy directives.

Draft press release and opinion of SG

45. It is alleged that when this matter was put up on 7.1.2008 before accused Siddhartha Behura, Secretary (Telecom), he attached a draft press release for approval of MOC&IT. This draft Press Release contained the manner in which Letters of Intent were planned to be issued to applicants. It is alleged that MOC&IT 'approved' the same and asked Secretary to obtain Solicitor General's opinion since he was appearing before the TDSAT and High Court Delhi. After this accused Siddhartha Behura took the file himself to the then Ld. Solicitor General of India, who advised – "I have seen the matter. The issues regarding new LOI's are not before any court. What is proposed is fair and reasonable. The press release makes for transparency. This seems to be in order." It is alleged that accused A. Raja, in conspiracy with accused Siddhartha Behura subsequently struck out the last para of the press release, which mentioned - "However, if more than one applicant complies with LOI condition on the same date, the inter-se seniority would be decided by the date of application". It is also alleged that, when accused A. Raja struck out last para of draft press release, at the same time he also inserted, in his aforementioned note dated 07.01.2008, the words – "press release appd as amended". This insertion in his note was willfully done by accused A. Raja after the then Solicitor

General had already recorded his note dated 07.01.2008 after his note, on the running note sheet. By this dishonest act accused A. Raja, in conspiracy with accused Siddhartha Behura, fraudulently portrayed to the Department of Telecommunications that the amended draft had the consent of the then Ld. Solicitor General. In this manner he falsified the records in furtherance of his design to cheat DOT by manipulating the allocation of new licences in a manner wrongfully benefitting the accused private persons / companies aforesaid. This amendment in the press release led to redefining the concept of first-come first-served on the basis of priority in submission of compliance to the LOI against the established practice of priority in order of receipt of applications. It is alleged that this press release was issued to the public on 10.1.2008 at 1347 hours.

Distribution of LOIs: Four counters

46. It is alleged that in furtherance to the conspiracy accused R.K. Chandolia, in conspiracy with accused Siddhartha Behura, designed the manner in which the LOIs were to be distributed to various applicants and asked the DOT officials to implement it. When the concerned DOT officers resisted to the proposed unfair and ill-conceived scheme proposed, which was not in line with the first-come first-served principle, accused Siddhartha Behura directed the DOT officers to implement it and asked to take his approval for the same on file, if so required. Later, when DOT officers sought his approval for this

scheme of distribution of LOIs, he even approved it. This ill-conceived design included establishing 4 counters to distribute LOIs, in the committee room of Sanchar Bhawan at 2nd Floor, subverting the system of first-come first-served in letter as well as in spirit. In this design, the accused persons deliberately did not even ensure that only after the first batch of 4 applicants had been issued the LOIs, the second batch be called. The manner in which the counters were placed, priority of the applicants as per date of application and the number of LOIs / letters that were to be distributed at each counter, is as mentioned below :

S. No.	**Counter No.1**	**Counter No. 2**	**Counter No. 3**	**Counter No. 4**
1	M/s. By Cell (Priority : 1) (1 rejection letter only)	M/s. Tata Teleservices. (Priority : 2) (3 LOIs + 1 In-Principle approval for Dual Technology)	M/s. Idea Cellular. (Priority : 3) (9 LOIs)	M/s. Spice Communications. (Priority : 4) (4 LOIs)
2	M/s. Swan Telecom (Priority : 5) (13 LOIs)	M/s. HFCL Infotel (Priority : 6) (Rejection Letter)	M/s. S. Tel (Priority : 7) (6 LOIs)	M/s. Parsvnath. (Priority : 8) (1 rejection letter only - absent)
3	M/s. Datacom Solutions (Priority : 9) (22 LOIs)	M/s. Loop Telecom (Priority : 10) (21 LOIs)	M/s. Allianz (Priority : 11) (A letter)	M/s. Unitech Group. (Priority : 12) (22 LOIs)
4	M/s. Shyam Telelink (Priority : 13) (21 LOIs)	M/s. Selene Infrastructure (Priority : 14) (Rejection Letter)		

47. It is alleged that on 10.01.2008 another press release was issued by Department of Telecommunications in the

afternoon asking the representatives of all applicant companies to collect the Letters of Intent at 3.30PM at Sanchar Bhawan and the same was put up by DOT on its website. The representatives of the companies were also telephonically informed by the DOT officers for this purpose. Representatives of the companies assembled at committee room of the Sanchar Bhawan for collection of LOIs / letters, and collected the LOIs from said counters. It is also alleged that the distribution of LOIs was not in first-come first-served manner and the willful design of such distribution resulted into an disorderly manner of priority. The distribution of LOIs in aforesaid fraudulent manner resulted in reshuffling of the priority of applicants from the date of application to time of compliance which had difference of few minutes and completely changed the priority to the benefit of M/s. Swan Telecom Pvt. Ltd. (STPL), which got first priority in Delhi where spectrum for one licensee only was available, and M/s Unitech Wireless (Tamilnadu) Pvt. Ltd. (representing all the 8 Unitech group companies later merged into it), for many circles where spectrum was not sufficient to accommodate last applicant. The altered order of priority, vis-à-vis the dates of application are as mentioned in a tabular form below :-

SL. No.	SERVICE AREA	COMPANY	DATE OF APPLICATION	Date of LOI Compliances & Entry Fee	Time of LOI Compliances & Entry Fee
1	Mumbai	Swan Telecom Pvt. Ltd.	2-Mar-2007	10/1/2008	16:10
2	Delhi	Swan Telecom Pvt. Ltd.	2-Mar-2007	10/1/2008	16:11
3	Andhra Pradesh	Datacom Solutions Pvt. Ltd.	28-Aug-2007	10/1/2008	16:14

4	Assam	Datacom Solutions Pvt. Ltd.	28-Aug-2007	10/1/2008	16:14
5	Bihar	Datacom Solutions Pvt. Ltd.	28-Aug-2007	10/1/2008	16:15
6	Delhi	Datacom Solutions Pvt. Ltd.	28-Aug-2007	10/1/2008	16:16
7	Gujarat	Datacom Solutions Pvt. Ltd.	28-Aug-2007	10/1/2008	16:16
8	Haryana	Datacom Solutions Pvt. Ltd.	28-Aug-2007	10/1/2008	16:17
9	Himachal Pradesh	Datacom Solutions Pvt. Ltd.	28-Aug-2007	10/1/2008	16:17
10	Jammu & Kashmir	Datacom Solutions Pvt. Ltd.	28-Aug-2007	10/1/2008	16:18
11	Karnataka	Datacom Solutions Pvt. Ltd.	28-Aug-2007	10/1/2008	16:18
12	Kerala	Datacom Solutions Pvt. Ltd.	28-Aug-2007	10/1/2008	16:18
13	Kolkata	Datacom Solutions Pvt. Ltd.	28-Aug-2007	10/1/2008	16:19
14	Madhya Pradesh	Datacom Solutions Pvt. Ltd.	28-Aug-2007	10/1/2008	16:20
15	Uttar Pradesh (East)	Datacom Solutions Pvt. Ltd.	28-Aug-2007	10/1/2008	16:20
16	Uttar Pradesh (West)	Datacom Solutions Pvt. Ltd.	28-Aug-2007	10/1/2008	16:20
17	Rajasthan	Datacom Solutions Pvt. Ltd.	28-Aug-2007	10/1/2008	16:21
18	Tamilnadu (injcluding Chennai)	Datacom Solutions Pvt. Ltd.	28-Aug-2007	10/1/2008	16:21
19	Mumbai	Datacom Solutions Pvt. Ltd.	28-Aug-2007	10/1/2008	16:22
20	North East	Datacom Solutions Pvt. Ltd.	28-Aug-2007	10/1/2008	16:22
21	Orissa	Datacom Solutions Pvt. Ltd.	28-Aug-2007	10/1/2008	16:22
22	Maharashtra	Datacom Solutions Pvt. Ltd.	28-Aug-2007	10/1/2008	16:23
23	West Bengal	Datacom Solutions Pvt. Ltd.	28-Aug-2007	10/1/2008	16:23
24	Tamilnadu (injcluding Chennai)	Idea Cellular Ltd.	26-Jun-2006	10/1/2008	16:30
25	Karnataka	Idea Cellular Ltd.	26-Jun-2006	10/1/2008	16:31
26	Punjab	Idea Cellular Ltd.	26-Jun-2006	10/1/2008	16:32
27	West Bengal	Idea Cellular Ltd.	26-Jun-2006	10/1/2008	16:32
28	Assam	Idea Cellular Ltd.	26-Jun-2006	10/1/2008	16:33

29	Kolkata	Idea Cellular Ltd.	26-Jun-2006	10/1/2008	16:33
30	Orissa	Idea Cellular Ltd.	26-Jun-2006	10/1/2008	16:33
31	Jammu & Kashmir	Idea Cellular Ltd.	26-Jun-2006	10/1/2008	16:34
32	North East	Idea Cellular Ltd.	26-Jun-2006	10/1/2008	16:34
33	Rajasthan	Adonis Projects P. Ltd. (Unitech).	24-Sep-2007	10/1/2008	16:41
34	Delhi	Hudson Properties P. Ltd. (Unitech)	24-Sep-2007	10/1/2008	16:41
35	Mumbai	Unitech Infrastructures P. Ltd. (Unitech)	24-Sep-2007	10/1/2008	16:41
36	Punjab	Adonis Projects P. Ltd. (Unitech)	24-Sep-2007	10/1/2008	16:42
37	Andhra Pradesh	Aska Projects Ltd. (Unitech)	24-Sep-2007	10/1/2008	16:42
38	Karnataka	Aska Projects Ltd. (Unitech)	24-Sep-2007	10/1/2008	16:43
39	Kerala	Aska Projects Ltd. (Unitech)	24-Sep-2007	10/1/2008	16:43
40	Haryana	Adonis Projects P. Ltd. (Unitech)	24-Sep-2007	10/1/2008	16:44
41	Himachal Pradesh	Adonis Projects P. Ltd. (Unitech)	24-Sep-2007	10/1/2008	16:44
42	Jammu & Kashmir	Adonis Projects P. Ltd. (Unitech)	24-Sep-2007	10/1/2008	16:44
43	Uttar Pradesh (West)	Adonis Projects P. Ltd. (Unitech)	24-Sep-2007	10/1/2008	16:45
44	Kolkata	Azare Properties Ltd. (Unitech)	24-Sep-2007	10/1/2008	16:45
45	Tamilnadu (injcluding Chennai)	Unitech Builders & Estates Pvt. Ltd. (Unitech)	24-Sep-2007	10/1/2008	16:45
46	Assam	Nahan Properties Pvt. Ltd. (Unitech)	24-Sep-2007	10/1/2008	16:46
47	Bihar	Nahan Properties Pvt. Ltd. (Unitech)	24-Sep-2007	10/1/2008	16:46
48	Gujarat	Volga Properties Pvt Ltd. (Unitech)	24-Sep-2007	10/1/2008	16:47
49	Madhya Pradesh	Volga Properties Pvt Ltd. (Unitech)	24-Sep-2007	10/1/2008	16:47
50	Uttar Pradesh (East)	Nahan Properties Pvt. Ltd. (Unitech)	24-Sep-2007	10/1/2008	16:48
51	West Bengal	Nahan Properties Pvt. Ltd. (Unitech)	24-Sep-2007	10/1/2008	16:48
52	Maharashtra	Volga Properties Pvt Ltd. (Unitech)	24-Sep-2007	10/1/2008	16:48
53	North East	Nahan Properties Pvt. Ltd. (Unitech)	24-Sep-2007	10/1/2008	16:49
54	Orissa	Nahan Properties Pvt.	24-Sep-	10/1/2008	16:49

		Ltd. (Unitech)	2007		
55	Delhi	Spice Communications Ltd.	31-Aug-2006	10/1/2008	16:51
56	Haryana	Spice Communications Ltd.	31-Aug-2006	10/1/2008	16:52
57	Andhra Pradesh	Spice Communications Ltd.	31-Aug-2006	10/1/2008	16:53
58	Maharashtra	Spice Communications Ltd.	31-Aug-2006	10/1/2008	16:55
59	Assam	Tata Teleservices Ltd.	21-Jun-2006	10/1/2008	17:20
60	Jammu & Kashmir	Tata Teleservices Ltd.	21-Jun-2006	10/1/2008	17:20
61	North East	Tata Teleservices Ltd.	21-Jun-2006	10/1/2008	17:20
62	Assam	S Tel Ltd.	7-Jul-2007	10/1/2008	18:10
63	Bihar	S Tel Ltd.	7-Jul-2007	10/1/2008	18:10
64	Himachal Pradesh	S Tel Ltd.	7-Jul-2007	10/1/2008	18:10
65	Jammu & Kashmir	S Tel Ltd.	7-Jul-2007	10/1/2008	18:10
66	North East	S Tel Ltd.	7-Jul-2007	10/1/2008	18:10
67	Orissa	S Tel Ltd.	7-Jul-2007	10/1/2008	18:10
68	Andhra Pradesh	Swan Telecom Pvt. Ltd.	2-Mar-2007	10/1/2008	18:15
69	Gujarat	Swan Telecom Pvt. Ltd.	2-Mar-2007	10/1/2008	18:15
70	Haryana	Swan Telecom Pvt. Ltd.	2-Mar-2007	10/1/2008	18:15
71	Maharashtra	Swan Telecom Pvt. Ltd.	2-Mar-2007	10/1/2008	18:15
72	Tamilnadu (injcluding Chennai)	Swan Telecom Pvt. Ltd.	2-Mar-2007	10/1/2008	18:15
73	Uttar Pradesh (East)	Swan Telecom Pvt. Ltd.	2-Mar-2007	10/1/2008	18:15
74	Karnataka	Swan Telecom Pvt. Ltd.	2-Mar-2007	10/1/2008	18:20
75	Punjab	Swan Telecom Pvt. Ltd.	2-Mar-2007	10/1/2008	18:25
76	Rajasthan	Swan Telecom Pvt. Ltd.	2-Mar-2007	10/1/2008	18:25
77	Uttar Pradesh (West)	Swan Telecom Pvt. Ltd.	2-Mar-2007	10/1/2008	18:25
78	Kerala	Swan Telecom Pvt. Ltd.	2-Mar-2007	10/1/2008	18:30
79	Bihar	Loop Telecom Private Ltd.	6-Sep-2007	11/1/2008	9:22
80	Madhya Pradesh	Loop Telecom Private Ltd.	6-Sep-2007	11/1/2008	9:23
81	Orissa	Loop Telecom Private Ltd.	6-Sep-2007	11/1/2008	9:23
82	Uttar Pradesh	Loop Telecom Private Ltd.	6-Sep-2007	11/1/2008	9:24

	(West)				
83	Jammu & Kashmir	Loop Telecom Private Ltd.	6-Sep-2007	11/1/2008	9:25
84	West Bengal	Loop Telecom Private Ltd.	6-Sep-2007	11/1/2008	9:25
85	Karnataka	Loop Telecom Private Ltd.	6-Sep-2007	11/1/2008	9:27
86	Kolkata	Loop Telecom Private Ltd.	6-Sep-2007	11/1/2008	9:27
87	Kerala	Loop Telecom Private Ltd.	6-Sep-2007	11/1/2008	9:28
88	Punjab	Loop Telecom Private Ltd.	6-Sep-2007	11/1/2008	9:28
89	Delhi	Loop Telecom Private Ltd.	6-Sep-2007	11/1/2008	9:29
90	Andhra Pradesh	Loop Telecom Private Ltd.	6-Sep-2007	11/1/2008	9:30
91	Maharashtra	Loop Telecom Private Ltd.	6-Sep-2007	11/1/2008	9:30
92	Haryana	Loop Telecom Private Ltd.	6-Sep-2007	11/1/2008	9:31
93	North East	Loop Telecom Private Ltd.	6-Sep-2007	11/1/2008	9:32
94	Tamilnadu (injcluding Chennai)	Loop Telecom Private Ltd.	6-Sep-2007	11/1/2008	9:33
95	Uttar Pradesh (East)	Loop Telecom Private Ltd.	6-Sep-2007	11/1/2008	9:33
96	Assam	Loop Telecom Private Ltd.	6-Sep-2007	11/1/2008	9:34
97	Gujarat	Loop Telecom Private Ltd.	6-Sep-2007	11/1/2008	9:34
98	Himachal Pradesh	Loop Telecom Private Ltd.	6-Sep-2007	11/1/2008	9:35
99	Rajasthan	Loop Telecom Private Ltd.	6-Sep-2007	11/1/2008	9:35
100	Andhra Pradesh	Shyam Telelink Limited	25-Sep-2007	11/1/2008	9:43
101	Assam	Shyam Telelink Limited	25-Sep-2007	11/1/2008	9:44
102	Bihar	Shyam Telelink Limited	25-Sep-2007	11/1/2008	9:44
103	Delhi	Shyam Telelink Limited	25-Sep-2007	11/1/2008	9:44
104	Gujarat	Shyam Telelink Limited	25-Sep-2007	11/1/2008	9:45
105	Haryana	Shyam Telelink Limited	25-Sep-2007	11/1/2008	9:45
106	Himachal Pradesh	Shyam Telelink Limited	25-Sep-2007	11/1/2008	9:45
107	Jammu & Kashmir	Shyam Telelink Limited	25-Sep-2007	11/1/2008	9:46
108	Karnataka	Shyam Telelink Limited	25-Sep-	11/1/2008	9:46

			2007		
109	Kerala	Shyam Telelink Limited	25-Sep-2007	11/1/2008	9:46
110	Kolkata	Shyam Telelink Limited	25-Sep-2007	11/1/2008	9:46
111	Madhya Pradesh	Shyam Telelink Limited	25-Sep-2007	11/1/2008	9:47
112	Maharashtra	Shyam Telelink Limited	25-Sep-2007	11/1/2008	9:50
113	Mumbai	Shyam Telelink Limited	25-Sep-2007	11/1/2008	9:50
114	North East	Shyam Telelink Limited	25-Sep-2007	11/1/2008	9:51
115	Orissa	Shyam Telelink Limited	25-Sep-2007	11/1/2008	9:51
116	Punjab	Shyam Telelink Limited	25-Sep-2007	11/1/2008	9:52
117	Tamilnadu (including Chennai)	Shyam Telelink Limited	25-Sep-2007	11/1/2008	9:52
118	Uttar Pradesh (East)	Shyam Telelink Limited	25-Sep-2007	11/1/2008	9:52
119	Uttar Pradesh (West)	Shyam Telelink Limited	25-Sep-2007	11/1/2008	9:52
120	West Bengal	Shyam Telelink Limited	25-Sep-2007	11/1/2008	9:53

48. It is further alleged that as per the ill-conceived design of distribution of LOIs and receipt of LOI compliance / Entry Fee, etc., applicant company representatives were required to rush to the reception area of the Sanchar Bhawan at Ground Floor, after receiving the LOIs, for submission of LOI compliance / Entry Fee, etc. As a result of the said conspiracy, M/s Swan Telecom Pvt. Ltd. was the first to submit compliances for Delhi (where spectrum was limited for one licensee only) and Mumbai circles; and M/s Unitech Wireless (Tamilnadu) Pvt. Ltd. (representing all the 8 Unitech group companies later merged into it) were able to get priority in all circles over many other applicants which had applied much before it. This

desperate race to the reception area led to a lot of chaos, which also resulted in a situation that physical fitness of the representatives became the main deciding factor for priority in submission of compliance of LOIs and entry fee, etc., making a mockery of the first-come first-served policy. This design certainly benefitted those in criminal conspiracy and led to incidental gains/losses to others. In this manner the whole process of allocation of LOIs and licences was vitiated and was arbitrary in nature.

Prior information

49. It is alleged that the accused persons connected with M/s. Swan Telecom Pvt. Ltd. and M/s Unitech Ltd. had prior knowledge of such ill-conceived design of first-come first-served process and had been keeping the demand drafts ready since early November, 2007 and October, 2007 itself, respectively. M/s Swan Telecom Pvt. Ltd. had got first FBG & PBGs made for 2 circles as early as first half of November, 2007. It was subsequently changed to Delhi and Mumbai, in view of the advance knowledge that spectrum was limited in metros especially in Delhi circle. The first manifestation of the knowledge of M/s Swan Telecom about the manner in which the policy shall be implemented is seen in the fact that M/s Swan Telecom Pvt. Ltd. applied to Punjab National Bank for loan as early as in October, 2007 and mentioned that the Demand Drafts would be required at a very short notice as these are required to be deposited as soon as the LOI would be issued.

Similarly, M/s Unitech Wireless (Tamilnadu) Pvt. Ltd. (representing all the 8 Unitech group companies later merged into it) also had its DDs ready by 10th October 2007, even before the decision was taken to call the applicants for the issuance of LOIs by twisting the FCFS policy giving priority for issue of licences to those who complied with LOI conditions first. In December 2007, through media reports, such indications became public and most of the companies were thereafter, keeping their demand drafts / PBG/FBG, etc. ready for depositing whenever called for.

III. Dual technology and spectrum allocation

TRAI recommendations and acceptance thereof

50. The TRAI in its recommendations dated 28.08.2007 had, at paras 6.21 and 6.23, mentioned as under:-

> "6.21 : A licencee using one technology may be permitted on request, usage of alternate technology and thus allocation of dual spectrum. However such a licencee must pay the same amount of fee which has been paid by existing licencees using the alternative technology or which would be paid by a new licensee going to use that technology"
>
> "6.23 : Regarding inter se priority for spectrum allocation, when the existing licensee becomes eligible for allocation of additional spectrum specific to the new technology, such a licensee has to be treated like any other existing licensee in the queue and the inter se priority of allocation

should be based on the criteria that may be determined by the Department of Telecommunications for the existing licensee."

51. Telecom Commission approved the said recommendations and the same were accepted by MOC&IT on 17.10.2007. However, it is alleged that accused A. Raja, while approving the recommendations, noted that "in view of above approvals, pending requests of existing UASL operators for use of dual/ alternate wireless access technology should be asked to pay the required fees. Allocation of spectrum in alternate technology should be considered from the date of such requests to WPC subject to payment of required fees".

Accordingly, on 18.10.2007 accused A. Raja accorded in principle approval for dual technology spectrum to M/s. Reliance Communications Limited, M/s HFCL Infotel Limited and M/s Shyam Telelinks Limited, and mentioned in his note that "…for allocation of spectrum for dual technology, the date of payment of required fee should determine the seniority".

Applications of TTSL and TTML and clubbing them with reference to Law Ministry

52. It is alleged that as soon as the DOT accepted TRAI recommendations on allowing allocation of Dual Technology spectrum and this decision was notified on 19.10.2007 through a press release, M/s. Tata Teleservices Ltd. (TTSL) and M/s Tata Teleservices (Maharashtra) Ltd. (TTML), existing CDMA operators in many circles, also submitted applications for dual

technology spectrum on 19.10.2007. Before, the said press release was issued, M/s Reliance Communications (for 18 circles), M/s HFCL Infotel Limited (1 circle) and M/s Shyam Telelinks Limited (1 circle) had already been granted in-principle approval for dual technology spectrum on 18.10.2007. During the same time Cellular Operators' Association of India (COAI) & others filed a petition no. 286 of 2007 before Telecom Disputes Settlement & Appellate Tribunal (TDSAT) challenging the policy on dual technology.

53. It is alleged that when this request of M/s TTSL / M/s TTML was put up for in principle approval to use GSM technology under UAS Licence, accused A. Raja dishonestly clubbed this issue also with the letter dated 26.10.2007 being sent to Ministry of Law & Justice for guidance as to in which manner the pending applications of new licencees and dual technology spectrum be decided. In fact, as per the approval of the TRAI recommendations by Telecom Commission, which was also approved by the MOC&IT earlier, the matter regarding inter-se seniority of the applicants for dual technology spectrum and spectrum for new licencees had already been decided, and the dual technology spectrum applicants were to be treated at par with the existing licencees, and not with applicants for new licences.

Criteria for Inter-se Priority for Spectrum Allocation and Proceedings before TDSAT

54. Ministry of Law & Justice had, on this, opined on

01.11.2007 that the matter be referred to Empowered Group of Ministers. However, the same was also not acceded to by accused A. Raja, as already mentioned above. During the proceedings of petition no. 286 of 2007, filed by Cellular Operators Association of India (COAI) & Others, DOT filed an affidavit on 13.11.2007 before TDSAT. In this affidavit the details about criteria for deciding inter se priority of allocation of spectrum, in consonance with the TRAI recommendations as accepted by the DOT, was again spelt out. These details were also spelt out in a note dated 14.12.2007 about the proceedings dated 12.12.2007 before TDSAT and a list of the action points reflecting the position of processing of pending requests of M/s TTSL/M/s TTML for usage of dual technology over the processing of pending applications for grant of new UAS Licences was also approved. This position was also communicated to the WPC Wing of DOT, which is the custodian of frequency spectrum and is required to allocate spectrum to various licencees as per policy.

Delay in grant of in-principle approval

55. It is alleged that accused A. Raja, in conspiracy with other accused persons, did not accord in-principle approval to M/s TTSL / M/s TTML till 10.01.2008, when LOIs for new licences were distributed to applicants till 25.09.2007, and dishonestly clubbed the distribution of in-principle approvals to TTSL/TTML with distribution of LOIs for new licences. Accordingly, M/s Tata Tele Services Limited & TTML were given

in-principle approval on 10.01.2008 for use of dual technology in 20 Circles, along with the LOIs given to new licencees. In para 2 of the letter conveying in-principle approval it has been clearly mentioned that date of receipt of payment of required fee shall determine the date of priority for allocation of spectrum. It is alleged that TTSL and TTML deposited the requisite fee on the same day, i.e. 10.01.2008 and also submitted applications for allocation of startup GSM spectrum in 20 service areas on the same day i.e. 10.01.2008 with WPC wing of DOT.

56. These applications were received by DOT at the reception counter and further delivered in the office of Wireless Advisor. However, it is alleged that the applications were thereafter not traceable and have remained untraced, except one application for Karnataka Circle, which has been traced by the WPC officials during investigation, in the WPC office itself.

Delay in amendment of licence

57. It is alleged that vide a note dated 14.01.2008, Under Secretary (AS-III) put up the case of TTSL/TTML for amendment of UAS Licence condition 43.5(iv), allowing TTSL/TTML the use of dual technology spectrum, on a pattern similar to the one issued to M/s Reliance Communications Ltd earlier. This file reached the office of accused A. Raja for his approval on 23.01.2008. However, accused A. Raja, in furtherance to his conspiracy with accused Shahid Balwa & Vinod Goenka of M/s Swan Telecom Pvt. Ltd. and accused

Sanjay Chandra of M/s Unitech Ltd., and to wrongly benefit M/s Unitech Wireless (Tamilnadu) Pvt. Ltd. (representing all the 8 Unitech group companies later merged into it) and M/s Swan Telecom Pvt. Ltd. kept the file pending with him till 27.02.2008. In pursuance to this conspiracy, accused A. Raja, in the meantime, approved signing of new licences w.e.f. 26.02.2008. M/s Swan Telecom Pvt Ltd signed the licence for Mumbai & Delhi service areas on 26.02.2008 and applied for allocation of spectrum on 27.02.2008. It was only after ensuring the receipt of applications of M/s Swan Telecom Pvt. Ltd. in Delhi & Mumbai service areas before WPC wing, accused A. Raja approved the amendments in the UAS Licence of M/s Tata Tele Services Limited / TTML on 27.02.2008. It is alleged that even this amendment was formally communicated to M/s Tata Tele Services Limited/ M/s TTML on 04.03.2008, only after M/s Unitech Ltd. group companies had also signed all the licences and applied for the spectrum in various circles. The amended UAS license agreement between Tata Teleservises Ltd. (TTSL) / TTML and DOT was signed on 04.03.2008. The authorized person for TTSL/TTML by abundant precaution submitted another set of application in WPC Cell for allocation of GSM spectrum in all the applied circles also referring to the date of their first application dated 10.01.2008. However, accused public servants, in conspiracy with aforesaid accused private persons/ companies, dishonestly treated this date of 05.03.2008 as the date of seniority for allocation of spectrum for M/s TTSL /TTML instead of the date of making payments i.e.

10.01.2008, which was to be treated as priority as per accused A. Raja's decision earlier. Even as per the policy guidelines for dual technology and approvals of Telecom Commission and DOT, M/s Tata Tele Services Limited/ TTML being existing telecom operators were to be treated as existing licencees and had inter se priority over the new applicants.

Date of priority for allocation

58. WPC Wing allocated spectrum to all the applicants in 8 circles, where sufficient spectrum was available to accommodate all the new licencees as well as TTSL / TTML, simultaneously. However, the issue of inter-se priority became relevant & critical for the remaining circles, where sufficient spectrum was not available to cater to the requirement of all the new licencees & dual technology spectrum seekers. There were demands for spectrum from existing telecom operators, dual technology spectrum seekers and new operators in the remaining 14 circles including Delhi, where only one applicant could be accommodated for want of adequate spectrum. It is alleged that the concerned officers of WPC were being persistently pestered by all accused public servants to process applications in these circles, especially for Delhi, in the order of their applications for spectrum were received in WPC, while treating the date of application of TTSL/TTML as 05.03.2008, instead of 10.01.2008. It is further alleged that when the file for spectrum allocation in Delhi circle was not processed in this manner, accused Siddhartha Behura and accused R K Chandolia

caused the transfer of two concerned officers of WPC, who were not prepared to toe their line, out of the WPC wing on 25.08.2008. In pursuance to conspiracy with accused Shahid Balwa & Vinod Goenka of M/s Swan Telecom Pvt. Ltd. and accused Sanjay Chandra of M/s Unitech Ltd., accused A. Raja and other accused public servants forced the then Wireless Advisor to put up a note in the aforesaid manner and on his putting up such a note, accused Siddhartha Behura and accused A. Raja approved allocation of spectrum to M/s Swan Telecom Pvt. Ltd. in Delhi circle on very next day, i.e. 26.08.2008. This became a precedent for remaining circles also wherein M/s Unitech Wireless (Tamilnadu) Pvt. Ltd. (representing all the 8 Unitech group companies later merged into it) got priority over few other companies which applied earlier, depriving M/s Tata Tele Services Limited / TTML of their priority over other new licencees in various circles.

59. It is alleged that accused A. Raja in conspiracy with accused Siddhartha Behura, accused R K Chandolia, accused Shahid Balwa & Vinod Goenka of M/s Swan Telecom Pvt. Ltd. and accused Sanjay Chandra of M/s Unitech Ltd., allocated spectrum to M/s Swan Telecom Pvt. Ltd. in Delhi circle unreasonably depriving M/s Tata Tele Services Limited and M/s Spice Communications, which were having priority over M/s Swan Telecom Pvt. Ltd., in terms of the Dual Technology approvals and seniority of new applicants as per date of application, respectively. It is further alleged that the manner in which spectrum was allocated in Delhi circle was subsequently

treated as a precedent for other circles, and M/s Unitech Wireless (Tamilnadu) Pvt. Ltd. (representing all the 8 Unitech group companies later merged into it) got spectrum in many circles ahead of M/s. Loop Telecom, M/s. Tata Teleservices (dual technology), M/s. S. Tel and M/s. Swan Telecom. In telecom circles of Gujarat, West Bangal, UP (East), UP (West), Punjab, Haryana, Assam, J & K, Bihar and Himachal Pradesh, M/s. Unitech group companies got spectrum in full in some telecom circles and most of the areas in other circles, ahead of other companies, which had applied for the UAS license prior to M/s Unitech group companies but got partial spectrum / spectrum in fewer districts only in these circles. The allocation of new UAS licences and spectrum, in this manner, was in stark violation of the TRAI recommendations dated 20.02.2003 and 27.10.2003 and NTP-99, which mandated that applications for CMTS / UAS licences could be considered only if sufficient spectrum was available for existing operators as well as new applicants. Had this principle been followed, in most of the aforementioned telecom circles M/s Unitech Wireless (Tamilnadu) Pvt. Ltd. (representing all the 8 Unitech group companies later merged into it) would not have got any license at all and M/s Swan Telecom Pvt. Ltd. would not have got UAS license for Delhi service area. After accused A. Raja demitted the office of MOC&IT, DOT has now admitted the case of priority of TTSL/TTML for spectrum over new UAS licensees.

Renting of house by R. K. Chandolia

60. It is further alleged that accused R K Chandolia rented his residential property C-6/39 second floor, Safdarjung Development Area, New Delhi to M/s Associated Hotels Pvt. Ltd. (a sister concern of M/s. D B Realty Ltd.) on 03.03.2009, on a monthly Rs. 63,000/-.

Intra-service roaming arrangement

61. It is alleged that accused A. Raja and Siddhartha Behura, in conspiracy with accused Shahid Balwa & Vinod Goenka of M/s Swan Telecom Pvt. Ltd. asked DOT officers to put up a note recommending allowing intra service area roaming arrangements between two service providers in a circle by amending the UASL terms and conditions. The said accused persons so asked, despite the fact that on 24.04.2008 Chairman, TRAI, in a letter to accused Siddhartha Behura, then Secretary (Telecom) conveyed the need for compliance of the contents of section 11 of the TRAI Act, especially as regards for issue of licences to new service providers and amendments to the terms and conditions of the license of existing service providers. It was also clarified by TRAI that the terms and conditions of inter-connectivity, including intra circle roaming arrangement, between the service providers was also critical condition of the license conditions and for that as per the provisions of the section 11 of the Act, the recommendations of the Authority had to be obtained, before the same were amended.

However, accused A. Raja and other public servants, unauthorisedly proceeded further to amend the access services

license to make it mandatory for all service providers to allow Intra-Service Area Roaming arrangements with other service providers. However, the officers did not put up the note in a similar manner and instead recommended to allow mutual commercial arrangements for Intra service area without any force on the operators to enter into Intra service area facility. Accused A. Raja approved the same on 11.06.2008 in DOT file no. 842-725/2005-VAS(Pt.)-I on subject "Amendment to Access Service Licences reg Intra-Service Area Roaming". He also, while approving the note, directed that Secretary may discuss with Industry for making it mandatory. It is alleged that later out of many applicants for intra circle roaming arrangements with BSNL, only M/s Swan Telecom Pvt. Ltd. could sign a Memorandum of Understanding with BSNL for such an arrangement on 13.10.2008.

Failure to roll-out

62. It is alleged that M/s Swan Telecom Pvt. Ltd., despite being the only company to receive spectrum in Delhi service area, among new licencees, since 2008 did not roll out its services and failed to meet the roll-out obligations, and continued to receive the patronage of accused A. Raja till he demitted the office of MOC&IT.

Offloading of shares by STPL and Unitech

63. It is also alleged M/s Etisalat (Mauritius) Ltd., a group company of M/s Emirates Telecommunications

Corporation (ETISALAT) of UAE, subscribed to 11,29,94,228 shares of the M/s Swan Telecom Pvt. Ltd. on 17.12.2008 for a total consideration of Rs.3228,44,61,409/- (Rs. 3228 Crore). Similarly, M/s Genex Exim Ventures Pvt. Ltd. subscribed to 1,33,17,245 shares of the company on 17.12.2008 for a total consideration of Rs.380,49,73,846/- (Rs. 380 Crore). It is alleged that this amount of Rs. 380 Crore was arranged by M/s Genex Exim Ventures Pvt. Ltd. through M/s ETA Star Infrastructure Ltd. having its account at Oriental Bank of Commerce, Goregaon, Mumbai. It is alleged that M/s Al Waha Investments Ltd., Dubai, UAE, remitted Rs. 380 crore from Mashreq Bank, Dubai on 17.12.2008 in favour of M/s ETA Star Infrastructure Ltd. at its aforesaid account. This amount was transferred by M/s ETA Star Infrastructure Ltd. to M/s Genex Exim Ventures Pvt. Ltd., which used the same for taking aforesaid equity in M/s Swan Telecom Pvt. Ltd. As per the said subscriptions, price of each share of Rs. 10/- comes at Rs. 285.7178, meaning thereby a premium of Rs.275.7178 on each share. The total no. of shares held by M/s Tiger Trustees Pvt. Ltd., having 90.1% equity of M/s Swan Telecom Pvt. Ltd., which was wholly held by DB group, prior to entry of M/s Etisalat (Mauritius) Ltd. was 10,22,19000. At a premium of Rs.275.7178, the total value of shares held by M/s Tiger Trustees Pvt. Ltd., held by Dynamix Balwa group of companies promoted by accused Shahid Balwa and Vinod Goenka, comes at Rs.2818.3597 Crore.

64. It is further alleged that a subscription agreement

dated 28.10.2008 between various Unitech group companies, their holding companies and M/s Telenor Asia Pvt. Ltd. & Telenor Mobile Communications AS, Telenor agreed to infuse extra equity into the companies for 66.5% stake. The pre money enterprise value of the company was pegged at Rs. 4400 Crore of which Rs. 1146.7 Crore was external debt and Rs. 773 Crore as shareholders loans. Net pre money equity value of the promoters was treated as Rs. 2480 Crore. Accordingly the investment consideration of Telenor was kept at Rs. 5093 Crore. Actual investment of promoters in equity was Rs. 138 Crore, which was valued at Rs. 2480 Crore, indicating a gain of Rs. 2342 Crore to promoters of M/s Unitech Wireless.

65. It is alleged that M/s Telenor Asia Pvt. Ltd. subscribed to 340,532,767 shares of the company during the period 20.03.2009 to 22.02.2010, in six tranches. These shares were allotted at total consideration of Rs. 6135,62,53,270/- (Rs. 6135 Crore). Price of each share of Rs. 10/- comes at Rs. 179.731, meaning thereby a premium of Rs.169.731 on each share. The total no. of shares held by Unitech group in 8 group companies of Unitech Wireless, prior to agreement with Telenor was 138000000. At a premium of Rs.169.731, the total premium amount / gain to the Unitech group as such comes at Rs.2342.2878 Crore, which is the same amount as arrived at according to the agreement.

IV. Eligibility of companies

Creation of Networth and structure of shareholding

66. It is alleged that in January-February, 2007 accused Gautam Doshi (A-9), Surendra Pipara (A-10) and Hari Nair (A-11) in furtherance to their common intention to cheat the Department of Telecommunications, structured/ created net worth of a company M/s Swan Telecom Pvt. Ltd., out of funds arranged from M/s Reliance Telecom Ltd. (A-12) or its associates, for applying to the DOT for UAS Licences in 13 circles, where M/s Reliance Telecom Ltd. had no GSM spectrum, in a manner that its association with M/s Reliance Telecom Ltd. may not be detected, so that DOT could not reject its applications on the basis of clause 8 of the UASL Guidelines dated 14.12.2005 . The clause 8 of the UASL guidelines is as mentioned below:-

> "No single company/ legal person, either directly or through its associates, shall have substantial equity holding in more than one LICENSEE Company in the same service area for the Access Services namely; Basic, Cellular and Unified Access Service. 'Substantial equity' herein will mean 'an equity of 10% or more'. A promoter company/ Legal person cannot have stakes in more than one LICENSEE Company for the same service area. A certificate to this effect shall be provided by the applicant's company Secretary along with application."

67. In pursuance to the said common intention of accused persons, they structured the stake-holdings of M/s Swan Telecom Pvt. Ltd. in a manner that only 9.9 % equity was held by M/s Reliance Telecom Ltd. (RTL) and rest 90.1% was shown as held by M/s Tiger Traders Pvt. Ltd. (later known as

M/s Tiger Trustees Pvt. Ltd. - TTPL), although the entire company was held by the Reliance ADA Group of companies through the funds raised from M/s Reliance Telecom Ltd. etc.

STPL "Associate" of RCL

68. It is alleged that M/s Swan Telecom Pvt. Ltd. (STPL) was, at the time of application dated 02.03.2007, an associate of M/s Reliance ADA Group / M/s Reliance Communications Limited / M/s Reliance Telecom Limited, having existing UAS Licences in all telecom circles. It is alleged that M/s Tiger Traders Pvt. Ltd., which held majority stake (more than 90%) in M/s Swan Telecom Pvt. Ltd. (STPL), was also an associate company of Reliance ADA Group. Both the companies had no business history and were activated solely for the purpose of applying for UAS Licences in 13 telecom circles, where M/s Reliance Telecom Ltd. did not have GSM spectrum and M/s Reliance Communications Ltd. had already applied for dual technology spectrum for these circles. It is further alleged that the day-to-day affairs of M/s Swan Telecom Pvt. Ltd. and M/s Tiger Traders Pvt. Ltd. were managed by the said three accused persons either themselves or through other officers / consultants related to the Reliance ADA group. Commercial decisions of M/s Swan Telecom Pvt. Ltd. and M/s Tiger Traders Pvt. Ltd. were also taken by these accused persons of Reliance ADA group. Material inter-company transactions (bank transactions) of M/s Reliance Communications/ M/s Reliance Telecommunications Ltd. and M/s Swan Telecom Pvt. Ltd.

(STPL) and M/s Tiger Traders Pvt. Ltd. were carried out by same group of persons as per the instructions of said accused Gautam Doshi and Hari Nair.

Cross-holding of companies

69. It is alleged that holding structure of M/s Tiger Traders Pvt. Ltd. has revealed that the aforesaid accused persons also structured two other companies i.e. M/s Zebra Consultancy Private Limited & M/s Parrot Consultants Private Limited. Till April, 2007, by when M/s Swan Telecom Pvt. Ltd. applied for telecom licenses, 50% shares of M/s Zebra Consultancy Private Limited & M/s Parrot Consultants Private Limited, were purchased by M/s Tiger Traders Pvt. Ltd. Similarly, 50% of equity shares of M/s Parrot Consultants Private Limited & M/s Tiger Traders Private Limited were purchased by M/s Zebra Consultancy Private Limited. Also, 50% of equity shares of M/s Zebra Consultancy Private Limited and M/s Tiger Traders Private Limited were purchased by M/s Parrot Consultants Private Limited. These three companies were, therefore, cross holding each other in an inter-locking structure.

Misrepresentation to DoT

70. It is alleged that in such a cross holding structure, no one is the absolute owner of any company and practically same are controlled by the Directors. Accused Hari Nair, in league with accused Gautam Doshi and accused Surendra Pipara, however dishonestly misrepresented to DOT that M/s Tiger

Traders Pvt. Ltd. was held by India Telecom Infrastructure Fund held by Ashok Wadhwa group of companies, when DOT asked clarification about the holding structure of M/s Tiger Traders Pvt. Ltd. in March, 2007.

Arrangement of funds

71. It is alleged about M/s Tiger Traders Pvt Limited (TTPL) that funds to raise its equity and also to subscribe shares of other companies had also come from group companies of Reliance ADA group. Further the source of funds i.e. Rs. 3 crore during January 2007 and Rs. 95.51 Crore during March, 2007, utilized by M/s Tiger Traders Pvt Ltd to subscribe to majority equity of M/s Swan Telecom Pvt. Ltd. (STPL), has been arranged through the group companies of Reliance ADA Group. Moreover, a sum of Rs.992 crore, which constituted bulk of the networth of M/s.STPL, was also paid by Reliance Telecom Ltd. under the garb of subscribing the preference share of STPL. The preference shares were purchased at an abnormally high premium of Rs. 999/- per share (face value Rs.1) of the company which had no business history. Moreover, the entire amount of Rs.992 crore was immediately returned by STPL to Reliance Communication Ltd. showing an advance to a purchase order. It is further alleged that the said transactions were carried out at the instructions of accused Gautam Doshi and Hari Nair. During the relevant period, the board meetings of M/s Swan Telecom Pvt. Ltd. (STPL) & TTPL were chaired by accused Surendra Pipara and he was party to all decisions taken. It

shows that till October, 2007, M/s Swan Telecom Pvt. Ltd. was an associate of companies of Reliance ADA Group, including M/s Reliance Telecom Ltd./ Reliance Communications Ltd., which held pan India telecom licenses. As such on the date of application, M/s Swan Telecom Pvt. Ltd. (STPL) was ineligible as its application was in violation of clause 8 of UASL guidelines dated 14.12.2005 regarding substantial equity. It is further alleged that the other companies including M/s Swan Consultants Services Pvt. Ltd., M/s AAA Consultancy Services Co. Pvt. Ltd., M/s ADAE Ventures Pvt. Ltd., M/s Giraffe/Siddhartha Consultancy Services Pvt. Ltd., M/s Sonata Investments Ltd., M/s Zebra Consultancy Services Pvt. Ltd., M/s Parrot Consultants Services Pvt. Ltd. etc., which have been used to transfer funds / hold M/s Tiger Traders Pvt. Ltd. (TTPL) and M/s Swan Telecom Pvt. Ltd. (STPL), were also associate companies of Reliance ADA Group.

Role of Gautam Doshi

72. It is alleged that accused Gautam Doshi, Group President of Reliance ADA Group and director / board member, M/s Reliance Telecom Ltd., with others has played an active role in structuring and funding of M/s Swan Telecom Pvt. Ltd. (STPL), TTPL and other companies. Further all important decisions regarding transfer of funds to TTPL / M/s Swan Telecom Pvt. Ltd. (STPL) through various companies were taken by him. Further the commercial decisions on behalf of M/s Reliance Telecom Ltd. including investments in M/s Swan

Telecom Pvt. Ltd. (STPL), transfer of shares to Delphi Investment Ltd., etc have also been taken by him.

Role of Hari Nair

73. It is alleged that accused Hari Nair, in collusion with accused Gautam Doshi and Surendra Pipara structured different companies. He has been instrumental in transferring of funds of Rs. 95.51 Crore and Rs. 3 Crore to TTPL and Swan Telecom Pvt. Ltd. (STPL). Besides being company Secretary of Swan Telecom Pvt. Ltd. (STPL) Ltd., he was also on the board to various companies and also the authorized bank signatory. As Company Secretary of M/s Swan Telecom Pvt. Ltd. (STPL), he in league with accused Gautam Doshi and Surendra Pipara, dishonestly and fraudulently submitted false information to DOT under his signatures regarding its share holding by different companies thereby concealing the material facts, which could lead DOT to consider the company as ineligible for getting a UAS license. He along with accused Gautam Doshi was party to different commercial decisions taken on behalf of different companies. As such he has played active role in management of day-to-day affairs of different companies including Swan Telecom Pvt. Ltd. (STPL) and TTPL.

Role of Surendra Pipara

74. It is alleged that accused Surendra Pipara in league with accused Gautam Doshi and Hari Nair has prepared false minutes of board meetings of M/s Swan Telecom Pvt. Ltd.

(STPL) and TTPL showing appointment of one Sh. Ashok Wadhwa as Director and his presence during the meetings. He has also presided over board meetings of M/s Swan Telecom Pvt. Ltd. (STPL) when the crucial decisions regarding raising its equity, allotment of shares, applications to DoT etc. were taken by M/s Swan Telecom Pvt. Ltd. (STPL). Similarly he chaired the Board Meetings of TTPL when the company subscribed majority equity in M/s Swan Telecom Pvt. Ltd. (STPL) and funds for the purpose were arranged. As Director in STPL and TTPL, he was also representing the interests of Reliance Telecom Ltd. Therefore, he along with accused Gautam Doshi and Hari Nair were managing day-to-day affairs of the companies during the relevant period i.e. January, 2007 to March, 2007.

Report of MCA

75. It is further alleged that Ministry of Corporate Affairs has also confirmed vide a report of Registrar of Companies, Mumbai that M/s Swan Telecom Pvt. Ltd. was an associate of M/s Reliance Telecom Ltd. and M/s Reliance Communications Ltd. It is alleged that M/s Reliance Telecom Ltd., which is a subsidiary of M/s Reliance Communications Ltd., had invested in M/s Swan Telecom Pvt. Ltd. (STPL) in form of minority equity stake and preference shares. However, the investment towards equity shares of M/s Swan Telecom Pvt. Ltd. (STPL) was within permissible limits i.e. less than 10 %. All the said persons, in league with each other, belonged to M/s Reliance Telecom Ltd. and were authorized by M/s Reliance

Telecom Ltd. to represent its interests in M/s Swan Telecom Pvt. Ltd.

Transfer of STPL

76. It is alleged that pursuant to TRAI recommendations dated 28.08.2007 when M/s Reliance Communications Ltd. got the GSM spectrum under the Dual Technology policy, accused Gautam Doshi, Hari Nair and Surendra Pipara transferred the control of M/s Swan Telecom Pvt. Ltd., and said structure of holding companies, to accused Shahid Balwa and Vinod Goenka. In this manner they transferred a company which was otherwise ineligible for grant of UAS license on the date of application, to the said two accused persons belonging to Dynamix Balwa (DB) group and thereby facilitated them to cheat the DOT by getting issued UAS Licences despite the ineligibility on the date of application and till 18.10.2007.

Role of Shahid Balwa and Vinod Goenka

77. It is alleged that accused Shahid Balwa and Vinod Goenka joined M/s Swan Telecom Pvt. Ltd. and M/s Tiger Traders Pvt. Ltd. as directors on 01.10.2007 and DB group acquired the majority stake in TTPL / M/s Swan Telecom Pvt. Ltd. (STPL) on 18.10.2007. On 18/10/2007 a fresh equity of 49.90 lakh shares was allotted to M/s DB Infrastructure Pvt. Ltd. Therefore on 01.10.2007, and thereafter, accused Shahid Balwa and Vinod Goenka were in-charge of, and were responsible to, the company M/s Swan Telecom Pvt. Ltd. for the

conduct of its business. As such on this date, majority shares of the company were held by D.B. Group. M/s Siddhartha Consultancy Services Pvt. Ltd., a holding company of M/s Tiger Traders Pvt Ltd before October, 2007, also later transferred its shares to Shahid Balwa and Vinod Goenka (5000 each). Thereafter, accused Shahid Balwa, in conspiracy with accused Vinod Goenka, created false documents including board minutes of M/s Giraffe Consultancy Pvt. Ltd., etc, fraudulently showing transfer of its shares by the companies of Reliance ADA Group during February, 2007 itself. It is further alleged that accused Shahid Balwa, in conspiracy with accused Vinod Goenka, either concealed or furnished false information to DOT regarding share holding pattern of M/s Swan Telecom Pvt. Ltd. (STPL) as on date of application.

Complaint against STPL

78. It is alleged that certain complaints alleging substantial stake of Reliance ADA group in M/s Swan Telecom Pvt. Ltd. (STPL) as on date of application, were received by DOT. However, the same were not considered by the accused Siddhartha Behura and accused A. Raja and M/s Swan Telecom Pvt. Ltd. (STPL) was declared eligible for issuing LOI for UAS Licence.

79. It is alleged that accused A. Raja & Siddhartha Behura, in criminal conspiracy with accused Shahid Balwa and Vinod Goenka, Directors of M/s Swan Telecom Pvt. Ltd., abused their official position and without initiating any enquiry

suggested by LF branch in respect of complaints received against M/s Swan Telecom Pvt. Ltd. and thereby allowed the said ineligible company to get LOI, UAS Licence and spectrum, despite there being sufficient material to raise doubt about eligibility of M/s Swan Telecom Pvt. Ltd. for getting UAS Licence. It is alleged that for being ineligible on date of application, many other applicants were denied Letters of Intent and thus no licences could be issued to those companies which were ineligible on the date of application.

Role of Sanjay Chandra

80. It is alleged that Sanjay Chandra, Managing Director, M/s Unitech Limited, who was in-charge of, and was responsible to, the company for the conduct of its business especially in the telecom area, also joined the conspiracy with accused A. Raja and R K Chandolia to cheat DOT for grant of licence in fraudulent manner, and in pursuance to the same M/s Unitech group companies filed applications for UAS Licences in all the 22 circles. As a result the applications of Unitech group companies were included in the consideration zone for award of licences despite inadequate spectrum in FCFS licencing regime. It is alleged that the said Unitech group companies, having object clauses of realty, did not even have their object clauses under Memorandum & Articles of Association amended before applying to enter into business of telecom. M/s Unitech group companies fraudulently concealed critical information in this regard to avoid rejection for being

ineligible. It is alleged that M/s Unitech group companies acquired eligibility after the grant of UAS Licences.

81. It is alleged that several other companies like M/s Swan Capital, M/s Cheetah Corporate Services Pvt. Ltd. and M/s Parshwanath Developers had been rejected on these very grounds of not being eligible for want of Object Clause regarding telecom as business on the date of application. The criminal conspiracy resulted in cheating of the DoT in fraudulent allotment of UAS Licence/ spectrum to ineligible companies through abuse of official position and undue gain passed on to the companies.

82. It is alleged that both the applicant companies viz. M/s Swan Telecom Pvt. Ltd. and M/s Unitech Wireless (Tamilnadu) Pvt. Ltd. (representing all the 8 Unitech group companies later merged into it), unduly favoured, were ineligible as on date of application.

V. Cheating the Government by non-revision of entry fee

83. It is alleged that there were many triggers which warranted a thoughtful reconsideration, by accused A. Raja, then MOC&IT of the DOT policy and precedents regarding allocation of new UAS licences at the entry fee discovered through auction in the year 2001. In the year 2007-08, when the dual technology spectrum was allotted by him to few companies and also new UAS licences were issued to as many as 122 applicants, the circumstances had entirely changed since the year 2001. In such changed circumstances, elaborated in the

following paras, the new UAS Licences as well as dual technology spectrum were required to be either auctioned or allocated on established first-come first-served principle at a revised entry fee :-

Need for revision of entry fee

I. The number of entire licences issued in as many as 4-5 years during 2003 to 2007 were miniscule as compared to the number of licences proposed to be issued in 2008, which finally came about to be 122 after declaring the remaining 110 applicants as ineligible.

II. The telecom sector had undergone tremendous growth and the parameters like teledensity, Adjusted Gross Revenues, etc. had undergone phenomenal rise since the year 2001 when the last auction of licences took place.

III. In few circles, e.g. Bihar, Orissa, W.B. & A.N and Assam, etc. where either no bidders came forward during auction in 2001 or were not having sufficient number of operators, the prices of basic telecom license were taken as UAS Licence fee in the year 2003 for migration to UAS Licensing regime. In these circles the UAS Licence fee was fixed in the range of Rs.1 to 5 Crore as compared to other circles where the entry fee was in the range of Rs. 20 – 206 Crore. The entry fee needed to be compulsorily revised in these circles to reflect tremendous change in circumstances in these circles.

Recommendations of Ministry of Finance

IV. Ministry of Finance strongly recommended the revision of spectrum fee for the dual technology entry fee, vide a letter dated 22.11.2007, which was pegged at the same prices as for the entry fee for new licences. The Finance Secretary mentioned - "it is not clear how the rate of Rs. 1600 crore, determined as far back as in 2001, has been applied for a licence given in 2007 without any indexation, let alone current valuation. Moreover, in view of the financial implications, the Ministry of Finance should have been consulted in the matter before you had finalized the decision. I request you to kindly review the matter and revert to us as early as possible with responses to the above issue. Meanwhile, all further action to implement the above licences may please be stayed."

V. On the issue of LOIs for grant of new UAS licences, Ms. Manju Madhavan, then Member (Finance) also put up a note dated 30.11.2007 for consideration of the MOC&IT as under :

"We are in receipt of communication dated on 22/11/2007(PUC17/C) from the Department of Economic Affairs wherein they have expressed concern that we are offering the rates obtained in 2001 as entry fee even in 2007, without any indexation/current valuation. They want to be consulted in the matter. Though the communication is in the context of crossover license and a reply has been sent it is equally applicable in the present context. …Since the rates have not been revised and the

Finance Secretary has raised the issue, I am of the view that this issue should be examined in depth before any further steps are taken in this matter. Para 3 of the PUC (17/C) may also be considered."

Opinion of Ministry of Law

VI. By its own admission, the DOT sent a reference dated 26.10.2007 to Ministry of Law & Justice seeking an opinion of the Ld. Attorney General, because the situation was unprecedented. In this reference it was mentioned that :-

"There has been a spurt in the number of applications received by DOT for grant of UAS licences after receipt of TRAI recommendations…. To deal with the situation for grant of new licences as well as grant of approval for use dual technology spectrum to the existing operators, a number of alternatives are available…….. It is requested that the opinion of Ld. Attorney General of India/Solicitor General of India may please be communicated on this issue so as to enable DOT to handle such unprecedented situation in a fair and equitable manner which would be legally tenable."

VII. The Law Ministry, on this issue, opined that – "in view of the importance of the case and various options indicated in the Statement of the case it is necessary that the whole issue is first considered by an empowered Group of Ministers & in that process legal opinion of AG can be

obtained".

Letter of Hon'ble PM

VIII. Hon'ble Prime Minister sent a letter dated 02-11-2007 to MOC&IT and mentioned that - "A number of issues relating to allocation of spectrum have been raised by telecom sector companies as well as in sections of the media. Broadly, the issues relate to enhancement of subscriber linked spectrum allocation criteria, permission to CDMA service providers to also provide services on the GSM standard and be eligible for spectrum in the GSM service band, and the processing of a large number of applications received for fresh licences against the backdrop of inadequate spectrum to cater to overall demand…… The key issues are summarized in the annexed note. I would request you to give urgent consideration to the issues being raised with a view to ensuring fairness and transparency and let me know of the position before you take any further action in this regard". In the Annexure to said letter one of the issues raised was – "In order that spectrum use efficiency gets directly linked with correct pricing of spectrum, consider (i) introduction of a transparent methodology of auction, wherever legally and technically feasible, and (ii) revision of entry fee, which is currently benchmarked on old spectrum auction figures."

TRAI Recommendations

IX. TRAI had also deliberated in the para 2.73 of its recommendation dated 28.08.2007 that "in today's dynamism and unprecedented growth of telecom sector the Entry Fee determined then is also not the realistic price for obtaining a license. Perhaps it needs to be re-assessed through a market mechanism".

84. It is alleged that accused A. Raja, despite the above mentioned repeated suggestions from various corners of the Government for the revision of Entry Fee to be charged from the new UAS Licencees & Dual technology applicants, deliberately and dishonestly did not consider auction or revision of entry fee, and gave away licences at same fee which was discovered in 2001, in criminal conspiracy with Sanjay Chandra, Managing Director, M/s Unitech Ltd., M/s Unitech Wireless (Tamilnadu) Pvt. Ltd. (representing all the 8 Unitech group companies later merged into it), accused Shahid Balwa, accused Vinod Goenka and M/s Swan Telecom Pvt. Ltd. Consequent to this criminal conspiracy, he deprived the Govt. exchequer of possible revenues which could have accrued, even retaining the level playing field for the new operators. It is alleged that accused A. Raja has falsely taken shelter under the extant policies to award licences at the entry fee applicable for 4th cellular operator as determined in 2001.

85. It is claimed that Ministry of Finance deliberated the matter regarding revision of entry fee and spectrum pricing with Department of Telecommunications in various meetings during 2007-2008. It is alleged that later accused A. Raja, went ahead

to allocate new licences at an entry fee discovered through auction in 2001, despite the suggestions of Ministry of Finance to the contrary. Later, the Ministry of Finance raised the issue of revising spectrum charges for excess allocation of 2G spectrum, as DOT contested that it was now contractually obliged to issue contracted amount of spectrum to new LOI holders. At this stage the price of spectrum suggested by Ministry of Finance, and agreed to in-principle by the Department of Telecommunications, was a price indexed from the entry fee discovered in 2001 on the basis of change in Adjusted Gross Revenue (AGR) per MHz per year during the years 2002-03 to 2007. The change in the Adjusted Gross Revenue (AGR) per MHz per year during the years 2002-03 to 2007 was pegged at around 3.5 times by the Department of Telecommunications during this time, and is an appropriate & preferred parameter for indexation, as suggested by TRAI also later in its recommendations dated 11.05.2010.

86. It is alleged that based on growth in Adjusted Gross Revenue (AGR) per MHz per year during the years 2002-03 to 2007, which grew by 3.5 times during this time, additional revenue of around Rs. 22,535.6 Crore in respect of entry fee of new UAS licences granted by accused A. Raja to various applicants and Rs. 8,448.95 Crore in respect of fee paid by Dual Technology users, totaling to Rs.30,984.55 Crore could have accrued to the Government exchequer.

VI. Payment of Illegal Gratification of 200 Crore

87. It is alleged that in furtherance to the said conspiracy, M/s Dynamix Realty, a partnership firm of M/s DB Realty Ltd. and other DB Group companies, paid Rs 200 crore to M/s Kalaignar TV Pvt. Ltd. during December 2008 to August 2009, following a circuitous route through M/s Kusegaon Fruits & Vegetables Pvt. Ltd. (a DB Group company) and M/s Cineyug Films Pvt. Ltd. (DB group holds 49 % equity in it).

Role of M/s Green House Promoters (P) Limited

88. It is alleged that one M/s Green House Promoters Pvt. Ltd. was registered with Registrar of Companies, Chennai in the year 2004 and initial directors of the company were Sh A M Saadhick Batcha and his wife Ms. S Reha Banu. Later other people also joined the company as directors as per details mentioned below :-

1.	*A M Sadhick Batcha*	*23.08.04 onwards*
2.	*A M Jamal Ahmed*	*31.01.2006 to 19.09.09*
3.	*M Subramaniyam*	*20.07.2006 to 31.03.09*
4.	*David Karthikeyan*	*22.07.2006 to 31.03.09*
5.	***Ramachandran Ramaganesh***	***02.07.2007 to 10.03.10***
6.	***M. A Parameshwari***	***12.02.07 to 02.02.2008***
7.	*M S Malarvizhi Ram*	*02.02.08 to till date*
8.	*Ms Reha Banu Sadhick Batcha*	*23.08.04 to 31.03.09*
9.	***A Kaliya Perumal***	***12.02.07 to till date***
10.	***R P Paramesh Kumar***	***12.02.07 to till date***

Ms. M. A Parameshwari, worked as Director (Legal) in the company and is the wife of accused A. Raja. Other persons mentioned in bold are also the relatives of accused A. Raja. Sh. A Kaliya Perumal, Director of the company is brother of accused A. Raja. Sh. Ramachandran Ramaganesh and Sh. R P Paramesh Kumar are nephews of accused A. Raja.

89. It is alleged that M/s Protiviti Consulting Pvt. Ltd. , a consulting firm, was appointed by M/s Green House Promoters Pvt. Ltd to assist them in strengthening their accounting compliance and Management Information System (MIS) by preparing Standard Operating Procedure (S.O.P) vide a job arrangement letter dtd July 30, 2008 signed by Mr A. M. Sadhick Batcha (since expired) on behalf of M/s Green House Promoters and Sh Mrityunjay Kapur on behalf of M/s Protiviti Consulting Private Limited for a fee of Rs. 12 Lacs. At the same time M/s DB Realty Ltd., belonging to the Dynamix Balwa group of companies which also controls M/s Swan Telecom Pvt. Ltd. (now, M/s Etisalat DB Telecom Pvt. Ltd.) also entered into an agreement with M/s Protiviti Consulting Pvt. Ltd. asking it to conduct due diligence of M/s Green House Promoters Pvt. Ltd. in context of proposed investment by M/s D B Realty in M/s Green House Promoters Pvt. Ltd. for advising the SOPs for M/s Green House Promoters Pvt. Ltd., the experts of the Protiviti, as representatives of M/s DB Realty, also took interviews of various employees of M/s Green House Promoters Pvt. Ltd. and afterwards certain unskilled staff of the said company was removed in preparation of such proposed investment by M/s D B Realty Ltd. For this purpose M/s Protiviti Consulting Pvt. Ltd. also looked at land acquisition process, Sales process, purchase process, Marketing process, liaison process, construction process, Human resource process, Cash in Bank, Conceptualization, Capital Expenditure Monitoring process, etc. and suggested standard procedures for the same. M/s Protiviti

Consulting Pvt. Ltd. submitted its draft financial due diligence report dated August 2008 upon M/s Green House Promoters Pvt Ltd and the same was made available by it to M/s DB Realty Ltd., Mumbai.

90. It is alleged that M/s DB Realty Ltd., through its subsidiary M/s Eterna Developers Pvt. Ltd., also transferred an amount of Rs. 1.25 Crore to M/s Green House Promoters Pvt. Ltd. on 29.09.2008, in connection with advance for a land purchase, which was however, returned on 29.11.2008, prior to the registration of FIR of this case. It is also alleged that such proposed investment in M/s Green House Promoters Pvt. Ltd. or procurement of land-bank of M/s Green House Promoters Pvt. Ltd. was not further taken up by M/s DB Realty.

Transfer of money from Dynamix Realty to Kusegaon Fruits and Vegetables (P) Limited

91. It is alleged that M/s Swan Telecom Pvt. Ltd. received additional share money of Rs. 3228 Crore from M/s Etisalat Mauritius Ltd. and Rs. 381 Crore from M/s Genex Exim Ventures Pvt. Ltd. on 17.12.2008. It is alleged that immediately thereafter, with effect from 23.12.2008 to 11.08.2009, M/s Dynamix Realty, a partnership firm of M/s DB Realty Ltd. (now a company listed on stock exchanges), M/s Eversmile Construction Company Pvt. Ltd. and M/s Conwood Construction Developers Pvt. Ltd., both DB Group companies, transferred a total amount of Rs. 209.25 crore to M/s Kusegaon Fruits & Vegetables Pvt. Ltd. through banking channels as per following

details:-

Sl. No.	Date	Amount
1.	23.12.2008	10 crore
2.	12.01.2009	2.5 crore
3.	14.01.2009	0.25 crore
4.	16.01.2009	2 crore
5.	27.01.2009	0.25 crore
6.	28.01.2009	8 crore
7.	29.01.2009	1.5 crore
8.	12.02.2009	2 crore
9.	20.03.2009	5 crore
10.	06.04.2009	1.5 crore
11.	08.04.2009	25 crore
12	22.06.2009	01 crore
13	15.07.2009	0.25 crore
14.	16.07.2009	80 crore
15.	16.07.2009	20 crore
16.	11.08.2009	50 crore
	Total	**209.25 crore**

92. It is alleged that no agreement executed between M/s Dynamix Realty and M/s Kusegaon Fruits & Vegetables Pvt. Ltd. has come on record, in respect of the above referred transactions. Accused Asif Balwa (A-13) and Rajiv B. Agarwal (A-14), both Directors in M/s Kusegaon Fruits & Vegetables Pvt. Ltd., have taken a plea that M/s Dynamix Realty extended this amount as unsecured loan of Rs. 206 crore (approx) bearing interest @ 7.5% per annum to M/s Kusegaon Fruits & Vegetables Pvt. Ltd.

Transfer of money from Kusegaon Fruits and Vegetables (P) Limited to Cineyug Films (P) Limited

93. It is alleged that M/s Kusegaon Fruits & Vegetables Pvt. Ltd transferred a total amount of Rs. 200 crore in the accounts of M/s Cineyug films Pvt. Ltd. as per following details :-

Sl. No.	Date	Amount
1.	23.12.2008	Rs. 10 Crore
2.	16.01.2009	Rs. 2 Crore
3.	28.01.2009	Rs. 8 Crore
4.	20.03.2009	Rs. 5 Crore
5.	06.04.2009	Rs. 25 Crore..
6.	15.07.2009	Rs. 100 Crore
7.	07.08.2009	Rs. 50 Crore
	Total	**Rs. 200 Crore**

94. It is alleged that M/s Kusegaon Fruits & Vegetables Pvt. Ltd, also transferred a total sum of Rs. 6,24,75,000- in M/s Cineyug Films Pvt. Ltd., during January, 2009 to July 2009. It is alleged that later on, vide an agreement titled as 'subscription and shareholders agreement' executed between M/s Cineyug Films Pvt. Ltd. (Company), its four promoters and M/s Kusegaon Fruits & Vegetables Pvt. Ltd on 27.01.2010, this amount was post facto shown as a transfer towards acquisition of 49% equity shares of M/s Cineyug Films Pvt. Ltd. by M/s Kusegaon Fruits & Vegetables Pvt. Ltd. As per the said agreement, M/s Kusegaon Fruits & Vegetables Pvt. Ltd (investor) would subscribe to 1,22,500 equity shares @ Rs 510/- each aggregating to Rs. 6,24,75,000/- and Rs. 200 Crore 8% Optionally Convertible Redeemable Debentures of the company. The subscription shares would be entitled to voting rights equivalent to 49% of the share capital of M/s Cineyug Films Pvt. Ltd (company). This agreement was signed by accused Karim Morani (A-15), other directors on behalf of M/s Cineyug Films Pvt. Ltd. and accused Asif Balwa & accused Rajiv B. Agarwal, both directors of M/s Kusegaon /Fruits & Vegetables Pvt. Ltd. The details of the said fund transfers is as follows :-

Sl. No.	Date	Amount
1.	29/01/2009	1,50,00,000
2.	12/02/2009	2,00,00,000
3.	08/04/2009	1,50,00,000
4.	22/06/2009	1,00,00,000
5.	15/07/2009	25,00,000
	Total	**6,25,00,000**

Transfer of money from Cineyug Films (P) Limited to Kalaignar TV (P) Limited

95. It is alleged that in order to facilitate the payment of illegal gratification of Rs. 200 Crore from DB Group companies to M/s Kalaignar TV Pvt. Ltd., accused Karim Morani further caused to pay this amount of Rs. 200 Crore received by him in accounts of M/s Cineyug Films Pvt. Ltd to M/s Kalaignar TV Pvt. Ltd. as per following details :-

Sl. No.	Date	Amount
1.	23.12.2008	Rs. 10 Crore
2.	28.01.2009	Rs. 10 Crore
3.	20.03.2009	Rs. 5 Crore
4.	06.04.2009	Rs. 25 Crore
5.	15.07.2009	Rs.100 Crore
6.	07.08.2009	Rs. 50 Crore
	Total	**Rs. 200 Crore**

96. It is alleged that M/s Dynamix Realty, which is a partnership firm of Dynamix Balwa Group companies, which also owns M/s Swan Telecom Pvt. Ltd., paid Rs. 200 crore as illegal gratification to M/s Kalaignar TV Pvt Ltd. which is also controlled by affiliates of Dravid Munetra Kadgam to which accused A. Raja belongs and such fund transfer was facilitated by Karim Morani, Sharad Kumar and Kanimozhi Karunanithi through their companies M/s Kusegaon Fruits & Vegetables Pvt. Ltd. and M/s Cineyug Films Pvt. Ltd. as per following details:-

M/s Dynamix Realty		
	23.12.08	10 Crore
	12.01.09	2.5 Crore
	14.01.09	0.25 Crore
	16.01.09	2 Crore
	27.01.09	0.25 Crore
	28.01.09	8 Crore
	29.01.09	1.5 Crore
	12.02.09	2 Crore
	20.03.09	5 Crore
	06.04.09	1.5 Crore
	08.04.09	25 Crore
	22.04	1
	15.05	0.25
	16.05	100
	11.08.09	50 Crore

M/s Kusegaon Fruits & Vegetable Pvt. Ltd.		
	23.12.2008	Rs. 10 Crore
	16.01.2009	Rs. 2 Crore
	28.01.2009	Rs. 8 Crore
	29.01.2009	Rs. 1.5 Crore
	12.02.2009	Rs. 2 Crore
	20.03.2009	Rs. 5 Crore
	06/04/2009	Rs. 25 Crore
	08.04.2009	Rs.1.5 Crore
	22.06.2009	Rs. 1Crore
	15.07.2009	Rs. 25 Lacs
	15.07.2009	Rs. 100 Crore
	07.08.2009	Rs. 50 Crore

M/s Cineyug Films Pvt. Ltd.		
	23.12.2008	Rs. 10 Crore
	28.01.2009	Rs. 10 Crore
	20.03.2009	Rs. 5 Crore
	06.04.2009	Rs. 25 Crore
	15.07.2009	Rs.100 Crore
	07.08.2009	Rs. 50 Crore

M/s Kalaignar TV Pvt. Ltd.

Plea of accused and their actions

97. It is alleged that accused persons have taken the plea that M/s Cineyug Films Pvt. Ltd. transferred the said funds to M/s Kalaignar TV Pvt. Ltd. in order that M/s Cineyug Films Pvt. Ltd. could acquire the equity shares of M/s Kalaignar TV Pvt. Ltd. to the tune of 32-35% of total equity. It is alleged that this plea is false, as no valid agreement to this effect was entered into by the said companies. It is alleged that after registration of the instant case, this amount was shown as loan, having an interest @ 10% per annum, on the pretext of clause 2.2 of a Share Subscription and Shareholders' Agreement dated 19.12.2008 claimed by accused persons to have been signed between M/s Cineyug Films Pvt. Ltd., M/s Kalaignar TV Pvt. Ltd. and promoters. Accused Sharad Kumar signed the same on behalf of M/s Kalaignar TV Pvt. Ltd. and its promoters. It is alleged that accused Karim Morani, Asif Balwa and Rajiv B. Aggarwal arranged these funds from M/s Dynamix Realty, a partnership firm of DB group companies managed and controlled by Shahid Balwa and Vinod Goenka, and facilitated the transfer of these funds in a dubious manner to M/s Kalaignar TV Pvt. Ltd.

98. It is alleged that for all the aforesaid transactions of more than Rs. 200 Crore between M/s Dynamix Realty, M/s Kusegaon Fruits & Vegetables Pvt. Ltd., M/s Cineyug Films Pvt. Ltd. and M/s Kalaignar TV Pvt. Ltd., claimed to be in nature of loan, no valid agreement was signed between any of the parties

and no collaterals/ securities were ensured to secure the alleged loan amounts. It is alleged that after registration of the instant case on 21.10.2009 by CBI, and on its taking various steps in investigation of the case, M/s Cineyug Films Pvt. Ltd offered the following securities to M/s Kusegaon Fruits & Vegetables Pvt. Ltd against the above referred unsecured loan of Rs. 200 crore :-

(a) 10/04/2010: Submission of Original documents of three properties from M/s Cineyug Films Pvt. Ltd to M/s Kusegaon Realty Pvt. Ltd towards collateral security for 8% OCRD of Rs. 200 Crore.

(b) 31/08/2010: Additional collateral security by Promoters of M/s Cineyug Films Pvt. Ltd. for Non disposal of 9,51,531 shares of M/s DB Realty Ltd in favour of M/s Kusegaon Realty Pvt. Ltd towards collateral security for 8% OCRD of Rs 200 Crore.

(c) 26/11/2010: Additional security by M/s Cineyug Films Pvt. Ltd by submission of Original documents of 1 property to M/s Kusegaon Realty Pvt. Ltd against collateral security for 8% OCRD.

(d) 01/12/2010: Additional security by Promoters of M/s Cineyug Films Pvt. Ltd. for share pledge cum power of attorney of M/s DB Hospitality Pvt. Ltd.

99. It is alleged that in terms of the Share Subscription and Shareholders' Agreement dated 19.12.2008, claimed by accused persons to have been signed between M/s Cineyug Films Pvt. Ltd., M/s Kalaignar TV Pvt. Ltd. and promoters, it was required that the funds transferred till 31.03.2009 be

treated as loan if no agreement could be entered regarding the price of equity of M/s Kalaignar TV Pvt. Ltd. However, it is alleged that though no such agreement could admittedly be reached between M/s Cineyug Films Pvt. Ltd. and M/s Kalaignar TV Pvt. Ltd., still the additional amounts of Rs. 175 crore were paid by M/s Cineyug Films Pvt. Ltd. to M/s Kalaignar TV Pvt. Ltd. It is alleged that following agreements for Inter Corporate Deposit were purportedly signed by M/s Cineyug Films Pvt. Ltd. and M/s Kalaignar TV Pvt. Ltd., to conceal actual nature of the transactions:-

a. **06/04/2009:** ICD (Inter corporate Deposit) agreement regarding a loan of Rs 25,00,00,000/- @10% interest per annum for a period of two years.
b. **15/07/2009**: ICD (Inter corporate Deposit) agreement regarding a loan of Rs 100,00,00,000/- @10% interest per annum for a period of two years.
c. **07/08/2009**: ICD (Inter corporate Deposit) agreement regarding a loan of Rs 50,00,00,000/- @10% interest per annum for a period of two years.

100. It is alleged that after registration of the instant case on 21.10.2009 by CBI, and on its taking various steps in investigation of the case, entire equity holding of M/s Kalaignar TV Pvt. Ltd. was pledged, vide an Agreement to Pledge dated 30.12.2009, to M/s Cineyug Films Pvt. Ltd as security for the due payment/ repayment of the purported loan amount under the Loan agreement and as security for performance of the obligations of the company set out under Loan agreement.

Accused Sharad Kumar signed the said agreement.

101. It is further alleged that accused persons belonging to M/s Kalaignar TV Pvt. Ltd. have claimed that they got their company valued in June, 2009 by a consultant and it was valued at around Rs. 846 crore. Since, by this valuation the proposed stake to be given to M/s Cineyug Films Pvt. Ltd. in lieu of Rs. 200 Crore fell below 20%, M/s Cineyug Films Pvt. Ltd purportedly decided to call back their investment in M/s Kalaignar TV Pvt. Ltd. It is also claimed by the accused persons and the companies concerned that till such time of repayment, an interest @ 10% per annum was decided to be charged on the amount paid so far. However, it is alleged that before this valuation was purportedly done in June, 2009, and any agreement regarding valuation of equity could be reached between the two parties, as claimed, an amount of Rs.50 Crore had already been transferred to M/s Kalaignar TV Pvt. Ltd. Contrary to the claim of the accused persons that no agreement could be reached about the valuation of equity of M/s Kalaignar TV Pvt. Ltd. to be subscribed by M/s Cineyug Films Pvt. Ltd., additional amount of Rs. 150 Crore was transferred in July-August, 2009, after such purported agreement failed. The aforesaid transactions related to purported investment by M/s Cineyug Films Pvt. Ltd. in M/s Kalaignar TV Pvt. Ltd., without any due diligence, or provision of any collateral, defies common sense and normal business practices.

Return of money

102. It is alleged that when accused A. Raja was

contacted by CBI for his examination scheduled on 24.12.2010, M/s Kalaignar TV Pvt. Ltd started refunding the amount of Rs 200 crore to M/s Dynamix Realty, through M/s Cineyug Films Pvt. Ltd. and M/s Kusegaon Fruits & Vegetables Pvt. Ltd. A substantial part of the amount was refunded by it just before and after 02.02.2011, when accused A. Raja was arrested by CBI in this case. The details of such transfers by M/s Kalaignar TV Pvt. Ltd. to M/s Cineyug Films Pvt. Ltd. are as under:-

Sl. No.	**Date**	**Amount**
1.	24.12.2010	Rs. 10 Crore
2.	27.12.2010	Rs. 20 Crore
3.	04.01.2011	Rs. 10 Crore
4.	05.01.2011	Rs. 10 Crore
5.	11.01.2011	Rs. 10 Crore
6.	24.01.2011	Rs. 65 Crore
7.	29.01.2011	Rs. 25 Crore
8.	03.02.2011	Rs. 50 Crore
	Total	**Rs. 200 Crore.**

103. It is alleged that that, in order to conceal the dubious nature of the amount transferred, M/s Kalaignar TV Pvt. Ltd. paid back the aforesaid amount with interest to M/s Cineyug Films Pvt. Ltd. as per following details :-

Date	**Amount (Net after TDS)**	**Gross Amount**
20/12/2010	Rs. 14,86,54,109	Rs. 15,24,65,753
29/12/2010	Rs. 9,61,90,000	Rs. 10,00,00,000
03/02/2011	Rs. 5,82,95,576	Rs. 6,11,64,384
Total	**Rs. 30,31,39,685**	**Rs. 31,36,30,137**

104. It is alleged that M/s Cineyug Media & Entertainment Pvt. Ltd, also, in furtherance of the design to facilitate concealing the dubious nature of entire transactions, paid back the amount of Rs 200 crore to M/s Kusegaon Realty Pvt. Ltd., as per following details :-

Sl. No	Date	Amount
1.	24.12.2010	Rs. 10 Crore.
2.	27.12.2010	Rs. 20 Crore
3.	04.01.2011	Rs. 10 Crore
4.	05.01.2011	Rs. 10 Crore
5.	11.01.2011	Rs. 10 Crore
6.	24.01.2011	Rs. 65 Crore
7.	29.01.2011	Rs. 25 Crore
8.	03.02.2011	Rs. 50 Crore
	Total	**Rs. 200 Crore**

105. It is alleged that, in order to conceal the dubious nature of the amounts transferred, M/s Cineyug Films Pvt. Ltd. also paid back the aforesaid amount to M/s Kusegaon Realty Pvt. Ltd. with interest as per following details :-

Date	Amount (Net after TDS)	Gross Amount
20/12/2010	Rs. 12,00,89,041	Rs. 12,19,17,808
29/12/2010	Rs. 7,96,00,000	Rs. 8,00,00,000
03/02/2011	Rs. 4,86,86,849	Rs. 4,89,31,507
Total	**Rs. 24,83,75,890**	**Rs. 25,08,49,315**

106. It is alleged that M/s Kusegaon Fruits & Vegetables Pvt. Ltd, in turn, paid back Rs. 200 crore, with interest @ 7.5% per annum to M/s Dynamix Realty. The details are as under:-

Sl. No.	Date	Amount
1.	23.12.2010	Rs. 12 crore
2.	29.12.2010	Rs. 10 crore
3.	30.12.2010	Rs. 20 crore
4.	31.12.2010	Rs. 7.95 crore
5.	10.01.2011	Rs. 7.95 crore
6.	01.01.2011	Rs. 12.06 crore
7.	17.01.2011	Rs. 10 crore
8.	24.01.2011	Rs. 65 crore
9.	01.02.2011	Rs. 25 crore
10.	04.02.2011	Rs. 50 crore
11.	12.02.2011	Rs. 1.35 crore
12	28.02.2011	Rs. 2.24 crore
	Total	**Rs. 223.55 crore**

Treatment in balance sheets

107. It is alleged the nature of transactions between M/s

Dynamix Realty, M/s Kusegaon Fruits & Vegetables Pvt. Ltd., M/s Cineyug Films Pvt. Ltd. and M/s Kalaignar TV Pvt. Ltd. has also revealed that M/s Cineyug Films Pvt. Ltd, in its Balance sheet as on 31st March, 2009, showed an amount of Rs 28,50,00,000/- as "other liabilities" from M/s Kusegaon Fruits & Vegetables Pvt. Ltd. Likewise on the asset side it is shown under "Sundry Loans & Advances" to the tune of Rs. 29,21,56,969/- (including the purported loan of Rs 25 crore given to M/s Kalaignar TV Pvt. Ltd).

108. It is alleged that as per Balance sheet of M/s Cineyug Films Pvt. Ltd as on 31st March 2010, a liability of Rs 212,00,89,041/- on account of loan from M/s Kusegaon Fruits & Vegetables Pvt. Ltd (8% OCRD with interest) has been shown. Likewise on the asset side it is shown as other advances paid to M/s Kalaignar TV Pvt. Ltd to the tune of Rs. 214,86,54,109/- (with interest). It is alleged that M/s Kusegaon Fruits & Vegetables Pvt. Ltd. paid the amounts of Rs. 200 Crore to M/s Cineyug Films Pvt. Ltd during 2008-09, purportedly towards subscription of debentures. However, the subscription agreement to this effect was admittedly entered much later on 27.01.2010 and collaterals against these payments from M/s Cineyug Films Pvt. Ltd. were taken thereafter on record, which also defies common sense and normal business practices.

109. A certified copy of the balance sheet filed by M/s Kalaignar TV Pvt. Ltd before Registrar of Companies, Chennai, as on 31.03.2009 and 31.03.2010 has also been obtained. These balance sheets reveal that a sum of Rs. 31,82,21,171/- has been

shown as 'Sundry Creditors for others' as on 31.03.2009. It purportedly included Rs. 25 crore received from M/s Cineyug Films Pvt. Ltd. However, on the contrary, in order to conceal the actual nature of these amounts / transactions, as per balance sheet filed as on 31.03.2010, this amount has been reduced by Rs. 25 crore and mentioned as Rs. 6,82,21,171/- and this amount of Rs. 25 crore has been enhanced under the head 'unsecured loans' to the tune of Rs. 83,69,35,057/-. On the other hand as per balance sheet filed as on 31.03.2009, unsecured loan has been shown as Rs. 58,69,35,057/- and as on 31.03.2010 the total unsecured loan has been shown as 214,86,54,109/- including Rs. 25 crore + further Rs. 175 crore received from M/s Cineyug Films Pvt. Ltd. This regrouping of schedules has been done by accused promoters / directors of M/s Kalaignar TV Pvt. Ltd. in the balance sheet filed as on 31.03.2010, in order to conceal the actual dubious nature of transaction, after registration of the instant case on 21.10.2009 and related investigation.

110. It is alleged that in balance sheet filed as on 31.03.2009 by M/s Cineyug Films Pvt. Ltd. a sum of Rs. 31,38,05,690/- has been shown as current liabilities, including Rs. 28,50,00,000/- to M/s Kusegaon Fruits & Vegetables Pvt. Ltd and a sum of Rs. 29,21,56,969/- including Rs. 25 crore has been shown as 'Sundry Loans and Advances'. The balance sheet as on 31.03.2010 revealed that a sum of Rs. 212,00,89,041/- has been shown as unsecured loans from M/s Kusegaon Fruits & Vegetables Pvt. Ltd and a sum of Rs. 214,86,54,109/- has been

shown as loan to M/s Kalaignar TV Pvt. Ltd.

111. It is alleged that in balance sheet filed as on 31.03.2009 M/s Kusegaon Fruits & Vegetables Pvt. Ltd a sum of Rs.31,50,00,000/- has been shown as unsecured loan from M/s Dynamix Realty. A sum of Rs. 28.5 Crore has been shown as investment towards share application money of M/s Cineyug Films Pvt. Ltd. On the contrary this amount of Rs. 28.5 Crore was shown as 'Sundry Loans and Advances' by M/s Cineyug Films Pvt. Ltd. in its balance sheet as of 31.03.2009. The balance sheet of M/s Kusegaon Fruits & Vegetables Pvt. Ltd as on 31.03.2010 revealed that a sum of Rs. 209,25,10,000/- has been shown as unsecured loan and a sum of Rs. 200,00,00,000 has been shown as an advance to M/s Cineyug Films Pvt. Ltd.

Role of Shahid Balwa, Vinod Goenka, Asif Balwa and Rajiv Agarwal

112. It is alleged that accused persons, viz. Shahid Balwa and Vinod Goenka, were the promoters / directors of M/s Swan Telecom Pvt. Ltd., which is a DB group company. M/s Dynamix Realty is a partnership firm of three DB Group companies in which Shahid Balwa, Vinod Goenka, Asif Balwa and Rajiv B. Agarwal were directors / stakeholders / authorized signatories. Accused Asif Balwa and Rajiv B. Agarwal were also the directors / stakeholders of M/s Kusegaon Fruits & Vegetables Pvt. Ltd. and were also the authorized signatories of the said company. They signed all the bank instruments regarding transfer of aforesaid amount on behalf of said company. Accused Karim

Morani was a director / promoter of M/s Cineyug Films Pvt. Ltd. and was a signatory to all the agreements / bank instruments in respect of aforesaid transactions on behalf of M/s Cineyug Films Pvt. Ltd. Other directors / promoters of M/s Cineyug Films Pvt. Ltd. have stated that accused Karim Morani was responsible for financial decisions / transactions on behalf of the company, and they were looking after other functions of the company. Accused Asif Balwa and Rajiv B. Agarwal also represented M/s Kusegaon Fruits & Vegetables Pvt. Ltd. for its 49% stake in M/s Cineyug Films Pvt. Ltd.

Role of Sharad Kumar

113. It is alleged that in the June 2007, accused Sharad Kumar, along with other promoters, incorporated M/s Kalaignar TV Pvt. Ltd. after they left Sun TV network. Accused Sharad Kumar was a promoter & director of M/s Kalaignar TV Pvt. Ltd. and is a stakeholder of the company to the tune of 20%. He is a director and CEO of the company. He has attended / chaired all the board meetings of the company wherein the decisions regarding the aforesaid transactions were taken by the company. He has also signed all the agreements purportedly signed with M/s Cineyug Films Pvt. Ltd., and other relevant documents in this regard, not only on behalf of the company but also on behalf of himself and other directors / shareholders of the company. He had also been visiting accused A. Raja in connection with pursuing various pending works relating to M/s Kalaignar TV Pvt. Ltd.

Role of Kanimozhi Karunanithi

114. It is alleged that in the June 2007, accused Ms. Kanimozhi Karunanithi (A-17), along with other promoters, incorporated M/s Kalaignar TV Pvt. Ltd. after they left Sun TV network. She had also been in regular touch with accused A. Raja regarding launching of Kalaignar TV channels and other pending works of M/s Kalaignar TV Pvt. Ltd. Accused Ms. Kanimozhi Karunanithi was also an initial director of the company and resigned only for the reason that her clearance from MHA was pending and could take time and delay the matter of launching the Kalaignar TV channels. Accused A. Raja was further pursuing the cause of M/s Kalaignar TV Pvt. Ltd. not only for getting registration of the company from Ministry of Information & Broadcasting but also for getting it in the Tata Sky bouquet. It is alleged that accused Ms. Kanimozhi Karunanithi was a stakeholder of M/s Kalaignar TV Pvt. Ltd. to the tune of 20% equity and was an active brain behind its operations. She was also widely covered by the Kalaignar Seithigal (News) channel. She also actively pursued with the intermediaries and DMK Hqrs. the matter regarding reappointment of accused A. Raja as Minister of Communications & Information Technology in 2009, which clearly establishes the strong association of accused Ms. Kanimozhi Karunanithi and accused A. Raja in the official / political matters.

Role of Dayalu Ammal

115. It is claimed that the other stakeholder Mrs. Dayalu Karunanithi , was requested by board of M/s Kalaignar TV Pvt. Ltd. to act as Director of the Company. However, as per the minutes of board meeting dated 27.07.2007, she categorically informed that in view of her old age and deteriorating health, she cannot be expected to give any attention to the company's affairs and requested Mr. Sharad Kumar to exercise degree of skill which may reasonably be expected of a person of his knowledge, experience, caliber and status. As per these minutes she also informed the board that due to her age and non understanding of any language other than Tamil, after appointment as Director, she will attend the meeting only to suffice the legal requirement to have quorum and not for anything else.

The said board minutes also noted that Mrs. Dayalu Karunanithi can understand only Tamil and cannot read, write, speak or even understand any other language, and that the fact of the same already intimated to Registrar of Companies while executing the incorporation documents. The board accordingly resolved that - "Pursuant to the provisions of Section 260 and all other applicable provisions of the Companies Act, 1956, Mrs. Dayalu Karunanithi, be and is hereby appointed as Additional Director of the company with effect from 27th July, 2007 with noting of her reservations and statements for her appointment as Director."

Indicators of payment of illegal gratification

116. It is claimed that there are number of circumstances, including the ones mentioned here-in-below, which together conclusively establish that the amount of Rs. 200 Crore paid by M/s Dynamix Realty to M/s Kalaignar TV Pvt. Ltd, through M/s Kusegaon Fruits & Vegetables Pvt. Ltd. and M/s Cineyug Films Pvt. Ltd., was not a genuine business transaction but in the nature of illegal gratification paid in lieu of the UAS Licences, valuable spectrum and other undue benefit given by accused public servants to M/s Swan Telecom Pvt. Ltd. :-

(a) The refund of the entire amount has occurred after the registration of the CBI case. In fact the date when the refund of the amount started, i.e. 23.12.2010 coincides with the date when accused A. Raja was asked to join investigation at CBI office on 24.12.2010 and 25.12.2010. The major chunk of funds was refunded after 25.01.2011, i.e. Rs. 65 Crore on 24.01.2011, Rs.25 Crore on 29.01.2011 and Rs. 50 Crore on 03.02.2011. During this time around media reports about likely arrest of accused A. Raja started appearing and on 02.02.2011 he was arrested.

(b) The subscription and shareholder agreement between M/s Cineyug Films Pvt. Ltd., its promoters and M/s Kusegaon Fruits and Vegetables Pvt. Ltd. vide which 49% shares of M/s Cineyug Films Pvt. Ltd. were subscribed by M/s Kusegaon was signed on 27.01.2010, that is, after registration of the instant case on 21.10.2009 and searches had been conducted at various

premises of the private companies. Although, the funds against these shares were transferred way back in December, 2008 as elaborated above.

(c) The original share subscription and shareholder's agreement between M/s Cineyug Films Pvt. Ltd., M/s Kalaignar T.V. Pvt. Ltd. and its promoters has not been produced by any of the concerned parties. The photocopy made available is not on a stamp paper & is not enforceable in law, and has been prepared only to mislead the law and to create a false justification for said payments.

(d) Till 31st March, 2009 an amount of Rs. 25 Crore had already been received by M/s Kalaignar TV Pvt. Ltd. from M/s Cineyug Films Pvt. Ltd. It is claimed vide agreement dated 19.12.2008 that this money was transacted for the purpose of acquiring equity of M/s Kalaignar TV Pvt. Ltd. Accordingly, this amount should have been shown in the balance sheet either as share money or share application money, if shares were yet to be allotted. The balance sheet of M/s Kalaignar TV for the year ending on 31.03.2009 has shown this amount as part of schedule 11 under head 'Sundry Creditors for Others'. On the other hand no share application money has been shown in the Schedule 1. In the balance sheet for the year ending 31.03.2010 the amount has been regrouped as unsecured loan and a figure of Rs. 25 crore has been shown in this head as on 31.03.2009. By this time the entire 214 crore (including interest liability)

was received by M/s Kalaignar TV Pvt. Ltd. upto August, 2009. In October, 2009 instant case was registered and investigation about quid pro quo were taken up at Chennai during January, 2010. This regrouping of the amount is clearly an act of window dressing and an afterthought.

(e) As regards the money paid by M/s Dynamix Realty to M/s Kusegaon Fruits & Vegetables Pvt. Ltd., the said company (M/s Kusegaon Fruits & Vegetables Pvt. Ltd.) has communicated that there was no formal agreement between them for a loan of Rs. 209.25 Crore.

(f) Material collected has not disclosed any collateral / securities taken by M/s Cineyug Films Pvt. Ltd. from M/s Kalaignar TV Pvt. Ltd., M/s Kusegaon from M/s Cineyug or M/s Dynamix Realty from M/s Kusegaon for a loan of such huge amount of Rs. 200 Crore. At this time, the entire paid-up equity of M/s Kalaignar TV Pvt. Ltd. was Rs. 10.01 Crore and its entire income (turnover) for the year ending on 31.03.2009 was only Rs. 47.54 Crore. The paid-up equity of M/s Cineyug Films Pvt. Ltd. as on 31.03.2009 was only Rs. 1 lakh. The paid-up equity of M/s Kusegaon Fruits & Vegetables Pvt. Ltd. as on 31.03.2009 was only Rs. 1 lakh. M/s Kusegaon Fruits & Vegetables Pvt. Ltd. has shown, in its balance sheet dated 31.03.2009, an amount of Rs. 31.5 crore as receipt of loan from M/s Dynamix Realty (shown as sister concern). It has also shown to have given an amount of Rs. 28.5 crore to M/s Cineyug Films Pvt. Ltd. as

share application money. On the other hand M/s Cineyug Films Pvt. Ltd., in its balance sheet dated 31.03.2009, has shown an amount of Rs. 29.21 crore in schedule-F 'current assets loans and advances' under the head 'sundry loans and advances'. It has not shown any amount received under share capital account or as share application money.

(g) The entire amount of Rs. 200 crore was paid by M/s Dynamix Realty to M/s Kalaignar TV Pvt. Ltd., through aforesaid intermediaries, during 23.12.2008 to 07.08.2009, after the offshore investments in M/s Swan Telecom Pvt. Ltd. from M/s Etisalat Mauritius Ltd. and M/s Genex Exim Ventures Pvt. Ltd. came in on 17.12.2008.

(h) The funds from which M/s Kalaignar TV Pvt. Ltd. has refunded Rs. 200 crore to M/s Cineyug Films Pvt. Ltd. have partly come from M/s Anjugam Films Pvt. Ltd. (said to be a subsidiary of Kalaignar TV) (Rs. 70 crore approx.), internal accruals from advertisements advances (Rs. 96 crore approx.) and internal accruals from OCC accounts (Rs. 65 crore approx.). Moreover, the subsidiary company has also given Rs. 70 crore. The other OCC account accruals are at an interest rate of more than 13.25% to 14.5% per annum. These facts indicate the sudden reaction of the company to the steps in investigation and arrest of accused A. Raja, in arranging these funds and repaying.

(i) Clause 2.2 of the copy of the agreement given by the M/s Kalaignar TV Pvt. Ltd. and M/s Cineyug Films Pvt. Ltd., and said

to have been signed on 19.12.2008 (original copy not traceable during investigation) mention that 'Notwithstanding any other provisions of this Agreement, in the event the Conditions Precedent are not complied with on or before March 31, 2009, the Advance Amount shall stand automatically converted into a loan and the Company shall return the same to the Investor with interest thereon at the rate of 10% per annum.' Even going by this clause, when M/s Kalaignar TV Pvt. Ltd. has received only Rs. 25 crore till 31.03.2009 and the both parties could not agree on the valuation of the shares, it is not clear as to why the remaining amount of Rs. 175 crore was also subsequently transferred and the advance amount was not returned.

(j) Rate of interest shown to have been charged by M/s Cineyug Films Pvt Ltd from M/s Kalaignar TV Pvt. Ltd., by M/s Kusegaun Realty from M/s Cineyug Films and by M/s Dynamix Realty from M/s Kusegaon Realty was of the order of 7.5% to 10%, against the rate at which M/s Kalaignar TV had earlier taken loan from the bank at more than 13% per annum, i.e. Overdraft account in Indian Bank, Chennai.

(k) The company M/s Kusegaon Fruits & Vegetables Pvt. Ltd. was incorporated under the Companies Act, 1956 and the main objectives of the company were to carry on the business of farming, agriculture etc. Later the company's name was changed to M/s Kusegaon Realty Pvt. Ltd. The company, as per objects incidental to the attainment of main objects, could borrow or

advance money to any other company. However, there was no object relating to business of cinematography in the company, the purported loan of Rs. 200 crore was given by M/s Kusegaoon Fruits & Vegetables Pvt. Ltd. to M/s Cineyug Media & Entertainment Pvt. Ltd. was contrary to the main objects of the company.

(l) M/s Dynamix Realty was a partnership firm and a partnership was entered into by M/s D.B. Realty Ltd., M/s Eversmile Construction Company Pvt. Ltd. and M/s Conwood Construction Developers Pvt. Ltd. and the partnership deed was entered specifically in order to develop a Slum Rehabilitation Project at Mumbai. The partnership deed did not provide for any other related project or a project relating to farm and agriculture business or cinematography work.

(m) It is alleged that none of the companies, firms involved into the entire transactions, purportedly claimed as loan of an amount of Rs. 200 crore, had the main objective of lending money. The companies could lend money only for the purposes incidental to the main objects and lending money could not be the main object of the company. The amount of interest purportedly earned out of these moneys is a large proportion of the entire revenue of M/s Kalaignar TV Pvt. Ltd., and M/s Cineyug Films Pvt. Ltd. As regards M/s Kusegaoon Fruits & Vegetables Pvt. Ltd., the almost entire earnings of the company are out of these transactions only. It is alleged that none of these companies was

holding status of non banking finance company.

(n) It is alleged that M/s Dynamix Realty and M/s DB Realty Ltd. had taken credit facilities from M/s IL&FS Finance Services during 2007 to 2011, amounting to Rs. 140 crore and Rs. 102 crore, respectively. These loans were secured by M/s IL&FS Finance Services by way of collateral securities / mortgages of big chunks of land held by the entities, shares of the promoters of the companies concerned and rate of interest charged was 13.5% & 16% respectively. The transactions by which M/s Dynamix Realty paid the amount of Rs. 200 crore to M/s Kalaignar TV Pvt. Ltd. through M/s Kusegaon Fruits & Vegetables Pvt. Ltd. & M/s Cineyug Films Pvt. Ltd. during 2008-2011 at rates of interest of 7.5% to 10%, while M/s Dynamix Realty itself and its promoters had taken loans of similar amounts at much higher rate of interest cannot be said to be a genuine business transactions. It is more so in view of the fact that none of the transactions among these four companies / firms were secured by way of any collateral / guarantee / mortgage when these transactions were made. Moreover, taking into consideration the untenable and unacceptable plea of the accused persons that the payment of funds were in the nature of loan, there exists incontrovertible material to establish the fact of inadequate consideration by the accused persons in as much as these so called loans were obtained by M/s Kalaignar TV Pvt. Ltd. at 10% per annum, whereas those giving the so called loans themselves took loans from IL&FS at the rate of 13.5% to 16%

per annum. M/s Kalaignar TV Pvt. Ltd. itself took credit limit from Indian Bank at the rate of 13.25% to 14.5% per annum.

117. It is alleged that thus accused public servants, viz. A. Raja (A-1), then MOC&IT; Siddhartha Behura (A-2), then Secretary (Telecom) & R. K. Chandolia (A-3), then PS to MOC&IT, in abuse of their official position, and in conspiracy with Shahid Usman Balwa (A-4), Director, M/s Swan Telecom Pvt. Ltd., Vinod Goenka (A-5), Director, M/s Swan Telecom Pvt. Ltd. and Sanjay Chandra (A-7), Managing Director of M/s Unitech Ltd., gave undue favours to M/s Swan Telecom Pvt. Ltd. (now Etisalat DB Telecom Pvt Ltd) (A-6) and M/s Unitech Wireless (Tamil Nadu) Private Ltd. (A-8) (representing all the 8 Unitech group companies later merged into it), both ineligible applicants for UAS Licences, resulting in wrongful pecuniary gain to these accused companies/ accused private persons. It is alleged that during said conspiracy accused A. Raja, in conspiracy with Siddhartha Behura also forged his own note dated 07.01.2008 and used the same to wrongly project & justify that the proposed amendment in press release had the concurrence of the Law officer, with an intent to fraudulently allocate UAS Licences and valuable spectrum to the accused private companies on priority. A report of the Joint Director (Inspection), Ministry of Corporate Affairs, Govt. of India has also been received indicating the ineligibility of M/s Unitech Wireless (Tamil Nadu) Private Ltd., (including all the 8 Unitech group companies later merged into it).

118. It is alleged that accused persons, viz. Gautam Doshi

(A-9), Group Managing Director, Reliance ADA Group; Surendra Pipara (A-10), Senior Vice President of Reliance ADA Group and Hari Nair (A-11), Senior Vice President of Reliance ADA Group and, working at the behest of and for wrongful benefit to M/s Reliance Telecom Ltd. (A-12), on receipt of approval for allocation of dual technology spectrum to M/s Reliance Communications Ltd. (holding company of M/s Reliance Telecom Ltd.), deliberately did not withdraw their fraudulent applications for UAS Licences and in conspiracy with accused Shahid Usman Balwa and Vinod Goenka, transferred the management and control of M/s Swan Telecom Pvt. Ltd. (STPL) to them, thereby intentionally aiding / facilitating accused Shahid Usman Balwa and Vinod Goenka to fraudulently get UAS Licences & valuable spectrum for M/s Swan Telecom Pvt. Ltd. despite full knowledge that the company was ineligible on date of application, as applications were in violation of clause 8 of UASL guidelines dated 14.12.2005. It is alleged that in pursuance to the said conspiracy accused persons Shahid Balwa and Vinod Goenka forged certain records of the accused company M/s Swan Telecom and related group companies, used the same and with intent to cheat, submitted false certificates to/ concealed vital information from Department of Telecommunications for fraudulently getting issued UAS Licences and valuable spectrum on priority and thereby cheated the Department of Telecommunications.

119. It is alleged that the aforesaid facts and circumstances constitute commission of offences, during 2007-

09, punishable u/s 120-B, 420, 468, 471 of IPC and also punishable u/s 13 (2) r/w 13 (1) (d) of Prevention of Corruption Act 1988 against accused persons, viz. A. Raja, then MOC&IT; Siddhartha Behura, then Secretary (Telecom); R. K. Chandolia, then PS to MOC&IT; Shahid Usman Balwa, Director, M/s Swan Telecom Pvt. Ltd., Vinod Goenka, Director, M/s Swan Telecom Pvt. Ltd.; M/s Swan Telecom Pvt. Ltd. through its Director; Sanjay Chandra, Managing Director of M/s Unitech Ltd.; M/s Unitech Wireless (Tamil Nadu) Private Ltd through its Director; Sh. Gautam Doshi, Group Managing Director, Reliance ADA Group; Sh. Hari Nair, Senior Vice President of Reliance ADA Group; Sh. Surendra Pipara, Senior Vice President of Reliance ADA Group & M/s Reliance Telecom Ltd. through its Director.

120. It is alleged that following substantive offences are also made out against:-

a) A. Raja, then MOC&IT - the offences punishable u/s 420, 468, 471 IPC & 13 (2) r/w 13 (1) (d) PC Act 1988.

b) Siddhartha Behura, then Secretary, Department of Telecom - the offences punishable u/s 420 IPC &13 (2) r/w 13 (1) (d) PC Act 1988.

c) R. K. Chandolia, then PS to MOC&IT - the offences punishable u/s 420 IPC & 13 (2) r/w 13 (1) (d) PC Act 1988.

d) Shahid Usman Balwa, Director, M/s Swan Telecom Pvt. Ltd.;

Vinod Goenka, Director, M/s Swan Telecom Pvt. Ltd. and M/s Swan Telecom Pvt. Ltd. through its Director - offences punishable u/s 420/ 468/ 471 IPC

e) Sanjay Chandra, Managing Director, M/s Unitech Ltd. and M/s Unitech Wireless (Tamil Nadu) Private Ltd through its Director - offence punishable u/s 420 IPC.

f) Gautam Doshi, Group Managing Director, Reliance ADA Group; Hari Nair, Senior Vice President of Reliance ADA Group & Surendra Pipara, Senior Vice President of Reliance ADA Group & M/s Reliance Telecom Ltd. through its Director - offence punishable under section 109 r/w 420 of IPC.

121. It is alleged that pursuant to the criminal conspiracy accused A. Raja, accused Sharad Kumar & K. Kanimozhi Karunanithi, stakeholders &/or Directors of M/s Kalaignar TV Pvt Ltd., Chennai, accepted and received an illegal gratification of Rs. 200 Crore in M/s Kalaignar TV Pvt. Ltd. from accused Shahid Balwa and Vinod Goenka from the accounts of DB Group Companies, in the years 2008-09, as a reward in lieu of the undue favours shown by accused A. Raja, in connivance with other accused public servants, in allocation of UAS Licences, valuable & scarce spectrum in various telecom circles and other undue favours to M/s Swan Telecom Pvt. Ltd., during 2008-09.

122. It is further alleged that accused Asif Balwa & Rajiv B. Agarwal, both directors of M/s Kusegaon Fruits & Vegetables Pvt. Ltd. (now M/s Kusegaon Realty Pvt. Ltd.), and accused

Karim Morani, Director of M/s Cineyug Films Pvt. Ltd. (now, M/s Cineyug Media & Entertainment Pvt. Ltd.), Mumbai intentionally aided and facilitated the said payment of illegal gratification of Rs. 200 Crore by Shahid Balwa and Vinod Goenka, as a reward for undue favours shown to their group company M/s Swan Telecom (P) Limited, to M/s Kalaignar TV Pvt. Ltd. on behalf of accused A. Raja, Sharad Kumar and Kanimozhi Karunanithi, and gave it a colour of a regular business transaction. The aforesaid facts and circumstances constitute commission of offence during 2007-2011, punishable u/s 120-B IPC r/w section 7 of Prevention of Corruption Act, 1988 against A. Raja, the then MOC and IT, Sharad Kumar and Ms. Kanimozhi Karunanithi, and section 12 of PC Act, 1988 against accused Shahid Balwa, Vinod Goenka, Asif Balwa, Rajiv B. Agarwal and Karim Morani.

123. It is further alleged that, even if the defence of the accused persons that the said transactions of Rs. 200 crore among M/s Dynamix Realty, M/s Kusegaon Fruits & Vegetables Pvt. Ltd., M/s Cineyug Films Pvt. Ltd. and M/s Kalaignar TV Pvt. Ltd. were genuine business transactions in the nature of loan / advances, is accepted, it is established that accused A. Raja (being a public Servant) in conspiracy with accused Sharad Kumar and Ms. K Kanimozhi Karunanithi, despite knowing the fact that accused A. Raja had connections with accused Shahid Balwa and Vinod Goenka regarding his official functions, obtained for M/s Kalaignar TV Pvt. Ltd. a loan of Rs. 200 crore for a consideration which they knew to be inadequate, from

Shahid Balwa and Vinod Goenka, the promoters of M/s Swam Telecom Pvt. Ltd. to which accused A. Raja and other public servants had allotted UAS licenses, valuable spectrum and other undue favours in 2008-09. It is alleged that accused Asif Balwa and Rajiv B. Agarwal and Karim Morani knowingly abetted and facilitated such transactions of loan to M/s Kalaignar TV Pvt. Ltd. on behalf of accused A. Raja, Sharad Kumar and Kanimozhi Karunanithi for the consideration which they knew to be inadequate. The aforesaid facts and circumstances constitute commission of offence during 2007-2011, punishable u/s 120-B IPC r/w section 11 of Prevention of Corruption Act, 1988 against accused A. Raja, the then MOC and IT, Sharad Kumar and Ms. Kanimozhi Karunanithi, and section 12 of PC Act, 1988 against accused Shahid Balwa, Vinod Goenka, Asif Balwa, Rajiv B. Agarwal and Karim Morani.

124. It is further alleged that accused persons viz. A. Raja, Shahid Balwa, Vinod Goenka, Asif Balwa, Rajiv B. Agarwal, Karim Morani, Sharad Kumar and Ms. Kanimozhi Karunanithi are liable to be prosecuted for offences punishable under section 120-B IPC read with section 7/11 & 12 of PC Act, 1988, as per details mentioned below :-

a. A. Raja for the offence punishable u/s 7 of PC Act, 1988 or alternatively section 11 of PC Act, 1988.

b. Sharad Kumar and Ms. Kanimozhi for the offence punishable u/s 120-B IPC read with section 7 of PC Act, 1988 or alternatively u/s 120-B IPC read with section 11 of PC Act, 1988.

c. Shahid Balwa, Vinod Goenka, Asif Balwa, Rajiv B. Agarwal and Karim Morani for the offence punishable u/s section 12 of PC Act, 1988.

125. Sanction for prosecution of R. K. Chandolia was obtained from the competent authority and after completion of investigation, the instant charge sheet was filed in the Court.

126. Hence, this case.

Appearance of Accused and Compliance of Section 207 CrPC

127. Some accused were in custody and some were summoned and, as such, they all appeared in the Court. Copies, as required by the Section 207 CrPC, were supplied to them to their satisfaction.

Framing of Charge

128. Vide order dated 22.10.2012, charges punishable under Section 120-B IPC read with different provisions of PC Act and IPC were framed, read over and explained to the accused, to which they all pleaded not guilty and claimed trial.

Prosecution Evidence

129. In support of its case, prosecution has examined 153 witnesses.

130. PW 1 is Sh. Anand Subramaniam, Vice President, Reliance Capital. He has proved account opening form, Ex PW 1/A, of Swan Telecom (P) Limited with HDFC Bank, Fort Branch, Mumbai, three letters dated 01.03.2007, dated NIL and dated 02.03.2007, Ex PW 1/B, 1/C and 1/H, all written to the bank and four cheques, Ex PW 1/D to 1/G, issued by Reliance

Communications Limited in favour of Swan Telecom (P) Limited.

131. PW 2 is Sh. A. N. Sethuraman, Group President, Reliance ADA Group. He used to look after relations of entire ADA group with the Central Government, its departments and ministries. In that capacity, he signed UASL applications filed by Swan Capital (P) Limited for J&K service area, dated 23.01.2007 and thirteen applications, all dated 02.03.2007, for thirteen service areas including the one for Delhi service area and he has proved these applications as well as documents attached therewith, apart from some other papers, which are Ex PW 2/A to 2/Z-10.

132. PW 3 is Sh. Ashraf, who is a relative of accused Shahid Usman Balwa and Asif Balwa. He has deposed that as per document Ex PW 3/A, 1667 shares of Sidharath Consultancy Services (P) Limited were purchased in his name at the instance of Shahid Usman Balwa, which were later on sold and that neither any money was paid by him for purchasing these shares nor did he receive their sale price. He has also proved a copy of statement of his bank account, Ex PW 3/B, and also a letter written by him to CBI, Ex PW 3/C.

133. PW 4 is Sh. Amit Vij, Assistant Manager of ICICI Bank, Connaught Place. He has deposed that documents were received in Connaught Place branch of the bank from its Mumbai branch on six occasions for being handed over to the CBI and on all the six occasions he handed over these documents to the CBI through seizure memos Ex PW 4/A to 4/F.

134. PW 5 is Sh. Uday Shahasrabuddhe, Assistant Vice President, HDFC Bank, Fort Branch, Mumbai. He has proved documents sent by the bank to the CBI, Ex PW 5/A-1 to A-23, relating to Swan Telecom (P) Limited, account opening form of Reliance Communications Limited and documents submitted therewith, Ex PW 5/B and B-1 to B-6, account opening form of Reliance Telecom Limited and documents submitted therewith, Ex PW 5/C to 5/E, its statement of account for various periods, Ex PW 5/F, statement of account of Reliance Telecom Limited, Ex PW 5/G, account opening form of Reliance Infocom Limited, Ex PW 5/H, and documents submitted therewith. He has also deposed as to how money was transferred from one account to another.

135. PW 6 is Sh. Bharat Amberkar, Vice President, Accounts and Finance, Reliance Infrastructure Limited. He has deposed about various documents handed over by him to the CBI, account opening form of Swan Capital (P) Limited alongwith documents submitted to ICICI bank, correspondence of companies with the the bank, account opening form of Tiger Traders (P) Limited alongwith documents submitted to the bank, account opening form of Giraffe Consultancy Services (P) Limited alongwith documents submitted to the bank, account opening form of Zebra Consultants (P) Limited alongwith documents submitted to the bank, account opening form of Vikata Engineering Services (P) Limited alongwith documents submitted to the bank, account opening form of Swan Capital (P) Limited alongwith documents submitted to the bank,

correspondence with the bank regarding amendment of authorized signatories to operate the bank accounts, account opening form of ADAE Ventures (P) Limited alongwith documents submitted to the bank, correspondence regarding change/ amendment in authorized signatories, statement of accounts of various companies, cheques issued and received, pay-in-slips and instructions issued to the bank by various companies for transferring funds, Ex PW 6/A to 6/X-174, and transfer of funds.

136. PW 7 is Sh. Aseervatham Achary, who was Additional Private Secretary to A. Raja, when he was MOC&IT. He has proved the three letters, Ex PW 7/A to 7/C, written by A. Raja to the Hon'ble Prime Minister. He also deposed that R. K. Chandolia was Private Secretary to A. Raja. He has also deposed that R. K. Chandolia was Private Secretary to A. Raja, when he was Minister for Environment and Forests. He has further deposed that Sanjay Chandra, Shahid Usman Balwa and Vinod Goenka used to meet A. Raja and R. K. Chandolia on regular basis when he was Minister of Environment and Forests. He also deposed that Kanimozhi Karunanithi was also in regular touch with A. Raja. He has also deposed that Ms. Niira Radia, who was working for Tatas, also used to speak to him and the conversation dated 18.09.2008, which took place between the two, has been proved as Ex PW 7/D. His statement was also recorded under Section 164 CrPC, which is Ex PW 7/F.

137. PW 8 is Sh. Vijender Kumar Sharma, Vice President, DB Realty Limited. He had handed over a copy of agreement/

lease deed dated 03.03.2009, executed between R. K. Chandolia and Associated Hotels (P) Limited, details of cheques issued for payment of rent between 03.03.2009 to 02.03.2011 and copies of certificates of deduction of tax at source under Income Tax Act through a forwarding letter to the CBI and these documents were handed over to him by Dr. Vinod Kumar Budhiraja. The forwarding letter is Ex PW 8/A, photocopy of the lease deed is mark PW 8/A, details of payment are mark PW 8/B and certificates of deduction of tax are mark PW 8/C and 8/D.

138. PW 9 is Sh. Vardarajan Srinivasan, Assistant Vice President, HDFC, Fort Branch, Mumbai. He has deposed that he joined Reliance Communications Limited in 2006 and continued there up to 01.10.2009 and was looking after trade finance in banking operations. He has proved certified copy of board resolution of Reliance Infocom, Ex PW 9/A, conferment of authority on him for opening bank account, Ex PW 9/B, acting upon which he wrote letter Ex PW 1/C, letter dated 01.03.2007 written to HDFC Bank, Ex PW 9/C, and his PAN card, Ex PW 9/D. He also deposed that through letter dated 02.03.2007, Ex PW 9/E, HDFC Bank, Fort Branch, was asked to transfer Rs. 974,49,04,000 from the account of Swan Telecom (P) Limited to the account of Reliance Communications Limited.

139. PW 10 is Sh. Vijay Kumar, Zonal Inspector, MCD, R. K. Puram, New Delhi. He has deposed that Smt. Neeta, wife of R. K. Chandolia, resident of C-6/39, Second Floor, Safdarjung Development Area, applied for mutation of this property in her name and that of her husband R. K. Chandolia on 09.08.2007,

through application Ex PW 10/F. The application was accompanied by photocopy of sale deed, Ex PW 10/C, indemnity bond, Ex PW 10/D, and affidavit, Ex PW 10/E. He further deposed that the property was mutated in their name on 09.08.2007 and the payment received is Ex PW 10/G and the final order is Ex PW 10/H. He further deposed that these documents were contained in an office file, which is collectively Ex PW 10/B and this file was seized by CBI through memo Ex PW 10/A on 23.03.2011.

140. PW 11 is Sh. Nripendra Mishra, who was Chairman, Telecom Regulatory Authority of India (TRAI), from 22.03.2006 to 22.03.2009. He has deposed about functions of TRAI. He further deposed that through letter dated 13.04.2007, Ex PW 11/A, Government of India sought TRAI recommendations on various issues mentioned therein and the recommendations dated 28.08.2007, Ex PW 2/DD, were sent by TRAI to the Government through letter Ex PW 11/C. He has also proved correspondence exchanged between TRAI and DoT in order to clarify legal requirements under Section 11 (1)(a)(i) and (ii) of TRAI Act regarding seeking recommendation of it before licence to a new service provider is given. He has also proved various documents/ letters beginning from Ex PW 11/A to 11/W.

141. PW 12 is Sh. Tarun Dass, Deputy Advisor, TRAI, who was dealing with tariff and other related issues. He handed over a letter dated 18.03.2011, Ex PW 12/A, alongwith its two annexures, Ex PW 12/B and 12/C, to the CBI.

142. PW 13 is Sh. Ankur Huria, Officer of HDFC Bank,

Kasturba Gandhi Marg, New Delhi. Through letter dated 27.01.2011, Ex PW 13/A, he handed over documents mentioned therein to the CBI, which are bank statement of Reliance Communications Limited, having CA No. 060031000184 in HDFC Bank, Mumbai, Ex PW 5/F, and statement of account of Reliance Telecom Limited, having CA No. 2400310001115, Ex PW 5/G. These two documents were received from Mumbai branch.

143. PW 14 is Sh. Paresh Rathod, DGM, Reliance Power Limited. He has deposed about meaning of shell company, composition of Reliance ADA Group and minutes of Swan Capital (P) Limited and Tiger Traders (P) Limited. He has deposed about cheques issued by him in favour of Swan Consultants (P) Limited, Zebra Consultants (P) Limited and Parrot Consultants (P) Limited and vice versa regarding sale-purchase of shares.

144. PW 15 is Sh. Ashish Tambawala, Sr. Executive Vice President (Accounts & Finance), Reliance Infrastructure Limited. He deposed that he was authorized signatory for more than hundred companies of Reliance ADA group for operating more than 150 bank accounts. He has deposed about bank accounts of Swan Capital (P) Limited, Tiger Traders (P) Limited, Giraffe Consultancy Services (P) Limited, Vikata Engineering Services (P) Limited, Swan Consultants (P) Limited, Sonata Investments Limited, Zebra Consultants (P) Limited, ADAE Ventures (P) Limited and AAA Consultancy Services Co. (P) Limited, all with ICICI Bank. He has deposed about numerous cheques/ transfer

letters issued by or in favour of these companies and some other companies of the group and the transfer of money consequent thereto.

145. PW 16 is Sh. Desh Raj, who was dispatch clerk at Electronics Niketan Office of DoT. He used to diarize the dak received and dispatched from there. He deposed that files Ex PW 16/A to 16/L were received in the office at Electronics Niketan.

146. PW 17 is Sh. Nilesh R. Doshi, a practicing Chartered Accountant. He deposed that in 2006, he was appointed consultant to Reliance ADA group and in that capacity, he was appointed director on the board of Parrot Consultants (P) Limited, Zebra Consultants (P) Limited and Tiger Traders (P) Limited. He has proved the minutes book and resolutions passed by these companies and some documents relating to ADAE Ventures (P) Limited and AAA Consultancy Services Co. (P) Limited. He has also deposed about transfer of shares by these companies.

147. PW 18 is Sh. Deepak Maheshwari, Sr. Vice President (Project and Finance), and Chief Financial Officer, Reliance Power Limited. He has deposed about Sonata Investments Limited, being part of Reliance ADA group, and Oriental Buildtech Limited, a company which is part of Anant Raj group. He has deposed about a transaction of Rs. 100 crore between the two companies in 2007 and e-mails exchanged in this regard.

148. PW 19 is Sh. Sateesh Seth, Consultant to Reliance

ADA group and non-executive director of Reliance Telecom Limited. He has deposed about authorized signatories of Tiger Traders (P) Limited, Zebra Consultants (P) Limited, Swan Consultants (P) Limited, ADAE Ventures (P) Limited and AAA Consultancy Services Co. (P) Limited. He has also deposed about the board meetings of Reliance Telecom Limited and the resolutions passed in its board meetings on various occasions, including the one passed on 22.10.2005, Ex PW 19/A. He has also proved other resolutions and certified copies of extracts of minutes of meetings of board of directors Ex PW 19/B to 19/F.

149. PW 20 is Sh. Viresh Goel, Deputy Wireless Advisor, DoT, who was on deputation to TRAI as Deputy Advisor, and had written letter dated 23.03.2011, Ex PW 20/A, with annexure, Ex PW 20/B, to CBI, sending therewith AGR Data for the year 2007. He also deposed that TRAI report dated 11.05.2010, Ex PW 20/C, was issued by TRAI.

150. PW 21 is Dr. Vinod Kumar Budhiraja, Chief Regulatory Officer, Etisalat DB Telecom (P) Limited. He has proved the lease deed entered into between Associated Hotels (P) Limited and R. K. Chandolia, Ex PW 21/A.

151. PW 22 is Sh. Vijay Kumar Gupta, Deputy Registrar of Companies. He has deposed about procedure for alteration of object clause of a company. He has also deposed about seven certificates of registration of special resolution confirming alteration of object clause of companies, namely, Unitech Builders and Estates (P) Limited, Hudson Properties Limited, Volga Properties (P) Limited, Adonis Projects (P) Limited,

Nahan Properties (P) Limited, Unitech Infrastructures (P) Limited and Aska Projects Limited respectively, Ex PW 22/A-1 to A-7. He also deposed that the words "subject to change of name" were added by him in the certificates as the names of the companies were not in consonance with the proposed alteration of object clause of companies. He also deposed that electronic sheets of the companies, Ex PW 22/B-1 to B-7, were sent to the CBI by his office. He further deposed that amendment of the object clause was to be effective on the date company complied with the conditions stated in the certificates Ex PW 22/A-1 to A-7.

152. PW 23 is Sh. P. L. Malik, Registrar of Companies, Delhi and Haryana. He has deposed about the documents required to be filed by a company with the ROC as well as various documents filed by eight Unitech group companies with the ROC and seizure thereof by the CBI, Ex PW 23/A to 23/O-11.

153. PW 24 is Sh. R. S. Meena, Deputy Registrar of Companies in the office of Registrar of Companies, Mumbai. He has deposed about various documents filed with the ROC by Tiger Traders (P) Limited, Parrot Consultants (P) Limited, Reliance Telecom (P) Limited/ Reliance Telecom Limited, Giraffe Consultancy Services (P) Limited, Swan Capital (P) Limited/ Swan Telecom (P) Limited and Etisalat DB Telecom (P) Limited, Zebra Consultants (P) Limited/ Swan Advisory Services (P) Limited, Kusegaon Fruits and Vegetables (P) Limited, Cineyug Films (P) Limited/ Cineyug Media and Entertainment

(P) Limited, DB Realty Limited, Vikata Engineering Services (P) Limited, Reliance Energy Limited, BSES Ventures Limited, Reliance Energy Investments (P) Limited, Reliance Commerce and Trade (P) Limited and Power Surfer Interactive (India) (P) Limited and seizure thereof by the CBI, Ex PW 24/A-1 to 24/U.

154. PW 25 is Sh. Kailash Taparia, Relationship Manager, SBI, Mumbai. He deposed that on 28.10.2009, search was conducted by CBI in his presence at DB House, Mumbai, and a search memo, Ex PW 21/U, was prepared.

155. PW 26 is Sh. Gaurav Srivastava, Company Secretary, Selene Infrastructure (P) Limited. He has deposed that the company had filed an application, collectively Ex PW 26/A, for UAS licence for Punjab service area and the application is individually Ex PW 26/A-1 and its forwarding letter is Ex PW 26/A-2. He further deposed that letter dated 10.12.2007, Ex PW 26/A-3, was received by the company from DoT and the company replied to the same vide its letter dated 12.12.2007, Ex PW 26/A-4, and the five certificates of the company secretary, all dated 12.12.2007, are Ex PW 26/A-5 to A-9.

156. PW 27 is Ms. Reena Saxena, Private Secretary to Wireless Advisor, DoT, Sanchar Bhawan, New Delhi. She deposed that in 2007, she was PS to the then Wireless Advisor Sh. P. K. Garg and in that capacity used to diarize the dak. She has deposed as to how the dak received in the office used to be diarized and has proved dak register Ex PW 27/A and an entry recorded therein by her.

157. PW 28 is Ms. Deepa Rohra, Private Assistant to Joint

Wireless Advisor, DoT, Sanchar Bhawan. She deposed that in January 2008, she was posted as PA to the Joint Wireless Advisor and in that capacity also used to diarize the dak. She has also deposed as to how the dak used to be diarized and has proved dak register, Ex PW 28/A.

158. PW 29 is Sh. Yogender Yadav, Peon in WPC wing DoT. He deposed that his main duty is to distribute dak between different sections in the DoT and has proved his peon book, Ex PW 29/A.

159. PW 30 is Ms. Lata Dawar, Private Secretary to Wireless Advisor. She has also deposed that one of her duties was to diarize the dak. She has also deposed about the procedure for diarizing the same and also about peon book, Ex PW 29/A, and dak register Ex PW 27/A.

160. PW 31 is Sh. Raj Kumar Kapoor, Director, Bycell Communications Limited. He deposed that the company had applied for UAS licences to DoT in 2007. He further deposed that on 10.01.2008, he himself went to DoT in connection with licences, but was given a letter to the effect that company's applications were not being considered. He had marked his presence in the attendance sheet, Ex PW 31/A, at point A.

161. PW 32 is Sh. V. Mohan, Company Secretary, Parsvnath Developers Limited. He deposed that the company had applied for UAS licences in 2007. He has proved the application for Andhra Pradesh service area, Ex PW 32/A, with its annexures, Ex PW 32/A-1 to A-6, and the correspondence with DoT alongwith annexures, Ex PW 32/A-7 to A-10. He

further deposed that the applications of the company were rejected and the company received letter, Ex PW 32/A-11, in this regard.

162. PW 33 is Sh. Akhilesh Kumar Saxena, Vice President (Corporate), Spice Global Investments (P) Limited. He has deposed that Spice Communications Limited is a group company and had applied for UAS licence for 20 service areas in 2006. He further deposed that on 10.01.2011, he alongwith Ms. Preeti Malhotra and Sh. Umang Das, both from his office, went to DoT in connection with the licences. He further deposed that only Ms. Preeti Malhotra went inside office of DoT as she alone was having the authority letter. When she came out, she handed over four LOIs to him and he deposited the compliance, that is, licence fee, bank guarantee and entry fee.

163. PW 34 is Sh. Arun Kumar Dalmia, Advisor to Allianz Infratech (P) Limited. He deposed that the company had applied for UAS licences in 22 service areas and on 10.01.2008, he had gone to DoT to collect the LOIs. He further deposed that in the conference hall, there were four counters and his name was called either at counter No. 2 or 3, but he was given a paper and was told that no licence would be given to the company. He had marked his attendance in attendance sheet, Ex PW 31/A.

164. PW 35 is Sh. T. Narsimhan, Deputy CEO, Sistema Shyam Teleservices. He deposed that Shyam Telelinks had applied for UAS licences for 21 service areas. He further deposed that on 10.01.2008, he went to DoT to collect the LOIs

and in the conference hall, he marked his attendance in attendance sheet Ex PW 31/A. He further deposed that there were different counters and his number was at counter No. 1 at fourth position. He further deposed that the first in queue was Bycell, second was Swan and third was Datacom. He got the LOIs and compliance was deposited on 11.01.2008.

165. PW 36 Sh. D. S. Mathur was Secretary, Telecom, from July 2006 to 31.12.2007. He deposed that in May 2007, A. Raja became Minister of MOC&IT. He has narrated the events which occurred in DoT till his retirement beginning with recommendation of TRAI, processing in and acceptance thereof by DoT, receipt of applications for UAS licences and processing thereof and the procedure to be followed in this regard. He has proved numerous documents beginning with Ex PW 36/A to 36/H. He has also narrated the role played by various officials/ Minister in the matter.

166. PW 37 is Sh. Mohit Gupta, Executive, Unitech Limited. On 10.01.2008, he had gone to DoT for collecting LOIs. He marked his attendance at the gate of DoT in register Ex A-26 and thereafter, went to committee room, where he again marked his attendance in attendance sheet, Ex PW 31/A. In the committee room, there were four counters and his number was on fourth counter at third position. He further deposed that his company had applied for UAS licences for 22 service areas and he collected as many number of LOIs and after collecting the same deposited the compliance on the same day.

167. PW 38 is Sh. Rupender Sikka, Consultant, S. Tel (P)

Limited. He deposed that his company had applied for six UAS licences. He has proved the applications for Bihar service area, Tamil Nadu service area and some correspondence with DoT as Ex PW 38/A to 38/F. He further deposed that on 10.01.2008, he had gone to DoT to collect the LOIs and marked his presence there. He further deposed that he collected his LOIs and deposited the compliance on the same day.

168. PW 39 is Sh. Surender Lunia, Chief Executive Officer of HFCL Infotel Limited. He deposed that the company had applied for UAS licences in May 2007 for 21 service areas. He further deposed that on 10.01.2008, he had gone to DoT for collecting the LOIs, but was given a rejection letter for the reason that the company was not meeting net worth criteria. He has proved applications/ documents Ex PW 39/A to 39/E.

169. PW 40 is Sh. Rahul Vats, Assistant Vice President, Idea Cellular Limited. He deposed that his company had applied for UAS licences for nine service areas on 26.06.2006. He has proved application for Kolkata service area alongwith documents annexed thereto as Ex PW 40/A to 40/N. He further deposed that on 10.01.2008, he had gone to DoT for collecting the LOIs and collected nine LOIs and deposited the compliance on the same day. He has narrated the correspondence exchanged between the company and DoT regarding the processing of applications since the applications were filed as early as on 26.06.2006 and has proved these documents as Ex PW 40/O-1 to 40/S-6. He further deposed that on 10.01.2008, a press release had come on DoT website to the effect that the

first-come first-served policy would be to the effect that those who comply with LOI first and make the payment first would be the first one entitled to UAS licence, though earlier the policy was that those who had applied first were granted licence first.

170. PW 41 is Sh. Anand Dalal, Sr. Vice President, Regulatory Affairs, Tata Tele Services Limited (TTSL). He deposed that TTSL had filed applications for UAS licences in three service areas, that is, Assam, North-East and J&K, on 21.06.2006. He further deposed that TTSL and TTML, who were existing licencees and were using CDMA technology, also applied for permission to use GSM technology on 19.10.2007, as per the press release issued by DoT, that is, TTML had applied for Mumbai and Maharashtra service areas and TTSL had applied for eighteen service areas. He further deposed that LOIs for three service areas were issued on 10.01.2008 and in-principle approval for use of GSM technology, for the circles applied for, was also issued on this date. He himself, accompanied by Sh. Rakesh Mehrotra, had gone to collect the same. He went to the committee room and marked his attendance there. In the committee room, there were four counters and his position was at counter No. 2. He collected the LOIs and in-principle approval and deposited the compliance for three service areas and also payment towards in-principle approval for both TTSL and TTML. He further deposed that they had submitted their application for allocation of spectrum at the same counter on the same day for three service areas as well as for GSM technology. He further deposed that the company did

not get spectrum for Delhi service area despite being ahead in priority as payment was the only criteria. He has proved various documents Ex PW 41/A to 41/O.

171. PW 42 is Sh. Shah Nawaz Alam, Director (Wireless Finance), DoT. He deposed that applications filed for UAS licences are examined from finance angle in licensing branch, that is, regarding net worth, prescribed paid-up capital etc. He further deposed that before licence, a letter of intent is issued on a prescribed proforma. However, in case there is change in proforma, the same is required to be vetted by licensing branch. He had examined the draft LOI proposed to be issued to the applicants, whose applications were being processed. He deposed that when he went through the draft LOI, Ex PW 42/A, he found that it was not legally vetted. He further deposed that as per the draft LOI, the date of priority would be the date of payment of entry fee and this required attention. He further deposed that the policy of first-come first-served was being implemented at that time, which meant that application, which had come first and was found eligible would be the first to get the LOI and then an opportunity to comply with the same. He suggested that the para which made the date of payment of entry fee as the priority date may be deleted. He further deposed that the file went to the then Minister A. Raja, who approved that existing LOI proforma may be used, but his suggestion regarding implementation of first-come first-served policy was rejected.

172. PW 43 is Sh. Vivek Narayan, Additional GM, BSNL,

New Delhi. He has deposed about intra-circle roaming between BSNL and private operators. He deposed as to how intra-circle roaming arrangement/ issue was considered in the BSNL and finally a memorandum of understanding was signed between BSNL and Swan Telecom (P) Limited on 13.10.2008. He has proved documents Ex PW 43/A to 43/D.

173. PW 44 is Sh. Mukesh Kumar, a multi-tasking service employee of DoT. He deposed that his duty was to collect and deliver dak. He has deposed about the process of dak delivery in DoT. He deposed that in peon book, Ex PW 29/A, the dak mentioned at point A, page 59, was handed over to him by Sh. Surinder Singh Negi of CR Section and was delivered by him to Sh. Yogender Yadav of Wireless Advisor Section on 11.01.2008.

174. PW 45 is Sh. Surinder Singh Negi, UDC, CR Section, DoT, New Delhi. He deposed that on 10.01.2008, he, alongwith three other officials, was deputed at the reception of DoT for collecting compliance of LOIs. He further deposed that he collected the compliance and recorded time thereon. He has also deposed about receipt of compliance of TTSL and the fact thereof being recorded by him in diary register Ex PW 45/B and peon book, Ex PW 29/A. He has proved documents Ex PW 45/A to 45/J-8.

175. PW 46 is Sh. Shiv Kumar Sharma, Assistant, DoT, New Delhi. He also deposed that on 10.01.2008, he, alongwith three other officials, was deputed at the reception of DoT for collecting compliance of LOIs. He further deposed that he collected the compliance and recorded time thereon. He further

deposed that compliance for STPL for Mumbai service area was deposited by its managing director at 4:10 PM and compliance for Delhi service area was deposited by him at 4:11 PM. He has also proved documents Ex PW 46/A to 46/R.

176. PW 47 is Sh. Manoj Kumar Khatri, ADG, DoT, New Delhi. He deposed that on 10.01.2008 he was posted as Additional Director (BS-III), in DoT. He further deposed that on that day he was deputed in the committee room at counter No. 1 for distributing the LOIs. He further deposed that from his counter, he distributed LOIs/ papers to Bycell, Swan, Datacom and Shyam Telelinks and in token thereof, obtained the signatures of representatives of the companies.

177. PW 48 is Sh. Subhash Chand Sharma, Assistant, DoT, New Delhi. He deposed that on 10.01.2008, he, alongwith three other officials, was deputed at the reception of DoT for collecting compliance of LOIs. He further deposed that he collected the compliance and recorded time thereon. He also deposed about compliance of TTSL for three service areas and compliance of in-principle approval for GSM technology by TTML and TTSL. He has proved documents Ex PW 48/A-1 to 48/B-2.

178. PW 49 is Sh. S. E. Rizwi, Under Secretary, DoT. He deposed that in January 2008, he was looking after diverse duties including central registry. He deposed that on 09.01.2008, he got a wall clock purchased through his subordinate, which was to be hung at wall in reception area. He deposed that on 10.01.2008, as per instructions, he had set up

four counters at the reception for collecting compliance with the LOIs. He further deposed that a wall clock was accordingly purchased and fixed in the reception area and compliance with LOIs were collected in the reception area on 10.01.2008. He also deposed about peon book, Ex PW 29/A, and the diary register etc., being seized by the CBI through memos Ex PW 49/A and 49/B.

179. PW 50 is Sh. Prabhas Kumar, Operation Officer, Standard Chartered Bank, Bahadur Shah Zafar Marg, New Delhi. He deposed that some documents relating to Cineyug Films (P) Limited were received in Delhi office from its Mumbai office for handing over the same to CBI. He further deposed that he handed over the same to the CBI through memo Ex PW 50/A and these documents included account opening form, Ex PW 50/B, through which current account No. 23905026378 was opened at Juhu Branch, Mumbai, specimen signature card, Ex PW 50/C, and statement of account, Ex PW 50/D.

180. PW 51 is Sh. Mahesh Gandhi, independent director, TCK Advisors (P) Limited, an independent investment advisor. He deposed that the company had made investment in DB Realty Limited in 2007. He has proved the minutes book of DB Realty Limited and minutes of its various board meetings, which he used to attend as invitee nominee director. He has also deposed about Dynamix Realty, a partnership firm, in which DB Realty owned 99% share. He also deposed that he never controlled or supervised the business of Dynamix Realty. He knows of Kusegaon Fruits and Vegetables (P) Limited. He

further deposed that Dynamix Realty (P) Limited had given loan to it, but he was unable to recall if the loan transaction was discussed or approved by the board of Dynamix Realty (P) Limited. He further deposed that if it was so discussed, it must have been recorded in the minutes of the meeting. He further deposed that the day-to-day decisions of DB Realty Limited were taken by managing director and chairman, namely, Vinod Goenka and Shahid Usman Balwa. He has proved documents Ex PW 51/A to 51/N-3.

181. PW 52 is Sh. Ashok Kumar Dhar, ADG (VAS-I), DoT, New Delhi. He deposed that on 10.01.2008, he was deputed at counter No. 2 in committee room for distributing LOIs. He distributed LOIs and in token thereof, obtained signatures of the representatives of the companies on the office copies. He further deposed that the process of distribution of LOIs is mentioned in note sheet dated 10.01.2008, Ex PW 52/A, in DoT file D-7, Ex PW 36/B.

182. PW 53 is Sh. B. L. Panwar, ADG (VAS-I), DoT, New Delhi. He deposed that on 10.01.2008, he was deputed at one of the four counters in committee room of Sanchar Bhawan for distributing LOIs. Accordingly, he distributed LOIs to Idea, S. Tell and Allianz and in token thereof, obtained signatures of authorized representatives of companies.

183. PW 54 is Sh. Ajay Sharma, Vice President, Datacom Solutions (P) Limited. He deposed that his company had applied for UAS licences for 22 service areas. He further deposed that on 10.01.2008, he had gone to DoT for collecting LOIs and

reached conference hall, where he marked his attendance. There were four counters in the conference hall and he collected 22 LOIs from counter No. 1, serial No. 3. He deposited the compliance for 21 service areas on the same day. He has proved applications/ documents Ex PW 54/A to 54/D.

184. PW 55 is Sh. Vinod Raina, General Manager (Accounts), Shyam Telecom Limited. He deposed that on 10.01.2008, he was asked by his President Sh. T. Narsihman to reach DoT and accordingly, he reached there at about 3:30 PM. He further deposed that at about 4 PM, Sh. T. Narsihman accompanied by Sh. Subhash Sharma came out of DoT office and handed over to him LOIs and asked him to go to ICICI Bank, Connaught Place, for getting bank guarantees and bank drafts prepared and to return by 5:30 PM. However, by that time, only bank drafts could be prepared and he handed over the same to Sh. Subhash Sharma. He again went to the bank and got the bank guarantees prepared by 10 PM for 21 service areas.

185. PW 56 is Dr. Rakesh Mehrotra, Chief Regulatory Officer, TTSL/TTML. He has deposed on the lines of PW 41 Sh. Anand Dalal regarding filing of applications by TTSL for UAS licences for three service areas and application for in-principle approval to use GSM technology by the two companies and the facts related thereto.

186. PW 57 is Sh. Ram Jee Singh Kushvaha, Joint Wireless Advisor, WPC Wing, New Delhi. He has deposed, in great detail, about significance of spectrum in running mobile

telephony and the procedure for allocation thereof. He has also deposed as to how the applications for allocation of spectrum were processed and spectrum was allocated to various applicants in different service areas. He has proved various documents Ex PW 57/A to 57/Q.

187. PW 58 is Sh. Adi Ram, Section Officer, DoT. He deposed that on 10.01.2008, he, alongwith three other officials, was deputed at the reception of DoT for collecting compliance of LOIs. He further deposed that he collected the compliance and recorded time thereon. He has proved documents Ex PW 58/A to 58/L.

188. PW 59 is Sh. Sudhir Kumar Saxena, Director (Telecom), DoT. He deposed that on 10.01.2008, he alongwith late Sh. Kirthy Kumar, DDG (C&A), were present at the reception of DoT, where four counters were set up for receiving compliance to LOIs. He further deposed that a wall clock was hung on the front side in the reception area. He further deposed that the work of accepting LOIs started at about 4 PM and continued till 5:30 PM.

189. PW 60 is Sh. Avdhesh Kumar Srivastava @ A. K. Srivastava, DDG (AS), DoT, New Delhi. He deposed that Access Services (AS) Cell deals with issues relating to licensing of access services including UAS licences and the cell is headed by DDG (AS). He is a key witness as he is associated with the entire process of issuing of LOIs, grant of UAS licences and allocation of spectrum from May 2007 to May 2008. He has narrated the entire sequence of events in great detail from beginning to end

as unfolded in the DoT with regard to issuance of LOIs, grant of UAS licences and allocation of spectrum. He has proved a large number of documents ranging from Ex PW 60/A to 60/T-1.

190. PW 61 is Sh. G. S. Grover, Member (Services), Telecom Commission. He has deposed about allocation of spectrum in Delhi service area as per note sheet Ex PW 57/P-7.

191. PW 62 is Sh. A. S. Verma, Director (VAS-II), DoT, who held this post from May 2003 to August 2009. He has deposed about processing of applications for UAS licences. He has proved documents/ notes Ex PW 62/A to 62/B-2. He has also deposed as to how the policy of first-come first-served was approved on 24.11.2003 by the then MOC&IT Sh. Arun Shourie.

192. PW 63 is Sh. Alok Kumar, Chief Manager, Punjab National Bank, PNB House Branch, Fort, Mumbai. He has deposed as to how fund-based and non fund-based credit facilities of Rs. 1200 crore and Rs. 717 crore respectively were disbursed to Swan Telecom (P) Limited in the form of bank drafts and bank guarantees for obtaining UAS licences from DoT. He has proved documents Ex PW 63/A to 63/C-4.

193. PW 64 is Ms. Mythili Ramakrishnan, Manager, Punjab National Bank, Fort Branch, Mumbai. She has also deposed about credit facilities to Swan Telecom (P) Limited on the same lines as deposed to by PW 63. She has also proved documents Ex PW 64/A to 64/A-9.

194. PW 65 is Sh. Sanath Kumar Aggarwal, Deputy General Manager, Punjab National Bank, Fort Branch, Mumbai. He has also deposed on the lines of PW 63 and PW 64 regarding

credit facilities to Swan Telecom (P) Limited. He has proved letters Ex PW 65/A to 65/D.

195. PW 66 is Sh. T. K. Vishwanathan, former Law Secretary to Government of India. He deposed that on receipt of file, Ex PW 36/B, pertaining to UAS licensing policy, from DoT, he recorded note dated 01.11.2007, Ex PW 36/DK-17. He deposed that the since the reference received from DoT was not clear, Law Ministry desired it to refine the case statement and he marked the file to the then Minister, Law and Justice, who recorded note, Ex PW 60/C-2, regarding importance of the case and for that reason the need to refer the matter to Empowered Group of Ministers. He also proved a note Ex PW 66/A.

196. PW 67 is Ms. Preeti Malhotra, Company Secretary, Spice Communications Limited. She has deposed about filing of applications by the company for UAS licences and issuance of LOIs to it on 10.01.2008 on the lines deposed to by PW 33 Sh. Akhilesh Kumar Saxena. She has also proved the applications/ documents Ex PW 67/A to 67/Q.

197. PW 68 is Sh. Ujjwal Mehta, an employee of DB group. He is married to Ms. Parul Mehta. He has deposed as to how shares of Giraffe Consultancy Services (P) Limited were transferred in his name and his wife's name on 25.02.2007 by transfer forms, Ex PW 68/A to 68/C, from Power Surfer Interactive (India) (P) Limited. He has further deposed as to how these shares were transferred by him and his wife in the name of Dynamix Balwa Infrastructure Limited on 29.02.2008 vide transfer forms Ex PW 68/D to 68/F. He further deposed

that in February 2007, Sh. Deodatta Pandit, Company Secretary, had told him that company was going to invest in telecom sector and he alongwith his wife were to purchase shares of Giraffe Consultancy Services (P) Limited as per the instructions of Shahid Balwa.

198. PW 69 is Sh. K. L. Kamboj, Regional Director, Ministry of Corporate Affairs (MCA). He had examined the balance sheets/ documents filed by Kusegaon Fruits and Vegetables (P) Limited, Cineyug Films (P) Limited and Kalaignar TV (P) Limited and has deposed about the movement/ treatment of the various amounts involved in the case in the balance sheets of these three companies. He had also examined the record of Unitech group companies and after examining the same gave his report Ex PW 69/E, to the effect that these companies were compiling only paper minutes without actually holding any meeting and that they were not having requisite object clause on the date of applications to carry on the business of telecom. He has proved documents Ex PW 69/A to 69/E.

199. PW 70 is Sh. Henry Richard, Registrar of Companies, Chennai. He deposed that on receipt of a letter from CBI, he examined the documents made available to him, prepared report dated 11.03.2011, Ex PW 70/A, and the report was sent to CBI through letter Ex PW 70/B. He further deposed that the question asked was whether Swan Telecom (P) Limited was an "associate" of Reliance Telecom Limited/ Reliance Communications Limited and he replied in the positive.

200. PW 71 is Sh. Ashok Wadhwa, a Chartered Accountant. He has deposed that he was not a director in Swan Telecom (P) Limited and Tiger Traders (P) Limited, though he is shown to be a director in these two companies and also to have attended some meetings of the board of the two companies. He has proved documents Ex PW 71/A to 71/G-1.

201. PW 72 is Sh. Pradeep Sevanthi Lal Shah, a Chartered Accountant, who was a director on the board of Swan Telecom (P) Limited and Tiger Trustees (P) Limited. He attended some meetings of the board of these two companies. He has proved the minutes books/ minutes of the board meetings of the two companies, Ex PW 72/A to 72/E.

202. PW 73 is Sh. M. K. Rao, Deputy Wireless Advisor, DoT. He has deposed about the procedure for allocation of spectrum. He also deposed that many documents were handed over by him to the CBI. He has proved documents Ex PW 73/A to 73/J.

203. PW 74 is Ms. M. Revathi, Assistant Wireless Advisor, New Delhi. She has also deposed about the procedure for allocation of spectrum. She has also deposed about allocation of spectrum to some companies. She has proved documents Ex PW 74/A to 74/M.

204. PW 75 is Sh. Sukhbir Singh, Director (AS-III), DoT. He has deposed about amendment to access service licence regarding intra-service area roaming. He has also deposed about processing of files for UAS licences, distribution of LOIs and amendment to UAS licence of TTSL. He has proved documents

Ex PW 75/A, 75/A-1 and 75/A-2.

205. PW 76 is Sh. Fayaz Ahmed, an employee of DB group. He deposed that shares of Giraffe Consultancy Services (P) Limited were purchased by him in February 2007 through share transfer forms, Ex PW 76/A. He further deposed that these shares were sold to Dynamix Balwa Infrastructure Limited on 29.02.2008 through share transfer form, Ex PW 76/B. He did not make any payment for purchasing the shares nor did he receive any sale consideration. He has also proved photocopies of his statement of account Ex PW 76/C to 76/E and letter to CBI, Ex PW 76/F.

206. PW 77 is Sh. K. Sridhara, Member (T), DoT. He has deposed about processing of TRAI recommendations, procedure for allocation of spectrum and allocation thereof to some companies. He has proved documents Ex PW 77/A to 77/E.

207. PW 78 is Sh. D. Subba Rao, who was Finance Secretary to Government of India at the relevant time. He has deposed about his correspondence with DoT regarding cross-over licences for GSM operations, rate of Rs. 1600 crore determined in 2001 being applied in 2007, pricing of spectrum etc. He has proved documents Ex PW 78/A to 78/N-1.

208. PW 79 is Sh. R. Gopalan, the then Secretary, Department of Economic Affairs, Government of India. He has proved sanction for prosecution, Ex PW 79/A, accorded by the competent authority for prosecution of R. K. Chandolia, a public servant.

209. PW 80 is Sh. A. S. Narayanan, Deputy General

Manager, Loop Mobile (India) Limited. He has deposed that Shipping Stop Dot Com (India) (P) Limited, later on Loop Telecom (P) Limited, had submitted applications for UAS licences in 21 service areas. He also deposed that on 10.01.2008, he had gone to DoT for collecting LOIs and compliance was submitted on the same day.

210. PW 81 is Sh. Madan Chaurasia, Section Officer (AS-I), DoT. He has deposed about processing of UASL applications in the DoT and distribution of LOIs on 10.01.2008. He has proved documents Ex PW 81/A to 81/D.

211. PW 82 is Sh. Pushpender Kumar Sharma, Section Officer, PMO. He has deposed that he maintains record in the PMO and that through letter dated 09.03.2011, Ex PW 82/A, he had sent the documents/ letters mentioned therein to the CBI and these include Ex PW 7/A to 7/C and Ex PW 82/B to 82/D.

212. PW 83 is Ms. S. Meenakshi, Deputy Registrar of Companies, ROC office, Chennai. She has proved copies of various documents filed by Kalaignar TV (P) Limited with the ROC, Ex PW 83/A-1 to 83/A-8 and Ex PW 83/B-1 to 83/B-3.

213. PW 84 is Sh. Amit Khot, Deputy Branch Manager, ICICI Bank, Mumbai. He has deposed about accounts of ADAE Ventures (P) Limited, Zebra Consultants (P) Limited, Swan Consultants (P) Limited, Parrot Consultants (P) Limited, Tiger Traders (P) Limited, AAA Consultancy Services Co. (P) Limited, BSES Ventures Limited, Vikata Engineering Services (P) Limited, Giraffe Consultancy Services (P) Limited and Swan Capital (P) Limited with the bank. He has proved documents Ex PW 84/A

to 84/R.

214. PW 85 is Sh. Ajay Chandra, Managing Director, Unitech Limited. He has deposed about the telecom business of Unitech group and incorporation of eight Unitech group companies. He has proved documents Ex PW 85/A to 85/B-3.

215. PW 86 is Ms. Manju Madhavan, Member (Finance), Telecom Commission. She has deposed about her note dated 30.11.2007, Ex PW 36/B-11, regarding revision of entry fee.

216. PW 87 is Sh. Dinesh Jha, Deputy Director, DoT. He deposed that at the relevant time, he was Assistant Wireless Advisor in WPC wing. He has deposed about procedure for allocation of spectrum, processing of applications of some companies for allocation of spectrum and allocation thereof to them. He has proved documents Ex PW 87/A to 87/F.

217. PW 88 is Sh. R. K. Gupta, who was ADG (AS-I) at the relevant time. He has deposed about distribution of LOIs and signing of licence agreements with the companies. He has proved documents Ex PW 88/A to 88/K.

218. PW 89 is Mohd. Ashraf Nagani, an employee of DB group. He deposed that through share transfer form dated 25.02.2007, Ex PW 89/A, he had purchased shares of Giraffe Consultancy Services (P) Limited. He further deposed that he transferred these shares to Dynamix Balwa Infrastructure (P) Limited through transfer form dated 29.02.2008, Ex PW 89/B. He further deposed that neither he paid anything for purchasing these shares nor he received any sale consideration. He has also deposed about Kusegaon Fruits and Vegetables (P) Limited, in

which he was a director, and proved its minutes book and minutes, Ex PW 89/C to 89/D-2.

219. PW 90 is Sh. Ranjit Kumar Jha, Associate Banker, Citi Bank, Connaught Place, New Delhi. He had handed over documents relating to Cineyug Films (P) Limited to the CBI. He has also deposed about transfer of money from the account of the company on different occasions and has proved documents Ex PW 90/A to 90/R-1.

220. PW 91 is Sh. R. P. Aggarwal, Wireless Advisor, DoT. He has deposed about procedure for allocation of spectrum, transfer and posting of Group A officers including Sh. R. J. S. Kushvaha and Sh. D. Jha and regarding allocation of spectrum in Delhi service area and role of R. K. Chandolia therein. He has proved documents Ex PW 91/A and 91/B.

221. PW 92 is Sh. P. K. Mittal, DDG (AS-II). He has deposed about intra-circle roaming arrangements. He has further deposed that he was asked by Secretary (T) to put up a note to make intra-circle roaming arrangement mandatory.

222. PW 93 is Sh. Rajbir Singh Chahal, AGM, Oriental Bank of Commerce. He deposed that in February 2010, he was Chief Manager of Goregaon branch of the bank at Mumbai. He has deposed about accounts of Dynamix Realty, Kusegaon Fruits and Vegetables (P) Limited and Cineyug Films (P) Limited with the bank and has proved various documents, statements of accounts, cheques, RTGS requests etc., for transfer of money and has proved documents Ex PW 93/A to 93/P-11 relating to the three accounts.

223. PW 94 is Sh. Vinod Kumar Khumman, Officer, Goregaon Branch, OBC, Mumbai. He had delivered letter Ex PW 93/P to the CBI on the asking of PW 93 Sh. R. S. Chahal.

224. PW 95 is Sh. Anil Rustgi, Company Secretary, Unitech Wireless (Tamil Nadu) (P) Limited. He had handed over documents relating to Unitech group companies to CBI on four occasions and has proved these documents Ex PW 95/A to 95/O.

225. PW 96 is Sh. Deodatta Pandit. He deposed that in 2007, he was company secretary of DB Hospitality Limited, in which Shahid Balwa and Vinod Goenka were directors. He has deposed about his transfer as company secretary of Swan Telecom (P) Limited, board meetings of Swan Telecom (P) Limited, Tiger Traders (P) Limited and Giraffe Consultancy Services (P) Limited, maintenance of statutory record of these companies etc. He has also proved documents relating to these companies, Ex PW 96/A to 96/R-24.

226. PW 97 is Sh. B. B. Singh, who was DDG (LF) in DoT at the relevant time. He deposed that he was primarily responsible for collection of licence fee from telecom operators and was also rendering financial advice to Member (F). He has deposed as to how an application for UAS licence is to be examined from licence fee/ financial angle and as to how the applications were actually examined in the branch before issuance of LOIs, with specific reference to eligibility of Swan Telecom (P) Limited and violation of substantial equity clause by it. He has proved check list, Ex PW 97/A.

227. PW 98 is Sh. Amit Sarin, Director and Chief Executive Officer, Anant Raj Limited, New Delhi. He has deposed about transfer of Rs. 100 crore to Oriental Buildtech (P) Limited of Anant Raj group of Industries from Sonata Investments of Reliance group and thereafter, transfer of the amount from Anant Raj Agencies (P) Limited, a company of Anant Raj group of Industries to Giraffe Consultancy Services (P) Limited, a group company of Reliance ADA Group. He has proved documents Ex PW 98/A to 98/R.

228. PW 99 is Sh. Devendra Chandavarkar, Branch Operations Manager, Backbay Reclamation Branch, ICICI Bank, Mumbai. He has deposed about opening of bank accounts in the branch by Swan Capital (P) Limited, Giraffe Consultancy Services (P) Limited and Vikata Engineering Services (P) Limited. He has also deposed about statements of account/ transfer of money from/ into the accounts of Swan Telecom (P) Limited, Tiger Traders (P) Limited, Vikata Engineering Services (P) Limited, Sidharath Consultancy Services (P) Limited, Etisalat DB Telecom (P) Limited, Tractus Consultants (P) Limited, DB Tele Wimax (P) Limited, Dynamix Balwas Infrastructure (P) Limited, Reliance Communications Limited etc., and has proved the bank statements, cheques, RTGS requests etc., in this regard. He has also proved documents Ex PW 99/A to 99/K-66.

229. PW 100 is Sh. Ashish Karyekar, a qualified company secretary, formerly with Reliance ADA group. He has deposed about memorandum of associations of Parrot Consultants (P)

Limited, Zebra Consultants (P) Limited, Tiger Traders (P) Limited and Giraffe Consultancy Services (P) Limited, minutes books and minutes of various board meetings of these companies, cheques issued by him or in his favour by these companies etc. He has proved documents Ex PW 100/A to 100/T-14.

230. PW 101 is Sh. Hasit Shukla, Company Secretary, Reliance Communications Limited. He has deposed about minutes of various board meetings of Reliance Telecom Limited, ADAE Ventures (P) Limited, AAA Consultancy Services (P) Limited, Swan Capital (P) Limited and Tiger Traders (P) Limited, some resolutions passed in the board meetings of these companies, transfer of shares by the companies, transfer of money from one company to another etc. He has proved documents Ex PW 101/A to 101/O-4.

231. PW 102 is Sh. G. E. Vahanwati, Attorney General for India, who was Solicitor General of India during the relevant time. He has deposed about his appearance before the Hon'ble TDSAT in case titled Cellular Operators Association of India (COAI) and others Vs. Union of India, petition No. 286 of 2007, his meeting with the then External Affairs Minister, visit of Siddhartha Behura, the then Secretary (T), to his residence and his recording of note dated 07.01.2008, Ex PW 60/L-31, and also about the press release Ex PW 60/L-27. He has also proved documents Ex PW 102/A to 102/C.

232. PW 103 is Sh. Kushal Nagpal, DGM (Finance and Accounts), Unitech Limited. He has deposed about a

memorandum of understanding dated 09.10.2007, signed between Unitech Limited and Tata Realty and Infrastructure Limited (TRIL), for sale of land admeasuring 517 acres in Gurgaon by Unitech to TRIL for an amount of Rs. 2500 crore and for that Unitech Limited got an advance of Rs. 1700 crore. He has also deposed about various bank drafts got issued by Unitech group companies in favour of DoT in December 2007. He has proved documents Ex PW 103/A to 103/J-3.

233. PW 104 is Sh. Gaurav Jain, AGM (Legal and Compliance), Unitech Limited. He was involved in preparation and filing of applications for UAS licences by eight Unitech group companies. He has proved minutes of various board meetings of the companies, the applications and documents relating thereto, statements of account of the companies etc., Ex PW 104/A to 104/Q-8.

234. PW 105 is Sh. S. Somasundaram, Sr. Manager, Indian Bank, Chennai. He has deposed about the account of Kalaignar TV (P) Limited and deposit of various amounts in its account through bank deposit vouchers and thereafter, transfer of various amounts from its account to Cineyug Films (P) Limited by RTGS requests/ cheques and has also proved its statements of account for various period. He has proved documents Ex PW 105/A to 105/H-1.

235. PW 106 is Sh. Mitesh Kurani, Chief Financial Officer, Cineyug Films (P) Limited. He has deposed about share subscription and shareholder's agreement, Ex PW 106/B, entered into between Cineyug Films (P) Limited and Kalaignar

TV (P) Limited, agreement to pledge, Ex PW 106/C, executed between Ms. M. K. Dayalu, Kanimozhi Karunanithi, Sharad Kumar and Kalaignar TV (P) Limited, on one part, in favour of Cineyug Films (P) Limited, subscription and shareholder's agreement, Ex PW 106/D, between Karim Morani and others and Kusegaon Fruits and Vegetables (P) Limited, ledger accounts of Kalaignar TV (P) Limited and Kusegaon Fruits and Vegetables (P) Limited, ICD agreements between Kalaignar TV (P) Limited and Cineyug Films (P) Limited, correspondence exchanged between these companies regarding the transfer of amount of Rs. 212,00,89,041, reflection of the amount in the balance sheet of the company etc. He has proved documents Ex PW 106/A to 106/L-3.

236. PW 107 is Sh. P. Amirtham, Director, Kalaignar TV (P) Limited. He has proved the minutes book and minutes of various meetings of board, auditors report and balance sheet of Kalaignar TV (P) Limited, ICD agreements etc., as Ex PW 107/A to 107/C-5.

237. PW 108 is Sh. Atul Pancholi, Manager (Accounts), Goan Real Estate and Constructions (P) Limited. He was a director in Kusegaon Fruits and Vegetables (P) Limited and has deposed about transfer of shares of the company in favour of Asif Balwa and Rajiv Agarwal, as reflected in register of members, Ex PW 108/A. The fact of his joining as director is reflected at pages 48 to 50 of the register, Ex PW 108/B. He has proved minutes book of the company, Ex PW 108/C. He has also deposed about proposal from Cineyug Films (P) Limited for

investment of Rs. 200 crore towards 8% ROCCPS and Rs. 6.25 crore as equity.

238. PW 109 is Sh. Tushar Shah, who was working with IL&FS at the relevant time. He has deposed about the financial accommodation granted by the company to Dynamix Realty, the amount of financial accommodation, rate of interest and other requirements etc. He has proved documents Ex PW 109/A to 109/C-12.

239. PW 110 is Sh. Nitin Jain, Director (AS-I), DoT. He has also deposed about the processing of applications for UAS licences in the DoT and the procedure for grant of licences. He has proved documents Ex PW 110/A to 110/F.

240. PW 111 is Sh. Pramod Kumar Goenka, elder brother of Vinod Goenka. He has deposed about incorporation of Kusegaon Fruits and Vegetables (P) Limited and its transfer to Rajiv Agarwal and Asif Balwa, Conwood Construction and Developers (P) Limited and Eversmile Construction Co. (P) Limited and constitution of partnership firm Dynamix Realty by Conwood Construction and Developers (P) Limited, Eversmile Construction Co. (P) Limited and DB Realty Limited. He has also proved minutes books of the companies, minutes of various board meetings of these companies, cheques issued by these companies/ partnership firm etc. He has proved documents Ex PW 111/A to 111/N.

241. PW 112 is Sh. Satish Aggarwal, General Manager (Accounts), DB Realty Limited. He has deposed about account opening form of Kusegaon Fruits and Vegetables (P) Limited,

cheques issued by it and the role of Rajiv Agarwal, Asif Balwa, Shahid Usman Balwa and Vinod Goenka in the decision making of Kusegaon Fruits and Vegetables (P) Limited and Dynamix Realty, a partnership firm.

242. PW 113 is Sh. Krishan Goel, a Chartered Accountant, who joined Protiviti Consulting (P) Limited, a management consultancy company, as an associate in 2006. He deposed that this company conducted due diligence of Green House Promoters (P) Limited, a Chennai based company, for proposed investment therein by DB Realty Limited. He has further deposed about the process of conducting due diligence and payment of fee for that. He has proved documents Ex PW 113/A to 113/F.

243. PW 114 is Ms. Aseela Vinod Goenka, wife of Vinod Goenka. She was on the board of Conwood Construction and Developers (P) Limited. She has also deposed about the functioning of Dynamix Realty.

244. PW 115 is Ms. Neelam Soorma, who was/is a director, alongwith Karim Morani, Aly Morani and Mohammed Morani, on the board of Cineyug Media and Entertainment (P) Limited. She has deposed about the working of the board of the company. She has also deposed that approximately Rs. 206 crore were received in this company from Kusegaon Fruits and Vegetables (P) Limited in the year 2008-09 and Rs. 200 crore was given by this company to Kalaignar TV (P) Limited. She has deposed about account opening form submitted by the company with the bank, cheques issued by the company, share

subscription and shareholders agreement signed by the directors and the minutes of various board meetings of the company. She has proved documents Ex PW 115/A to 115/C.

245. PW 116 is Sh. G. Rajendran, General Manager (Finance), Kalaignar TV (P) Limited. He has deposed about share subscription and shareholders agreement signed by the company with Kalaignar TV (P) Limited, receipt of Rs. 200 crore by the company from Cineyug Films (P) Limited, ICD agreements signed with this company and return of the money. He has proved documents Ex PW 116/A to 116/C.

246. PW 117 is Sh. M. Krishnamoorthy, who was a driver with Green House Promoters (P) Limited. He has narrated about his job profile and the duties performed by him in the year 2008-09.

247. PW 118 is Sh. S. A. K. Narayanan, Company Secretary, DB Realty Limited. He has deposed about the directors of DB Realty Limited, constitution of partnership firm Dynamix Realty and minutes of various board meetings of DB Realty Limited. He deposed that Vinod Goenka is executive chairman of DB Realty Limited and Shahid Balwa is its managing director. He has proved seizure memos, Ex PW 118/A and 118/B.

248. PW 119 is Ms. Sunita Goenka, sister of Vinod Goenka. She deposed that she is a director on the board of Eversmile Constructions Co. (P) Limited and Conwood Construction and Developers (P) Limited. She has also deposed about the constitution of partnership firm Dynamix Realty,

about the minutes of various board meetings of Eversmile Construction Co. (P) Limited and Conwood Construction and Developers (P) Limited. She has also deposed that Rs. 209.25 crore was given by Dynamix Realty to Kusegaon Fruits and Vegetables (P) Limited in 2008-09. She has proved documents Ex PW 119/A to 119/B-4.

249. PW 120 is Sh. R. P. Paramesh Kumar, nephew of A. Raja. He deposed that he was a director in Green House Promoters (P) Limited, wherein M. A. Parmeshwari, wife of A. Raja, Kaliaperumal, elder brother of A. Raja, and his (PW 120) other two relatives, Ramchandran Ramganesh and Mrs. Malarvizhi were also directors. He has proved seizure memo, cheques issued by Eterna Developers (P) Limited in favour of Green House Promoters (P) Limited and by Green House Promoters (P) Limited in favour of Eterna Developers (P) Limited, account opening forms of Green House Promoters (P) Limited and some other documents, Ex PW 120/A to 120/L.

250. PW 121 is Sh. T. K. Vardakrishnan, Joint Wireless Advisor, DoT, New Delhi. He has deposed about allocation of spectrum in different service areas to different companies and also about seizure of documents on different dates from DoT by CBI. He has proved documents Ex PW 121/A to 121/R.

251. PW 122 is Aly Gulamali Morani, brother of Karim Morani, who is also a director on the board of Cineyug Films (P) Limited. He has deposed about the transaction of Rs. 206.25 crore between Cineyug Films (P) Limited and Kusegaon Fruits and Vegetables (P) Limited and it being sent to Kalaignar TV (P)

Limited. He has also deposed about minutes of various board meetings of Cineyug Films (P) Limited. He has also deposed about share subscription and shareholders agreement entered into between Cineyug Films (P) Limited and Kalaignar TV (P) Limited, ICD agreements, share subscription and shareholders agreement entered into between Cineyug Films (P) Limited and Kusegaon Fruits and Vegetables (P) Limited. He has proved documents Ex PW 122/A-1 to A-12.

252. PW 123 is Sh. N. M. Manickam, Director (AS-IV), DoT, New Delhi. He has deposed about the procedure adopted for distribution of LOIs as per the instructions of R. K. Chandolia and the distribution of LOIs in the evening of 10.01.2008 simultaneously by setting up four counters.

253. PW 124 is Sh. Yashvardhan Goenka, nephew of Vinod Goenka, who is also a director on the board of Eversmile Construction Co. (P) Limited. He has deposed about the constitution of partnership firm Dynamix Realty. He has proved minutes of various board meetings of Eversmile Construction Co. (P) Limited, Ex PW 124/A-1 to A-39.

254. PW 125 is Sh. Mohammed Gulamali Morani, brother of Karim Morani, who is also a director on the board of Cineyug Films (P) Limited. He has deposed on the lines of PW 122. He has also proved three seizure memos, Ex PW 125/A to 125/C.

255. PW 126 is Ms. Niira Radia, who used to advise Tatas on telecom matters. She deposed that TTSL was not granted spectrum, though they were ahead of everybody else. She has proved her conversation with Sh. Aseervatham Achary,

Additional Private Secretary to A. Raja, R. K. Chandolia, his Private Secretary, with A. Raja and Kanimozhi Karunanithi, Ex PW 126/B-1 to 126/B-11. She has proved identification-cum-transcription memo and its annexure, Ex PW 126/A and 126/B.

256. PW 127 is Sh. Pushpraj Jaishankar Kannan, who was a director on the board of Eterna Developers (P) Limited. He has also deposed about a transaction between this company and Green House Promoters (P) Limited. He has proved the account opening form and the cheques issued by the company as Ex PW 127/A to 127/C.

257. PW 128 is Kevin Amritraj, who was a marketing executive with Green House Promoters (P) Limited, a company engaged in real estate business. He knows Krishnamoorthy, who was a driver with the company.

258. PW 129 is T. Balakrishnan, Manager, Canara Bank, Habibullah Road branch, Chennai. He has deposed that Green House Promoters (P) Limited was having four current accounts in that branch of the bank and has proved account opening forms, their statements of account and the cheques issued by the company, Ex PW 129/B to 129/E. He has also deposed about the seizure of these documents by CBI through letter Ex PW 129/A.

259. PW 130 is Sh. V. D. Rao, Sr. Vice President, Reliance Communications Limited. He has deposed about receipt of Rs. 1000 crore in March 2007 against an NOA, that is, notification of award, Ex PW 130/A.

260. PW 131 is Sh. Sudhir Gupta, Advisor, TRAI. He has

deposed about recommendations dated 27.10.2003 being sent to the Government, consultation paper dated 16.07.2003 and other files relating to network division of TRAI, Ex PW 131/A to 131/J.

261. PW 132 is Sh. Arvind Bansal, Metropolitan Magistrate, Delhi. He had recorded statements of Sh. Ashok Wadhwa, Sh. Avdhesh Kumar Srivastava and Sh. R. P. Aggarwal under Section 164 CrPC and has proved the statements/ documents, Ex PW 132/A to 132/C-2.

262. PW 133 is Ms. Kiran Sharma, a practicing Company Secretary. She deposed that Unitech group was one of her clients. She deposed that she issued various certificates to Unitech group companies for filing with the applications for UAS licences. She has proved these certificates/ documents Ex PW 133/A-1 to 133/Q-21.

263. PW 134 is Sh. Rajeev Prakash, Branch Manager, State Bank of India, Connaught Circus branch, New Delhi. He deposed that Oriental Buildtech (P) Limited is maintaining account No. 30014633468 with the branch. He has proved its statements of account, pay-in-slips, through which cheques were deposited in the account, and an RTGS request for transfer of Rs. 100 crore from the account in favour of Sonata Investments Limited. He has proved these documents Ex PW 134/A to 134/L.

264. PW 135 is Sh. Balraj Singh, Assistant Manager, State Bank of India, Janpath, New Delhi. He deposed that Anant Raj Agencies (P) Limited is maintaining account No. 10185775620

and 10185879028 and has proved the statements of account pertaining to these two accounts, Ex PW 135/A to 135/C, RTGS details of Rs. 100 crore, Ex PW 135/D and 135/E, and certified copy of account opening form of account No. 10185879028, Ex PW 135/F.

265. PW 136 is Sh. Yogesh Sharma, President (Finance), Anant Raj Industries, New Delhi. He has deposed about e-mails exchanged between Reliance ADA group and Anant Raj group of Industries regarding transfer of Rs. 100 crore and transfer of the amount.

266. PW 137 is Sh. Jignesh Shah, Company Secretary, DB group. He has deposed about the statutory registers of Eversmile Construction Co. (P) Limited, Kusegaon Fruits and Vegetables (P) Limited and DB Realty Limited. He has proved two lists containing details of Conwood Construction and Developers (P) Limited and Eversmile Construction Co. (P) Limited and seizure memos Ex PW 137/A to 137/C.

267. PW 138 is Sh. Rajan Chheda, Assistant Vice President, HDFC, Mumbai. He has proved statements of account of Reliance Communications Limited, Reliance Telecom Limited, Swan Telecom (P) Limited and Reliance Communications Infrastructure Limited regarding their account No. 00600310001874, 02400310001115, 00600310010740 and 00600310004959 respectively, Ex PW 138/A to 138/A-7 and letter Ex PW 138/A-8 through which these statements were sent to CBI.

268. PW 139 is Sh. Ramesh Shenoy, Company Secretary,

Reliance Infrastructure Limited. He has deposed about letters written to ICICI bank regarding opening of bank accounts in the name of Swan Capital (P) Limited and Giraffe Consultancy Services (P) Limited, statutory register of Swan Capital (P) Limited and its directors and companies by the name of Tiger Trustees (P) Limited, Zebra Consultants (P) Limited, Parrot Consultants (P) Limited, Swan Consultants (P) Limited and Sonata Investments Limited being group companies of Reliance Infrastructure Limited and also about some e-mails exchanged between the different officials of Reliance ADA group regarding these companies and also about transfer of Rs. 100 crore. He has proved documents Ex PW 139/A to 139/C-8.

269. PW 140 is Sh. Anil D. Ambani, Chairman, Reliance ADA group. He has deposed about account opening forms and statutory registers of AAA Consultancy Services (P) Limited and ADAE Ventures (P) Limited. He has also deposed about the account opening forms of Swan Consultants (P) Limited, Zebra Consultants (P) Limited and Parrot Consultants (P) Limited. He has proved documents Ex PW 140/A to 140/E.

270. PW 141 is Ms. Tina Ambani. She has also deposed about the bank accounts of Zebra Consultants (P) Limited, Swan Consultants (P) Limited, Parrot Consultants (P) Limited, Tiger Traders (P) Limited, ADAE Ventures (P) Limited, AAA Consultancy Services (P) Limited and about the minutes of ADAE Ventures (P) Limited and AAA Consultancy Services (P) Limited.

271. PW 142 is Sh. Sumit Prakash Choithani, Deputy Vice

President, HDFC Bank, Mumbai. He has deposed about the bank accounts of Reliance Communications Limited, Reliance Telecom Limited, Swan Telecom (P) Limited and Reliance Communications Infrastructure Limited, as deposed to by PW 138 Sh. Rajan Chheda. He has also proved a cheque dated 02.03.2007 for an amount of Rs. 974,49,04,000, issued by Reliance Communications Limited in favour of Reliance Telecom Limited, Ex PW 142/B, pay-in-slip of which is Ex PW 142/C and covering letter for producing the same is Ex PW 142/A. He deposed that the cheque was honoured.

272. PW 143 is Sh. Kamalkant Gupta, General Manager, Reliance Power Limited. He has proved e-mail, sent to him by Hari Nair, and by him (PW 143) to other officials of the group, namely, Himanshu Aggarwal & Deepti Dhariwal and Shubha Dalmia, Ex PW 143/A to 143/C. He further deposed that Hari Nair was checking as to who were shareholders and directors in ADAE Ventures (P) Limited.

273. PW 144 is Sh. Deepak R. Handa, Sr. Scientific Officer, Grade-I (Documents), CFSL, New Delhi. He had examined the documents sent to him for examination by CBI. He has proved letter, Ex PW 144/A, through which documents were received by him. He further deposed that he examined these documents and prepared his report, Ex PW 144/B, which was sent to CBI through letter, Ex PW 141/B-1. He further deposed that he had also received documents through letters Ex PW 144/C and 144/E. He examined these documents also and prepared reports Ex PW 144/D and 144/G, which were sent to

CBI vide letters Ex PW 144/D-1 and 144/G-1.

274. PW 145 is Sh. Vijay Verma, Sr. Scientific Officer, Grade-II-cum-Assistant Chemical Examiner, CFSL, New Delhi. He deposed that he had received documents for examination through letter Ex PW 145/A. He also deposed that standard handwriting of Gautam Doshi, Ex PW 145/A-1 to A-10, of Surendra Pipara, Ex PW 145/A-11 to A-20, and of Hari Nair, Ex PW 145/A-21 to A-34, were also received by him. He further deposed that he examined these documents and prepared his report Ex PW 145/G, which was sent to CBI through letter Ex PW 145/G-1.

275. PW 146 is Ms. Bhavna Kalia, Metropolitan Magistrate, New Delhi. She deposed that she recorded statements of Sh. Ashish Karyekar, Sh. Deodatta Pandit, Sh. Ram Jee Singh Kushvaha and Sh. Aseervatham Achary under Section 164 CrPC and has proved these statements and documents related thereto, Ex PW 146/A to 146/D-1.

276. PW 147 is Dy. SP Rajesh Chahal of CBI. He had assisted the investigating officer Sh. Vivek Priyadarshi in the investigation of the case regarding collection of documents and examination of witnesses. He has deposed about the documents collected and the witnesses examined by him.

277. PW 148 is Inspector Shyam Prakash of CBI. He had also assisted the investigating officer Sh. Vivek Priyadarshi in the investigation of the case regarding collection of documents and examination of witnesses. He has deposed about the documents collected and the witnesses examined by him. He

also got the statements of seven witnesses recorded under Section 164 CrPC.

278. PW 149 is Inspector Anil Bisht of CBI. He had also assisted the investigating officer Sh. Vivek Priyadarshi in the investigation of the case regarding collection of documents and examination of witnesses. He has deposed about the documents collected and the witnesses examined by him.

279. PW 150 is Dy. SP V. M. Mittal of CBI. He had also assisted the investigating officer Sh. Vivek Priyadarshi in the investigation of the case regarding collection of documents and examination of witnesses. He has deposed about the documents collected and the witnesses examined by him. He had also examined the documents collected by him and has also deposed about the facts disclosed by the examination of these documents.

280. PW 151 is Dy. SP S. K. Sinha of CBI. He had also assisted the investigating officer Sh. Vivek Priyadarshi in the investigation of the case regarding collection of documents and examination of witnesses. He has deposed about the documents collected and the witnesses examined by him. He had also examined the documents collected by him and has also deposed about the facts disclosed by the examination of these documents.

281. PW 152 is Ms. Dayalu Karunanithi. She is mother of Kanimozhi Karunanithi. She had signed certain papers relating to Kalaignar TV (P) Limited.

282. PW 153 is Sh. Vivek Priyadarshi, Superintendent of

Police, ACB, CBI, New Delhi. He had investigated the case and during investigation either collected or got collected numerous documents. He has deposed about collection/ seizure of these documents. Furthermore, he examined many witnesses and also got numerous witnesses examined by other officers. He has also deposed about the examination of these witnesses. He also obtained sanction for prosecution of accused R. K. Chandolia. He further deposed that he examined the record of the case and thereafter, filed the charge sheet in the case.

Closure of Prosecution Evidence

282-A. After examining these witnesses, prosecution closed its evidence.

Statement of Accused Under Section 313 CrPC

283. On closure of prosecution evidence, statement of each accused was recorded under Section 313 CrPC, in which each one of them denied the allegations against him/ her as false. Every accused claimed that he/ she has been falsely implicated in this case. Out of the seventeen accused, only twelve expressed their desire to lead evidence in their defence.

Defence Evidence

284. However, only ten accused have examined witnesses in their defence. In all, twenty-nine witnesses have been examined in defence.

285. DW 1 is Sh. A. Raja, who has examined himself as a witness in his own defence. He has deposed in detail about his role in the grant of UAS licences and the procedure followed for

that.

286. DW 2 is Sh. J. B. S. Rawat, Joint Director, Lok Sabha Secretariat, who has been examined for A. Raja, has proved Lok Sabha debates for the dates 26.11.2007, 22.02.2010 and 21.02.2011, Ex DW 2(A-1)/X to Z.

287. DW 3 is Sh. Ranjan Khanna, Additional Commissioner, Customs, Excise and Service Tax Appellate Tribunal, who has also been examined by A. Raja, and who was earlier working as Private Secretary to Sh. Kapil Sibbal, the then MOC&IT. He has proved a press statement dated 07.01.2011, Ex DW 3(A-1)/Y, issued by the then Minister, and the accompanying letter Ex DW 3(A-1)/X.

288. DW 4 is Ms. Namita Bakshi, Private Secretary to DDG (AS-I), Sanchar Bhawan, DoT, New Delhi. She has been examined by R. K. Chandolia and has proved entries No. 3791 to 3816, Ex DW 4/A-3/X, in the file movement register maintained in the office of DDG (AS-I) in DoT.

289. DW 5 is Sh. S. Basu, Under Secretary, DoPT, North Block, New Delhi. He has been examined for Siddhartha Behura. He has proved documents relating to appointment of Siddhartha Behura as Secretary (DoT), his career profile, seniority list of empaneled officers of 1973 batch, to which Siddhartha Behura belongs, as Secretary, and his appointment order as Secretary, Ex DW 5/A-2/X-1 to X-4.

290. DW 6 is Sh. Lalit Kumar Sharma, Under Secretary, Department of Industrial Policy and Promotion, Ministry of Commerce and Industry, Government of India. He has also been

examined for Siddhartha Behura. He has proved some documents relating to the working of Siddhartha Behura as Joint Secretary, Secretariat for Industrial Approval (SIA), in that Ministry, and Constitution of Committee on Foreign Investment (CCFI), Ex DW 6(A-2)/X to Z and DW 6(A-2)/Z-1 and Z-2.

291. DW 7 is Inspector Bhagwan Sahai Meena, Incharge, Malkhana, ACB, CBI office, New Delhi. He has been examined for Sanjay Chandra. He has proved entries pertaining to 24.09.2007, Ex DW 7/A-7/X, in a Daily Diary Register maintained in CR Section, DoT, New Delhi, for the period 18.06.2007 to 12.10.2007. This register was in the possession of CBI.

292. DW 8 is Sh. M. Siva Kumar, Personal Assistant to Secretary (T), DoT, Sanchar Bhawan, New Delhi. He has been examined for R. K. Chandolia. He has deposed that the file movement register of the office of Secretary (T) relating to September 2007 was seized by CBI on 03.01.2011, vide seizure memo, Ex DW 8/A-3/X.

293. DW 9 is Sh. Ram Ganesh Yadav, Senior Telecom Office Assistant in the office of Member (T), Sanchar Bhawan, DoT, New Delhi. He has also been examined for R. K. Chandolia. He has proved photocopies of entries, Ex DW 9/A-3/X, relating to 24.09.2007, in the file movement register maintained in the office of Member (T). He also deposed that an entry relating to movement of a file is recorded in this register only when file is received in the office of Member (T), either in its upward or downward journey.

294. DW 10 is Ms. Chetali Chakraborty, Senior Editor, The Economic Times, ITO, New Delhi. She has been examined for Shahid Balwa. She has proved a certified copy of a news item, Ex DW 10/A-4/X, authored by her and published in the newspaper on 28.05.2007 under the heading "Idea, Spice Talk Merger".

295. DW 11 is Sh. Mohammad Shakeel Ahmed, General Manager (Administration), PTI, New Delhi. He has also been examined for Shahid Balwa. He has deposed that Press Trust of India is a credible news agency and it collects and disseminates news to its subscribers. He has proved some news items, collectively Ex DW 11/A-4/X, disseminated by the news agency between 03.12.2006 to 12.02.2011.

296. DW 12 is Sh. Vibhor Nayyar, Manager (Legal and Compliance), Unitech Limited. He has been examined for Sanjay Chandra. He has proved certified copies of some record relating to Dishnet Wireless, Vodafone Essar (South) Limited, S. Tel (P) Limited, Sunvision Engineering Co. (P) Limited and Sistema Shyam Teleservices, obtained from various offices of ROC. He has also filed an affidavit verifying the record. The affidavit is Ex DW 12(A-7)/Y and the record as annexure to the affidavit is Ex DW 12(A-7)/Y-1 to Y-4. He has also deposed about set-off of Rs. 1658.57 crore, earlier deposited by Unitech Wireless (Tamil Nadu) (P) Limited for grant of UAS licences, being granted to Telewig Communications Services (P) Limited, a company of Telenor, when it subsequently participated in auction of spectrum. The information is contained in Ex DW

12(A-7)/Y-5.

297. DW 13 is Sh. Nandan Singh Rawat, Publisher, Business Standard, Nehru House, Bahadur Shah Zafar Marg, New Delhi. He has been examined for Sanjay Chandra. He has proved a copy of newspaper dated 26.09.2007, Ex DW 13(A-7)/X, in which a news item appeared on that date under the caption “DOT's licence norms may be tougher”.

298. DW 14 is Sh. Anil Kumar, Officer (Legal), The Indian Express Limited, Bahadur Shah Zafar Marg, New Delhi. He has been examined for Shahid Balwa. He has proved copy of a news item, Ex DW 14(A-4)/X, published in this newspaper on 19.12.2007 under the caption “DOT to break the link between spectrum and licences”. He further deposed that no denial of this story was received in his office from any quarter.

299. DW 15 is Sh. Harminder Singh, Section (O&M), DoT, New Delhi. He has been examined for R. K. Chandolia. He has deposed that he has been working as Incharge, Record Room of DoT and the File Movement Register for the year 2007, of the office of then Minister, MOC&IT, has not been deposited in the record room.

300. DW 16 is Ms. Manjul Soni, Deputy Manager (Vigilance-I), DoT, New Delhi. She has been examined for R. K. Chandolia. She has proved that the diary register, Ex DW 16(A-3)/X, of the office of Secretary (T) and Chairman (TC), beginning with 14.06.2007, was seized by CBI vide seizure memo Ex DW 8/A-3/X.

301. DW 17 is Sh. Manmohan Juneja, Registrar of

Companies, NCT of Delhi & Haryana. He has been examined for Sanjay Chandra. He has proved certified copies of Form-23 in respect of Shipping Stop Dot Com (India) Pvt. Ltd. for passing a resolution on 10.09.2007, notice for calling extraordinary general meetings dated 07.09.2007 along with copy of resolution dated 10.09.2007 of EGM, Article of Association of Loop Telecom (P) Limited, Memorandum of Association of this company as filed by this company on the system of ROC and certificate of registration of this resolution dated 28.09.2007, which are collectively Ex DW 17/A-7/X.

302. DW 18 is Sh. Nisar Ahmed Khan, Sr. Manager, Reliance Tax Services (P) Limited, Mumbai, Maharashtra. He has been examined for Hari Nair. He has proved certified copies of e-mails alongwith their respective attachments dated 23.01.2007 and 01.03.2007, sent by Gaurang Shah to Hari Nair, and also certified copies of e-mails alongwith their respective attachments, dated 23.01.2007, 08.02.2007, 01.03.2007 and 27.03.2007, sent by Prakash Khedekar to Hari Nair, which are Ex DW 18(A-11)/X-1 to X-5 and X-7 and the certificate regarding their correctness is Ex DW 18(A-11)/X-6.

303. DW 19 is Sh. Arvind Sood, a handwriting and finger print expert from Hoshiarpur, Punjab. He has been examined for Hari Nair. He has forensically examined some documents relating to the instant case and gave his report Ex DW 19(A-11)/X. He had also prepared a CD of photographs, which is Ex DW 19(A-11)/X-1.

304. DW 20 is Sh. Vikas Singla, Assistant Vice President,

Reliance Infrastructure Limited. He has also been examined for Hari Nair. He has deposed about the working of the office of Hari Nair, the then Sr. Manager, later on Assistant Vice President, relating to receipt of e-mails, documents etc.

305. DW 21 is Sh. Mayur Mansukhlal Kanabar, DGM, Reliance Infrastructure Limited. He has also been examined for Hari Nair. He has deposed that in 2007, he was working with M/s Chaturvedi & Shah and M/s Pathak HD & Associates, firms of chartered accountants, as he himself is a qualified chartered accountant. While working with this firm, he had sent an e-mail dated 05.02.2007 to Hari Nair, relating to equity shareholding structure of Swan Capital (P) Limited. A copy of the e-mail is Ex DW 21(A-11)/X.

306. DW 22 is Sh. R. K. Chandolia. He has examined himself in his own defence and has deposed that he had no role in the process of decision making of DoT.

307. DW 23 is Sh. Manish Sansi, Vice President (Legal), Telewings Communications Services (P) Limited, Gurgaon. He has been examined for Unitech Wireless (Tamil Nadu) (P) Limited. He deposed that from May 2009 to November 2013, he was working as General Manager (Legal) with Unitech Wireless (Tamil Nadu) (P) Limited. He deposed that this company as well as seven other Unitech group of companies had received a notice dated 14.12.2010, Ex DW 23(A-8)/X-1, from DoT and this company replied to the same on 11.02.2011 vide reply Ex DW 23(A-8)/X-2. Other companies had also sent reply on the same lines. He has also deposed about approval of Foreign

Investment Promotion Board (FIPB) for enhancing foreign investment in the eight Unitech Wireless group companies up to 74% and has proved documents relating thereto as Ex DW 23(A-8)/X-3 to X-6. He has also proved the record relating to Directors, who were on the board of eight Unitech Wireless group companies from the date of incorporation in 2007 till grant of LOIs on 10.01.2008, which is collectively Ex DW 23(A-8)/X-7.

308. DW 24 is Sh. Rajeev Bhadauria, Director, Human Resources, Jindal Steel and Power Limited, New Delhi. He has also been examined for Hari Nair. He deposed that earlier he was working with Reliance group. He has deposed about the working of office of Hari Nair and has proved documents, Ex DW 24(A-11)/X-1 to X-8, relating to working of that office during the relevant period.

309. DW 25 is Sh. Chintan Ghelani, Chartered Accountant, Mumbai. He has been examined for Rajiv Agarwal. He has deposed about the disclosure of name of directors and companies from which a company had taken loan or advances and also about the working of an NBFC. He also deposed about an ICD agreement, Ex PW 89/DA, and also about the transactions entered into by Kusegaon Fruits and Vegetables (P) Limited and has proved documents, Ex DW 25(A-14)/X-1 to X-5.

310. DW 26 is Dr. Santokh Singh, the then Legal Advisor, DoT. He has been examined for Shahid Balwa. He has deposed about functions of Legal Advisor in DoT and various legal

aspects relating to grant of telecom licences. He has proved documents Ex DW 26(A-4)/X and Y and Y-1 to Y-7.

311. DW 27 is Sh. B. Lal, Handwriting Expert. He has been examined for Surendra Pipara. He had examined certain documents relating to the case and thereon submitted his reports Ex DW 27(A-10)/X and Y. He also prepared DVDs of the documents examined by him, which are Ex DW 27(A-10)/X-1 and Y-1.

312. DW 28 is Sh. Vijay Kumar Sharma, a Photographer. He has also been examined for Surendra Pipara. He had taken photographs of some documents from the record of this Court, for which due permission was taken from this Court. The photographs are contained in the two reports, Ex DW 28(A-10)/X and Y of DW 27 Sh. B. Lal.

313. DW 29 is Sh. N. D. Gupta, a practicing chartered accountant from Delhi. He has been examined for Rajiv Agarwal. He has deposed about the maintenance of books of accounts by a company and treatment of various items therein including share application money, current liabilities etc.

314. After examination of these witnesses, defence evidence was closed.

ADDITIONAL EVIDENCE AND CONSEQUENTIAL STATEMENTS OF ACCUSED.

315. During the recording of defence evidence, prosecution moved an application dated 06.08.2014 on 08.08.2014 for summoning five additional witnesses, which was allowed vide order dated 19.11.2014.

316. Consequent to the aforesaid order, PW 154 Sh. Navil Kapur, Under Secretary, Ministry of Information and Broadcasting; and PW 155 Sh. R. Anand Babu, Chief Manager-cum-Branch Manager, Kodambakkam Branch, Indian Bank, Chennai, were examined and PW 116 Sh. G. Rajendran was recalled for further examination by the prosecution. Remaining two witnesses were not examined.

317. PW 154 Sh. Navil Kapur deposed about some documents filed by Kalaignar TV (P) Limited regarding its continued eligibility for licence for uplinking and downlinking issued by Ministry of Information and Broadcasting. He has proved two files of the Ministry Ex PW 154/A-1 and 154/B-1. The permission for uplinking and downlinking granted to Kalaignar TV (P) Limited is Ex PW PW 154/A-2 collectively and the information submitted by Kalaignar TV (P) Limited is Ex PW 154/C, which contains the names of directors of the company at point X.

318. PW 155 Sh. R. Anand Babu proved documents relating to loan account of Kalaignar TV (P) Limited, which he submitted vide letter Ex PW 155/A-1 and the documents are Ex PW 155/A-2 to A-18. He also deposed that as per the proposal Ex PW 155/A-3, the directors of the company were M. K. Dayalu @ Dayalu Ammal, Kanimozhi Karunanithi and Sharad Kumar.

319. PW 116 Sh. G. Rajendran, who was recalled for further examination, deposed that document Ex PW 154/C bears his signature and was submitted by him to the Ministry of

Information and Broadcasting.

320. On recording these documents, further statement of each accused was recorded under Section 313 CrPC, wherein the evidence was denied as incorrect and only accused Kanimozhi Karunanithi expressed her desire to lead defence evidence in response to the aforesaid three witnesses.

321. She prayed that PW 154 Sh. Navil Kapur may be recalled for further cross-examination, which was allowed and he was further cross-examined and re-examined. In his cross-examination, he admitted that document Ex PW 154/DE was submitted to the Ministry by Kalaignar TV (P) Limited on 24.07.2014.

FINAL ARGUMENTS

322. I have extensively heard the arguments at the bar and have carefully gone through the record.

It may be noted that in view of voluminous record running into several lac pages and also technical nature of the case, oral arguments for the parties continued for about two years. Both parties also filed written submissions in detail running into about twenty to twenty-five thousand pages.

During final arguments, both parties extensively read out the facts of the case, documents and the evidence led on record for months together.

Apart from inviting my attention to the facts and evidence, both parties liberally invited my attention to a large number of case law.

323. Sh. Anand Grover, learned Sr. Advocate/ Spl. PP for

CBI, invited my attention to the following case law:

1) Tata Steel Limited & Another Vs. Indra Singh & Sons Private Ltd., 2007 SCC OnLine Cal 163;
2) Tahsildar Singh & Another Vs. State of U.P., AIR 1959 SC 1012;
3) Baleshwar Rai Alias Nepali Master etc. Vs. State of Bihar, (1964) 1 CriLJ 564;
4) Kali Ram Vs. State of Himachal Pradesh, (1973) 2 SCC 808;
5) Sita Ram Vs. State of Uttar Pradesh, AIR 1966 SC 1906;
6) Vinod Chaturvedi and Others Vs. State of Madhya Pradesh, (1984) 2 SCC 350;
7) S. P. Anand, Indore Vs. H. D. Devegowda and Others, (1996) 6 SCC 734;
8) J. K. Industries Limited and Another Vs. Union of India and Others, (2007) 13 SCC 673;
9) Dr. Vimla Vs. Delhi Administration, AIR 1963 SC 1572;
10) Parminder Kaur Vs. State of Uttar Pradesh and Another, (2010) 1 SCC 322;
11) Kalwa Devadattam and Others Vs. The Union of India and Others, AIR 1964 SC 880;
12) Sunil Siddharthbhai Vs. Commissioner of Income Tax, Ahmedabad, Gujarat, (1985) 4 SCC 519;
13) M. Narayanan Nambiar Vs. State of Kerala, AIR 1963 SC 1116;
14) Ram Krishan and Another Vs. State of Delhi, AIR 1956 SC 476;
15) State represented by CBI, Hyderabad Vs. G. Prem Raj, (2010) 1 SCC 398;
16) Edmund S. Lyngdoh Vs. State of Meghalaya, 2014 SCC OnLine SC 713;
17) Iridium India Telecom Limited Vs. Motorola Incorporated and Others, (2011) 1 SCC 74;
18) Ishwarlal Girdharilal Parekh Vs. State of Maharashtra and Others, AIR 1969 SC 40;
19) Association of Unified Tele Services Providers and Others Vs. Union of India and Others, (2014) 6 SCC 110;

20) **Sadhupati Nageswara Rao Vs. State of Andhra Pradesh, (2012) 8 SCC 547;**
21) **State of Gujarat Vs. Mohammed Atik and Others, (1998) 4 SCC 351;**
22) **Central Bureau of Investigation Vs. V. C. Shukla and Others, (1998) 3 SCC 410;**
23) **Bhagwan Swarup Lal Bishan Lal Vs. State of Maharashtra, AIR 1965 SC 682;**
24) **R. Venkatkrishnan Vs. Central Bureau of Investigation, (2009) 11 SCC 737;**
25) **State of Maharashtra and Others Vs. Som Nath Thapa and Others, (1996) 4 SCC 659;**
26) **Mir Nagvi Askari Vs. Central Bureau of Investigation, (2009) 15 SCC 643;**
27) **State (NCT of Delhi) Vs. Navjot Sandhu alias Afsan Guru, (2005) 11 SCC 600;**
28) **Ram Narayan Popli Vs. Central Bureau of Investigation; (2003) 3 SCC 641;**
29) **Mohd. Khalid Vs. State of W.B., (2002) 7 SCC 334;**
30) **Firozuddin Basheeruddin and Others Vs. State of Kerala, (2001) 7 SCC 596;**
31) **State through Superintendent of Police, CBI/SIT Vs. Nalini & Others, (1999) 5 SCC 253;**
32) **Yash Pal Mittal Vs. State of Punjab, (1977) 4 SCC 540;**
33) **Ajay Aggarwal Vs. Union of India and Others, (1993) 3 SCC 609;**
34) **Kehar Singh and Others Vs. State (Delhi Administration), (1988) 3 SCC 609; and**
35) **Centre for Public Interest Litigation and Others Vs. Union of India and Others, (2012) 3 SCC 1.**

324. On the other hand, Sh. R. S. Cheema, learned Sr. Advocate for Sanjay Chandra, invited my attention to the following case law:

1) **Kehar Singh and Others Vs. State (Delhi Administration), (1988) 3 SCC 609;**
2) **State of Tamil Nadu through Superintendent of Police, CBI/SIT Vs. Nalini & Others, AIR 1999 SC 2640;**

3) Saju Vs. State of Kerala, (2001) 1 SCC 378;
4) R. Vs. Griffiths, (1965) 2 ALL ER 448;
5) State of Kerala Vs. P. Sugathan and Another, (2000) 8 SCC 203;
6) Esher Singh Vs. State of A. P., (2004) 11 SCC 585;
7) Firozuddin Basheeruddin and Others Vs. State of Kerala, (2001) 7 SCC 596;
8) State (NCT of Delhi) Vs. Navjot Sandhu alias Afsan Guru, (2005) 11 SCC 600;
9) Subramanian Swamy Vs. A. Raja, (2012) 9 SCC 257;
10) V. C. Shukla Vs. State (Delhi Administration), (1980) 2 SCC 665;
11) R. Vs. Anderson, (1985) 2 All ER;
12) Arun Kumar Agrawal Vs. Union of India and Others, (2014) 2 SCC 609;
13) P. K. Narayanan Vs. State of Kerala, (1995) 1 SCC 142;
14) State of M. P. Vs. Sheetla Sahai and Others, (2009) 8 SCC 617;
15) Param Hans Yadav Vs. State of Bihar, (1987) 2 SCC 197;
16) State of U. P. through Central Bureau of Investigation Vs. Dr. Sanjay Singh and Another, 1994 Supp (2) SCC 707;
17) Girja Shankar Misra Vs. State of U. P., (1994) Supp (1) SCC 26;
18) Mohd. Hussain Umar Kochra etc. Vs. K. S. Dalipsinghji and Another etc., (1969) 3 SCC 429;
19) Sharad Birdhichand Sarda Vs. State of Maharashtra, (1984) 4 SCC 116; and
20) State of U. P. Vs. Dr. Ravindra Prakash Mittal, (1992) 3 SCC 300.

Ms. Rebecca John, learned Sr. Advocate for Sanjay Chandra, invited my attention to the following case law:

1) Pandurang, Tukia and Bhillia Vs. State of Hyderabad, AIR 1955 SC 216;
2) Dudh Nath Pandey Vs. State of U. P., AIR 1981 SC 911;
3) State Vs. Kuldeep Kumar, 2011 SCC OnLine Del 2225;
4) Lal Chand and Others Vs. State of Haryana, (1984) 1

SCC 686;

5) Binay Kumar Singh Vs. State of Bihar, (1997) 1 SCC 283;
6) Bhagirath Vs. State of Madhya Pradesh, (1976) 1 SCC 20;
7) Ugar Ahir and Others Vs. State of Bihar, AIR 1965 SC 277;
8) Salim Zia Vs. State of Uttar Pradesh, (1979) 2 SCC 648;
9) Nandini Satpathy Vs. P. L. Dani and Another, 1978 (2) SCC 424;
10) Tata Steel Limited & Another Vs. Indra Singh & Sons Private Ltd., 2007 SCC OnLine Cal 163;
11) Nautam Prakash DGSVC, Vadtal and Others Vs. K. K. Thakkar and Others, (2006) 5 SCC 330;
12) Jamal Uddin Ahmad Vs. Abu Saleh Najmuddin and Another, AIR 2003 SC 1917;
13) Golconda Industries (P) Ltd. Vs. Registrar of Companies, 1968 ILR Del 275;
14) State of Karnataka Vs. M. Muniswamy, (2002) 10 SCC 546;
15) Ram Parshotam Mittal and Another Vs. Hillcrest Realty SDN. BHD. and Others, (2009) 8 SCC 709;
16) Western India Vegetable Products Ltd. Vs. Commissioner of Income Tax, Bombay City, AIR 1955 Bombay 13;
17) Commissioner of Wealth Tax, Madras Vs. Ramaraju Surgical Cotton Mills Ltd., AIR 1967 SC 509;
18) Commissioner of Income Tax Vs. Sarabhai Sons Pvt. Ltd., (1973) 90 ITR 318 (Guj);
19) Sarabhai Management Corporation Ltd. Vs. Commissioner of Income Tax, Gujarat, (1976) 102 ITS 25;
20) Selvi and Others Vs. State of Karnataka, (2010) 7 SCC 263;
21) F. Hoffmann-la Roche Ltd. and Anr. Vs. Cipla Ltd., RFA (OS) 92/2012 dated 08.12.2015 (Delhi High Court); and
22) Anvar P. V. Vs. P. K. Basheer and Others, (2014) 10 SCC 473.

Apart from Sh. R. S. Cheema & Ms. Rebecca John, learned Sr. Advocates, Sh. Sushil Bajaj learned Advocate for Sanjay Chandra also invited my attention to the following case law:

1) Arun Kumar Agrawal Vs. Union of India and Others, (2013) 7 SCC 1;
2) Bhavesh D. Parish and Others Vs. Union of India and Another, (2000) 5 SCC 471;
3) Pathan Mohammed Suleman Rehmatkhan Vs. State of Gujarat and Others, (2014) 4 SCC 156;
4) R. Sai Bharathi Vs. J. Jayalalitha and Others, (2004) 2 SCC 9;
5) Ashok Chawla Vs. Ram Chander Garvan, Inspector CBI, ILR (2011) III DELHI 638;
6) Suraj Pal Vs. State of Uttar Pradesh, AIR 1955 SC 419;
7) Vithalbhai Devjibhai Patel Vs. State of Gujarat, Criminal Appeal No. 61 of 1998, decided on 24.12.2014 (Gujarat High Court);
8) Ram Chander Vs. State of Haryana, (1981) 3 SCC 191;
9) Oma alias Omprakash and Another Vs. State of Tamil Nadu, (2013) 3 SCC 440;
10) Mohd. Faizan Ahmad alias Kalu Vs. State of Bihar, (2013) 2 SCC 131;
11) State of Uttaranchal and Another Vs. Sunil Kumar Vaish and Others, (2011) 8 SCC 670;
12) Kartar Singh Vs. State of Punjab, (1994) 3 SCC 569;
13) Dr. S. L. Goswami Vs. State of Madhya Pradesh, (1972) 3 SCC 22;
14) Sri Rabindra Kumar Dey Vs. State of Orissa, (1976) 4 SCC 233;
15) P. K. Narayanan Vs. State of Kerala, (1995) 1 SCC 142;
16) Sunil Bharti Mittal Vs. Central Bureau of Investigation, (2015) 4 SCC 609;
17) Maharashtra State Electricity Distribution Company Limited and Another Vs. Datar Switchgear Limited and Others, (2010) 10 SCC 479;
18) Pooja Ravinder Devidasani Vs. State of Maharashtra

and Another, (2014) 16 SCC 1;

19) The United Commercial Bank Vs. Bhim Sain Makhija and Another, 1993 (27) DRJ;
20) Ranjitsing Brahmajeetsing Sharma Vs. State of Maharashtra and Another, (2005) 5 SCC 294;
21) Hemant S/o Omkarnath Thakre Vs. State of Maharashtra, 2009 SCC OnLine Bom 173;
22) Bharat Sanchar Nigam Ltd. and Another Vs. Union of India and Others, (2006) 3 SCC 1;
23) Avtar Singh Vs. State of Punjab, AIR 1965 SC 666;
24) Common Cause, a registered society Vs. Union of India and Others, (1999) 6 SCC 667;
25) Sheila Kaul Vs. Shiv Sagar Tiwari, (2002) 10 SCC 667;
26) Central Board of Dawoodi Bohra Community and Another Vs. State of Maharashtra and Another, (2005) 2 SCC 673;
27) Siddharam Satlingappa Mhetre Vs. State of Maharashtra, 2011 [1] JCC 1;
28) Velji Raghavji Patel Vs. State of Maharashtra, AIR 1965 SC 1433;
29) Centre for Public Interest Litigation and Others Vs. Union of India and Others, AIR 2012 SC 3725;

Sh. Amarendar Sharan, learned Sr. Advocate for Kanimozhi Karunanithi, invited my attention to the following case law:

1) State of Delhi Vs. Shri Ram Lohia, AIR 1960 SC 490;
2) Bhagirath Vs. State of M. P., (1976) 1 SCC 20;
3) Ram Lakhan Singh & Others Vs. State of Uttar Pradesh, (1977) 3 SCC 268;
4) Gurdeep Singh Vs. State of Punjab and Others, (2011) 12 SCC 408;
5) George and Others Vs. State of Kerala and Another, (1998) 4 SCC 605;
6) Javed Masood and Another Vs. State of Rajasthan, (2010) 3 SCC 538;
7) Mukhtiar Ahmed Ansari Vs. State (NCT of Delhi), (2005) 5 SCC 258;
8) Raja Ram Vs. State of Rajasthan, (2005) 5 SCC 272;

9) Krishan Chander Vs. State of Delhi, (2016) 3 SCC 108;
10) Raj Kumar Singh alias Raju alias Batya Vs. State of Rajasthan, (2013) 5 SCC 722;
11) R. Shaji Vs. State of Kerala, (2013) 14 SCC 266;
12) Shatzadi Begum Saheba and Others Vs. Girdharilal Sanghi and Others, AIR 1976 AP 273;
13) Vinay Kumar @ Vinay Kumar Kedia Vs. State (NCT of Delhi) & Anr., 2010 SCC OnLine Del 4266;
14) V. S. Gupta Vs. Punjab National Bank, 2010 (114) DRJ 208; and
15) S. K. Alagh Vs. State of Uttar Pradesh and Others, (2008) 5 SCC 662.

Sh. Amit Desai, learned Sr. Advocate for Karim Morani, invited my attention to the following case law:

1) M. S. Ahlawat Vs. State of Haryana and Another, (2000) 1 SCC 278;
2) Abdul Rehman and Others Vs. K. M. Anees-Ul-Haq, (2011) 10 SCC 696;
3) Anita Malhotra Vs. Apparel Export Promotion Council and Another, (2012) 1 SCC 520;
4) Mobarik Ali Ahmed Vs. The State of Bombay, AIR 1957 SC 857;
5) Om Prakash Berlia and Another Vs. Unit Trust of India and Others, AIR 1983 Bom 1;
6) Bishwanath Rai Vs. Sachhidanand Singh, (1972) 4 SCC 707;
7) Ramji Dayawala and Sons (P) Ltd. Vs. Invest Import, (1981) 1 SCC 80;
8) M. S. Madhusoodhanan and Another Vs. Kerala Kaumudi (P) Ltd. and Others, (2004) 9 SCC 204;
9) Sri Rabindra Kumar Dey Vs. State of Orissa, (1976) 4 SCC 233;
10) The State Vs. Md. Misir Ali and Others, AIR 1963 ASSAM 151;
11) Bhagirath Vs. State of Madhya Pradesh, (1976) 1 SCC 20;

12) Raja Ram Vs. State of Rajasthan, (2005) 5 SCC 272;
13) Kunju Muhammed alias Khumani and Another Vs. State of Kerala, (2004) 9 SCC 193;
14) Krishan Chander Vs. State of Delhi, (2016) 3 SCC 108;
15) Rajat Prasad Vs. Central Bureau of Investigation, (2014) 6 SCC 495;
16) Virendranath Vs. State of Maharashtra, (1996) 11 SCC 688;
17) Tomaso Bruno and Another Vs. State of Uttar Pradesh, (2015) 7 SCC 178;
18) Paulmeli and Another Vs. State of Tamil Nadu through Inspector of Police, (2014) 13 SCC 90;
19) K. Subba Reddy Vs. State of A. P., (2007) 8 SCC 246;
20) Rohtash Kumar Vs. State of Haryana, (2013) 14 SCC 434;
21) C. Muniappan and Others Vs. State of Tamil Nadu, (2010) 9 SCC 567;
22) Binapani Roja Vs. Rabindranath Sarkar and Others, MANU/WB/0055/1959;
23) Chaturdas Bhagwandas Patel Vs. The State of Gujarat, (1976) 3 SCC 46;
24) A. E. G. Carapiet Vs. A. Y. Derderian, AIR 1961 Cal 359;
25) Sunil Bharti Mittal Vs. Central Bureau of Investigation, (2015) 4 SCC 609;
26) Laxmibai (dead) through LRs. and Another Vs. Bhagwantbuva (dead) through LRs. and Others, (2013) 4 SCC 97;
27) Atluri Brahmanandam (dead) through LRs. Vs. Anne Sai Bapuji, (2010) 14 SCC 466;
28) Sadashiv Mahadeo Yavaluje and Gajanan Shripatrao Salokhe Vs. State of Maharashtra, (1990) 1 SCC 299;
29) P. Satyanarayana Murthy Vs. District Inspector of Police, State of A. P. and Another, (2015) 10 SCC 152;
30) State of Madras Vs. C. V. Parekh and Another, 1970 (3) SCC 491;
31) Kehar Singh and Others Vs. State (Delhi Administration), (1988) 3 SCC 609;
32) Lennart Schussler and Another Vs. The Director of Enforcement and Another, 1970 (1) SCC 152;
33) Sujit Biswas Vs. State of Assam, (2013) 12 SCC 406;

and

34) **Hanumant, son of Govind Nargundkar Vs. State of Madhya Pradesh, 1953 CriLJ 129.**

Sh. Sidharth Luthra, learned Sr. Advocate for Siddhartha Behura, invited my attention to the following case law:

1) **P. N. Duda Vs P. Shiv Shanker and others, (1988) 3 SCC 167;**
2) **Shreekantiah Ramayya Munipalli Vs. State of Bombay, (1955) 1 SCR 1177;**
3) **Amrik Singh Vs. State of Pepsu, (1955) 1 SCR 1302;**
4) **N. K. Ganguly Vs. Central Bureau of Investigation, New Delhi, (2016) 2 SCC 143;**
5) **S. P. Bhatnagar Vs. State of Maharashtra, (1979) 1 SCC 535;**
6) **State through Superintendent of Police, CBI/SIT Vs. Nalini & Others, (1999) 5 SCC 253;**
7) **Velji Raghavji Patel Vs. State of Maharashtra, (1965) 2 SCR 429;**
8) **Indian Oil Corpn. Vs. NEPC India Ltd. and Others, (2006) 6 SCC 736;**
9) **Tahsildar Singh & Another Vs. State of U.P., 1959 Supp (2) SCR 875;**
10) **Sunil Kumar Sambhudayal Gupta (Dr.) and Others Vs. State of Maharashtra, (2010) 13 SCC 657;**
11) **Pawan @ Diggi Vs. State, MANU/DE/0255/2014; and**
12) **Dinesh Kumar @ Kalu and Others Vs. State Govt. of NCT of Delhi, 2014 (145) DRJ 465 [DB].**

Apart from Sh. Sidharth Luthra, learned Sr. Advocate, Sh. Pramod Jalan, learned Advocate for Siddhartha Behura also invited my attention to the following case law:

1) **Amal Kumar Jha Vs. State of Chhatisgarh and Another, 2016 (4) SCALE 378;**
2) **Harchand Singh and Another Vs. State of Haryana, (1974) 3 SCC 397;**

3) T.S.R. Subramanian and Others Vs. Union of India and Others, (2013) 15 SCC 732;
4) Rajinder Pershad (Dead) by LRs Vs. Darshana Devi (Smt), (2001) 7 SCC 69;
5) State of U. P. Vs. Babu Ram, AIR 2000 SC 1735;

Sh. S. V. Raju, learned Sr. Advocate for Vinod Goenka, invited my attention to the following case law:

1) State of Madras Vs. C. V. Parekh and Another, 1970 (3) SCC 491;
2) Keki Hormusji Gharda and Others Vs. Mehervan Rustom Irani and Another, (2009) 6 SCC 475;
3) V. K. Mishra and Another Vs. State of Uttarakhand and Another, (2015) 9 SCC 588;
4) Thermax Limited and Others Vs. K. M. Johny and Others, (2011) 13 SCC 412;
5) Maksud Saiyed Vs. State of Gujarat and Others, (2008) 5 SCC 668;
6) S. K. Alagh Vs. State of Uttar Pradesh and Others, (2008) 5 SCC 662;
7) Maharashtra State Electricity Distribution Company Limited and Another Vs. Datar Switchgear Limited and Others, (2010) 10 SCC 479;
8) Hanumant, son of Govind Nargundkar Vs. State of Madhya Pradesh, 1953 CriLJ 129;
9) Sharad Birdhichand Sarda Vs. State of Maharashtra, (1984) 4 SCC 116;
10) State of Madhya Pradesh Vs. Sheetla Sahai and Others, (2009) 8 SCC 617;
11) Bhagwan Swarup Lal Bishan Lal Vs. State of Maharashtra, AIR 1965 SC 682;
12) Balkar Singh Vs. State of Haryana, (2015) 2 SCC 746;
13) Baliya alias Bal Kishan Vs. State of Madhya Pradesh, (2012) 9 SCC 696;
14) V. C. Shukla Vs. State (Delhi Administration), (1980) 2 SCC 665;
15) Narendra Singh and Another Vs. State of M. P., (2004) 10 SCC 699;
16) Rishipal Vs. State of Uttarakhand, (2013) 12 SCC 551;

17) **Raj Kumar Singh alias Raju alias Batya Vs. State of Rajasthan, (2013) 5 SCC 722;**
18) **Sarwan Singh Vs. State of Punjab, AIR 1957 SC 637;**
19) **Krishna Janardhan Bhat Vs. Dattatraya G. Hegde, (2008) 4 SCC 54;**
20) **Rattiram and Others Vs. State of Madhya Pradesh (through Inspector of Police), (2012) 4 SCC 516;**
21) **Ajay Mitra Vs. State of M. P. and Others, (2003) 3 SCC 11;**
22) **Harmanpreet Singh Ahluwalia and Others Vs. State of Punjab and Others, (2009) 7 SCC 712;**
23) **Vir Prakash Sharma Vs. Anil Kumar Agarwal and Another, (2007) 7 SCC 373;**
24) **Vesa Holdings Private Limited and Another Vs. State of Kerala and Others, (2015) 8 SCC 293;**
25) **Rameshbhai Mohanbhai Koli Vs. State of Gujarat, Criminal Appeal No. 1422 of 2005 (High Court of Gujarat);**
26) **Saju Vs. State of Kerala, (2001) 1 SCC 378;**
27) **George and Others Vs. State of Kerala and Another, (1998) 4 SCC 605;**
28) **Govindaraju alias Govinda Vs. State by Sriramapuram Police Station and Another, (2012) 4 SCC 722;**
29) **State of Karnataka Vs. L. Muniswamy and Others, (1977) 2 SCC 699;**
30) **Central Bureau of Investigation Vs. V. C. Shukla and Others, (1998) 3 SCC 410; and**
31) **S. Arul Raja Vs. State of Tamil Nadu, (2010) 8 SCC 233.**

Apart from Sh. S. V. Raju, learned Sr. Advocate, Sh. Majid Memon, learned Advocate for Vinod Goenka also invited my attention to the following case law:

1) **Shri Cruz Pedro Pacheco Vs. State of Maharashtra, 1998 CriLJ 4628; and**
2) **V. K. Mishra and Another Vs. State of Uttarakhand and Another, (2015) 9 SCC 588.**

Sh. Saurab Soparkar, learned Sr. Advocate for

Reliance Telecom Limited, invited my attention to the following case law:

1) Commissioner of Income Tax, Patiala & Others Vs. Shahzada Nand & Sons & Others, AIR 1966 SC 1342;
2) Kamal Kumar Dutta and Another Vs. Ruby General Hospital Ltd. and Others, (2006) 7 SCC 613;
3) Dattatraya Govind Mahajan and Others Vs. State of Maharashtra and Another, (1977) 2 SCC 548;
4) Polestar Electronic (Pvt.) Ltd. Vs. Additional Commissioner, Sales Tax and Another, (1978) 1 SCC 636;
5) Commissioner of Income Tax, Jullundur Vs. Dr. Krishan Lal Goyal, 1984 SCC OnLine P & H 798;
6) Khial Das and Sons Vs. Commissioner of Income Tax, (1997) 225 ITR 960;
7) Jagatram Ahuja Vs. Commissioner of Gift Tax, Hyderabad, (2000) 8 SCC 249;
8) Shah and Co., Bombay Vs. State of Maharashtra and Another, AIR 1967 SC 1877;
9) Vanguard Fire and General Insurance Co. Ltd. Vs. Fraser and Ross and Another, AIR 1960 SC 971;
10) Pushpa Devi and Others Vs. Milkhi Ram, (1990) 2 SCC 134;
11) Tata Power Company Limited Vs. Reliance Energy Limited and Others, (2009) 16 SCC 659;
12) Aher Raja Khima Vs. State of Saurashtra, AIR 1956 SC 217;
13) Delhi Development Authority Vs. Skipper Construction Co. (P) Ltd. and Another, (1996) 4 SCC 622;
14) Balwant Rai Saluja and Another Vs. Air India Limited and Others, (2013) 15 SCC 85;
15) Balwant Rai Saluja and Another Vs. Air India Limited and Others, (2014) 9 SCC 407;
16) Commissioner of Central Excise, New Delhi Vs. Modi Alkalies & Chemicals Ltd. and Others, (2004) 7 SCC 569; and
17) Linsen International Ltd. and Others Vs. Humpuss Sea Transport Pte Ltd. and Others, [2011] EWHC 2339 (Comm).

Sh. Hariharan, learned Sr. Advocate for Surendra Pipara, invited my attention to the following case law:

1) Ramji Lal Baisiwala Vs. Baiton Cables Ltd. and Others, [1964] 14 RAJ. 135;
2) Krishna Kumar Birla Vs. Rajendra Singh Lodha and Ors., MANU/SC/1693/2008;
3) In Re: Tri-sure India Ltd. AND Richard laurence parish (Jr.) and others Vs. Registrar of companies, Maharashtra and others, MANU/MH/0006/1981;
4) Vrijlal Ghosi and Another Vs. State of M. P., MANU/MP/0661/2012;
5) Buddhu Pal and Another Vs. State of M. P., MANU/MP/0283/2012;
6) Vinay Rai Vs. Anil Rai, MANU/DE/2101/2010;
7) M/s Rudnap Export-Import Vs. Eastern Associates Co. and Others, MANU/DE/0466/1983;
8) Maharashtra State Electricity Distribution Co. Ltd. and Another Vs. Datar Switchgear Ltd. and Others, MANU/SC/0815/2010;
9) Shubh Shanti Services Ltd. Vs. Manjula S. Agarwalla and Others, MANU/SC/0387/2005;
10) Mother Dairy Fruit and Vegetable Private Limited Vs. Hatim Ali and Others, MANU/DE/0230/2015;
11) Oriental Industrial Investment Corporation Vs. Union of India, MANU/DE/0228/1980;
12) Uday Kotak and Others Vs. G. D. Foods Mfg (I) Pvt. Ltd. and Others, MANU/DE/1390/2015;
13) V. N. Deosthali Vs. State through CBI, MANU/DE/3323/2009;
14) Yogesh Jain and Another Vs. Sudha Jain and Others, MANU/DE/0028/2013;
15) The Seksaria Cotton Mills Ltd. Vs. The State of Bombay; MANU/SC/0027/1953;
16) Sharad Birdhichand Sarda Vs. State of Maharashtra, MANU/SC/0111/1984;
17) P. K. Narayanan Vs. State of Kerala, MANU/SC/0520/1995;
18) Aher Raja Khima Vs. The State of Saurashtra,

MANU/SC/0040/1955;

19) Mt. Shevanti Vs. Emperor, MANU/NA/0118/1928;
20) Ram Charan and Others Vs. State of U. P., AIR 1968 SC 1270; and
21) Balak Ram and Another Vs. State of U. P., 1974 CriLJ 1486 (V 80 C 541).

Sh. Manu Sharma, learned Advocate for A. Raja, invited my attention to the following case law:

1) State Vs. Mohd. Afzal, (2003) 107 DLT 385 [DB];
2) Kehar Singh and Others Vs. State (Delhi Administration), (1988) 3 SCC 609;
3) R. Vs. Griffiths, (1965) 2 ALL ER 448;
4) Mohd. Hussain Umar Kochra etc. Vs. K. S. Dalipsinghji and Another etc., (1969) 3 SCC 429;
5) Major E. G. Barsay Vs. State of Bombay, [1961] (2) CriLJ 828;
6) Baldev Singh Vs. State of Punjab, (2009) 6 SCC 564;
7) Bhagwan Swarup Lal Bishan Lal and Others Vs. The State of Maharashtra, [1965] 1 CriLJ 608;
8) State of Gujarat Vs. Manshankar Prabhashankar Dwivedi, (1972) 2 SCC 392;
9) M. Narayanan Nambiar Vs. State of Kerala, (1963) (2) CriLJ 186;
10) Major S. K. Kale Vs. State of Maharashtra, (1977) 2 SCC 394;
11) S. P. Bhatnagar Vs. State of Maharashtra, (1979) 1 SCC 535;
12) H. R. Bashal Vs. State of H. P. and Others, 2002 (1) ShimLC 253;
13) State of M. P. Vs. Sheetla Sahai and Others, (2009) 8 SCC 617;
14) B. Jayaraj Vs. State of A. P., (2014) 13 SCC 55;
15) P. Satyanarayana Murthy Vs. District Inspector of Police, State of A. P. and Another, (2015) 10 SCC 152;
16) State of Delhi Vs. Shri Ram Lohia, 1960 CriLJ 679;
17) Gagan Kanojia and Another Vs. State of Punjab, (2006) 13 SCC 516;
18) Banu Singh Vs. Emperor, (1906) ILR 33 CAL 1353;

19) Laxmipat Choraria Vs. State of Maharashtra, 1968 CriLJ 1124;
20) Queen Empress Vs. Hosh Nak, 1941 ALL ALJR 416;
21) Hanumant Govind Nargundkar Vs. State of Madhya Pradesh, 1953 CriLJ 129;
22) Matajog Dobey Vs. H. C. Bhari, 1956 CriLJ 140;
23) Prof. N. K. Ganguly Vs. CBI, 2015 SCC OnLine SC 1205, Crl. Appeal No. 798/2015, D.O.D. 19.11.2015;
24) Ganesh Bhavan Patel and Another Vs. State of Maharashtra, (1978) 4 SCC 371;
25) Tejinder Virdi @ Dolly Vs. State, 2009 SCC OnLine Del 4099, Crl. Appeal No. 237/2008, D.O.D. 16.12.2009;
26) Common Cause Vs. Union of India, (1999) 6 SCC 667;
27) Parminder Kaur Vs. State of U. P., (2010) 1 SCC 322;
28) Velji Raghavji Patel Vs. State of Maharashtra, 1965 (2) CriLJ 431;
29) Bhagirath Vs. State of M. P., (1976) 1 SCC 20; and
30) Kashmir Singh Vs. State of Punjab, (2006) 2 RCR (Cri) 477.

Sh. Vijay Aggarwal, learned Advocate for R. K. Chandolia, invited my attention to the following case law:

1) V. N. Deosthali Vs. State through CBI, 2010 [1] JCC 466;
2) Paramjit Singh and Others Vs. State of Punjab and Others, AIR 1997 SC 1614;
3) Adambhai Sulemanbhai Ajmeri and Others Vs. State of Gujarat, (2014) 7 SCC 716;
4) Pradip Buragohain Vs. Pranati Phukan, (2010) 11 SCC 108;
5) Mukesh Vs. State, 2010 [2] JCC 1563;
6) Paramjeet Singh alias Pamma Vs. State of Uttarakhand, (2010) 10 SCC 439;
7) Manjit Singh Vs. State, 2009 [2] JCC 1501;
8) Suresh @ Bona Vs. State, 2013 (4) JCC 2876;
9) Saju Vs. State of Kerala, (2001) 1 SCC 378;
10) Subramanian Swamy Vs. A. Raja, (2012) 9 SCC 257;
11) Sharad Birdhichand Sarda Vs. State of Maharashtra, (1984) 4 SCC 116;

12) Zahira Habibullah Sheikh (5) and Another Vs. State of Gujarat and Others, (2006) 3 SCC 374;
13) Syed Ibrahim Vs. State of A. P., (2006) 10 SCC 601;
14) Ashok Kumar Aggarwal Vs. CBI and Others, W. P. (Crl.) 1401/2002 (DHC);
15) Ajay Singh Vs. State of Maharashtra, (2007) 12 SCC 341;
16) S. K. Singhal Vs. State (CBI), Crl. A. 577/2002 (DHC);
17) Shashikant Vs. Central Bureau of Investigation and Others, (2007) 1 SCC 630;
18) Ripun Bora Vs. State, W. P. (Crl.) 882/2009, decided on 07.12.2011 (DHC);
19) Kehar Singh and Others Vs. State (Delhi Administration), (1988) 3 SCC 609;
20) V. K. Mishra and Another Vs. State of Uttarakhand and Another, (2015) 9 SCC 588;
21) K. S. Narayanan and Others Vs. S. Gopinathan, 1982 CriLJ 1611;
22) State of Himachal Pradesh Vs. R. K. Singha and Others, 2000 CriLJ 4102;
23) State (through) CBI Vs. Someshwar and Others, 120 (2005) DLT 324;
24) State of Karnataka Vs. L. Muniswamy and Others, (1977) 2 SCC 699;
25) Subramanian Swamy Vs. A. Raja, (2012) 9 SCC 257;
26) Raja Ram Vs. State of Rajasthan, (2005) 5 SCC 272;
27) Kunju Muhammed alias Khumani and Another Vs. State of Kerala, (2004) 9 SCC 193;
28) Shiv Kumar Vs. Hukam Chand and Another, 1999 [2] JCC [SC] 466;
29) Union Public Service Commission Vs. S. Papaiah and Others, (1997) 7 SCC 614;
30) State Vs. Lalita, Crl. L. P. 501/2013 dated 16.09.2013 (DHC);
31) Vishwanath Vs. State of Maharashtra, 1995 CriLJ 2571;
32) Surender Singh Vs. State (NCT of Delhi), Crl. A. 684 of 2008, decided on 16.10.2014 (DHC);
33) Anil Seth Vs. Ravi Garg, 2011 (180) DLT 101;
34) Balaka Singh and Others Vs. State of Punjab,

MANU/SC/0087/1975;

35) Majhar @ Papoo and Others Vs. State, 96 (2002) DLT 566;
36) Smt. Deepa Bajwa Vs. State and Others, 115 (2004) DLT 202;
37) Rajesh Kumar Singhal Vs. State, 2001 III AD (Cr.) DHC 115;
38) Sunil Bansal Vs. The State of Delhi, 2007 [2] JCC 1415;
39) Ashok Kumar Nayyar Vs. The State, 2007 [2] JCC 1489;
40) State of Tamil Nadu Vs. Ammasi alias William, 1992 Supp (3) SCC 75;
41) Neeraj Verma Vs. State, Crl. M. C. No. 3770/2005 (DHC);
42) Harvinder Singh Khurana and Others Vs. The State (NCT of Delhi) and Another, 2007 [4] JCC 3164;
43) Budhan Singh and Others Vs. State (Through NCT of Delhi), 2008 [2] JCC 1017;
44) Srushty Rahul Shinde and Others Vs. State of Maharashtra and Others, 2009 (2) Bom. C. R. (Cri.) 63;
45) Tara Chand and Others Vs. Dabkauli Trading Company, 1982 (2) PLR 562;
46) Golla Jalla Reddy and Others Vs. State of Andhra Pradesh, AIR 1996 SC 3244;
47) Sakiri Vasu Vs. State of Uttar Pradesh and Others, (2008) 2 SCC 409;
48) T. C. Thangaraj Vs. V. Engammal and Others, (2011) 12 SCC 328;
49) Vasanthi Devi Vs. S. I. of Police, Kattakkada Police Station and Others, 2008 CriLJ 2359;
50) Subodh S. Salaskar Vs. Jayprakash M. Shah and Another, 2008 [3] JCC (NI) 330;
51) Hardeep Singh Nagra Vs. State, 2011 (2) JCC 112 (NI);
52) Sakatar Singh and Others Vs. State of Haryana, (2004) 11 SCC 291;
53) Shingara Singh Vs. State of Haryana and Another, (2003) 12 SCC 758;
54) State of T. N. Vs. Sundar, (2003) 12 SCC 684;

55) State of H. P. Vs. Sukhvinder Singh, (2004) 12 SCC 101;
56) Ram Swaroop and Others Vs. State of Rajasthan, (2004) 13 SCC 134;
57) Anil Prakash Shukla Vs. Arvind Shukla, (2007) 9 SCC 513;
58) Parme Hansda and Another Vs. State of Bihar (Now Jharkhand), (2006) 12 SCC 114;
59) K. L. E. Society and Others Vs. Siddalingesh, 2008 II AD (Cr) (SC) 344;
60) V. K. Gupta Vs. Manjit Kaur, 2009 (1) C. C. Cases (HC) 333, (P&H);
61) Rajey Nagpal Vs. State, Bail Application No. 512/2009, Order dated 09.04.2009 (DHC);
62) State (Delhi Administration) Vs. Virender Kumar and Others, 2009 [2] JCC 994;
63) Satbir Singh and Another Vs. State and Others, 2009 [1] JCC 731;
64) Rakesh Kumar Gupta Vs. State (Govt. of NCT of Delhi), 2010 [1] JCC 433;
65) Zandu Pharmaceutical Works Ltd. and Others Vs. Mohd. Sharaful Haque and Another, 2005 [3] JCC 1583;
66) B. Suresh Yadav Vs. Sharifa Bee and Another, (2007) 13 SCC 107;
67) Sunil Kapoor and Another Vs. State and Another, 2009 [4] JCC 2995;
68) Baldev Singh and Others Vs. State of Punjab and Another, II (2006) CCR 161;
69) Pravinbhai Kashirambhai Patel Vs. State of Gujarat and Others, (2010) 7 SCC 598;
70) Umrao Lal Vs. State, 1954 CriLJ 860 (Allahabad);
71) Gangawwa Vs. State of Mysore, AIR 1969 Mysore 114;
72) Michael Lebon Vs. The State and Another, Crl. M. C. No. 2688/2010, dated 15.03.2011 (DHC);
73) Rajneesh Kumar Singhal Vs. The State (National Capital Territory of Delhi), 2001 CriLJ 1192;
74) Yahoo! India Pvt. Ltd. Vs. State, 2012 (2) JCC 1012;
75) Mussauddin Ahmed Vs. State of Assam, (2009) 14 SCC 541;

76) Sunil Chand Gupta and Others Vs. State, Crl. A. 28/2002, dated 05.02.2014 (DHC);
77) Raymond Ltd. and Others Vs. Rameshwar Das Dwarka Das P. Ltd., 2013 [2] JCC 1227;
78) Kamlesh Vs. The State, 2014 [3] JCC 2177;
79) Bhadresh Bipinbhai Sheth Vs. State of Gujarat and Another, Criminal Appeal Nos. 1134 - 1135 of 2015 [Arising out of Special Leave Petition (Crl.) Nos. 6028 - 6029 of 2014], dated 01.09.2015;
80) Jagbir Singh Vs. State and Another, 2001 [1] JCC [Delhi] 181;
81) Sudhansu Sekhar Sahoo Vs. State of Orissa, (2002) 10 SCC 743;
82) Abbas Ahmad Choudhary Vs. State of Assam, (2010) 12 SCC 115;
83) State of Kerala and Another Vs. C. P. Rao, (2011) 6 SCC 450;
84) Durga Prasad Vs. State, 2009 (4) JCC 2533;
85) Prof. N. K. Ganguly Vs. CBI, New Delhi, Criminal Appeal No. 798/2015, Decided on 19.11.2015 (SC);
86) State of Madhya Pradesh Vs. Sheetla Sahai and Others, 2009 VIII AD (SC) 630;
87) Sidhartha Vashisht alias Manu Sharma Vs. State (NCT of Delhi), (2010) 6 SCC 1;
88) V. K. Sasikala Vs. State represented by Superintendent of Police, (2012) 9 SCC 771;
89) State of Punjab Vs. Davinder Pal Singh Bhullar and Others, (2011) 14 SCC 770;
90) Sanjaysinh Ramrao Chavan Vs. Dattatray Gulabrao Phalke and Others, 2015 [2] JCC 930;
91) Suraj Mal Vs. The State (Delhi Administration), 1979 CriLJ 1087;
92) Rajesh Patel Vs. State of Jharkhand, (2013) 3 SCC 791;
93) N. Suresh Nathan and Another Vs. Union of India and Others, 1992 Supp (1) SCC 584;
94) Shailendra Dania and Others Vs. S. P. Dubey and Others, (2007) 5 SCC 535;
95) State of Bihar and Another Vs. Shri P. P. Sharma and Another, AIR 1991 SC 1260;
96) Asif Khan Bashir Khan @ Junaid Vs. The State of

Maharashtra, Criminal Appeal No. 973 of 2012 & 992 of 2012 dated 10.12.2012 (Bombay High Court);

97) State Inspector of Police, Vishakhapatnam Vs. Surya Sankaram Karri, (2006) 7 SCC 172;
98) N. Suresh Nathan and Another Vs. Union of India and Others, 1992 Supp (1) SCC 584;
99) Tomaso Bruno and Another Vs. State of Uttar Pradesh, (2015) 7 SCC 178;
100) P. A. S. Syed Mohideen Vs. The Joint Secretary to the Government of India, Ministry of Finance, New Delhi and Another, 1991 CriLJ 2679;
101) Ram Kishan Singh Vs. Harmit Kaur and Another, 1972 CriLJ 267;
102) Varkey Joseph Vs. State of Kerala, rep. by the Circle Inspector of Police, 1993 CriLJ 2010;
103) Parminder Kaur Vs. State of Uttar Pradesh and Another, (2010) 1 SCC 322;
104) Alpana Das Vs. CBI, 132 (2006) DLT 85;
105) Dr. Vimla Vs. The Delhi Administration, AIR 1963 SC 1572 (V 50 C 232);
106) MCD Vs. State of Delhi and Another, (2005) 4 SCC 605;
107) Rewati Raman Singh Vs. State, 2012 (1) JCC 297;
108) Anvar P. V. Vs. P. K. Basheer and Others, (2014) 10 SCC 473;
109) P. Satyanarayana Murthy Vs. The Dist. Inspector of Police and Anr., Criminal Appeal No. 31 of 2009 (SC), decided on 14.09.2015;
110) C. K. Jaffer Sharief Vs. State (Through CBI), 2013 (1) SCC 205;
111) C. Sukumaran Vs. State of Kerala, Criminal Appeal No. 192 of 2015 (SC), decided on 29.01.2015;
112) K. R. Purushothaman Vs. State of Kerala, 2005 (12) SCC 631;
113) State (NCT of Delhi) Vs. Navjot Sandhu alias Afsan Guru, 2005 SCC (Cri) 1715;
114) Sudhdeo Jha Utpal Vs. The State of Bihar, AIR 1957 SC 466 (V 44 C 69 June);
115) Anil Kumar Bose Vs. State of Bihar, (1974) 4 SCC 616;
116) Dadasaheb Bapusaheb Naik and etc. Vs. State of Maharashtra, 1982 CriLJ 856;

117) Rita Handa Vs. CBI, 2008 [3] JCC 2020;
118) Shakun Grover Vs. Central Bureau of Investigation, Crl. A. No. 760 of 2010, decision on 21.08.2014 (DHC);
119) Baburao alias P. B. Samant Vs. Union of India and Others, 1988 (Supp) SCC 401;
120) MRF Limited Vs. Commissioner of Commercial Taxes and Another, MANU/KA/0196/1996;
121) K. L. E. Society and Others Vs. Siddalingesh, (2008) 4 SCC 541;
122) Zandu Pharmaceutical Works Ltd. and Others Vs. Mohd. Sharaful Haque and Another, (2005) 1 SCC 122;
123) Lahu Kamlakar Patil and Another Vs. State of Maharashtra, (2013) 6 SCC 417;
124) Prithipal Singh and Others Vs. State of Punjab and Another, (2012) 1 SCC 10;
125) State represented by Inspector of Police, Tamil Nadu Vs. Sait alias Krishnakumar, (2008) 15 SCC 440;
126) Dilip Kumar Dey @ Dilip @ Dilu Vs. State of West Bengal, CRA No. 141 of 2008 dated 26.03.2010 (Calcutta High Court);
127) Sat Pal Vs. The State, (22) 1982 DLT (SN) 5;
128) Superintendent of Police, CBI and Others Vs. Tapan Kumar Singh, 2003 SCC (Cri) 1305;
129) A. Subair Vs. State of Kerala, 2009 CriLJ 3450;
130) A. K. Ganju Vs. Central Bureau of Investigation, 2014 (1) AD (Delhi) 349;
131) Central Bureau of Investigation Vs. R. C. Bhargava and Another, 2014 (2) JCC 1424;
132) Central Bureau of Investigation, Hyderabad Vs. K. Narayana Rao, (2012) 9 SCC 512;
133) Surinder Kaur Vs. State of Haryana, 2015 [1] JCC 586; and
134) Avtar Singh Vs. Union of India and Others, WP(C) No. 6563/2011 dated 23.09.2013 (DHC).

Sh. Vijay Aggarwal, learned Advocate for Shahid Balwa, invited my attention to the following case law:

1) V. R. Venugopal Vs. Miss T. Pankajam, 1961 CriLJ 804;

2) A. R. Milton Vs. Mr. & Mrs. Sherman, S. C. 46 Ind. Cas 70 J.) (Criminal Revision No. 460 of 1918 – Calcutta High Court);
3) Shashi Lata Khanna Vs. State of Delhi and Others, 2005 (2) JCC 1220;
4) State of Gujarat Vs. Shyamlal Mohanlal Choksi, 1965 [2] CriLJ 256;
5) Krishnan and Another Vs. Krishnaveni and Another, (1997) 4 SCC 241;
6) Devender Kumar Singla Vs. Baldev Krishan Singla, (2005) 9 SCC 15;
7) Hira Lal Hari Lal Bhagwati Vs. CBI, New Delhi, (2003) 5 SCC 257;
8) Municipal Corporation of Delhi Vs. Jagdish Lal and Another, 1970 CriLJ 1;
9) Jatinder Gupta and Others Vs. U. T. Chandigarh, 1994 (2) C.C. Cases 562 (HC);
10) J. K. Cotton Spinning and Weaving Mills Co. Ltd. Vs. State of Uttar Pradesh and Other, AIR 1961 SC 1170;
11) Neelima Chopra Vs. Anil Chopra, 1986 [11] DRJ 188;
12) Sarwansingh Gajjan Singh Jat Vs. State, AIR 1958 M.P. 230;
13) Raj Kishore Lenka Vs. Republic of India, CRA No. 123 of 2000 (High Court of Orissa);
14) Sunil Bharti Mittal Vs. Central Bureau of Investigation, (2015) 4 SCC 609;
15) S. K. Alagh Vs. State of Uttar Pradesh and Others, (2008) 5 SCC 662;
16) Girdhir Lal Mohta Vs. Central Bureau of Investigation, 2013 (4) JCC 2649;
17) State of Bihar and Others Vs. Kripalu Shankar and Others, (1987) 3 SCC 34;
18) Smt. Shashi Bala Vs. Sh. Rajiv Arora, FAO No. 185/2001, decided on 21.03.2012 (DHC);
19) Satyendra Kumar Sharma Vs. Jitender Kudsia, 2005 (119) DLT 498;
20) Sarwan Singh Vs. State of Punjab, (2003) 1 SCC 240;
21) V. K. Mishra and Another Vs. State of Uttarakhand and Another, (2015) 9 SCC 588;
22) Krishan Chander Vs. State of Delhi, Criminal Appeal

No. 14/2016, decided on 06.01.2016 (SC) / (2016) 3 SCC 108;

23) Issac Isanga Musumba and Others Vs. State of Maharashtra and Others, (2014) 15 SCC 357;
24) Akhtar and Others Vs. State of Uttaranchal, (2009) 13 SCC 722;
25) Central Bureau of Investigation Vs. Ashok Kumar Aggarwal, (2014) 14 SCC 295;
26) R. Sai Bharathi Vs. J. Jayalalitha and Others, 2004 CriLJ 286;
27) Balaka Singh and Others Vs. The State of Punjab, (1975) 4 SCC 511;
28) Union of India and Another Vs. Association of Unified Telecom Service Providers of India and Others, (2011) 10 SCC 543;
29) P. Kasilingam and Others Vs. P. S. G. College of Technology and Others, 1995 Supp (2) SCC 348;
30) Shri Nasiruddin Vs. State Transport Appellate Tribunal, 1975 (2) SCC 671;
31) J. R. Raghupathy and Others Vs. State of A. P. and Others, (1988) 4 SCC 364;
32) Gulf Goans Hotels Company Limited and Another Vs. Union of India and Others, (2014) 10 SCC 673;
33) Narendra Kumar Maheshwari Vs. Union of India and Others, 1990 (Supp) SCC 440;
34) Jumni and Others Vs. State of Haryana, (2014) 11 SCC 355;
35) Desh Bandhu Gupta and Co. and Others Vs. Delhi Stock Exchange Association Ltd., (1979) 4 SCC 565;
36) Villianur Iyarkkai Padukappu Maiyam Vs. Union of India and Others, (2009) 7 SCC 561;
37) Kailash Nath Agarwal Vs. Pradeshiya Industrial & Investment Corporation of U. P. Ltd., 2003 AIR (SC) 1886;
38) SA Vs. AA, MAT. APP. 68/2012, decided on 22.03.2016 (DHC);
39) Vodafone International Holdings BV Vs. Union of India and Another, (2012) 6 SCC 613;
40) Pravinkumar Lalchand Shah Vs. State of Gujarat and Another, MANU/GJ/0169/1981;

41) State of Maharashtra Vs. Sukhdev Singh and Another, (1992) 3 SCC 700;
42) Girish Son of Narayanrao Naik Vs. The State of Maharashtra, Criminal Appeal No. 20 of 1997 (Bombay High Court, Nagpur Bench);
43) Mrs. R. M. Chinnammal Vs. The General Manager, Bharath Sanchar Nigam Ltd. and The Senior Divisional Engineer (Extl), Anna Nagar Exchange, BSNL, MANU/TN/2418/2002;
44) Radhakrishnan Vs. General Manager, BSNL, MANU/KE/0267/2002;
45) Rahul Vashist Vs. Union of India and Others, 1996 SCC OnLine P&H 643;
46) Sri Kailash Nahak alias Naik etc. Vs. State of Orissa, 2008 CriLJ 2909;
47) State of Punjab Vs. Okara Grain Buyers Syndicate Ltd., Okara and Another (1964) 5 SCR 387;
48) Pandit Ram Narain Vs. The State of Uttar Pradesh and Others, MANU/SC/0014/1956;
49) Bharat Hansraj Gandhi Vs. Additional Collector of Central Excise, MANU/KA/0165/1990;
50) Commissioner of Central Excise, Nagpur Vs. Shree Baidyanath Ayurved Bhavan Limited, (2009) 12 SCC 419;
51) The Commissioner of Income Tax Vs. M/s Ecom Gill Coffee Trading Pvt. Ltd., Income Tax Appeal No. 160 of 2012 (High Court of Karnataka);
52) Erin Estate, Galah, Ceylon Vs. Commissioner of Income Tax, Madras, 1959 SCR 573;
53) Commissioner of Income Tax, West Bengal, Calcutta Vs. Raja Benoy Kumar Sahas Roy, AIR 1957 SC 768;
54) M/s MSCO Pvt. Ltd. Vs. Union of India and Others, (1985) 1 SCC 51;
55) South Asia LPG Company Private Limited Vs. Competition Commission of India, 2014 (8) AD (Delhi) 385;
56) Rajneesh Kumar Singhal Vs. State (National Capital Territory of Delhi), 2001 [1] JCC [Delhi] 155;
57) Kartongen Kemi Och Forvaltning AB Vs. State through CBI, 2004 [1] JCC 218;

58) Srichand P. Hinduja Vs. State through CBI, 2005 [2] JCC 1153;
59) Doctor Morepen Ltd. Vs. Poysha Power Generation P. Ltd., 2013 (137) DRJ 261;
60) Om Prakash Berlia and Another Vs. Unit Trust of India and Others, AIR 1983 Bombay 1;
61) Shalimar Chemical Works Limited Vs. Surendra Oil and Dal Mills (Refineries) and Others, (2010) 8 SCC 423;
62) R. Dineshkumar @ Deena Vs. State rep. by Inspector of Police & Others, Criminal Appeal No. 454 of 2015 (SC);
63) Kamal Kishore Vs. State through Delhi Administration, 1997 CriLJ 2106;
64) Bhiva Doulu Patil Vs. State of Maharashtra, AIR 1963 SC 599;
65) Mirza Akbar Vs. King-Emperor, MANU/PR/0037/1940;
66) Sardul Singh Vs. State of Bombay, AIR 1957 SC 747;
67) State of Gujarat Vs. Mohammed Atik and Others, (1998) 4 SCC 351;
68) Suresh @ Bubby Vs. State, Bail Application No. 699/2011, decided on 25.05.2011 (DHC);
69) Manoj Rana Vs. State (NCT of Delhi), 2010 (4) JCC 2448;
70) Kehar Singh and Others Vs. State (Delhi Administration), (1988) 3 SCC 609;
71) Sharad Birdhichand Sarda Vs. State of Maharashtra, (1984) 4 SCC 116;
72) J. Jayalalitha Vs. State represented by Director of Vigilance and Anti-Corruption, MANU/TN/1423/2001;
73) Subash Parbat Sonvane Vs. State of Gujarat, 2002 (5) SCC 86;
74) M. Narayanan Nambiar Vs. State of Kerala, MANU/SC/0164/1962;
75) Major S. K. Kale Vs. State of Maharashtra, (1977) 2 SCC 394;
76) C. K. Jaffer Sharief Vs. State (Through CBI), 2013 (1) SCC 205;
77) R. Sai Bharathi Vs. J. Jayalalitha and Others, (2004) 2 SCC 9;

78) J. Jayalalitha and Others Vs. State represented by Additional Superintendent of Police, CB CID and Others, MANU/TN/1421/2001;
79) G. L. Batra Vs. State of Haryana and Others, (2014) 13 SCC 759;
80) P. Satyanarayana Murthy Vs. The Dist. Inspector of Police and Another, Criminal Appeal No. 31 of 2009 (SC) dated 14.09.2015;
81) Surinder Kaur Vs. State of Haryana, 2015 [1] JCC 586;
82) B. Jayaraj Vs. State of A. P., (2014) 13 SCC 55;
83) A. Sivaprakash Vs. State of Kerala, Criminal Appeal No. 131 of 2007 (SC) dated 10.05.2016;
84) Ved Prakash Kharbanda Vs. Vimal Bindal, 2013 (198) DLT 555;
85) State of UP Vs. Krishna Pal and others, 2003 Crl. L. J. 1115;
86) Ram Sagar Verma Vs. State, 2002 (2) ACR 1405;
87) Govindaraju @ Govinda Vs. State by Sriramapuram Police Station and another, (2012) 4 SCC 722;
88) Preet Singh Vs. State of NCT of Delhi, 2011 (4) JCC 2629;
89) Surinder Pal Jain Vs. Delhi Administration, 1993 Supp (3) SCC 681;
90) Bharat Sanchar Nigam Limited Vs. Telecom Regulatory Authority of India; (2006) 2 Comp L J 320 (Telecom DSAT);
91) J. Jayalalitha Vs. State represented by Director of Vigilance and Anti-Corruption, 2002 1 LW (Crl) 37;
92) Lalita Kumari Vs. Government of Uttar Pradesh and others, (2014) 2 SCC 1;
93) State represented by Inspector of Police, Chennai, Vs. N. S. Gnaneswaran, (2013) 3 SCC 594;
94) People Vs. Donahue, Crim. No. 13273 Court of Appeals of California, First Appellate District, Division One, decided on April 4, 1975;
95) Satish Kumar Vs. State, MANU/DE/0636/1995;
96) Dalip Ram Vs. State (NCT of Delhi), MANU/DE/7605/2007; and
97) Vesa Holdings Private Limited and Another Vs. State of Kerala and Others, (2015) 8 SCC 293.

Sh. D. P. Singh, learned Advocate for Unitech Wireless (Tamil Nadu) Pvt. Ltd., invited my attention to the following case law:

1) **Raghubar Sahai Bhatnagar Vs. Bhakt Sajjan, MANU/UP/0449/1977;**
2) **Vakil Chand Jain Vs. Income Tax Officer, MANU/ID/0223/1992;**
3) **Harbans Lal and Ors. Vs. Charanjit Singh and Ors., MANU/JK/0003/1994;**
4) **Sidhartha Vashisht alias Manu Sharma Vs. State (NCT of Delhi), (2010) 6 SCC 1;**
5) **John L. Brady Vs. State of Maryland, 373 U. S. 83;**
6) **Natural Resources Allocation, In Re, Special Reference No. 1 of 2012, (2012) 10 SCC 1;**
7) **Western India Vegetable Products Ltd. Vs. Commissioner of Income Tax, Bombay City, MANU/MH/0169/1954;**
8) **Commissioner of Wealth Tax Madras Vs. Ramaraju Surgical Cotton Mills Ltd., MANU/SC/0167/1966;**
9) **Commissioner of Income Tax Vs. Sarabhai Sons Pvt. Ltd., MANU/GJ/0014/1972;**
10) **Sarabhai Management Corporation Ltd. Vs. Commissioner of Income Tax, Gujarat, MANU/GJ/0029/1975;**
11) **Commissioner of Income Tax Vs. Sponge Iron India Ltd., MANU/AP/0116/1992;**
12) **Deputy Commissioner of Income Tax Vs. Gujarat Nre Coke Ltd., MANU/IK/0003/2008;**
13) **Kotak Mahindra Old Mutual Life Insurance Ltd. Vs. ITO, MANU/IU/5051/2007;**
14) **Ahmedabad Vadodara Express Co. Ltd. (a Subsidiary of NHAI) Vs. Income Tax Officer, MANU/ID/2262/2009;**
15) **H. L. Bolton (Engineering) Co. Ltd. Vs. T. J. Graham & Sons Ltd., [1957] 1 Q. B. 159;**
16) **Tesco Supermarkets Ltd. Vs. Nattrass, MANU/UKHL/0005/1971;**
17) **Lennard's Carrying Company Limited Vs. Asiatic Petroleum Company Limited, [1915] A.C. 705;**

18) Assistant Commissioner, Assessment-II, Bangalore and Others Vs. Velliappa Textiles Ltd. and Another, (2003) 11 SCC 405;
19) R. S. Sodhi and Another and Manoranjan Pani and Others Vs. Partha Pratim Saikia, MANU/GH/0060/2009;
20) Iridium India Telecom Limited Vs. Motorola Incorporated and Others, (2011) 1 SCC 74;
21) J. K. Industries Ltd. and Others Vs. Chief Inspector of Factories and Boilers and Others, (1996) 6 SCC 665;
22) Sunil Bharti Mittal Vs. Central Bureau of Investigation, (2015) 4 SCC 609;
23) New York Central & Hudson River Railroad Company Vs. United States, MANU/USSC/0147/1909;
24) United States Vs. One Parcel of Land, 61 USLW 2030;
25) Director of Public Prosecutions Vs. Kent and Sussex Contractors Limited, [1944] K. B. 146;
26) Lewis Holdings Limited Vs. Steel & Tube Holdings Limited, [2014] NZHC 3311;
27) Grace E. Lowendahl Vs. The Baltimore and OHIO Railroad Company and Another, 247 A. D. 144, 287 N. Y. S. 62;
28) Vodafone International Holdings BV Vs. Union of India and Another, (2012) 6 SCC 613;
29) United States Vs. Bestfoods Et Al., MANU/USSC/0074/1998;
30) Balwant Rai Saluja and Another Vs. Air India Limited and Others, (2014) 9 SCC 407;
31) Life Insurance Corporation of India Vs. Escorts Ltd. and Others, [1985] Supp 3 SCR 909;
32) State of U. P. and Others Vs. Renusagar Power Co. and Others, (1988) 4 SCC 59;
33) Re Hydrodan (Corby) Ltd., [1994] B. C. C. 161;
34) U. K. Mehra Vs. Union of India and Others, MANU/DE/0157/1993;
35) Delhi Development Authority Vs. Punjab National Bank and Another, MANU/DE/0273/1980;

Sh. H. H. Ponda, learned Advocate for Gautam Doshi, invited my attention to the following case law:

1) Sharad Birdhichand Sarda Vs. State of Maharashtra, (1984) 4 SCC 116;
2) M. G. Agarwal Vs. State of Maharashtra, AIR 1963 SC 200;
3) Ram Bali and Others Vs. State, AIR 1952 All 289;
4) Dasu @ Dadasaheb Sitaram Chavan and Another Vs. The State of Maharashtra, (1985) 2 Bom CR 168;
5) Murli and Another Vs. State of Rajasthan, (2009) 9 SCC 417;
6) Bhagwan Singh Vs. State of Punjab, AIR 1952 SC 214;
7) Shri Cruz Pedro Pacheco Vs. State of Maharashtra, 1998 CriLJ 4628;
8) Sunder Singh Vs. State of Uttaranchal, (2010) 10 SCC 611;
9) V. K. Mishra and Another Vs. State of Uttarakhand and Another, (2015) 9 SCC 588;
10) Krishan Chander Vs. State of Delhi, (2016) 3 SCC 108;
11) Raja Ram Vs. State of Rajasthan, (2005) 5 SCC 272;
12) Mukhtiar Ahmed Ansari Vs. State (NCT of Delhi), (2005) 5 SCC 258;
13) Javed Masood and Another Vs. State of Rajasthan, (2010) 3 SCC 538;
14) Mohd. Imran Khan Vs. State Government (NCT of Delhi), (2011) 10 SCC 192;
15) Babuli alias Narayan Bahera Vs. The State of Orissa, (1974) 3 SCC 562;
16) Aher Raja Khima Vs. State of Saurashtra, AIR 1956 SC 217;

Sh. Siddharth Aggarwal, learned Advocate for Hari Nair, invited my attention to the following case law:

1) Anvar P. V. Vs. P. K. Basheer and Others, (2014) 10 SCC 473;
2) Sanjaysinh Ramrao Chavan Vs. Dattatray Gulabrao Phalke and Others, (2015) 3 SCC 123;
3) Jaldu Ananta Raghurama Arya alias Ramarao Vs. Sri Rajah Bommadevaram Naga Chayadevamma Bahadur Zamindarini and Others, 1958 SCC OnLine AP 9;
4) H. Siddiqui (Dead) by LRs. Vs. A. Ramalingam, (2011)

4 SCC 240;

5) Tori Singh and Another Vs. State of Uttar Pradesh, AIR 1962 SC 399;
6) Kali Ram Vs. State of Himachal Pradesh, (1973) 2 SCC 808;
7) Browne Vs. Dunn, (1894) 6 R.] 67;
8) Laxmipat Choraria and Others Vs. State of Maharashtra, AIR 1968 SC 938;
9) P. B. Desai Vs. State of Maharashtra and Another, (2013) 15 SCC 481;
10) Bhuboni Sahu Vs. The King, AIR (36) 1949 Privy Council 257;
11) Maharaja Sris Chandra Nandy and Another Vs. Rakhalananda Thakur and Others, AIR 1941 Privy Council 16; and
12) Prabhu Dayal Deorah Vs. The District Magistrate, Kamrup and Others, (1974) 1 SCC 103.

Sh. Vijay Aggarwal, learned Advocate for Asif Balwa and Rajiv Agarwal, invited my attention to the following case law:

1. Surender Singh Vs. State (NCT of Delhi), Crl. A. No. 684 of 2008 (DHC);
2. Sariatullah Sarkar and Others Vs. Pran Nath Nandi and Others, [ILR 26 Cal. 184];
3. Rakesh Vs. State, 2010 [2] JCC 1529;
4. Sukhdev Shankar Nikumbe Vs. State of Maharashtra,2000 LawSuit (SC) 2055;
5. Paramjeet Singh @ Pamma Vs. State of Uttarakhand, (2010) 10 SCC 439;
6. Satish Kumar Vs. State, 1995 (34) DRJ (DB);
7. Babu Vs. State of Kerala, (2010) 9 SCC 189;
8. Sujit Biswas Vs. State of Assam, (2013) 12 SCC 406;
9. Shankar Nikumbe Vs. State of Maharashtra, 2000 Lawsuit (SC) 2055;
10. State of U. P. Vs. Jagdish Singh Malhotra, (2001) 10 SCC 215;
11. Kanhaiyalal Vs. State of Rajasthan, 1998 CriLJ 3155;
12. Kitab Singh Vs. State of Rajasthan, 1999 CriLJ 3590;

13. State of Madhya Pradesh Vs. Anil Kumar Verma, 2007 CriLJ 2919;
14. State of Maharashtra Vs. Anant Gurunath Jotrao, 2005 CriLJ 4450;
15. State of Andhra Pradesh Vs. T. Venkateswara Rao, 2004 CriLJ 1412;
16. Mohan Lal Vs. State of Rajasthan, MANU/RH/1185/2001;
17. Deep Chand Vs. The State, AIR 1966 P & H 302;
18. Hakumat Rai Nigam Vs. The State, MANU/DE/0221/1982;
19. Narendranath Das Vs. State of Orissa, MANU/OR/0496/2002;
20. Dinesh Bohra Vs. State of Rajasthan, 2007 CriLJ 4766;
21. Suryabhan Vs. State of Maharashtra, 1995 CriLJ 107;
22. Mehar Chand Vs. State of Haryana, MANU/PH/0959/2004;
23. Ram Avtar Sah Vs. State of Bihar, 2002 CriLJ 3899;
24. Khanju Prasad Ladiya Vs. State of M. P., 2000 CriLJ 4400;
25. Kailash Chandra Pandey Vs. State of West Bengal, 2003 CriLJ 4286;
26. P. Satyanarayana Murthy Vs. District Inspector of Police, State of Andhra Pradesh and Another, (2015) 10 SCC 152;
27. Satvir Singh Vs. State of Delhi, (2014) 13 SCC 143;
28. State of Punjab Vs. Madan Mohanlal Verma, (2013) 14 SCC 153;
29. B. Jayaraj Vs. State of A. P., (2014) 13 SCC 55;
30. C. Sukumaran Vs. State of Kerala, (2015) 11 SCC 314;
31. M. R. Purushotham Vs. State of Karnataka, (2015) 3 SCC 247;
32. N. Sukanna Vs. State of Andhra Pradesh, (2016) 1 SCC 713;
33. A. Subair Vs. State of Kerala, (2009) 6 SCC 587;
34. L. K. Advani Vs. Central Bureau of Investigation, 1997 CriLJ 2559;
35. Central Bureau of Investigation Vs. V. C. Shukla and Others, (1998) 3 SCC 410;
36. Surinder Kaur Vs. State of Haryana, 2015 [1] JCC 586;

37. Shakun Grover Vs. Central Bureau of Investigation, 2014 (7) AD Delhi 513;
38. Sharad Birdhichand Sarda Vs. State of Maharashtra, (1984) 4 SCC 116;
39. Man Singh Vs. Delhi Administration, (1979) 3 SCC 425;
40. Om Prakash Vs. State of Haryana, (2006) 2 SCC 250;
41. Surender Singh Vs. State (NCT of Delhi), 2014 [4] JCC 2766;
42. Smt. Shashi Bala Vs. Sh. Rajiv Arora, FAO No. 185/2001, decided on 21.03.2012 (DHC);
43. Satyendra Kumar Sharma Vs. Jitender Kudsia, 2005 (119) DLT 498;
44. Sarwan Singh Vs. State of Punjab, (2003) 1 SCC 240;
45. Jatinder Kumar and Others Vs. State (Delhi Admn.), 1992 CriLJ 1482;
46. State of West Bengal and Another Vs. Laisal Haque and Others, (1989) 3 SCC 166;
47. Subhra Mukherjee and Another Vs. Bharat Coking Coal Ltd. and Others, (2000) 3 SCC 312;
48. Commissioner of Income Tax-II Vs. Kamdhenu Steel and Alloys Ltd., 2011 SCC OnLine Del 5581;
49. K. Narasimhulu Naidu and Co. Vs. G. Subbarama Reddy, 2003 [6] ALT 118;
50. Smt. Chandrakantaben, wife of Jayantilal Bapalal Modi Vs. Vadilal Bapalal Modi and Others, (1989) 2 SCC 630;
51. R. Kalyani Vs. Janak C. Mehta and Others, (2009) 1 SCC 516;
52. S. K. Alagh Vs. State of Uttar Pradesh and Others, (2008) 5 SCC 662;
53. Sharad Kumar Sanghi Vs. Sangita Rane, 2015 [2] JCC 1277;
54. State (Through) CBI Vs. Someshwar and Others, 2005 (120) DLT 324;
55. K. S. Narayanan and Others Vs. S. Gopinathan, 1982 CriLJ 1611;
56. Abdul Rehman and Others Vs. K. M. Anees-Ul-Haq,2008 [2] JCC 881;
57. Abdul Rehman and Others Vs. K. M. Anees-Ul-Haq,

(2011) 10 SCC 696;

58. Kailash Mangal Vs. Ramesh Chand, 2015 (2) SCALE 615;
59. Pradeep Kumar Vs. State of Uttaranchal, III (2006) CCR 43;
60. Chander Daryani Vs. State of M. P., Crl. A. No. 174 of 1979, decided on 20.09.1983 (Madhya Pradesh High Court);
61. Punjabrao Vs. State of Maharashtra, (2002) 10 SCC 371;
62. S. V. S. Kodanda Rao Vs. State of A. P., Rep. By Inspector of Police, ACB 2003 (2) ALT (Cri) 51; and
63. Delhi Development Authority and Another Vs. K. R. Builders Pvt. Ltd., 2005 (119) DLT 196.

Sh. Balaji Subramanian, learned Advocate for Sharad Kumar, invited my attention to the following case law:

1) State through Superintendent of Police, CBI/SIT Vs. Nalini & Others, (1999) 5 SCC 253;
2) Hanumant Govind Nargundkar and Another Vs. State of M. P., 1953 CriLJ 129 (SC) (1);
3) Queen Empress Vs. Hosh Nak, 1941 ALJR 416;
4) P. Satyanarayana Murthy Vs. District Inspector of Police,
5) State of Andhra Pradesh and Another, (2015) 10 SCC 152;
6) L. K. Advani Vs. Central Bureau of Investigation, 1997 CriLJ 2559;
7) Javed Masood and Another Vs. State of Rajasthan, (2010) 3 SCC 538;
8) Mukhtiar Ahmed Ansari Vs. State (NCT of Delhi), (2005) 5 SCC 258;
9) Raja Ram Vs. State of Rajasthan, (2005) 5 SCC 272;
10) Bhagirath Vs. State of Madhya Pradesh, (1976) 1 SCC 20;
11) S. K. Alagh Vs. State of Uttar Pradesh and Others, (2008) 5 SCC 662; and
12) Iqbal Singh Marwah and Another Vs. Meenakshi Marwah and Another, (2005) 4 SCC 370.

Ms. Deeksha Khurana learned Advocate for Swan Telecom Private Limited has invited my attention to an authority reported as **Raymond Ltd. and Others Vs. Rameshwar Das Dwarkadas P. Ltd., 2013 [2] JCC 1227**.

325. In rebuttal, Sh. Anand Grover, learned Sr. Advocate/ Spl. PP for CBI, invited my attention to the following case law:

1) **Bhutoria Brothers (Private) Ltd., AIR 1957 Cal 593;**
2) **Indian Iron and Steel Co. Ltd., AIR 1957 Cal 234;**
3) **Mahaluxmi Bank Ltd. Vs. The Registrar of Companies, West Bengal, AIR 1961 Cal 666;**
4) **Standard General Assurance Co. Ltd., AIR 1965 Cal 16;**
5) **The New Asiatic Insurance Co. Ltd., 1965 ILR Vol. XVIII (2) 564;**
6) **United Collieries Ltd., 1974 SCC OnLine Cal 50;**
7) **Juggi Lal Kamlapat Jute Mills Co. Ltd. Vs. The Registrar of Companies, AIR 1966 All 417;**
8) **Tata Steel Ltd. & Anr. Vs. Indra Singh & Sons Private Ltd., 2007 SCC OnLine Cal 163;**
9) **Sadashiv Dada Patil Vs. Purushottam Onkar Patil, (2006) 11 SCC 161;**
10) **Lexicon Finance Limited Vs. Park Securities Ltd., 2003 SCC OnLine Bom 1031;**
11) **Yash Pal Mittal Vs. State of Punjab, (1977) 4 SCC 540;**
12) **Ajay Aggarwal Vs. Union of India and Others, (1993) 3 SCC 609;**
13) **State of Maharashtra and Others Vs. Som Nath Thapa and Others, (1996) 4 SCC 659;**
14) **Firozuddin Basheeruddin and Others Vs. State of Kerala, (2001) 7 SCC 596;**
15) **S. Swamirathnam Vs. State of Madras, AIR 1957 SC 340;**
16) **Ram Narayan Popli Vs. Central Bureau of Investigation; (2003) 3 SCC 641;**
17) **State through Superintendent of Police, CBI/SIT Vs. Nalini & Others, (1999) 5 SCC 253;**
18) **Kehar Singh and Others Vs. State (Delhi**

Administration), (1988) 3 SCC 609;

19) Mohammad Usman Mohammad Hussain Maniyar and Others Vs. State of Maharashtra, (1981) 2 SCC 443;
20) R. Venkatkrishnan Vs. Central Bureau of Investigation, (2009) 11 SCC 737;
21) Mir Nagvi Askari Vs. Central Bureau of Investigation, (2009) 15 SCC 643;
22) Mohd. Khalid Vs. State of W.B., (2002) 7 SCC 334;
23) Govt. of NCT of Delhi Vs. Jaspal Singh, (2003) 10 SCC 586;
24) Bhagwan Swarup Lal Bishan Lal Vs. State of Maharashtra, AIR 1965 SC 682;
25) Harihar Prasad etc. Vs. State of Bihar, (1972) 3 SCC 89;
26) State of Uttar Pradesh Vs. Paras Nath Singh, (2009) 6 SCC 372;
27) Parkash Singh Badal and Another Vs. State of Punjab and Others, (2007) 1 SCC 1;
28) Punjab State Warehousing Corporation Vs. Bhushan Chander and Another, (2016) 13 SCC 44;
29) R. S. Nayak Vs. A. R. Antulay, (1984) 2 SCC 183;
30) Subramanian Swamy Vs. Manmohan Singh and Another, (2012) 3 SCC 64;
31) Abhay Singh Chautala Vs. Central Bureau of Investigation, (2011) 7 SCC 141;
32) L. Narayana Swamy Vs. State of Karnataka and Others, (2016) 9 SCC 598;
33) N. K. Ganguly Vs. Central Bureau of Investigation, New Delhi, (2016) 2 SCC 143;
34) Shivanarayan Kabra Vs. State of Madras, AIR 1967 SC 986;
35) Devender Kumar Singla Vs. Baldev Krishan Singla, (2005) 9 SCC 15;
36) Dalip Kaur and Others Vs. Jagnar Singh and Another, (2009) 14 SCC 696;
37) Regina Vs. William Butcher, (1858) 6 E. R. 169;
38) Haji Samo Vs. Emperor, AIR 1927 Sind 161;
39) State of U. P. Vs. Joti Prasad, AIR 1962 All 582;
40) R. Vs. Neil Bancroft Stringer, [1992] 94 Cr. App. R. 13;
41) Ishwarlal Girdharilal Parekh Vs. State of Maharashtra

and Others, (1969) 1 SCR 193;

42) In re. J. S. Dhas and Another, 1939 SCC OnLine Mad 407;
43) E. K. Krishnan Vs. Emperor, (1947) MWN Cr. 162;
44) Centre for Public Interest Litigation and Others Vs. Union of India and Others, (2012) 3 SCC 1;
45) Reg. Vs. Hanmanta, 7 Bom. H. C. Rep. 26, A, C. J.;
46) Kanumukkala Krishnamurthy Vs. State of Andhra Pradesh, AIR 1965 SC 333;
47) A. R. Antulay Vs. Ramdas Sriniwas Nayak and Another, (1984) 2 SCC 500;
48) R. Venkatkrishnan Vs. Central Bureau of Investigation, (2009) 11 SCC 737;
49) Shriram Krishnappa Asegaonkar Vs. State of Maharashtra and Another, 1986 SCC OnLine Bom 191;
50) Iridium India Telecom Limited Vs. Motorola Incorporated and Others, (2011) 1 SCC 74;
51) The Directors, & C., of The Central Railway Company of Venezuela Vs. Joseph Kisch, 1867 LR 99;
52) The New Brunswick and Canada Railway and Land Company Vs. Muggeridge, (1860) 62 E. R. 418;
53) Dobell Vs. Stevens, (1825) 107 E. R. 864;
54) Bakhshish Singh Dhaliwal Vs. State of Punjab, AIR 1967 SC 752;
55) Inder Singh and Another Vs. The State (Delhi Administration), (1978) 4 SCC 161;
56) The State of Punjab Vs. Jagir Singh, Baljit Singh and Karam Singh, (1974) 3 SCC 277;
57) Shivaji Sahabrao Bobade and Another Vs. State of Maharashtra, (1973) 2 SCC 793;
58) Som Prakash Vs. State of Delhi, (1974) 4 SCC 84;
59) State of Haryana Vs. Bhagirath and Others, (1999) 5 SCC 96;
60) Ram Narayan Popli Vs. Central Bureau of Investigation; (2003) 3 SCC 641;
61) Tribhuvan Nath Vs. The State of Maharashtra, (1972) 3 SCC 511;
62) State of U. P. Vs. Shyam Sunder, (2000) 10 SCC 49;
63) State of Madhya Pradesh Vs. Ramesh and Another, (2011) 4 SCC 786;

64) State of Uttar Pradesh Vs. Krishna Master and Others, (2010) 12 SCC 324;
65) Subramanian Swamy Vs. Manmohan Singh and Another, (2012) 3 SCC 64;
66) Gulam Sarbar Vs. State of Bihar (Now Jharkhand), (2014) 3 SCC 401;
67) Rai Sahib Ram Jawaya Kapur and Others Vs. State of Punjab, AIR 1955 SC 549;
68) Gujarat State Petroleum Corpn. Ltd. Vs. The Union of India and Others, MANU/GJ/0376/2008;
69) Government of Andhra Pradesh and Others Vs. A. Hanumantha Rao and Others, MANU/AP/0091/2005;
70) Home Secretary, U. T. of Chandigarh and Another Vs. Darshjit Singh Grewal and Others, (1993) 4 SCC 25;
71) Union of India and Others Vs. Indo-Afghan Agencies Ltd., AIR 1968 SC 718;
72) Delhi Development Authority Vs. Skipper Construction Co. (P) Ltd. and Another, (1996) 4 SCC 622;
73) Commissioner of Central Excise, New Delhi Vs. Modi Alkalies & Chemicals Ltd. and Others, (2004) 7 SCC 569;
74) Gilford Motor Company Limited Vs. Horne, [1933] Ch. 935,
75) Hindusthan Motors Ltd. Vs. Monopolies and Restrictive Trade Practices Commission and Others, AIR 1973 Cal 450;
76) Balwant Rai Saluja and Another Vs. Air India Limited and Others, (2014) 9 SCC 407;
77) Faiza Ben Hashem Vs. Abdulhadi Ali Shayif, [2008] EWHC 2380 (Fam);
78) R Vs. K, [2005] EWCA Crim 619;
79) Brooke Bond Lipton India Ltd. Vs. State of Assam, MANU/GH/0578/2004;
80) Iridium India Telecom Limited Vs. Motorola Incorporated and Others, (2011) 1 SCC 74;
81) J. K. Industries Limited and Another Vs. Union of India and Others, (2007) 13 SCC 673;
82) Anvar P. V. Vs. P. K. Basheer and Others, (2014) 10 SCC 473;
83) State of Kerala Vs. Jayanandan, 2016 SCC OnLine Ker

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84) R. V. E. Venkatachala Gounder Vs. Arulmigu Viswesaraswami & V. P. Temple and Another, (2003) 8 SCC 752;

85) Som Nath Puri Vs. The State of Rajasthan, (1972) 1 SCC 630;

86) The Superintendent & Remembrancer of Legal Affairs, West Bengal Vs. S. K. Roy, (1974) 4 SCC 230;

87) Common Cause, a registered society Vs. Union of India and Others, (1999) 6 SCC 667;

88) V. Purushotham Rao Vs. Union of India and Others, (2001) 10 SCC 305;

89) Sheila Kaul Vs. Shiv Sagar Tiwari, (2002) 10 SCC 667;

90) Delhi Science Forum and Others Vs. Union of India and Another, (1996) 2 SCC 405;

91) Bharti Airtel Ltd. Vs. Union of India, (2015) 12 SCC 1;

92) Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, (1979) 3 SCC 489;

93) State of Madhya Pradesh and Another Vs. Firm Gobardhan Dass Kailash Nath, (1973) 1 SCC 668;

94) Electrical Manufacturing Company Limited Vs. Power Grid Corporation of India Limited and Another, (2009) 4 SCC 87;

95) Vishnu (Dead) by LRs Vs. State of Maharashtra and Others, (2014) 1 SCC 516;

96) Poddar Steel Corporation Vs. Ganesh Engineering Works and Others, (1991) 3 SCC 273;

97) Gurudevdatta Vksss Maryadit and Others Vs. State of Maharashtra and Others, (2001) 4 SCC 534;

98) Forest Range Officer and Others Vs. P. Mohammed Ali and Others, 1993 Supp (3) SCC 627;

99) Siemens Public Communication Networks Private Limited and Another Vs. Union of India and Others, (2008) 16 SCC 215;

100) BLA Power Pvt. Ltd. Vs. Union of India and Others, 2015 (4) MPLJ 521;

101) Dineshchandra Jamnadas Gandhi Vs. State of Gujarat and Another, (1989) 1 SCC 420; and

102) Murlidhar Meghraj Loya and Another Vs. State of Maharashtra and Others, (1976) 3 SCC 684.

326. I may note that I have carefully gone through the entire case law cited at the bar by the parties. I have also carefully gone through the written submissions filed by the parties. The case law would be referred to as and when required.

Legal provision for grant of licence and Role of TRAI

327. Under Section 4 of Indian Telegraph Act, 1885, Central Government is authorized to grant a licence to a private entity for providing telecom services. For that Central Government and private entity is to enter into a contract on such terms and conditions as may be deemed fit in consultation with TRAI. For introduction of service providers, Recommendations of TRAI are required on need and timing and terms and conditions of licence.

328. Let me take note of Section 4 of Indian Telegraph Act, 1885, under which Central Government may grant a licence. Relevant part of the same reads as under:

> "**Exclusive privilege in respect of telegraphs, and power to grant licences**
> [(1) Within [India], the Central Government shall have the exclusive privilege of establishing, maintaining and working telegraphs:
> PROVIDED that the Central Government may grant a licence, on such conditions and in consideration of such payments as it thinks fit, to any person to establish, maintain or work a telegraph within any part of [India]:
> [PROVIDED FURTHER that the Central Government may, by rules made under this Act and published in the Official Gazette, permit, subject to

such restrictions and conditions as it thinks fit, the establishment, maintenance and working–

(a) of wireless telegraphs on ships within Indian territorial waters [and on aircraft within or above [India], or Indian territorial waters], and

(b) of telegraphs other than wireless telegraphs within any part of [India].

…….
……."

329. As per Section 11 of TRAI Act, Recommendations of TRAI are required. Relevant part of Section 11 of TRAI Act reads as under:

"**11. Functions of Authority.-** [(1) Notwithstanding anything contained in the Indian Telegraph Act, 1885 (13 of 1885), the functions of the Authority shall be to-

(a) make recommendations, either *suo motu* or on a request from the licensor, on the following matters, namely:-

(i) need and timing for introduction of new service provider;

(ii) terms and conditions of licence to a service provider;

(iii) revocation of licence for non-compliance of terms and conditions of licence;

(iv) measures to facilitate competition and promote efficiency in the operation of telecommunication services so as to facilitate growth in such services;

(v) technological improvements in the services provided by the service providers;

(vi) type of equipment to be used by the service providers after inspection of equipment used in the network;

(vii) measures for the development of telecommunication technology and any other matter relatable to telecommunication industry in general;

(viii) efficient management of available spectrum;

…….
…….

Provided that the recommendations of the Authority specified in clause *(a)* of this sub-section shall not be binding upon the Central Government:

Provided further that the Central Government shall seek the recommendations of the Authority in respect of matters specified in sub-clauses *(i)* and *(ii)* of clause *(a)* of this sub-section in respect of new licence to be issued to a service provider and the Authority shall forward its recommendations within a period of sixty days from the date on which that Government sought the recommendations:

…….
……."

330. It may be noted that TRAI Recommendations dated 20.02.2003, 27.10.2003 and 28.08.2007 are at the core of the instant case and shall be referred to as and when required.

331. Let me make a brief survey of law relating to conspiracy.

Law on conspiracy

332. In an authority reported as **Kehar Singh and others Vs. State (Delhi Administration) (1998) 3 SCC 609**, it was observed by the Hon'ble Supreme Court in paragraphs 275 and 276 as under:-

"**275**. Generally a conspiracy is hatched in secrecy and it may be difficult to adduce direct evidence of the same. The prosecution will often rely on evidence of acts of various parties to infer that they were done in reference to their common intention. The prosecution will also more often rely upon circumstantial evidence. The conspiracy can be undoubtedly proved by such evidence direct or

circumstantial. But the court must enquire whether the two persons are independently pursuing the same end or they have come together in the pursuit of the unlawful object. The former does not render them conspirators but the latter does. It is, however, essential that the offence of conspiracy requires some kind of physical manifestation of agreement. The express agreement, however, need not be proved. Nor actual meeting of two persons is necessary. Nor it is necessary to prove the actual words of communication. The evidence as to transmission of thoughts sharing the unlawful design may be sufficient. Gerald Orchard of University of Canterbury, New Zealand explains the limited nature of this proposition :

Although it is not in doubt that the offence requires some physical manifestation of agreement, it is important to note the limited nature of this proposition. The law does not require that the act of agreement take any particular form and the fact of agreement may be communicated by words or conduct. Thus, it has been said that it is unnecessary to prove that the parties "actually came together and agreed in terms" to pursue the unlawful object : there need never have been an express verbal agreement, it being sufficient that there was "a tacit understanding between conspirators as to what should be done".

276. I share this opinion, but hasten to add that the relative acts or conduct of the parties must be conscientious and clear to mark their concurrence as to what should be done. The concurrence cannot be inferred by a group of irrelevant facts artfully arranged so as to give an appearance of coherence. The innocuous, innocent or inadvertent events and incidents should not enter the judicial verdict. We must thus be strictly on our guard."

333. In an another authority reported as **State Vs. Nalini**

and others (1999) 5 SCC 253, it was observed by the Hon'ble Supreme Court in paragraph 583 as under:-

> "Some of the broad principles governing the law of conspiracy may be summarized though, as the name implies, a summary cannot be exhaustive of the principles.
> 1. Under Section 120-A IPC offence of criminal conspiracy is committed when two or more persons agree to do or cause to be done an illegal act or legal act by illegal means. When it is a legal act by illegal means overt act is necessary. Offence of criminal conspiracy is an exception to the general law where intent alone does not constitute crime. It is intention to commit crime and joining hands with persons having the same intention. Not only the intention but there has to be agreement to carry out the object of the intention, which is an offence. The question for consideration in a case is did all the accused have the intention and did they agree that the crime be committed. It would not be enough for the offence of conspiracy when some of the accuse merely entertained a wish, howsoever, it may be, that offence be committed.
>
> 2. Acts subsequent to the achieving of the object of conspiracy may tend to prove that a particular accused was party to the conspiracy. Once the object of conspiracy has been achieved, any subsequent act, which may be unlawful, would not make the accused a part of the conspiracy like giving shelter to an absconder.
>
> 3. Conspiracy is hatched in private or secrecy. It is rarely possible to establish a conspiracy by direct evidence. Usually, both the existence of the conspiracy and its objects have to be inferred from the circumstances and the conduct of the accused.
>
> 4. Conspirators may for example, be enrolled in a

chain – A enrolling B, B enrolling C, and so on; and all will be members of a single conspiracy if they so intend and agree, even though each member knows only the person who enrolled him and the person whom he enrols. There may be a kind of umbrella-spoke enrolment, where a single person at the centre does the enrolling and all the other members are unknown to each other, though they know that there are to be other members. These are theories and in practice it may be difficult to tell which conspiracy in a particular case falls into which category. It may however, even overlap. But then there has to be present mutual interest. Persons may be members of single conspiracy even though each is ignorant of the identity of many others who may have diverse roles to play. It is not a part of the crime of conspiracy that all the conspirators need to agree to play the same or an active role.

5. When two or more persons agree to commit a crime of conspiracy, then regardless of making or considering any plans for its commission, and despite the fact that no step is taken by any such person to carry out their common purpose, a crime is committed by each and every one who joins in the agreement. There has thus to be two conspirators and there may be more than that. To prove the charge of conspiracy it is not necessary that intended crime was committed or not. If committed it may further help prosecution to prove the charge of conspiracy.

6. It is not necessary that all conspirators should agree to the common purpose at the same time. They may join with other conspirators at any time before the consummation of the intended objective, and all are equally responsible. What part each conspirator is to play may not be known to everyone or the fact as to when a conspirator joined the conspiracy and when he left.

7. A charge of conspiracy may prejudice the accused because it forces them into a joint trial and the court may consider the entire mass of evidence against very accused. Prosecution has to produce evidence not only to show that each of the accused has knowledge of the object of conspiracy but also of the agreement. In the charge of conspiracy the court has to guard itself against the danger of unfairness to the accused. Introduction of evidence against some may result in the conviction of all which is to be avoided. By means of evidence in conspiracy, which is otherwise inadmissible in the trial of any other substantive offence prosecution tries to implicate the accused not only in the conspiracy itself but also in the substantive crime of the alleged conspirators. There is always difficulty in tracing the precise contribution of each member of the conspiracy but then there has to be cogent and convincing evidence against each one of the accused charged with the offence of conspiracy. As observed by Judge Learned Hand "this distinction is important today when many prosecutors seek to sweep within the dragnet of conspiracy all those who have been associated in any degree whatever with the main offenders".

8. As stated above it is the unlawful agreement and not its accomplishment, which is the gist or essence of the crime of conspiracy. Offence of criminal conspiracy is complete even though there is no agreement as to the means by which the purpose is to be accomplished. It is the unlawful agreement which is the gravamen of the crime of conspiracy. The unlawful agreement which amounts to a conspiracy need not be formal or express, but may be inherent in and inferred from the circumstances, especially declarations, acts and conduct of the conspirators. The agreement need not be entered into by all the parties to it at the same time, but may

be reached by successive actions evidencing their joining of the conspiracy.

9. It has been said that a criminal conspiracy is a partnership in crime, and that there is in each conspiracy a joint or mutual agency for the prosecution of a common plan. Thus, if two or more persons enter into a conspiracy, any act done by any of them pursuant to the agreement is, in contemplation of law, the act of each of them and they are jointly responsible therefor. This means that everything said, written or done by any of the conspirators in execution or furtherance of the common purpose is deemed to have been said, done or written by each of them. And this joint responsibility extends not only to what is done by any of the conspirators pursuant to the original agreement but also to collateral acts incidental to and growing out of the original purpose. A conspirator is not responsible, however, for acts done by a co-conspirator after termination of the conspiracy. The joinder of a conspiracy by a new member does not create a new conspiracy nor does it change the status of the other conspirators, and the mere fact that conspirators individually or in groups perform different tasks to a common end does not split up a conspiracy into several different conspiracies.

10. A man join a conspiracy by word or by deed. However, criminal responsibility for a conspiracy requires more than a merely passive attitude towards an existing conspiracy. One who commits an overt act with knowledge of the conspiracy is guilty. And one who tacitly consents to the object of a conspiracy and goes along with other conspirators, actually standing by while the others put the conspiracy into effect, is guilty though he intends to take no active part in the crime."

334. Furthermore, in an authority reported as **State (NCT of Delhi) Vs. Navjot Sandhu alias Afsan Guru, (2005) 11 SCC 600**, it was observed by the Hon'ble Supreme Court in paras 98 to 101, as under:

> "**98**. As pointed out by Fazal Ali, J., in V. C. Shukla v. State (Delhi Admn) : (SCC pp. 669-70, para 8)
>
> "In most cases it will be difficult to get direct evidence of an agreement to conspire but a conspiracy can be inferred even from circumstances giving rise to a conclusive or irresistible inference of an agreement between two or more persons to commit an offence."
>
> In this context, the observations in the case of Noor Mohammad Mohd. Yusuf Momain v. State of Maharashtra are worth noting : (SCC pp.669-700, para 7)
>
> "In most cases proof of conspiracy is largely inferential though the inference must be founded on solid facts. Surrounding circumstances and antecedent and subsequent conduct, among other factors, constitute relevant material."
>
> **99**. A few bits here and a few bits there on which the prosecution relies cannot be held to be adequate for connecting the accused in the offence of criminal conspiracy. The circumstances before, during and after the occurrence can be proved to decide about the complicity of the accused. (Vide Esher Singh v. State of AP.)
>
> **100**. Lord Bridge in R. v. Anderson aptly said that the evidence from which a jury may infer a criminal conspiracy is almost invariably to be found in the conduct of the parties. In Daniel Youth v. R. the Privy Council warned that in a joint trial case must be taken to separate the admissible evidence against each accused and the judicial mind should not be allowed to be influenced by evidence admissible

only against other. "A co-defendant in a conspiracy trial", observed Jackson, J, (US p.454), "occupies an uneasy seat" and "it is difficult for the individual to make his own case stand on its own merits in the minds of jurors who are ready to believe that birds of a feather are flocked together". (Vide Alvin Krulewitch v. United States of America.)

In Nalini case Wadhwa, J. pointed out, at p. 517 of SCC, the need to guard against prejudice being caused to the accused on account of joint trial with other conspirators. The learned Judge observed that: (SCC p. 517, para 583)

"There is always difficulty in tracing the precise contribution of each member of the conspiracy but then there has to be cogent and convincing evidence against each one of the accused charged with the offence of conspiracy."

The pertinent observation of Judge Hand in U.S. v. Falcone was referred to: (SCC p. 511, para 572)

"The distinction is especially important today when so many prosecutors seek to sweep within the dragnet of conspiracy all those who have been associated in any degree whatever with the main offenders."

At para 518, Wadhwa, J., pointed out that the criminal responsibility for a conspiracy requires more than a merely passive attitude towards an existing conspiracy. The learned Judge then set out the legal position regarding the criminal liability of the persons accused of the conspiracy as follows: (SCC p. 518, para 583)

"One who commits an overt act with knowledge of the conspiracy is guilty. And one who tacitly consents to the object of a conspiracy and goes along with other conspirators, actually standing by while the others put the conspiracy into effect, is guilty though he intends to take no active part in the crime."

101. One more principle which deserves notice is that the cumulative effect of the proved circumstances should be taken into account in determining the guilt of the accused rather than adopting an isolated approach to each of the circumstances. Of course, each one of the circumstances should be proved beyond reasonable doubt. Lastly, in regard to the appreciation of evidence relating to the conspiracy, the Court must take care to see that the acts or conduct of the parties must be conscious and clear enough to infer their concurrence as to the common design and its execution. K. J. Shetty, J., pointed out in Kehar Singh case that : (SCC p. 773, para 276)

The innocuous, innocent or inadvertent events and incidents should not enter the judicial verdict."

335. In another case reported as **R. Venkatakrishnan Vs. Central Bureau of Investigation, AIR 2010 SC 1812**, law relating to acts or things which were inherently unlawful was stated in paragraph 86 as under:-

"In some case, intent of unlawful use being made of the goods or services in question may be inferred from the knowledge itself. This Court is State of Maharashtra v. Som Nath Thapa opined that it is not necessary for the prosecution to establish that a particular unlawful use was intended, so long as the goods or services in question could not be put to any lawful use, stating:

".....to establish a charge of conspiracy knowledge about indulgence in either an illegal act or a legal act by illegal means is necessary. In some cases, intent of unlawful use being made of the goods or services in question may be inferred from the knowledge itself. This apart, the prosecution has not to establish that a particular unlawful use was intended, so long as the goods or services in question could not be put to any lawful use. Finally,

when the ultimate offence consists of a chain of actions, it would not be necessary for the prosecution to establish, to bring home the charge of conspiracy, that each of the conspirators had the knowledge of what the collaborator would do, so long as it is known that the collaborator would put the goods or service to an unlawful use."

336. What is misconduct? This point was considered by the Hon'ble Supreme Court in an authority reported as **State of Madhya Pradesh Vs. Sheetla Sahai and others, (2009) 8 SCC 617**, in paragraph 46 as under:-

"10. In State of Punjab v. Ram Singh it was stated:

'5. Misconduct has been defined in Black's Law Dictionary, 6th Edn., at p. 999, thus:

"Misconduct.-A transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, unlawful behavior, willful in character improper or wrong behavior; its synonyms are misdemeanor, misdeed, misbehavior, delinquency, impropriety, mismanagement, offence, but not negligence or carelessness."

Misconduct in office has been defined as:

"Misconduct in office- Any unlawful behavior by a public officer in relation to the duties of his office, willful in character. Term embraces acts which the office holder had no right to perform, acts performed improperly, and failure to act in the fact of an affirmative duty to act."

11. In P. Ramanatha Aiyar's Law Lexicon, 3rd Edn., at p. 3027, the term 'misconduct' has been defined as under:

'Misconduct.-The term "misconduct" implies a wrongful intention, and not a mere error of judgment.

MISCONDUCT is not necessarily the same thing as conduct involving moral turpitude.

> The word "misconduct" is a relative term, and has to be construed with reference to the subject-matter and the context wherein the term occurs, having regard to the scope of the Act or statute which is being, construed. "Misconduct" literally means wrong conduct or improper conduct."

337. As to when conduct of a public servant becomes criminal misconduct within the meaning of PC Act, it was observed in paragraphs 35 and 47 as under:-

> "**35**. Section 13 of the Act provides for criminal misconduct by a public servant. Such an offence of criminal misconduct by a public servant can be said to have been committed if in terms of Sections 13(1)(d)(ii)-(iii) a public servant abuses its position and obtains for himself or for any other person any valuable thing or pecuniary advantage; or while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest. Sub-section (2) of Section 13 provides that any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than one year but which may extend to seven years and shall also be liable to fine.
>
> **47**. Even under the Act, an offence cannot be said to have been committed only because the public servant has obtained either for himself or for any other person any pecuniary advantage. He must do so by abusing his position as a public servant or holding office as a public servant. In the latter category of cases, absence of any public interest is a sine qua non. The materials brought on record do not suggest in any manner whatsoever that Respondents 1 to 7 either had abused position or had obtained pecuniary advantage for Respondents 8, 9, and 10, which was without any public interest."

Law on circumstantial evidence

338. In an authority reported as **Sharad Birdhichand Sarda Vs. State of Maharashtra, (1984) 4 SCC 116**, Hon'ble Supreme Court while dealing with appreciation of circumstantial evidence observed in paragraphs 153 and 154 as under:

> "**153**. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:
>
> (1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.
>
> It may be noted here that this Court indicated that the circumstances concerned 'must or should' and not 'may be' established. There is not only a grammatical but a legal distinction between 'may be proved' and "must be or should be proved" as was held by this Court in *Shivaji Sahabrao Bobade v. State of Maharashtra* where the following observations were made : [SCC para 19, p. 807 : SCC (Cri) p. 1047]
>
> Certainly, it is a primary principle that the accused *must* be and not merely *may* be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions.
>
> (2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

(3) the circumstances should be of a conclusive nature and tendency.

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

154. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence."

339. In the light of the facts and circumstances of the case, evidence led on record and the law cited at the bar, I proceed to dispose of the matter issue-wise as under:

Association/ Familiarity between A. Raja and Sh. Shahid Balwa & Sh. Vinod Goenka and Sh. Sanjay Chandra

340. It is the case of the prosecution that these accused knew Sh. A. Raja from his days in the Ministry of Environment and Forests. It is the case of the prosecution that Sh. A. Raja was Minister of Environment and Forests during 2004 to May 2007 and during this period, Sh. A. Raja had cleared many projects of DB Realty Limited, a company of Sh. Shahid Balwa & Sh. Vinod Goenka and Unitech Limited, company of Sh. Sanjay Chandra. It is the case of the prosecution that these three accused used to visit Sh. A. Raja in connection with their real estate projects.

341. It is also the case of the prosecution that family

members of Sh. A. Raja were on the board of Green House Promoters (P) Limited, a Chennai based company, engaged in business of Realty and DB Realty Limited had got due diligence conducted of this company. It is also the case of the prosecution that DB group had also attempted to buy land through this company and in that process these accused developed good relations. It is the case of the prosecution that this familiarity led to the criminal conspiracy in the instant case.

342. The defence has denied it submitting that there is no credible evidence in this regard.

343. Let me examine the issue based on evidence on record.

Familiarity of accused during clearance of realty projects

344. It is the case of the prosecution that Sh. Shahid Balwa, Sh. Vinod Goenka and Sh. Sanjay Chandra knew Sh. A. Raja from the days when he (A. Raja) was the Minister for Environment and Forests. It is the case of the prosecution that Sh. A. Raja had cleared various real estate projects of DB Realty Limited and Unitech Limited and, as such, knew these three accused from before. It is also the case of the prosecution that at that time Sh. R. K. Chandolia was also PS to Sh. A. Raja and Sh. Siddhartha Behura was Additional Secretary in the Ministry. It is the case of the prosecution that Sh. Shahid Balwa, Sh. Vinod Goenka and Sh. Sanjay Chandra used to visit Sh. A. Raja in the Ministry of Environment and Forests as well as at his residence. It is the case of the prosecution that the three accused were

familiar with Sh. A. Raja. My attention has been invited to the deposition of PW 7 Sh. Aseervatham Achary, who was Additional Private Secretary to Sh. A. Raja during the relevant time.

345. On the other hand, defence has submitted that PW 7 Sh. Aseervatham Achary is a false witness. It is the case of the defence that his testimony cannot be relied upon as it is not supported by any documentary evidence. It is the case of the defence that whenever a person meets a Minister, the meeting is reflected in the appointment chart of the day and entry and exit of the person concerned is also reflected in the visitor's register maintained by MHA. No such document has been produced by the prosecution. It is the case of the defence that Sh. Aseervatham Achary had political inclinations and, as such, made a false statement.

346. Let me examine the evidence of Sh. Aseervatham Achary.

347. PW 7 Sh. Aseervatham Achary in his examination-in-chief dated 19.12.2011, pages 2 and 3, has deposed as under:

> "I was associated with Sh. A. Raja as his Assistant Private Secretary from October 1999 till December, 2003 in Ministry of Rural Development and Ministry of Health and Family Welfare. Then, again I was appointed as his Assistant Private Secretary in May 2004 in the Ministry of Environment and Forests. I continued in this post till 31.12.2005. On 01.01.2006, I was appointed as his Additional Private Secretary and I continued in this post till 29.10.2008 in MOC&IT.
>
> During the period, A. Raja was Minister of Environment and Forests, I was looking after the

work of his constituency and political activities, besides any other work he entrusted to me time-to-time. At that time, the Minister had a Private Secretary Sh. R. K. Chandolia. R. K. Chandolia belongs to Indian Economic Service and his parent Ministry is Ministry of Finance. Sh. R. K. Chandolia joined as Private Secretary to Sh. A. Raja in January 2005. In the Ministry of Environment and Forests Sh. R. K. Chandolia continued as Private Secretary till May 2007 and thereafter, he also migrated to MOC&IT. Sh. A. Raja as Minister in Ministry of Environment and Forests was handling the Environmental clearances and forest clearances, besides looking after the administration of Indian Forest Service. Environmental clearances are required for construction activities and setting up of factories, plants or any other industrial establishment. Construction of residential complexes is also included in the construction activities. The big construction projects cleared by Sh. A. Raja as Minister of Environment and Forests included Unitech, D. B. Realty and other companies. I do not know the procedure for making such clearances as I was not involved in these clearances. As far as Unitech is concerned, Sh. Sanjay Chandra and as far as D. B. Realty is concerned, Sh. Shahid Balwa and Sh. Vinod Goenka used to follow up. They used to meet Sh. A. Raja and R. K. Chandolia on regular basis to pursue their cases in Ministry of Environment and Forests, located in Paryavaran Bhawan as well as Minister Sh. A. Raja's official residence located at 2A, Motilal Nehru Marg, New Delhi."

348. In his examination-in-chief, PW 7 Sh. Asservatham Achary deposed that Sh. Shahid Balwa, Sh. Vinod Goenka and Sh. Sanjay Chandra used to meet Sh. A. Raja on regular basis in connection with their realty projects.

349. Let me take note of his cross-examination also.

350. PW 7 Sh. Aseervatham Achary in his cross-examination dated 20.12.2011, page 5, deposed as under:

> "I saw Shahid Balwa and Vinod Goenka approximately more than 20 times, in the office of the Minister of Environment and Forests."

351. PW 7 in his further cross-examination dated 20.12.2011, page 6, deposed as under:

> "It is correct that a chart of appointments of Minister would be prepared and would be given to the Minister and his personal staff, at the end of the day for the next day."

352. He further deposed in his cross-examination dated 23.12.2011, pages 7 and 8, as under:

> "It is correct that at the camp office of the Minister, three charts, that is, daily engagements, tour programmes, monthly programmes, used to be prepared. I did not use to prepare these charts daily. However, whenever the Minister wanted me to do it, I used to do it. It is correct that in case I prepared these charts, I would come to know about the person who would meet the Minister next day. It is also correct that whenever I would prepare the tour programme of Minister, I would come to know as to when the Minister would be in Delhi and when he would be out of Delhi. It is correct that even if I did not prepare the daily engagements chart, I would have a look at it at his camp office and would come to know about the person who would meet the Minister. It is correct that whenever industrialists, service providers would come to meet the Minister, I would come to know about that. It is correct that if anybody would seek an appointment with the Minister through me, I would bring the same to the

notice of the Minister and would fix the time of meeting with the Minister. Through this process, large number of persons would be meeting the Minister. A record of these charts is maintained at the camp office or in the office of the Minister. It is correct that Electronics Niketan office is a secured place and to enter it a pass is required to be obtained. It is correct that if a person wishes to enter Electronics Niketan office, he would obtain a pass from the receptionist and meet the person concerned and on return surrender the pass at the reception signed by the concerned person, that is, the person visited by the visitor. This is the normal procedure. It is possible to verify from the reception register and the official record if a particular person had met the Minister on a particular day or not."

353. He further deposed in his cross-examination dated 02.01.2012, pages 4 and 5, as under:

"It is correct that whether the daily engagement chart of the Minister was prepared by me or someone else, I would come to know as to who was meeting the Minister. I have been shown a folder containing some papers, collectively mark PW 7/DC, and I cannot say anything about it as it is not an official file of DoT. This folder contains some documents, which are put into folder by the persons working in the bungalow of the Minister. The engagement charts were typed by me, other persons as well as by Sh. R. K. Chandolia in case I fail to reach in time. "

354. He further deposed in his cross-examination dated 04.01.2012, pages 7 and 8, as under:

"The engagement charts in folder mark PW 7/DC seems to be the charts which were prepared showing engagements of the Minister. This folder contains

about hundred such charts and some of them might have been typed by me. If there was any engagement of Sh. Shahid Usman Balwa with Sh. A. Raja, it must have been shown in the engagement chart. Mr. Anil Ambani of Reliance and Mr. Sunil Bharti Mittal of Airtel met Sh. A. Raja. However, I do not know if Sh. Ratan Tata of Tata Indicom met Sh. A. Raja or not. To my remembrance, Sh. Sunil Bharti Mittal met Sh. A. Raja only once. I have seen engagement chart dated 24.05.2007, now mark PW 7/DC-1, in file mark PW 7/DC and this shows the engagement of Sh. Sunil Bharti Mittal and Sh. Ratan Tata with Sh. A. Raja (objected to by Ld. Sr. PP on the ground of authenticity of the chart). I am not aware if such engagement charts have been seized by the CBI or not. I was not shown any engagement chart by the CBI. Department may be maintaining a visitors register. I do not know if a visitors register in every department of Government of India is maintained by the MHA persons. The normal procedure in the three Ministries in which I served is that a visitors register is maintained and the visitor is required to sign the same. I do not know if the CBI seized any visitors register showing the visit of Sh. Shahid Usman Balwa to the three Ministries during the tenure of Sh. A. Raja. The CBI did not show me any such register. I have been shown two registers, D-104 and 105, which are visitors registers of Sanchar Bhawan and such registers are maintained in the department by MHA regarding visitors visiting the department.

At this stage, Sh. R. N. Mittal, learned Sr. Advocate, submits that he does not dispute the exhibition of these registers.

Court Order: These two documents have been placed on record by the prosecution and their exhibition is not disputed by the learned Sr. Counsel. The same are allowed to be exhibited and the same are Ex A-26 and A-27.

I cannot tell if Shahid Balwa visited the DoT

during the period mentioned in these registers without going through the same. I cannot admit or deny if name of Shahid Usman Balwa does not figure in these registers without reading the same."

355. Sh. Aseervatham Achary deposed in his cross-examination that he saw Sh. Shahid Balwa and Sh. Vinod Goenka visiting the office of Sh. A. Raja more than 20 times. It is a common knowledge that when anyone visits office of a Minister, his particulars are recorded in a visitor's register. Sh. Achary himself admitted that an appointment chart of the Minister is also maintained. He also admitted that a visitor's register is also maintained in the DoT. Even prosecution itself has produced two visitor's registers of DoT, that is, D-104 and D-105, in which names of the visitors, who visited Sanchar Bhawan in the year 2008, have been recorded. How is it that prosecution could not collect even a single appointment chart or a visitor's register in which the visit/ meeting of the three accused with the Minister would have been shown? It is not the case of the prosecution that whenever the three accused, namely, Sh. Shahid Balwa, Sh. Vinod Goenka and Sh. Sanjay Chandra, visited Sh. A. Raja, their names would not be entered in the record, that is, in the appointment chart or in the visitor's register at the instance of Sh. A. Raja. Had Sh. Aseervatham Achary stated that the accused visited Sh. A. Raja once or twice, his deposition might have been acceptable and taken to be true. However, he has deposed that these accused were seen by him visiting the Minister more than 20 times. How is it that not even

once their visit was taken on record? Moreover, no clearance given by Sh. A. Raja has been placed on record by the prosecution. Since there is no documentary record produced by the prosecution regarding their visit to the office of the Minister, I am not inclined to believe the oral statement of Sh. Aseervatham Achary. Furthermore, he is a man with political inclinations and used to think of joining a political party and weighing various options. This has further added to the belief that the witness is not reliable. It is not safe to act on such testimony.

356. Moreover, there is no material on record as to what Sh. A. Raja and Ms. Kanimozhi Karunanithi or other accused used to talk about.

357. Not only this, the instant case was registered on 21.10.2009. Sh. Aseervatham Achary remained Additional PS to Sh. A. Raja till 29.10.2008. Naturally, he is an important witness and is expected to know many facts. However, his statement under Section 161 CrPC was recorded by the IO on 24.03.2011, after a long gap and only about a week before filing the charge sheet and the witness suddenly became a goldmine of information. This long delay in recording his statement alone is good enough to destroy the evidentary value of his deposition. Furthermore, if Sh. Shahid Balwa and Sh. Vinod Goenka were in constant touch with Sh. A. Raja in the Ministry of Environment and Forests, the prosecution could have easily cited any other witness also from that Ministry to prove their association.

358. Not only this, DW 1 Sh. A. Raja in his cross-

examination dated 07.07.2014, pages and 8 and 9, denied meeting these three accused and deposed as under:

> "**Ques**: Have you ever met Sh. Sanjay Chandra at your residence?
> **Ans**: I do not recollect specifically if Sanjay Chandra met me at my residence. Had it been so, it should have been reflected in the chart and the entries maintained by the security forces.
> **Ques**: Have you ever met Sh. Sanjay Chandra at your office?
> **Ans**: I do not recollect specifically if Sanjay Chandra met me at my office. Had it been so, it should have been reflected in the chart and the entries maintained by the security forces.
> **Ques**: Did you ever meet Sh. Vinod Goenka at your residence or office?
> **Ans**: I do not recollect specifically if Vinod Goenka met me at my residence or office. Had it been so, it should have been reflected in the chart and the entries maintained by the security forces.
> **Ques**: Did you ever meet Sh. Shahid Usman Balwa at your residence or office?
> **Ans**: I do not recollect specifically if Shahid Usman Balwa met me at my residence or office. Had it been so, it should have been reflected in the chart and the entries maintained by the security forces.
> **Ques**: I put it to you that all the aforesaid three persons used to meet you at your residence and your office in connection with various pending official work?
> **Ans**: This is incorrect.
> **Ques**: I put it to you that you are well acquainted with the aforesaid three persons?
> **Ans**: It is incorrect."

359. Furthermore, DW 22 Sh. R. K. Chandolia in his examination-in-chief dated 04.08.2014, page 6, deposed as under:

"**Ques**: Were any projects cleared by Sh. A. Raja during his tenure as Minister for Environment and Forests related to DB Realty or Unitech?
Ans: A large number of files used to be received daily for administrative matters and environmental/ forest clearances in the office of Minister of Environment and Forests and they were placed before him for his orders. I do not remember any file approved by him for these two companies.
Ques: Did you meet Shahid Usman Balwa, Vinod Goenka or Sanjay Chandra in the Ministry of Environment and Forests?
Ans: I did not meet these persons during my tenure in that Ministry. I met Shahid Usman Balwa for the first time in February 2011 while I was in judicial custody and Vinod Goenka and Sanjay Chandra in this Court room, when they were summoned in this case."

360. In his cross-examination dated 05.08.2014, page 5, DW 22 deposed as under:

"Appointments chart for the day of the Minister was used to be prepared by the Addl. PS Sh. Aseervatham Achary and not by me in both the Ministries. It is wrong to suggest that I also used to prepare it in both the Ministries."

361. In his further cross-examination dated 05.08.2014, pages 6 and 7, DW 22 denied meeting the three accused and deposed as under:

"It is wrong to suggest that I know Sh. Shahid Usman Balwa, Sh. Vinod Goenka and Sh. Sanjay Chandra, since the days of my posting in Ministry of Environment and Forests. It is wrong to suggest that these three persons used to meet me either in the Ministry of Environment and Forests in connection with environmental clearances for their projects or at

the camp office of the Minister. I do not know if these three persons used to meet Sh. A. Raja or not during his tenure in this Ministry or at his camp office. It is wrong to suggest that I know that Sh. A. Raja had cleared projects of DB group and Unitech group during his tenure as Minister for Environment and Forests."

362. PW 153 Sh. Vivek Priyadarshi, Investigating Officer, in his cross-examination dated 18.11.2013, pages 16 and 17, deposed as under:

"I had written a letter to Ministry of Environment and Forest asking for certain documents relating to the groups involved in the instant case and I did receive a response, but the same has not been placed on the record of this case. I did not record statement of any official of this Ministry. It is wrong to suggest that this response did not suit the prosecution version and for this reason I did not place the same on the record of this Court."

363. PW 153 in his further cross-examination dated 19.11.2013, page 20, deposed as under:

"It is correct that a Minister has a daily list of appointments both for residence as well as office. A gate register is also maintained. No gate register or appointment diary of accused A. Raja have been seized during his tenure as Minister for Environment and Forests."

364. The Investigating Officer could not collect any evidence, oral or documentary, from the Ministry of Environment and Forests regarding the meetings of accused.

365. From the perusal of the deposition referred to above,

it is clear that there is no legally acceptable material on record to show that three accused, namely, Sh. Shahid Balwa, Sh. Vinod Goenka and Sanjay Chandra, used to meet Sh. A. Raja and were familiar with each other from before, that is, during the tenure of Sh. A. Raja in the Ministry of Environment and Forests.

366. As far as remaining two accused, that is, Sh. Siddhartha Behura and Sh. R. K. Chandolia are concerned, they were Government officials and there is nothing unusual in their posting in the Ministry of Environment and Forests. Accordingly, I do not find any merit at all in the case of prosecution on this point.

Relations between accused through Green House Promoters (P) Limited

367. It is the case of the prosecution that DB group of Sh. Shahid Balwa and Sh. Vinod Goenka knew Sh. A. Raja from before and that facilitated the conspiracy to grant UAS licences to STPL and consequently transfer of Rs. 200 crore from Dynamix Realty to Kalaignar TV (P) Limited as illegal gratification for grant of these licences to STPL by Sh. A. Raja as MOC&IT. It is submitted that there was a company by the name of Green House Promoters (P) Limited, promoted by one Sh. Sadhick Batcha. This company was engaged in real estate business in Tamil Nadu. It is the case of the prosecution that family members of Sh. A. Raja were also on the board of this company. It is the case of the prosecution that DB group got due

diligence conducted of Green House Promoters (P) Limited through Protiviti Consulting (P) Limited, a management consulting firm. It is also the case of the prosecution that DB Realty Limited, through its subsidiary Eterna Developers (P) Limited, paid Rs. 1.25 crore to Green House Promoters (P) Limited on 29.09.2008 as an advance for purchase of land, but the money was returned. It is the case of the prosecution that these facts show that DB Realty was in touch with Green House Promoters (P) Limited, in which family members of Sh. A. Raja were also directors and, as such, Sh. A. Raja was known to DB group from before through this company. To prove the relations, my attention has been invited to the deposition of PW 117 Sh. M. Krishnamoorthy, driver in Green House Promoters (P) Limited; PW 120 Sh. R. P. Paramesh Kumar, Director in Green House Promoters (P) Limited and a relative of Sh. A. Raja; PW 128 Sh. Kevin Amrithraj, Managing director of Green House Promoters (P) Limited; PW 113 Sh. Krishan Goyal, Manager, Protiviti Consulting (P) Limited, PW 127 Pushpara Jaishankar Kannan, Director Eterna Developers and PW 129 T. Balakrishnan, Manager, Canara Bank, Chennai.

368. On the other hand, defence has argued that in the deposition of these witnesses there is no material at all showing that Sh. A. Raja knew DB group of Sh. Shahid Balwa and Sh. Vinod Goenka from before.

369. PW 117 Sh. M. Krishnamoorthy was a driver in Green House Promoters (P) Limited. He has not said anything of substance in his deposition. PW 128 Sh. Kevin Amrithraj,

Managing Director of Green House Promoters (P) Limited has also disowned any knowledge of DB group of Mumbai. He is also not aware of any company by the name of DB Realty Limited. PW 120 Sh. R. P. Paramesh Kumar, Director of Green House Promoters (P) Limited, also did not know Sh. Shahid Balwa. PW 127 Sh. Pushparaj Jaishankar Kannan, Director of Eterna Developers (P) Limited, also did not know Sh. Shahid Balwa or Sh. Vinod Goenka. He also deposed that Eterna Developers (P) Limited does not belong to any group, though letter Ex PW 127/B (D-779) do show that Sh. Shahid Balwa and Sh. Vinod Goenka were its former directors. The prosecution has highlighted this point in detail. In the absence of any other evidence, being former director of a company does not show their familiarity with Sh. A. Raja.

370. However, PW 113 Sh. Krishan Goyal has deposed that Protiviti Consulting (P) Limited conducted due diligence of Green House Promoters (P) Limited, on being engaged by DB Realty Limited vide agreement dated 10.06.2008, Ex PW 113/A (D-785), and it submitted a draft due diligence report, Ex PW 113/B (D-786). He also deposed that part fee was also paid by DB Realty Limited. He deposed that two persons, namely, Sh. Venkat Iyer and Sh. Navil Patel were involved from DB Realty. There is absolutely no evidence in the deposition of these witnesses indicating any relations between Sh. A. Raja and Sh. Shahid Balwa and Sh. Vinod Goenka. At best it shows an inchoate transaction between the two companies.

371. From the material on record, it cannot be said that

there was any relation/ association/ familiarity between Sh. A. Raja, Sh. Shahid Balwa, Sh. Vinod Goenka and DB Realty Limited from before. Moreover, mere familiarity does not mean conspiratorial familiarity.

372. Moreover, deposition referred to above does not reveal as to what the accused used to talk and plan relating to the conspiracy alleged in the case. It is instructive to take note of the observations of Hon'ble Supreme Court made in an authority reported as **State of Karnataka Vs. L. Muniswamy and others, (1977) 2 SCC 699**, paragraph 8 of which reads as under:

> ".....A few bits here and a few bits there on which the prosecution proposes to rely are woefully inadequate for connecting the respondents with the crime, howsoever skilfully one may attempt to weave those bits into a presentable whole. There is no material on the record on which any tribunal could reasonably convict the respondents for any offence connected with the assault on the complainant. It is undisputed that the respondents were nowhere near the scene of offence at the time of the assault. What is alleged against them is that they had conspired to commit that assault. This, we think, is one of those cases in which a charge of conspiracy is hit upon for the mere reason that evidence of direct involvement of the accused is lacking. We have been taken through the statements recorded by the police during the course of investigation and the other material. The worst that can be said against the respondents on the basis thereof is that they used to meet one another frequently after the dismissal of accused 1 and prior to the commission of the assault on the complainant. Why they met, what they said, and whether they held any deliberations at all, are matters on which

> no witness has said a word. In the circumstances, it would be sheer waste of public time and money to permit the proceedings to continue against the respondents....."

373. Similar observations were made by the Hon'ble Supreme Court in an authority reported as **Babubhai Bhimabhai Bokhiria and another Vs. State of Gujarat and others, (2014) 5 SCC 568**, wherein it was observed in paragraph 21 as under:

> "The other evidence sought to be relied for summoning the appellant is the alleged conversation between the appellant and the accused on and immediately after the day of the occurrence. But, nothing has come during the course of trial regarding the content of the conversation and from the call records alone, the appellant's complicity in the crime does not surface at all."

374. Accordingly, I do not find any merit in the submission that there was any relation/ association between A. Raja and DB Group from before, though it may be possible that some officials of DB Realty might have got acquainted with the family members of Sh. A. Raja during the process of due diligence of Green House Promoters (P) Limited. In any case, there is no evidence in the deposition of these witnesses of any conspiracy to transfer the amount of Rs. 200 crore from DB group to Kalaignar TV (P) Limited.

375. Thus, the allegation of familiarity between the accused from before is not supported at all from material on record.

376. Conduct and relations of these accused during transaction of crime, which is the subject matter of the case, would be examined as the order proceeds further.

I. Issue relating to Cut-off Date: Role of A. Raja and R. K. Chandolia

Fixing of Cut-off date: 01.10.2007 on 24.09.2007

377. The issue is: Whether the proposal of cut-off date was mooted at the instance of Sh. A. Raja? Whether the cut-off date of 10.10.2007 proposed by Sh. A. K. Srivastava was cut short to 01.10.2007 by Sh. A. Raja due to conspiratorial design? The case of the prosecution is that after joining as MOC&IT in May 2007, accused A. Raja entered into criminal conspiracy with other accused persons, that is, STPL, Unitech group of companies and their directors for favouring them in the matter of issue of LOIs, grant of UAS licences and allocation of spectrum. An indication of this was in the fixation of cut-off date of 01.10.2007 for receipt of applications for UAS licences. It is the case of prosecution that award of UAS licences was a continuous process based on priority fixed on the basis of date of receipt of applications and the applications were being received on continuous basis. It is further their case that this procedure nowhere permitted fixing of any cut-off date. It is further their case that the cut-off date was fixed by A. Raja, in conspiracy with other accused persons, when R. K. Chandolia directed PW 60 DDG (AS) Sh. A. K. Srivastava to stop receipt of further applications and on being told that this could not be

done abruptly, he directed Sh. A. K. Srivastava to put up a note for fixing a cut-off date for receipt of applications and this was done to ensure better prospects for the two favoured companies, that is, STPL and Unitech group of companies.

378. On the other hand, the case of the defence is that the cut-off date was fixed on account of receipt of large number of applications, disposal of which was not possible in the light of their large number as well as inadequate availability of spectrum. The cut-off date was suggested by Sh. A. K. Srivastava and was agreed to by senior officers and finally approved by Sh. A. Raja. It is the case of the defence that there was no conspiracy at all in fixing of the cut-off date and it was a pure and simple routine administrative exercise undertaken to streamline the processing of applications and to discourage speculative players. Moreover, it was initiated by senior officers of the department and not by Sh. A. Raja.

379. The issue of cut-off date of 01.10.2007 was dealt with in file D-6, Ex PW 36/E. Let me examine the file in detail.

380. The first note, Ex PW 36/E-1, was put up by PW 60 Sh. A. K. Srivastava, DDG (AS) on 24.09.2007, which reads as under:

> "As per amendment dated 11.11.2003 to New Telecom Policy-1999 (NTP-99), the existing CMTS and Basic Service Licensees were permitted on 25.11.2003, migration to Unified Access Service Licensing regime. Also new Access Service Licenses were to be granted for UASL service only. The window for submission of applications for UASL was opened on continuous basis in terms of guidelines

issued by DOT and put on the website. A policy of first come- first served for grant of UAS License was being followed based on decision of Hon'ble MOC&IT. However, in view of increasing demand on spectrum in a substantial manner, recommendation of TRAI was sought on 13.4.2007 on limit of number of Access Service Providers and on other terms and conditions of UAS Licences. It was also decided separately by Hon'ble MOC&IT that new UASL applications are to be processed only after receipt of TRAI recommendations and LOI is to be granted after receiving comments of WA on availability of spectrum.

The recommendations of TRAI has since been received by DOT on 29.8.2007. TRAI has, interalia, recommended no cap on number of Access Service Providers in any service area among other recommendations on terms of UAS Licences. In the meantime, the new UASL applications are pouring in and till date 167 applications from 12 companies for 22 service areas have been received. It is felt that it may be difficult to handle such large number of applications at any point of time. Therefore, it is proposed that we may announce a cut-off date for receipt of UASL applications such that no new applications will be received after cutoff date till further orders. We may give a reasonable time to all who wish to submit new UASL applications so that the decision may not be challenged. The reasonable period may be, say, 15 days. Therefore, we may announce 10.10.2007 to be the cut-off date for receipt of new UASL applications till further orders.

DFA please."

381. On recording the aforesaid note, PW 60 Sh. A. K. Srivastava, an officer of the rank of Joint Secretary, marked the file upward to Member (T), PW 77 Sh. K. Sridhara; an officer of the rank of Ex-officio Secretary/Special Secretary to

Government of India. Sh. K. Sridhara agreed to the note and marked the file to Secretary (T) PW 36 Sh. D. S. Mathur. He also agreed to the note and marked it to the then MOC&IT Sh. A. Raja.

382. Sh. A. Raja approved the same, but date of 10.10.2007, as proposed, was reduced to 01.10.2007, vide his note, Ex PW 36/E-2, dated 24.09.2007, which reads as under:

> "In view of large number of applications pending and to discourage speculative players, we may close receiving applications on 01.10.2007, i.e., one month from the date of TRAI's recommendations."

383. In the aforesaid note, Ex PW 36/E-1, there is no mention as to whose proposal was it to have a cut-off date for receipt of applications. Perusal of the note, Ex PW 36/E-1, reveals that the proposal was put up by PW 60 Sh. A. K. Srivastava on his own initiative and understanding of the situation, he being an officer of the rank of Joint Secretary to Government of India. Naturally, this note would be attributed to Sh. A. K. Srivastava and to none else. Sh. A. Raja had also cited three reasons for his approval of cut-off date and reducing the cut-off date from proposed 10.10.2007 to 01.10.2007, that is, large number of applications, to discourage speculative players and one month time from date of receipt of TRAI Recommendations on 29.08.2007.

384. Let me take note of the evidence on this point.

385. PW 60 Sh. A. K. Srivastava, DDG (AS), put up the note for fixing a cut-off date. He has deposed in his examination-in-chief dated 01.08.2012, pages 10 to 13, about

the cut-off date as under:

> ".....I have been shown DoT file D-6, already Ex PW 36/E, pertaining to applications for UAS licences, press release and for cut-off date. This file was opened in the DoT in the official course of business. The applications received for UAS Licences are kept in the AS section. However, whenever any statement is sought by superior officers regarding the status of the applications, the same is provided by the AS section. I have been shown page 1/N in this file, which contains a note dated 24.09.2007 submitted by me. My signature appears at point B. The note is already Ex PW 36/E-1. This note was put up by me for fixing a cut-off date on receipt of further UASL applications in the DoT till further orders. I proposed the cut-off date of 10.10.2007 for receipt of applications. I marked this note to Member (T) Sh. K. Sridhara, whose signature appears at point C and he in turn marked the note to Secretary (T) Sh. D. S. Mathur, whose signature at point D, and he marked the file to the then Minister Sh. A. Raja. Sh. A. Raja recorded his decision dated 24.09.2007 vide Ex PW 36/E-2 fixing the cut-off date of 01.10.2007 to discourage the speculative players and in view of pendency of large number of applications. In my note, I had referred to a DFA in my note and this pertains to a press note available at page 2 (1/C), already Ex PW 36/E-3. The same bears my signature at points A, B and C. This press note was released on 24.09.2007.
>
> **Ques**: What was the necessity of you initiating the note Ex PW 36/E-1 dated 24.09.2007?
>
> **Ans**: After receipt of TRAI recommendations, large number of applications were being received in the DoT for UAS Licences. The TRAI had, inter alia, recommended no cap on number of UAS Licences in a service area. Sh. R. K. Chandolia, PS to the then Minister, MOC&IT, Sh. A. Raja, had been asking me the details of applications received after receipt of TRAI recommendations on daily basis. I had been

giving the information on telephone to him. On 24.09.2007, when about 167 applications were already received, Sh. R. K. Chandolia asked me whether applications of Unitech group have been received. I enquired from the dealing section and replied back to him that applications of Unitech group have not been received in the section till then. He told me that applications of Unitech group will be submitted to DoT today and thereafter, you should stop receipt of further UASL applications. I told that it was not possible as the new applicants have to be given a reasonable time to apply for UAS licences after a public notice. He then directed me to originate a proposal in the file to put a cut-off date on receipt of further UASL applications. As directed by PS to the then MOC&IT Sh. A. Raja, I originated this proposal in the file proposing that we may announce a cut-off date of 10.10.2007 for receipt of new UASL applications till further orders. I submitted the file through proper channel.

The file was submitted to the then MOC&IT Sh. A. Raja through Member (T) Sh. K. Sridhara and Secretary (T) Sh. D. S. Mathur, who signed the file and concurred with my proposal. In the afternoon, when the file was in the office of the Minister, I again received a call from Sh. R. K. Chandolia to verify if applications of Unitech group have been received. I enquired from the Section and replied to him in affirmative. Thereafter, I received the file in the evening with due approval of the then MOC&IT through Secretary (T). I issued the press release on 24.09.2007 itself....."

386. Perusal of the deposition reveals that by oral evidence he is shifting the onus for the note to Sh. R. K. Chandolia, which is otherwise reasonable one.

387. However, PW 60 Sh. A. K. Srivastava in his cross-examination dated 14.09.2012, pages 12 to 14, deposed about

cut-off date as under:

> ".....The TRAI recommendations of 2007 were received in the DoT on 29.08.2007. It is correct that from 30.08.2007 to 23.09.2007, both dates inclusive, applications of only two companies were received in DoT on 03.09.2007 & 06.09.2007 and 06.09.2007, of Allianz Infratech (P) Limited and Shipping Stop Dot Com (India) (P) Limited respectively. It is correct that after the receipt of TRAI recommendations, large number of applications were not being received during the aforesaid period. However, the report about the receipt of such applications was being sought on daily basis. It is wrong to suggest that R. K. Chandolia did not use to ask for such reports on daily basis. It is correct that the note dated 24.09.2007, already Ex PW 36/E-1, in DoT file D-6, already Ex PW 36/E, was initiated by me. **Volunteered**: This note was initiated by me on the asking of Sh. R. K. Chandolia.
>
> It is wrong to suggest that this note was not initiated by me on the asking of Sh. R. K. Chandolia as the fact of his asking for such a note does not find mention therein. **Volunteered**: He specifically asked me neither to refer to the telephonic discussion which he had with me nor to mention his name.
>
> This fact I am telling for the first time as it did not earlier occur to me and accordingly, was not told by me to anyone including CBI, learned Magistrate or this Court. It is wrong to suggest that I am telling a lie on this point to save myself.
>
> **Ques**: Did it not occur to you that non-mentioning of name of Sh. R. K. Chandolia in the note Ex PW 36/E-1 was a violation of CCS Conduct Rules and Manual of Office Procedures? (objected to by Ld. Sr. PP).
>
> **Ans**: It was not possible for me to think about the violation of the office procedure by not mentioning the name of Sh. R. K. Chandolia in the note as his was PS to the MOC&IT and used to give orders to us and put pressure on us.

In the month of September 2007, my designation was of Joint Secretary level while that of R. K. Chandolia was of Director level. **Volunteered**: Whatever may be the hierarchical level of the PS, he exercises the powers of the Minister and issues order in his name.

It is wrong to suggest that I am telling a lie on this point just to shift accountability.

Ques: I put it to you that you have told this Court on 01.08.2012 that "On 24.09.2007, when about 167 applications were already received, Sh. R. K. Chandolia asked me whether applications of Unitech group have been received. I enquired from the dealing section and replied back to him that applications of Unitech group have not been received in the section till then", but this portion does not find mention in your statement recorded under Section 161 CrPC dated 29.11.2010, Ex PW 60/DJ-2 (A-3)?

Ans: That is correct.

Volunteered: My statement before the IO is a result of wrong recording as it is a matter of record that in the 167 applications, applications of Unitech group were not included....."

388. Thus, here also, by way of oral evidence he is shifting the blame to Sh. R. K. Chandolia. Here, he has contradicted himself on two material points, that is, receipt of large number of applications after TRAI Recommendations and statement to police.

389. Furthermore, PW 60 in his further cross-examination dated 17.09.2012, pages 1 to 4, deposed about cut-off date as under:

".....**Ques**: I put it to you that you told this Court that R. K. Chandolia told you that applications of Unitech Group would be submitted on that day, that

is, 24.09.2007, and thereafter, you should stop receipt of further UASL applications, whereas in your statement dated 29.11.2010, Ex PW 60/DJ-2, or in any other statement up to and inclusive of 15.03.2011, Ex PW 60/DJ-3 to DJ-9, made to the IO, you did not say so. Please explain the omission?

Court Observation: At this stage, witness submits that this is a record based question and he may be allowed to see file D-6, Ex PW 36/E. Parties have no objection to the same. Prayer allowed. Witness is at liberty to see the abovesaid file.

Ans: The statement dated 29.11.2010 before the CBI recorded that 167 applications were already received including that of Unitech group companies. This recording is not factually correct. It is correct that I did not tell the IO that R. K. Chandolia told me that applications of Unitech group would be received on 24.09.2007 and thereafter, I should stop further receipt of UASL applications, but I did not tell so as there was no discussion on those days with me on this point, that is, on 29.11.2010 or on any other day up to or inclusive of 15.03.2011.

It is wrong to suggest that I am deposing falsely on this point for the reason that on those days more particularly on 29.11.2010 or on 04.03.2011 complete discussion had taken place with the IO on this point. It is wrong to suggest that I have improved my version on this point in the Court.

Ques: I put it to you that when Sh. R. K. Chandolia allegedly told you to stop receipt of UASL applications, you opposed the idea saying that it is unfair? (objected to by Ld. Sr. PP on the ground that the word "allegedly" cannot be used in a leading question).

Ans: That is correct, but I was asked by Sh. R. K. Chandolia to do so.

It is wrong to suggest that I am repeatedly shifting my position.

Ques: I put it to you that you told this Court that in the afternoon, when the file was in the office of the

Minister, you again received a call from Sh. R. K. Chandolia to verify if applications of Unitech group have been received and you enquired from the Section and replied to him in affirmative, but you did not say so in your statement dated 29.11.2010. Please explain the omission?

Ans: That is correct as no detailed discussion had taken place with IO on this point on that day, but I told so to him on 04.03.2011.

It is wrong to suggest that I am deposing falsely on this point.

It is correct that the basic idea of my note dated 24.09.2007, Ex PW 36/E-1, file D-6, Ex PW 36/E, was to fix a cut-off date for receipt of further UASL applications in the DoT and not for processing of applications. It is wrong to suggest that I was not asked by Sh. R. K. Chandolia to initiate this note. It is further wrong to suggest that this note was not initiated by me on my own. It is wrong to suggest that I was not under pressure of Sh. R. K. Chandolia. It is wrong to suggest that I am deposing falsely in order to save myself and to implicate R. K. Chandolia falsely in this case for the reason that I am under pressure of CBI on the pretext of a likely DA case against me.

Ques: If you were told by someone to put up a note in violation of the norms and rules of the department, were you not supposed to bring it to the notice of the Secretary of the department, by writing a note in this regard?

Ans: On the date the note was put up, I was under much pressure and was also told by R. K. Chandolia not to mention his name. I had no opportunity or occasion to think about writing to the Secretary as I was under threat of the implications of writing to the Secretary.

Ques: You mean you are a person who can commit a wrong under pressure?

Ans: No. I had submitted the note through proper channel for approval of highest decision making

authority in the department and if the suggestion of Mr. Chandolia to originate such a proposal was really correct, it would get approval of the then MOC&IT before implementation.

Mr. A. Raja resigned as MOC&IT in November 2010. I do not remember if R. K. Chandolia ceased to be his Private Secretary since June 2009, but I do recall that he ceased to be so in 2009 itself.

Ques: After 2010 you had numerous occasions to disclose before any authority the fact that you were under pressure of Sh. R. K. Chandolia while initiating the note, as stated by you before this Court. Did you tell it to anyone?

Ans: That is correct. I did not tell it to any authority. However, I told it when it occurred in my mind in this context."

390. Thus, Sh. A. K. Srivastava is trying hard to shift the blame to Sh. R. K. Chandolia by citing pressure as a reason for recording the note.

391. PW 60 in his further cross-examination dated 18.09.2012, pages 1 and 2, deposed about filing of applications of Unitech group companies as under:

".....I am not aware if Unitech group had sent intimation to NSE and BSE regarding filing of its applications for UAS licences in the DoT on 21.09.2007 itself. I do not know if some news agencies had reported on 21.09.2007 itself regarding Unitech group foray into telecom business. I do not remember if 21.09.2007 was Friday and for that reason I cannot say if the next following days were Saturday and Sunday, but I do say that Saturday and Sunday are closed days for DoT.

I do not know if one of the employees of Unitech group Sh. Mohit Gupta had thereafter filed its applications for UAS licences in the DoT in the early morning of 24.09.2007. It is wrong to suggest

that my entire narration of the conversation with Sh. R. K. Chandolia regarding filing of applications of Unitech for UAS licences is a complete lie, fabrication and concoction. It is further wrong to suggest that as a quid pro quo with the CBI, I have made false averments on this point to save myself from being proceeded against by the CBI in a likely DA case as well as the instant case....."

392. Sh. A. K. Srivastava did not know, if the applications of Unitech group had been filed in early morning of 24.09.2007.

393. PW 60 in his further cross-examination dated 18.09.2012, pages 5 and 6, deposed about note relating to cu-off date as under:

".....**Ques**: I put it to you that your note dated 24.09.2007, already Ex PW 36/E-1, is a self-explanatory note and was generated by you in the facts and circumstances of the case, without any extraneous reason or pressure on you?
Ans: The cut-off date proposed for receipt of new UASL applications was from the prospective date with due intimation to/ through press to general public and for the reasons mentioned therein. I fully own up its contents. However, the circumstances under which I was made to originate the note had already been explained by me to this Hon'ble Court.

It is wrong to suggest that there were no extraneous circumstances surrounding the initiation of this note.

I have been shown DoT file D-35, already Ex PW 36/DL-36, wherein there is a letter dated 17.09.2007, written by Chairman, Spice Communications, to Secretary (T) and Chairman (Telecom Commission). As per my initials at point A on this letter, this letter was seen by me on 20.09.2007. The letter is now Ex PW 60/DM (A-7). Through this letter the applicant company had asked for a cut-off date of December 2006, as mentioned at

points B to B. It is wrong to suggest that on receipt of this letter, I started working on the concept of a cut-off date. It is wrong to suggest that this finally found effect in my note already Ex PW 36/E-1 dated 24.09.2007. **Volunteered**: The note Ex PW 36/E-1 was initiated by me in the circumstances already stated by me.

I do not know the total number of applications received after the receipt of TRAI recommendations dated 28.08.2007 and till 01.10.2007. However, it is correct that between 26.09.2007 to 01.10.2007, both dates inclusive, 343 applications were received in total for UAS licences.

Ques: Is it correct that during this period the sudden spurt of UASL applications was unforeseen and unprecedented in the DoT?

Ans: That is correct.

In his note dated 25.10.2007, already Ex PW 36/B-6, in file D-7, Ex PW 36/B, the then Secretary (T) Sh. D. S. Mathur recorded that in view of the inadequacy of the spectrum, there was no question of granting LOIs to all 575 applicants, who had applied till the cut-off date of 01.10.2007. I do not know if this was the reason that DoT decided not to process all the applications received up till 01.10.2007. **Volunteered**: This reason does not find mention in any of my notes....."

Here also, Sh. A. K. Srivastava fully owned up the contents of the note put up for fixation of cut-off date, but attributes the circumstances in which the note was recorded to Sh. R. K. Chandolia.

394. PW 60 in his further cross-examination dated 18.09.2012, page 11, deposed contradictory to note, Ex PW 36/E-1, as under:

"......Things are not processed in the DoT as per the

ease and convenience of the DoT officials. It is wrong to suggest that it was not possible to process all 575 applications in one go. It is wrong to suggest that these 575 applications could not have been processed in one go and for this reason it was decided to process them in more than one phase....."

395. Perusal of the deposition of PW 60 Sh. A. K. Srivastava reveals two broad features. First, he has introduced the name of Sh. R. K. Chandolia by way of oral evidence contrary to the written record. Secondly, he has deposed contrary to his statement under Section 161 CrPC. PW 60 Sh. A. K. Srivastava owns up the note, Ex PW 36/E-1, but blames Sh. R. K. Chandolia for this note. Furthermore, he owned up the DFA, Ex PW 36/E-3, in which the date of 01.10.2007 is also mentioned and this DFA finds mention in the note, Ex PW 36/E-1, itself. It means that Sh. A. K. Srivastava left room for the Minister to reduce the suggested date from 10.10.2007 to 01.10.2007. The possibility of Sh. A. K. Srivastava himself suggesting the date of 01.10.2007 cannot be ruled out. When the note, Ex PW 36/E-1, and draft of the press note, Ex PW 36/E-3, are read together, it is clear that Sh. A. K. Srivastava had proposed the date of 01.10.2007 also. DW 1 Sh. A. Raja in his cross-examination dated 08.07.2014, page 1, deposed that this press release did not come to him after signature of Sh. A. K. Srivastava. However, he has not said anything about the draft before it was signed by Sh. A. K. Srivastava. Whatever may be oral evidence, the two official notes, both relied upon and exhibited by the prosecution, are required to be reconciled

and when reconciled, the possibility of 01.10.2007 also being suggested by the department cannot be ruled out. In the end, the deposition of Sh. A. K. Srivastava does not inspire confidence being contrary to official record.

396. However, PW 77 Sh. K. Sridhara, the then Member (T), DoT, has deposed contrary to the version of Sh. A. K. Srivastava. He has deposed in his examination-in-chief dated 10.12.2012, page 7, about the cut-off date as under:

> ".....I have been shown DoT file D-6, already Ex PW 36/E, pertaining to applications for UAS Licences, press release for cut-off date. In this file, note Ex PW 36/E-1, dated 24.09.2007, was put up by DDG (AS). He marked the file to me after recording this note. I had read the note of DDG (AS). This note was initiated because after the TRAI recommendations there was spurt in the number of applications received by the department. Before putting this note, the matter was discussed between DDG (AS) and myself regarding large number of applications having been received. This note was recorded for stopping receipt of further applications.
>
> The policy of the department prior to this was that there was no cut-off date for receipt of applications....."

397. PW 77 in his cross-examination dated 10.12.2012, pages 11 and 12, deposed as to how the note, Ex PW 36/E-1, proposing the cut-off date was put up, which reads as under:

> ".....In file Ex PW 36/E (D-6) pertaining to cut-off date etc., there is a note dated 24.09.2007 recorded by DDG (AS) Sh. A. K. Srivastava, already Ex PW 36/E-1, and this note correctly captures the discussion which took place between me and Sh. A.

K. Srivastava. Point No. 11 of UASL Guidelines dated 14.12.2005 says that licences shall be issued without any restriction on the number of entrants for provision of unified access service in a service area. It is correct that as per TRAI recommendations, there was to be no cap on number of service providers in a service area. It is correct that till 01.10.2007, a total of about 575 applications has been received for grant of UAS Licences. It is correct that view of the then Secretary (T) Sh. D. S. Mathur was that LOIs could not be issued to all the 575 applications because of non-availability of spectrum and as per guidelines of NTP-1999. It is correct that as per note Ex PW 52/A dated 10.01.2008, in file Ex PW 36/B (D-7), a total of 232 applications had been received till 25.09.2007. It is generally found that some of the applications may not be eligible for LOIs and may get rejected. It is correct that out of these applications, 110 were found to be ineligible and were rejected. At that time, some of the licencees were waiting for allocation of spectrum for sometime, though I cannot say for how long they were waiting. It is correct that efforts were being made to get more spectrum available through various methods including release of spectrum from Defence. TRAI generally gives consultation paper before recommendations are made on all matters. In this case also, consultation paper was issued. The consultation paper was never put up before us and, as such, I am not aware about its contents. It is correct that while issuing licences, DoT had to take into consideration NTP-1999, UASL Guidelines, TRAI recommendations, likely number of eligible applicants, likely availability of spectrum and precedent of licencees waiting for allocation of spectrum....."

398. Thus, Sh. K. Sridhara owned up the note, Ex PW 36/E-1, vide which the cut-off date was proposed by deposing

that this note was the result of discussion between Sh. A. K. Srivastava and himself due to receipt of large number of applications. He has categorically deposed that before the note was put up, the matter was discussed by him and Sh. A. K. Srivastava. The deposition of Sh. K. Sridhara has rendered the deposition of Sh. A. K. Srivastava highly suspect and liable to rejection.

399. PW 36 Sh. D. S. Mathur, the then Secretary, DoT, deposed in his examination-in-chief dated 10.04.2012, page 9, about the cut-off date as under:

> ".....I have been shown file, D-6, which is a file of DoT and is now collectively Ex PW 36/E. Pages 1/N to 8/N are note sheet and pages 1 to 53 are correspondence. I have been shown page 1/N and the note thereon was initiated by Sh. A. K. Srivastava, DDG (AS), on 24.09.2007. The subject involved was cut-off date for receiving applications for UAS Licences. He marked the file to Member (T) Sh. K. Sridhara, who marked it to me and I marked it to the Minister Sh. A. Raja on 24.09.2007. The proposal made by Sh. A. K. Srivastava in the note was that 10.10.2007 may be announced as cut-off date for receipt of new UASL applications till further orders. I agreed with the views of Sh. A. K. Srivastava and marked the file to the then Minister Sh. A. Raja. The Minister ordered that we may close receiving applications on 01.10.2007 and marked the file to me and I, in turn, marked the file to DDG (AS) Sh. A. K. Srivastava. Note of A. K. Srivastava is Ex PW 36/E-1 at page 1/N. My signature is available at point A on this page. The approval of the Minister alongwith his signature is Ex PW 36/E-2. In this regard, a press note was also issued by the DoT under signature of Sh. A. K. Srivastava, DDG (AS), an office copy of which is available at page 2 and the

same is now Ex PW 36/E-3....."

400. Sh. D. S. Mathur simply agreed to the proposal. He also owns up press release, Ex PW 36/E-3, in which the date of 01.10.2007 is mentioned. Sh. D. S. Mathur agreed with the views of Sh. A. K. Srivastava in the upward journey of file and also to the date of 01.10.2007, as approved by Sh. A. Raja in the downward journey of file.

401. However, PW 36 in his cross-examination dated 12.04.2012, pages 9 to 11, deposed as under:

> ".....I have been shown file D-5 vol I, already Ex PW 36/A-3, wherein on page 5/N, there is a noting regarding the first meeting of the committee headed by Member (T) and as per this the first meeting was held on 22.09.2007, already Ex PW 36/A-6. I have been shown file, D-6, already Ex PW 36/E, wherein on page 1/N there is a proposal initiated by Sh. A. K. Srivastava, the then DDG (AS) for fixing a cut-off date for receipt of new UASL applications and the proposal is already Ex PW 36/E-1. I had not discussed this matter with Sh. A. K. Srivastava before he recorded this note. As per this note, by the note of the date 167 applications had already been received. The reason for this note as mentioned in this is the difficulty in handling large number of applications. I am not aware if adequate spectrum was available on the date of the note for accommodating these applications. I did not ask for availability of spectrum on 24.09.2007 for accommodating these applications. The possibility of receiving large number of applications was foreseen by me as Secretary, DoT, in case of announcement of cut-off date. I agreed with the note of Sh. A. K. Srivastava without assessing the availability of spectrum. It is wrong to suggest that I misled Mr. A. Raja, the then Minister, MOC&IT, by endorsing the

proposal of Sh. A. K. Srivastava without assessing the spectrum availability. It is wrong to suggest that I did not assess the spectrum availability because I thought that it was not necessary. I did not approve the proposal of Sh. A. K. Srivastva as the same was to be done by the Minister, I just agreed with him. I did not discuss with Sh. A. K. Srivastava or Member (T) before agreeing with Sh. A. K. Srivastava. It is correct that the file went to the then Minister only after I agreed with the note of Sh. A. K. Srivastava.

I have been shown D-5 vol. I, already Ex PW 36/A-3, wherein on page 140 there is a report of a committee headed by Member (T), already Ex PW 36/A-7. The second meeting of the committee took place on 26.09.2007 and the other dates of meeting of the committee are also mentioned. As per pages 169-170 of this file, already Ex PW 36/A-11 and 36/A-12, the notices were issued regarding convening the meeting of telecom commission for considering the recommendations of TRAI on 10.10.2007. The committee headed by Member (T) submitted its report, already Ex PW 36/A-8, on 10.10.2007. The committee had noted that allocation of spectrum is not guaranteed and is subject to availability. The report of the committee headed by DDG (AS), already Ex PW 36/A-9, is also dated 10.10.2007....."

402. Here, Sh. D. S. Mathur has disowned all responsibility for everything relating to fixing of the cut-off date. To him, the date was proposed by Sh. A. K. Srivastava and approved by Sh. A. Raja in which he had no role. He did not even ask for spectrum availability. The perusal of the evidence of Sh. D. S. Mathur reveals that he was acting as an idle bystander, though he was administrative head of DoT.

403. PW 36 Sh. D. S. Mathur in his further cross-

examination dated 18.04.2012, page 14, deposed as under:

> ".....It is correct that as there was inadequate spectrum, it was not possible to issue LOIs to all applicants. It is for this reason that number of LOI was to be limited.
>
> It is for the reason of receipt of large number of applications that a cut-off date was to be fixed and we proposed the cut-off date to be 10.10.2007. I have been shown note already Ex PW 36/DK-16 (D-7), which highlights the discussion with Sh. A. K. Srivastava, DDG (AS) and Sh. Nitin Jain, Director (AS-1). In this note, it is also mentioned that issuance of LOI/ UAS Licence does not confer right to spectrum....."

404. PW 36 Sh. D. S. Mathur in his further cross-examination dated 23.04.2012, page 3, deposed as under:

> ".....The cut-off date of 10.10.2007 was suggested by AS department for receiving applications and I agreed to the same. The reasons for suggesting cut-off date were receipt of large number of applications and inadequacy of spectrum at that moment of time as mentioned in note Ex PW 36/E-1 in D-6, Ex PW 36/E and I agreed to it. There were no official guidelines for fixing cut-off date. I cannot say if the date of 10.10.2007 suggested by Sh. A. K. Srivastava was his subjective satisfaction, but it was to give reasonable time to the prospective applicants. I had examined this note when I agreed to it. It was my subjective satisfaction also. I cannot say if subjective satisfaction differs from man to man....."

405. PW 36 Sh. D. S. Mathur in his further cross-examination dated 23.04.2012, page 12, deposed as under:

> ".....I have been shown DoT file D-6, Ex PW 36/E. As per note sheet Ex PW 36/E-1, the proposal to have a cut-off date was initiated by Sh. A. K.

Srivastava on 24.09.2007. This cut-off date was suggested for the purpose of receiving new UASL applications. Sh. K. Sridhara, Member (T), and myself agreed to this proposal. The Minister fixed the cut-off date of 01.10.2007 instead of 10.10.2007 suggested by Sh. A. K. Srivastava in view of the reasons recorded by the Minister as mentioned in Ex PW 36/E-2……."

406. PW 36 Sh. D. S. Mathur in his further cross-examination dated 24.04.2012, pages 12 and 13, deposed as under:

"……It is correct that 575 applications were received up to the cut-off date of 01.10.2007. The cut-off date was fixed because it was not possible to process such a large number of applications at the same time.

It was reasonable to deal with the applications in two parts……"

407. PW 36 Sh. D. S. Mathur in his further cross-examination dated 24.04.2012, page 17, deposed as under:

"……I have been shown DoT file D-6, Ex PW 36/E, wherein there is a note sheet Ex PW 36/E-1, and as per this note sheet new applications for UAS Licence were to be processed only after the receipt of TRAI recommendations. The processing of the applications started after the TRAI recommendations were received and Government orders were obtained thereon in the first week of November 2007……."

408. The perusal of the deposition of Sh. D. S. Mathur upto here reveals that he took no responsibility for the fixation of cut-off date, but justified the proposal, as it was not possible to process such large number of applications at the same time.

He also deposed that it was reasonable to deal with the applications in two parts. He clearly justified the fixing of cut-off date, but does not take responsibility for anything. He puts the blame on Sh. A. K. Srivastava or Sh. A. Raja. However, his evidence shows that file D-6 may be reflective of deliberations in file D-5 relating to processing of TRAI Recommendations, as after acceptance of TRAI Recommendations, applications were also to be processed. A way out for this was found by fixing cut-off date. In the end, his deposition is not suggestive of any conspiracy.

409. Investigating officer PW 153 Sh. Vivek Priyadarshi in his cross-examination dated 20.11.2013, pages 9 and 10, deposed as under:

> ".....It is correct that note sheets of an official file are serially numbered under the nomenclature 1/N and so on and correspondence relating to that file is placed on the record under the nomenclature 1/C and so on. File D-6, Ex PW 36/E, was seen by me during investigation. There is a difference in date at page 1/N, already Ex PW 36/E-1, where the date proposed is 10.10.2007 and the date in Ex PW 36/E-3, which is 01.10.2007 and this difference in date was explained by A. K. Srivastava during his statement. It is wrong to suggest that by this file it is clear that DoT officials felt that a cut-off date was required. It is further wrong to suggest that for this reason a cut-off date was proposed. It is wrong to suggest that applications from only two entities were received after receipt of TRAI recommendations. It is wrong to suggest that the allegation against R. K. Chandolia that he used to inquire about number of applications received in the AS division is false and unfounded. The applications received between 29.08.2007 and 23.09.2007 is a matter of

record....."

410. Sh. Vivek Priyadarshi agreed that in the note, Ex PW 36/E-1, the date proposed is 10.10.2007 while in the draft press release, the contents of which have already been owned up by Sh. A. K. Srivastava, the date proposed is 01.10.2007. Furthermore, Sh. Vivek Priyadarshi deposed contrary to record when he denied that only two entities had applied for UAS licence between 29.08.2007 and 23.09.2007. It is a fact, clear from the record, that only two entities, namely, Allianz Infratech (P) Ltd. and Shippingstop Dot Com (India) Pvt. Ltd. had applied for UAS licences during this period and applications did not pour in as claimed by Sh. A. K. Srivastava.

411. PW 37 Sh. Mohit Gupta, who submitted the applications for Unitech group of companies for UAS licences in DoT, in his examination-in-chief dated 25.04.2012, page 1, deposed as under:

> ".....I was associated with telecom business of the company in September 2007. At that time, Mr. Ram Kishan Sharma, Vice President of the company, Sh. Ravi Aiyar, Legal and Company Secretary, and Mr. Nitin Bansal, AGM, were also associated with telecom business of the company. When I was associated with the telecom business, my job was to carry out the relevant documentation, like preparation of the applications and attachments to be annexed therewith. The applications of the company were deposited in the DoT office. After deposit the applications, I used to visit DoT for follow up action on the applications....."

412. PW 37 in his cross-examination dated 25.04.2012,

page 6, deposed as under:

> ".....I went to DoT on 24.09.2007 for submitting the applications at about 10 AM. It is correct that before the issuance of LOIs, there was media speculation that DoT would be issuing LOIs soon and this fact was in public domain."

Sh. Mohit Gupta was associated with the telecom business of the company and was also involved in the preparation of applications. Sh. Mohit Gupta has deposed that he went to submit the applications on 24.09.2007 at 10:00 AM and this matches with the record. This witness, who submitted the applications for Unitech group of companies, does not say anything which can even remotely be construed to be indicative of any conspiracy in the submission of applications for Unitech. Furthermore, he deposed that he submitted the applications at 10:00 AM, which puts the version of Sh. A. K. Srivastava about enquiry from AS Section about the receipt of Unitech applications in doubt. The case of the prosecution is that cut-off date was fixed after ensuring receipt of applications of Unitech group companies to ensure better prospects for them, but this is not supported by the evidence on record.

413. PW 85 Sh. Ajay Chandra, Director, Unitech Limited, who is also brother of Sanjay Chandra, in his examination-in-chief dated 03.12.2012, page 1, deposed as under:

> ".....I am aware of the fact that eight subsidiaries of Unitech Limited were granted UAS Licences in 2007-08. Board of all eight subsidiaries took independent decisions to apply for UAS Licences. It was noted in the board meeting of Unitech Limited that eight of its subsidiaries had decided to apply for UAS

Licences……."

In his further examination-in-chief, page 2, he deposed as under:

> "……..I was not involved in telecom business. My brother and myself were involved in separate parts of real estate business. Once the business of telecom commenced, which was possible only after grant of UAS Licence, my brother Sh. Sanjay Chandra started looking after that with the professional management teams of those subsidiary companies. The money required for obtaining the licence was sourced from Unitech Limited……."

In deposition of this witness also, there is nothing of any sort which can be construed to be conspiratorial or indicative of role of Sh. Sanjay Chandra.

414. DW 22 Sh. R. K. Chandolia in his examination-in-chief dated 04.08.2014, pages 10 to 14, denied any role in the fixation of cut-off date and deposed as under:

> "**Ques**: Did Sh. A. Raja ever ask you to give oral instructions to the officers of the DoT?
> **Ans**: He never asked me to give any oral instructions to any officer of any department including A. K. Srivastava, DDG (AS), of DoT.
> **Ques**: How often Sh. A. K. Srivastava used to meet Sh. A. Raja?
> **Ans**: Sh. A. K. Srivastava was head of AS Division in the DoT and used to visit the Minister at his office in Electronics Niketan and his camp office alone or alongwith Member (T) or Secretary (T) frequently.
> **Ques**: Did you have any interaction with Sh. A. K. Srivastava in the month of September 2007 regarding receipt of new UASL applications or regarding the applications of Unitech?
> **Ans**: I had no interaction with Sh. A. K. Srivastave

in the month of September 2007 regarding receipt of new UASL applications, including that of Unitech.

There was no intercom connection between Sanchar Bhawan and Electronics Niketan.

Ques: Kindly take a look on note dated 24.09.2007, Ex PW 36/E-1, in file D-6, which is a note recorded by Sh. A. K. Srivastava. Do you know anything about this note?

Ans: This note was received in the office of MOC&IT in the afternoon of 24.09.2007 and I placed it before the Minister for his consideration. After sometime, Sh. A. K. Srivastava came to my chamber with this file after the approval of Minister and requested me to mark it to the Secretary (T), which I marked and handed over the file to him. I had no knowledge about this note or its contents till it was received in my room on 24.09.2007.

Ques: Kindly explain movement of this file?

Ans: This file was initiated by Sh. A. K. Srivastava on 24.09.2007 and marked to Member (T), who, in turn, marked it to Secretary (T) and who marked it to Minister. As per the marking on the left margin, it appears the first file movement was made in the office of Secretary (T) on 24.09.2007, after which it was received in the office of MOC&IT on the same day and DDG (AS) sent this note to his director on 25.09.2007. From this, it appears that the file was moved by hand by the officer concerned till office of Secretary (T) on 24.09.2007. On its return journey, it also appears that the file was moved by hand by the officers concerned as there is no downward movement of the file through Member (T).

Ques: Kindly take a look on page 1/N of file D-6, Ex PW 36/E. In this page at points X-1 to X-5, dates of 24.09.2007 and 25.09.2007 are appearing alternately. Would you be able explain these dates in the light of your experience as PS to the Minister?

Ans: In this note, the first file movement entry is at point X-3 of the office of Secretary (T) on 24.09.2007, when the file was received in the office

of Secretary (T) and sent to Minister. The entry at point X-1 is the entry of receiving the file in the office of MOC&IT on 24.09.2007. Point X-5 is signature of DDG (AS) on 24.09.2007 marking it to Director (AS-I). Since this note was received in the office of DDG (AS) after he marked the file to Director (AS-I) on 24.09.2007, the entry at point X-2 was made in the file. Entry at point X-4 is an entry of receiving the file in the office of Director (AS-I) on 25.09.2007.

Ques: What are the rules, instructions or guidelines regarding oral instructions issued by the Minister or an officer to his subordinates?

Ans: The rules regarding oral instructions have been issued by the Government from time to time, so that if any instructions are passed by any of the senior officer to the subordinates orally, it should be handled in the manner mentioned in these rules/ instructions. It is mandatory on the part of all the Government officials to follow these rules scrupulously to avoid future complications or ambiguities. These rules have been made to ensure future accountability of the concerned officer in decision making as well as the factors taken into considerations for arriving at a decision. In absence of such rules, any officer can take shelter under the garb of oral instructions given by senior to save himself from any future inquiry on the concerned decision. These instructions are contained in Manual for Office Procedure.

Ques: Were you involved in the process of decision making of the department regarding processing of applications received up to only 25.09.2007?

Ans: I had no role or involvement in the process of decision making of the department regarding processing of applications received up to only 25.09.2007.

Ques: The last date of receipt of applications was fixed as 01.10.2007 and the last date for processing of applications was 25.09.2007. Are the decisions

regarding these two dates related or independent of each other?
Ans: Both these decisions are independent of each other since first decision regarding receiving of applications up to 01.10.2007 was taken way back on 24.09.2007 and second decision regarding processing of applications received up to only 25.09.2007 was taken in November 2007.
I had no role in either of the two decisions....."

415. DW 22 Sh. R. K. Chandolia in his further examination-in-chief dated 05.08.2014, page 2, deposed as under:

".....The allegation of conspiracy with regard to filing of applications of Unitech on 24.09.2007 is false since if I had any conspiracy with Unitech, I would have come to know from Unitech as soon as they had filed their applications and there would have been no reason for me to confirm it from DDG (AS) about receiving of their applications....."

416. DW 22 Sh. R. K. Chandolia in his cross-examination dated 05.08.2014, pages 9 and 10, deposed as under:

".....It is wrong to suggest that I was continuously getting updates from Sh. A. K. Srivastava, DDG (AS), regarding filing of applications for UAS licences. It is further wrong to suggest that I was getting these updates in order to know whether Unitech group of companies had filed their applications or not. It is wrong to suggest that any such updates were being obtained by me in order to officially confirm the receipt of these applications. It is wrong to suggest that on 24.09.2007 also, I got any such update from Sh. A. K. Srivastava. It is further wrong to suggest that I asked Sh. A. K. Srivastava to close receipt of applications for UAS licences after receipt of applications of Unitech group of companies. It is

wrong to suggest that when Sh. A. K. Srivastava expressed his inability to do so, I asked him to generate a note in this regard. It is wrong to suggest that note dated 24.09.2007, Ex PW 36/E-1 (D-6), was generated by Sh. A. K. Srivastava on my asking. **Volunteered**: Had this note been generated on my asking, then Sh. A. K. Srivastava would have suggested the date of 24.09.2007, as allegedly asked by me and the Minister would have also agreed to it instead of suggesting the date of 01.10.2007.

This file reached the Minister through proper channel and was approved by him. However, the file was not marked by the Minister to Secretary (T), rather it was marked by me. The words "Sec (T)" at point X-6 is in my handwriting. It is wrong to suggest that these words are in the handwriting of the Minister. It is wrong to suggest that these words are part of note of the Minister. This file was taken personally by Sh. A. K. Srivastava from my office. It is wrong to suggest that this file was sent back downward in official course of business and was not carried personally by Sh. A. K. Srivastava. **Volunteered**: This fact can be verified from the file movement register from the office of the Secretary (T)....."

417. DW 22 Sh. R. K. Chandolia in his further cross-examination dated 05.08.2014, page 13, deposed as under:

"**Ques**: I put it to you that 01.10.2007 and 25.09.2007 were not dates meant for different purposes, but, in fact, the date of 01.10.2007 was reduced/ cut short to 25.09.2007 in order to benefit Unitech group of companies?
Ans: The cut-off date of 01.10.2007 was for receiving applications for UAS licence and date of 25.09.2007 was the date for processing the applications received up to 01.10.2007. The decision for both the dates was taken independently in the department. However, I cannot say as to what were

the considerations for fixing these dates, as I was not party to these decisions."

418. Perusal of the deposition of DW 22 Sh. R. K. Chandolia reveals that the version of events as deposed to by him appears to be reasonable one and also matches with the written official record, which is deemed to be correct in eyes of law. His denial of being involved in putting up the note for fixing cut-off date by Sh. A. K. Srivastava is capable of being accepted.

It may be noted that defence witnesses are also entitled to equal weight. In an authority reported as **Dudhnath Pandey Vs. State of U.P., 1981 CrLJ 618**, it was held by the Hon'ble Supreme Court that:

> "Defence witnesses are entitled to equal treatment with those of the prosecution. And courts ought to overcome their traditional, instinctive disbelief in defence witnesses. Quite often they tell lies, but so do the prosecution witnesses."

419. DW 1 Sh. A. Raja in his cross-examination dated 07.07.2014, pages 12 to 14, deposed as under:

> **"Ques**: Kindly take a look on note dated 24.09.2007, already Ex PW 36/E-1, in DoT file D-6, already Ex PW 36/E. Would you please tell this Court as to what exactly is the proposal in this note and regarding what?
> **Ans**: This proposal was put to me to announce cut-off date 10.10.2007 for receipt of UASL applications till further orders.
> **Ques**: What is the decision taken by you relating to aforesaid proposal in the note?
> **Ans**: The decision was taken after a brief discussion with Secretary (T) and DDG (AS) and it was decided

to close receiving of applications on 01.10.2007, that is, one month from the date of TRAI recommendations, for the reasons mentioned in the notes.
Ques: In other words, the cut-off date, which was proposed to be as 10.10.2007, was curtailed to 01.10.2007?
Ans: There is no question of curtailing the date of receipt of applications. It was believed after the discussions that time till 01.10.2007 was fair enough for the reasons discussed in the note of DDG (AS), as accepted by the officers in the meeting.
Ques: By "fair enough", do you mean sufficient advance intimation to concerned people?
Ans: It is not only on the basis of intimation. It was taken in view of the large number of applications, which were already pouring and to discourage the speculative players. Adequate advance intimation to people was already there since TRAI recommendation came in public domain one month ago. I had discussions on the fairness with the aforesaid two officers and they accepted it."

420. Sh. A. Raja has deposed that after discussion in DoT, it was believed that time till 01.10.2007 was fair enough. This oral version matches with press release, Ex PW 36/E-3, wherein date of 01.10.2007 was proposed.

421. DW 1 Sh. A. Raja in his further cross-examination dated 14.07.2014, pages 1 to 3, deposed as to how proposals are put, as under:

"**Ques**: Would it be correct to say that actions and decisions of the Government should be transparent and dispassionate?
Ans: That is correct. However, the transparent and dispassionate must be viewed in the specific context when and where the actions and decisions were taken.

It is correct that as per Allocation of Business Rules of Government of India, being a Minister, I was political head of DoT. Secretary is the administrative head of DoT.

Ques: I put it to you that everyone in the DoT, including Secretary, is bound to follow a decision taken by the Minister incharge?

Ans: Minister cannot take any independent decision beyond policy and procedure. However, once a proposal comes to the Minister from the department, he will have to take a decision. Once a decision is taken, it is binding on everyone in the department.

Ques: You mean that no decision can be taken by a Minister without a proposal from the department?

Ans: It is correct.

Ques: Please tell this Court as to whether a Minister can direct the department to put a proposal for a particular course of action?

Ans: If it is needed or the situation warrants, Minister can send a note to the Secretary or any other competent officer to put up a particular proposal and also to apprise him (Minister) whether any such proposal is legally tenable under policy or not.

Ques: Whether such a direction as above could be given by a Minister orally?

Ans: In case of oral direction, the official of the department would apprise the Minister of the facts only orally.

Ques: I put it to you that in case of oral direction by a Minister to any competent officer of the department, a written proposal can also be put up by the officer concerned to the Minister?

Ans: I am not in a position to reply to the question unless any such specific instance is shown to me, where such a fact situation is there.

Ques: I put it to you that a Minister is possessed of the power to issue oral directions to any competent officer of the department to put up a proposal in writing and that officer is obliged to do that?

Ans: Minister has no such power for giving oral directions.

It is wrong to suggest that a Minister is possessed of any power to issue oral instructions to competent officers of his department to put up any proposal.

Ques: I put it to you that Secretary being administrative head of a department, everybody below him is bound to follow his lawful orders?

Ans: I cannot say.

Ques: I put it to you that whenever a proposal reached you, it reached you for your decision?

Ans: That is correct."

422. DW 1 Sh. A. Raja in his further cross-examination dated 15.07.2014, pages 2 to 4, deposed about cut-off date and reasons for the same, as under:

".....The reference about the sudden increase in the applications is found in note sheet dated 24.10.2007, which was approved by me on 25.10.2007, but it is only a passing reference. It is wrong to suggest that I am deliberately calling the aforesaid reference in the note sheet as a passing reference. It is wrong to suggest that I fully know the background in which the reference was sent to the TRAI.

Ques: I put it to you that in view of the provisions of NTP-1999, TRAI recommendations and UASL Guidelines dated 14.12.2005, DoT was not empowered to fix any cut-off date so as to exclude anyone from applying for a UAS licence for any service area?

Ans: It is incorrect. It was the decision of DoT for administrative reasons to have a cut-off date where it was very clearly mentioned that the cut-off date is a temporary stoppage till the further orders and, as such, there is no question of excluding anyone from applying for a licence, more specifically in the

context of first-come first-served policy.
Ques: I put it to you that in fixing a cut-off date, you exceeded your powers as Minister for MOC&IT?
Ans: It is incorrect.
Ques: I put it to you that as per first-come first-served policy, fixing a cut-off date amounted to exclusion of future applicants from the zone of consideration as per their seniority?
Ans: It is incorrect. Since the applications were disposed of in chronological order under first-come first-served policy.
Ques: Would you please explain the administrative reasons which led DoT to fix a cut-off date against receipt of applications for UAS licences?
Ans: These reasons are found mentioned in note sheet dated 24.09.2007, Ex PW 36/E-1 (D-6). I need not say anything about this as this note sheet is speaking for itself.

It is wrong to suggest that no administrative reasons are mentioned in this note sheet. It is further wrong to suggest that for this reason I am not explaining the same before the Court. The reasons are receipt of large number of applications and difficulty in handling this large number of applications.
Ques: I put it to you that since DoT did not process all the applications received till the cut-off date of 01.10.2007, the reasons given by you for fixing the cut-off date are not valid?
Ans: It is incorrect. The reasons mentioned above for fixing a cut-off date against receiving fresh applications are valid as on the date of fixing the aforesaid date, we could not anticipate the number of applications which would be received by this date of 01.10.2007.
Ques: I put it to you that note sheet dated 24.09.2007, Ex PW 36/E-1, was initiated by A. K. Srivastava on the asking of R. K. Chandolia, who was working at your instance?
Ans: It is incorrect. The note was initiated by A. K.

Srivastava himself from AS branch and it was discussed in my chamber with Secretary (T) and A. K. Srivastava and the file was disposed of on 24.09.2007 itself. I did not give any instruction to my private secretary R. K. Chandolia. If any instructions are given by me, when I am not in station or office, to the private secretary, the same would be reflected in the note sheets as I had few occasions when such incidents took place and these facts were duly reflected in the file...."

423. DW 1 Sh. A. Raja in his further cross-examination dated 17.07.2014, pages 1 and 2, deposed as under:

"**Ques**: I put it to you that you avoided referring the matter to EGoM, as indicated by Ministry of Law and Justice, as by that reference you may not have been able to accommodate Unitech group of companies?
Ans: A Minister cannot avoid a group of Ministers if Hon'ble Prime Minister desires that there is a need for inter-ministerial consultation under the provisions of the Transactions of Business Rules. The Law Minister is also entitled to write to the Cabinet Secretary or to the office of the Hon'ble Prime Minister to constitute a Group of Minister if he is having reservations under the rule about any matter, which did not happen in this case. As such, the suggestion itself is incorrect and speculative.
Ques: I put it to you that in view of the observations of the Ministry of Law and Justice, it was imperative on you to refer the matter to EGoM?
Ans: It is incorrect in view of my earlier replies given in my statement in the Court.
Ques: I put it to you that you got checked from AS section through your private secretary R. K. Chandolia as to whether the UASL applications of Unitech group of companies had been received or not?
Ans: It is incorrect."

424. DW 1 Sh. A. Raja in his cross-examination has denied that the cut-off date of 01.10.2007 was wrongly fixed. Prosecution put only two questions to Sh. A. Raja regarding the cut-off date to the effect that the note dated 24.09.2007, Ex PW 36/E-1, was initiated by Sh. A. K. Srivastava on the asking of Sh. R. K. Chandolia and that Sh. A. Raja had got checked through Sh. R. K. Chandolia as to whether applications on Unitech group of companies had been received or not. No question was put to Sh. A. Raja that the cut-off date was fixed by him in conspiracy with STPL and Unitech group of companies to help them in the matter of UAS licences and allocation of spectrum.

The facts examined thus far do not reveal any conspiracy. Sh. A. Raja had approved the cut-off date by citing three reasons, that is, pendency of large number of applications, to discourage speculative players and time of one month from the receipt of TRAI Recommendations. These are good reasons, if seen in the light of the note, Ex PW 36/E-1, dated 24.09.2007 recorded by Sh. A. K. Srivastava. The date of 10.10.2007 or 01.10.2007 would not have made any difference to Unitech group of companies as their applications had already been filed on 24.09.2007. STPL had already applied as early as 02.03.2007.

Filing of Applications of Unitech and Enquiry by R. K. Chandolia:

425. The most important question is: Whether the idea of

cut-off date was introduced to rope in Unitech group of companies? The evidence of PW 60 Sh. A. K. Srivastava is that after receipt of TRAI Recommendations, large number of applications were being received in the DoT for UAS licences and R. K. Chandolia had been asking him the details of applications on daily basis, after receipt of TRAI Recommendations. However, the TRAI Recommendations dated 28.08.2007 were received in DoT on 29.08.2007 and thereafter only two companies, that is, Allianz had filed applications for five service areas on 03.09.2007 and for seventeen service areas on 06.09.2007 and Shipping Stop Dot Com (India) Private Limited had also filed its applications for twenty-one service areas on 06.09.2007. This means that the applications were received only from the two companies on two dates, that is, 03.09.2007 and 06.09.2007. 124 applications were already pending till 28.08.2007, the date of TRAI Recommendations, which were received in the DoT on 29.08.2007.

426. As such, it is not correct for Sh. A. K. Srivastava to say that large number of applications were being received in the DoT after TRAI Recommendations. The fact of the matter is that till 24.09.2007, only two companies had filed applications and PW 60 Sh. A. K. Srivastava has admitted so in his cross-examination dated 14.09.2012, page 12, also. Not only this, he further admitted on the same page that large number of applications were not being received during the aforesaid period. In such a situation, where was the question for Sh. R. K. Chandolia to enquire on day-to-day basis about receipt of

applications. In these circumstances, the testimony of PW 60 Sh. A. K. Srivastava is contrary to record and as such unreliable. In his note, Ex PW 36/E-1 (D-6), he recorded, inter-alia, that ".....The recommendations of TRAI has since been received by DOT on 29.8.2007. TRAI has, interalia, recommended no cap on number of Access Service Providers in any service area among other recommendations on terms of UAS Licences. In the meantime, the new UASL applications are pouring in and till date 167 applications from 12 companies for 22 service areas have been received.....". This recording is factually incorrect, as applications were not pouring in. How can one say that applications were pouring in when in a month only two companies had submitted their applications? If from 29.08.2007, the date of receipt of TRAI Recommendations, till 23.09.2007, only two companies had applied for UAS licences in twenty-two service areas, how can one dare to record on 24.09.2007 that applications for UAS licences were pouring in? This is highly exaggerated and misleading statement.

427. PW 60 Sh. A. K. Srivastava further deposed that on 24.09.2007 when 167 applications had already been received, R. K. Chandolia asked him whether applications of Unitech Group had been received and that he enquired from the Dealing Section and replied that applications of Unitech Group had not been received in the Section till then.

It may be noted that officials of CR Section, including their supervisory officers, have also been examined as witness. However, Sh. A. K. Srivastava did not tell the name of

the official/ officer from whom had he enquired about the receipt of applications of Unitech group of companies. Further, the note, Ex PW 36/E-1, dated 24.09.2007 was put up after discussion with Member (T). The discussion between Member (T) and PW 60 Sh. A. K. Srivastava must have taken some time. This means that R. K. Chandolia must have enquired from Sh. A. K. Srivastava about the receipt of applications of Unitech group, fairly early in the day, but as per him the applications of Unitech Group had not been received by then. However, the Diary Register, Ex DW 7/A-7/X, produced by DW 7 Inspector Bhagwan Sahai Meena shows that the applications of Unitech group of companies were received at the earliest on 24.09.2007, as the receipt of applications are recorded at the first entry of the day, that is, from 8983. The entry No. 8982 belongs to 21.09.2007 and 22.09.2007 & 23.09.2007 were closed day. The recording of the receipt of the applications from the first entry of the day means that the applications were received very early in the day and the deposition of PW 60 Sh. A. K. Srivastava that the Section told him that the applications of Unitech Group had not been received, is factually incorrect. This is further compounded by the fact that Sh. A. K. Srivastava deposed on 01.08.2012, page 12, that Sh. R. K. Chandolia had again enquired about the receipt of Unitech applications in the afternoon also. When the applications were filed in the early morning and Sh. R. K. Chandolia was in conspiracy with Unitech, how is it possible that he was ignorant of it till the afternoon? This is further strengthened by the cross-

examination of PW 60 Sh. A. K. Srivastava on 18.09.2012, page 2, which is as under:

> ".....I do not know if one of the employees of Unitech group Sh. Mohit Gupta had thereafter filed its applications for UAS licences in the DoT in the early morning of 24.09.2007. It is wrong to suggest that my entire narration of the conversation with Sh. R. K. Chandolia regarding filing of applications of Unitech for UAS licences is a complete lie, fabrication and concoction. It is further wrong to suggest that as a quid pro quo with the CBI, I have made false averments on this point to save myself from being proceeded against by the CBI in a likely DA case as well as the instant case....."

As already noted above, PW 37 Sh. Mohit Gupta has deposed that he deposited the applications for Unitech group of companies at 10:00 AM and this deposition matches with the record.

428. DW 22 Sh. R. K. Chandolia in his cross-examination dated 05.08.2014, page 9, denied that he was monitoring the filing of applications, and deposed as under:

> ".....It is wrong to suggest that I was continuously getting updates from Sh. A. K. Srivastava, DDG (AS), regarding filing of applications for UAS licences. It is further wrong to suggest that I was getting these updates in order to know whether Unitech group of companies had filed their applications or not. It is wrong to suggest that any such updates were being obtained by me in order to officially confirm the receipt of these applications. It is wrong to suggest that on 24.09.2007 also, I got any such update from Sh. A. K. Srivastava. It is further wrong to suggest that I asked Sh. A. K. Srivastava to close receipt of applications for UAS licences after receipt of applications of Unitech group of companies. It is

> wrong to suggest that when Sh. A. K. Srivastava expressed his inability to do so, I asked him to generate a note in this regard. It is wrong to suggest that note dated 24.09.2007, Ex PW 36/E-1 (D-6), was generated by Sh. A. K. Srivastava on my asking……"

Thus, DW 22 Sh. R. K. Chandolia has denied that he was enquiring from Sh. A. K. Srivastava about filing of applications on continuous basis. His deposition is as per record, as only two companies had filed applications till 23.09.2007 after receipt of TRAI Recommendations on 29.08.2007.

429. Furthermore, DW 1 Sh. A. Raja denied that he was getting the filing of applications checked through Sh. R. K. Chandolia and in his cross-examination dated 17.07.2014, page 1, deposed as under:

> "**Ques**: I put it to you that you got checked from AS section through your private secretary R. K. Chandolia as to whether the UASL applications of Unitech group of companies had been received or not?
> **Ans**: It is incorrect."

430. The case of the defence is that the applications of Unitech group companies were submitted early in the morning. PW 60 Sh. A. K. Srivastava has deposed that he had enquired from the Section on 24.09.2007 about the receipt of the applications and he was told that applications had not been submitted. In such a situation, he should have denied the suggestion instead of saying that he did not know, if the applications were filed in the early morning of 24.09.2007.

Thus, the recording of note, Ex PW 36/E-1, regarding cut-off date cannot be connected with the filing of applications of Unitech group companies.

431. Furthermore, the record does not indicate that the note, Ex PW 36/E-1, was recorded by PW 60 Sh. A. K. Srivastava on the asking of anyone else. Only by way of oral evidence, Sh. A. K. Srivastava introduced the name of Sh. R. K. Chandolia. In the face of written official record, oral evidence carries much less credence or I may say no credence at all, as the government rules and regulations require that all important business of the government should be duly documented for record, institutional memory and future reference. Not only the government business be documented but this must be truthfully documented as per rules/ guidelines of the government. Recording of events memorializes the government business for future use and reference. It also helps in retaining the institutional memory and is also helpful in fixing responsibility. Apart from that, it also helps in reward and punishment. It is the duty of every officer, more so, of a senior officer, to truthfully record the government business in writing. The names of participants in a decision must also be recorded. Writing down everything relating to a transaction of official business is a tremendously powerful technique for fixing responsibility. No degree of denial would help in the face of written record, as integrity of record cannot be doubted lightly. Wrongdoers will not escape punishment.

432. Thus, in the face of oral evidence led by both

parties, the evidence of the party which is supported by official record would become acceptable. By way of oral evidence, Sh. A. K. Srivastava deposed that Sh. R. K. Chandolia was enquiring about filing of applications including that of Unitech group of companies, which has been denied both by Sh. R. K. Chandolia as well as Sh. A. Raja as noted above. Sh. A. K. Srivastava orally deposed that the note Ex PW 36/E-1 regarding cut-off date was recorded by him on the asking of Sh. R. K. Chandolia. Moreover, the legal position does not support oral evidence in the face of official record.

433. In an authority reported as **T. S. R. Subramanian and Others Vs. Union of India and Others, (2013) 15 SCC 732**, Hon'ble Supreme Court dealt with the question of oral instructions and observed in paragraphs 37 & 38 as under:

> "**37**. We have extensively referred to the recommendations of the Hota Committee, 2004 and Santhanam Committee Report and those Reports have highlighted the necessity of recording instructions and directors by public servants. We notice that much of the deterioration of the standards of probity and accountability with the civil servants is due to the political influence or persons purporting to represent those who are in authority. Santhanam Committee on Prevention of Corruption, 1962 has recommended that there should be a system of keeping some sort of records in such situations. Rule 3(3)(*iii*) of the All India Service Rules specifically requires that all orders from superior officers shall ordinarily be in writing. Where in exceptional circumstances, action has to be taken on the basis of oral directions, it is mandatory for the officer superior to confirm the same in writing. The civil servant, in turn, who has received

such information, is required to seek confirmation of the directions in writing as early as possible and it is the duty of the officer superior to confirm the direction in writing.

38. We are of the view that the civil servants cannot function on the basis of verbal or oral instructions, orders, suggestions, proposals, etc. and they must also be protected against wrongful and arbitrary pressure exerted by the administrative superiors, political executive, business and other vested interests. Further, civil servants shall also not have any vested interests. Resultantly, there must be some records to demonstrate how the civil servant has acted, if the decision is not his, but if he is acting on the oral directions, instructions, he should record such directions in the file. If the civil servant is acting on oral directions or dictation of anybody, he will be taking a risk, because he cannot later take up the stand, the decision was in fact not his own. Recording of instructions, directions is, therefore, necessary for fixing responsibility and ensure accountability in the functioning of civil servants and to uphold institutional integrity."

Thus, if Sh. R. K. Chandolia or anyone else was issuing some direction on behalf of the Minister, the same ought to have been recorded in the file. The result of the discussion is that the deposition of Sh. A. K. Srivastava carries no value in the eyes of law.

Requirement of Recording Name of Officers:

434. PW 60 Sh. A. K. Srivastava in his cross-examination dated 12.09.2012, pages 4 and 5, conceded the requirement of recording the name of officers in official note, as under:

"……..There is a compendium of channel of

submissions and approvals, issued by DoT. It is correct that there is an office manual procedure applicable to Central Government departments. It is correct that as per manual of office procedures, all oral directions given by a superior officer to a subordinate are required to be recorded in writing by the subordinate officer in his note. **Volunteered**: On some occasions due to paucity of time or oversight this may be skipped.

It is correct that in case certain action to be taken is orally approved by the superior officer in a meeting and a note is required to be originated on that, this fact of prior oral approval would find mention in the note itself including name or designation of the officer. It is also correct that if more than one officer are present in such a meeting, their names or designation would also find mention in the note and note would move upward through proper channel for approval of the competent authority. After approval of the competent authority, which approval may be either as proposed or may be with some additions or deletions, the file would move downward through the same channel normally. If there is a remark by the competent authority or a modification and the file is required to be routed through a particular officer, but this is missed, in that event subordinate should bring it to the notice of the concerned officer. In many cases the name of all superior authorities is mentioned by the officer himself, who has initiated the note……."

435. PW 60 Sh. A. K. Srivastava in his further cross-examination dated 14.09.2012, pages 2 to 4, admitted the need for recording of name of officers in an official note, as under:

"……..The processing of UASL applications started vide note dated 02.11.2007 recorded by Sh. Nitin Jain, already Ex PW 36/B-8, in file D-7, Ex PW 36/B. Para 3 of this note has been correctly recorded as

there had been discussions of Nitin Jain with me and my discussions with Member (T), who had separately discussed the matter with the then MOC&IT Sh. A. Raja. Accordingly, this note was also initiated **('initialed', as per statement dated 17.09.2012, page 11)** by MOC&IT Sh. A. Raja, Member (T) Sh. K. Sridhara and myself at the points respectively shown there. **Volunteered**: The signature of the minister meant that the proposal as contained in pars 5, 6, and 8 of the note stood approved with certain modifications.

It is correct that the then Secretary (T) Sh. D. S. Mathur was not involved in these discussions as he was on tour. However, the file was later on marked by Member (T) to Secretary (T) to enable him to see the file and in recognition thereof, the Secretary (T) made a note Ex PW 36/B-9 and initialed the same. It is correct that in this note Ex PW 36/B-8, Nitin Jain first recorded the name of the official with whom the discussion took place and later on took their signatures on the note in confirmation thereof. It is correct that such a procedure was followed by Sh. Nitin Jain as per the requirement of CCS Conduct Rules and Central Secretariat Manual of Office Procedures.

Same procedure was followed by Sh. Nitin Jain while recording the note Ex PW 36/B-10, that is, the name of the officers with the whom the matter was discussed was recorded and later on their signatures were obtained, though in the instant case signature of the two officers could not be obtained for the reason that one officer was on tour and one was not concerned with the matter. It is correct that this procedure is followed to avoid ambiguity and to fix responsibility for the decision taken. **Volunteered**: Sometimes it so happen either by oversight or on the specific directions of officer concerned that his name is not recorded in the note regarding the discussion held with him, though his signature is obtained.

It is wrong to suggest that the procedure of

mentioning the name of the officer in the body of the note with the whom the discussion was held is to be scrupulously followed. **Volunteered**: This procedure is sometime avoided as a matter of practice under pressure.

It is wrong to suggest that I am saying so just to avoid fixation of my responsibility in the matter.

It is correct that in case of difference with the note put up by a subordinate officer, the senior officer may not make modification in the note of the junior, but instead should record his own note indicating the difference and this is the requirement of law and procedure.....”

436. Thus, Sh. A. K. Srivastava knew the importance of recording names of officers in the record. He understood the importance of recording name of officers in a note, but with a caveat that it need not be followed scrupulously.

437. PW 62 Sh. A. S. Verma in his cross-examination dated 19.09.2012 deposed that while acting on the oral instructions of Additional PS to MOC&IT, in order to affirm oral instructions given to him by the Additional PS, he recorded a note dated 17.10.2003, Ex PW 62/DA, at 13/N (D-591), which reads as under:

“As desired by Addl. PS to MOC&IT (Mr. Somnath), 3 pages (Page No. 3, Amendment Slip and the note sheet) was faxed to him on FAX No. 24369179 on date at 15:02 hrs. Subsequently, confirmed over phone that he has received the FAX (63/c). Copy of FAX report is placed below.”

This note of Sh. A. S. Verma is precedent as to how the name of an officer who conveyed the direction of the

Minister is to be recorded in the note.

Thus, the evidence of PW 60 Sh. A. K. Srivastava is in contrast to the stated position in the law. In the face of authenticated official record there can be no protection of deniability.

438. Sh. A. K. Srivastava was bound to maintain the official record correctly and truthfully. Official record is always deemed to be correct unless proved otherwise. In a given case, an oral statement can be larger than the official record, but to be acceptable it cannot be wholly contrary to the record. It can be supplemental and explanatory. If an oral statement amounts to nullifying the official record, it is required to be rejected. There is no cogent reason on the record to reject the official record and accept the oral statement of Sh. A. K. Srivastava. If this trend is allowed, wrongdoers will have a field day. Accordingly, I have no hesitation in rejecting the oral testimony of PW 60 Sh. A. K. Srivastava, being contrary to official record. The conclusion is that there is no legally acceptable evidence on record to show that the proposal for cut-off date was initiated by Sh. A. K. Srivastava at the instance of Sh. R. K. Chandolia.

Change of Date from 10.10.2007 to 01.10.2007:

439. The next question is: Whether the date of 10.10.2007 as proposed by PW 60 Sh. A. K. Srivastava was cut short by Sh. A. Raja unilaterally or was it done by him after discussion with PW 36 Sh. D. S. Mathur and PW 60 Sh. A. K. Srivastava?

440. DW 1 Sh. A. Raja in his examination-in-chief dated 01.07.2014, page 5, deposed as to how the cut-off date was approved, as under:

> "**Ques**: Kindly take a look on note sheet dated 24.09.2007, already Ex PW 36/E-2, in DoT file D-6, already Ex PW 36/E. Would you please tell this Court as to under what circumstances you recorded this note?
> **Ans**: This file was submitted to me on 24.09.2007 by the AS branch. I went through the notes. It was mentioned in the notes that already UASL applications were pouring in and till date 167 applications had been received. I called the Secretary for discussion to my chamber. The Secretary (T) came alongwith DDG (AS) Sh. A. K. Srivastava, and the matter was discussed with them and the decision taken in the meeting is reflected in the note and after my approval, the file was handed over to Sh. D. S. Mathur, the then Secretary (T), in person....."

441. DW 1 Sh. A. Raja in his cross-examination dated 07.07.2014, pages 12 and 13, deposed about the date of 01.10.2007, as under:

> "**Ques**: Kindly take a look on note dated 24.09.2007, already Ex PW 36/E-1, in DoT file D-6, already Ex PW 36/E. Would you please tell this Court as to what exactly is the proposal in this note and regarding what?
> **Ans**: This proposal was put to me to announce cut-off date 10.10.2007 for receipt of UASL applications till further orders.
> **Ques**: What is the decision taken by you relating to aforesaid proposal in the note?
> **Ans**: The decision was taken after a brief discussion with Secretary (T) and DDG (AS) and it was decided to close receiving of applications on 01.10.2007, that

is, one month from the date of TRAI recommendations, for the reasons mentioned in the notes.
Ques: In other words, the cut-off date, which was proposed to be as 10.10.2007, was curtailed to 01.10.2007?
Ans: There is no question of curtailing the date of receipt of applications. It was believed after the discussions that time till 01.10.2007 was fair enough for the reasons discussed in the note of DDG (AS), as accepted by the officers in the meeting."

442. Thus, Sh. A. Raja also deposed in his cross-examination, referred to above, that the decision regarding cut-off date of 01.10.2007 was taken by him after discussion with Sh. D. S. Mathur and Sh. A. K. Srivastava. The deposition of Sh. D. S. Mathur and Sh. A. K. Srivastava have already been taken note of above. This deposition of Sh. A. Raja is acceptable because with the note, Ex PW 36/E-1, a DFA of the Press Release, Ex PW 36/E-3, was also put up by Sh. A. K. Srivastava, in which the date of 01.10.2007 is recorded. This note is typewritten. This indicates that the date 01.10.2007 was decided in advance in the department after discussion and was not arrived at by Sh. A. Raja arbitrarily by curtailing the date of 10.10.2007. PW 77 Sh. K. Sridhara has also deposed that the note, Ex PW 36/E-1, regarding cut-off date was initiated by Sh. A. K. Srivastava after discussion with him regarding receipt of large number of applications. On the contrary, Sh. A. K. Srivastava has deposed that the note was initiated by him on the asking of Sh. R. K. Chandolia.

443. The mischievous attitude of Sh. A. K. Srivastava is

also reflected by the fact that in the note, Ex PW 36/E-1, he inter-alia recorded that:

> ".....It was also decided separately by Hon'ble MOC&IT that new UASL applications are to be processed only after receipt of TRAI recommendations....."

444. These lines indicate as if Sh. A. Raja had unilaterally decided that the pending applications would be processed after the receipt of TRAI Recommendations. The fact of the matter is that such a note was put up by Sh. Madan Chaurasia on 26.04.2007, Ex PW 60/J-46, suggesting that processing of new UAS applications would be carried out after receipt of TRAI Recommendations. This was agreed to by DDG (AS) and Member (T) also. Sh. Nitin Jain again recorded note dated 11.05.2007, Ex PW 60/J-47, proposing the same in paragraph (5). On this, Sh. D. S. Mathur recorded note, Ex PW 60/J-48, dated 18.05.2007 that decisions on paragraphs 4 and 5 may be postponed till MOC&IT had discussed this and other issues with all stakeholders. All this happened much before Sh. A. Raja took over as MOC&IT. The proposal pre-dates Sh. A. Raja. Sh. A. Raja approved it on 17.07.2007. Thus, the proposal moved by the department was approved by Sh. A. Raja, but the note referred to above, indicates that it was only Sh. A. Raja, who decided to process the pending applications after the receipt of TRAI Recommendations.

445. It is clear that the note regarding cut-off date is reasonable one and was put up by Sh. A. K. Srivastava with due

discussion in the department, but later on when things became hot, he disowned it and falsely introduced the name of Sh. R. K. Chandolia on the pretext of enquiry by him about receipt of Unitech applications. This has been done deliberately by him to escape all responsibility. His statement is indicative of the fact that his working in the department was personal and feudal and not formal and professional one, as a senior public servant is expected to be. There is absolutely no material on record indicating that any Unitech official was in touch with Sh. R. K. Chandolia regarding the receipt of applications. The applications for Unitech were deposited at the earliest in the morning on 24.09.2007 and as such, there was no occasion for anyone including Sh. R. K. Chandolia to enquire about the receipt of applications for Unitech.

446. In view of the above facts, there is no material on record to show that the note regarding cut-off date was initiated by Sh. A. K. Srivastava at the initiative of Sh. A. Raja, conveyed through Sh. R. K. Chandolia to benefit the accused companies.

447. The central issue here is not whether the note proposing cut-off date is right or not, but whether it is result of criminal conspiracy being executed by Sh. A. Raja and Sh. R. K. Chandolia through the innocent agency of Sh. A. K. Srivastava? The answer to the question is an emphatic "No", as the note was not put up by Sh. A. K. Srivastava either under pressure or on the asking of Sh. R. K. Chandolia, but on his own initiative after discussion within the department.

It is thus clear from the evidence, that putting up of

note, Ex PW 36/E-1, regarding cut-off date of 10.10.2007, on account of receipt of large number of applications for UAS licences or its curtailing by Sh. A. Raja to 01.10.2007, was not the result of any conspiracy, but was an administrative step taken up by the officers of DoT in view of receipt of large number of applications, but was later on disowned by them when the issue became controversial.

448. In an authority reported as **Govindaraju @ Govinda Vs. State, (2012) 4 SCC 722**, dealing with the appreciation of evidence, Hon'ble Supreme Court observed in para 24 as under:

> "It is a settled proposition of law of evidence that it is not the number of witnesses that matters but it is the substance. It is also not necessary to examine a large number of witnesses if the prosecution can bring home the guilt of the accused even with a limited number of witnesses. In *Lallu Manjhi v. State of Jharkhand* (SCC p. 405, para 10), this Court had classified the oral testimony of the witnesses into, three categories:
>
> (a) wholly reliable;
>
> (b) wholly unreliable; and
>
> (c) neither wholly reliable nor wholly unreliable.
>
> In the third category of witnesses, the court has to be cautious and see if the statement of such witness is corroborated, either by the other witnesses or by other documentary or expert evidence."

449. Sh. A. K. Srivastava is not a reliable witness, as he has not displayed any quality of a reliable witness. It is instructive to quote an authority reported as **Rai Sandeep alias Deepu Vs. State of NCT of Delhi, AIR 2012 SC 3157**, wherein Hon'ble Supreme Court, while dealing with the qualities of a

good witness observed in paragraph 15 as under:

> "In our considered opinion, the 'sterling witness' should be of a very high quality and caliber whose version should, therefore, be unassailable. The Court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the Court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as, the sequence of it. Such a version should have co-relation with each and everyone of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other similar such tests to be applied, it can be held that such a witness can be called as a 'sterling witness' whose version can be accepted by the Court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of

> the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the Court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged."

It is evident that the version given by Sh. A. K. Srivastava matches neither with the version of other witnesses nor with the official record. His evidence deserves to be discarded and is accordingly discarded in toto.

Cut-off Date of 25.09.2007: Opinion of Law Ministry

Origin of Cut-off Date of 25.09.2007 and the Circumstances of its Approval:

450. It is the case of the prosecution that cut-off date of 25.09.2007 was suggested by Sh. A. Raja in order to accommodate the applications of STPL and Unitech group of companies in the matter of grant of UAS licences and allocation of spectrum. It is the case of the prosecution that this date is the result of conspiracy between the accused to brighten the prospects of STPL and Unitech group of companies, particularly in the matter of allocation of spectrum. It is the case of the prosecution that this date was suggested by Sh. A. Raja in draft, Ex PW 36/B-3, which was placed on the file at his instance and was to be sent to the learned SG, for seeking his opinion on the processing of pending applications for UAS licences.

451. On the other hand, defence disputed it submitting

that the date of 25.09.2007 was proposed by the officers of the department keeping in view the availability of spectrum. It is the case of the defence that draft, Ex PW 36/B-3, was put up by the officers of the department and not by Sh. A. Raja or at his instance. It is their case that all three drafts, that is, Ex PW 36/B-1, PW 36/B-3 and PW 36/B-4, were placed on record by the officers of the department for seeking the opinion of learned SG and only role of Sh. A. Raja was that he finally approved the draft, Ex PW 36/B-3, and thereafter draft, Ex PW 36/B-4, was sent to the Law Ministry.

452. Both parties have invited my attention in great detail to the deposition on record as well as to the documents relevant to the issue.

453. It may be noted that vide approval dated 17.07.2007, Sh. A. Raja had approved a proposal, put up by PW 36 Sh. D. S. Mathur vide note, Ex PW 60/J-48 (D-44), that pending applications for UAS licences may be disposed after receipt of TRAI Recommendations, which were sought vide reference dated 13.04.2007. The TRAI Recommendations dated 28.08.2007 were received in the DoT on 29.08.2007. Sh. A. Raja on 17.10.2007 vide note, Ex PW 36/A-15 (D-5), approved TRAI Recommendations. Now, the applications were required to be processed by the DoT. Accordingly, reference to Law Ministry was sent.

454. On the point as to who suggested the date of 25.09.2007, four senior officers of DoT, that is, PW 110 Sh. Nitin Jain; Director (AS-I), PW 60 Sh. A. K. Srivastava; DDG

(AS), PW 77 Sh. K. Sridhara; Member (T) and PW 36 Sh. D. S. Mathur; Secretary (T) have been examined by the prosecution. These officers were involved in the process of finalizing of the brief to be sent to the Law Ministry for seeking its opinion on the methodology to be followed for disposal of large number of applications received for UAS licences.

455. On receipt of large number of applications for UAS licences, DoT desired to seek the opinion of learned SG regarding the methodology to be followed for processing of these applications. Accordingly, file D-7 was opened on the recording of note dated 24.10.2007, Ex PW 36/B-2, by PW 110 Sh. Nitin Jain, Director (AS-I). Along with this note, a draft of brief facts, to be sent to learned SG, was also prepared, which is available at 4/c and is Ex PW 36/B-1. The draft suggested various alternatives for disposal of applications. The note dated 24.10.2007, Ex PW 36/B-2, reads as under:

> **"Sub: Seeking opinion of Learned Solicitor General on grant of new Unified Access Service (UAS) Licenses and approval of used of Dual Technology Spectrum by UAS Licensee (s).**
>
> The policy for licensing of Unified Access Service was announced in November 2003 and the applicants were submitting the applications for grant of UAS licences as per the guidelines announced by the Government. Copy of the guidelines dated 14.12.2005 is also available on DOT website ***www.dotindia.com***. The number of UASL applications was increasing and there were about 5 to 8 licensed Access Service Provider in each service area. The increase in number of applications had increased the demand of spectrum in a substantial

manner. Therefore, a reference was made to TRAI on 13.4.2007 seeking their recommendations to put a limit on the number of access service providers in each service area keeping in view that spectrum is a scarce resource and to ensure that adequate quantity of spectrum is available to existing licensees. TRAI was also requested to give its recommendation on certain other terms and conditions of Access Service Providers licences. The recommendations of TRAI were received on 29th August 2007.

2. It was observed that the spurt in the number of applications received by DOT for grant of UAS licenses has increased tremendously after receipt of TRAI recommendations. Therefore, a cut-off date was announced as 1.10.2007 stating that no new UASL application will be received after this cut-off date till further orders. A copy of Press Release dated 24.9.2007 which appeared in press on 25.9.2007, in this regard is placed at **1/c**. TRAI's recommendations were examined by Telecom Commission and decision on TRAI recommendations has been taken by Hon'ble MOC&IT on 17.10.2007/18.10.2007. A copy of Press Release dated 19.10.2007 announcing the Government decision of TRAI's recommendation is placed at **2/c**. TRAI's recommendation, inter alia, that there should be no cap on the number of access providers in a service area has been accepted by the Government.

3. It is mentioned that 575 applications for UASL licenses have been received till the cut-off date from 46 applicant companies in respect of 22 service areas in the country. Government is yet to decide on processing for grant of licenses to the applicants based on availability of spectrum and other issues. In terms of the approved policy, M/s Reliance Communications Limited had been asked to pay the applicable fee for use of Dual Technology spectrum (i.e. for GSM in addition to CDMA technology) **(3/c)**. M/s Reliance Communications Limited is Unified Access Service provider in 20 service areas

and their applications were already pending with the Government for consideration of Dual Technology spectrum. M/s Reliance Communications Limited has paid the requisite fee amounting to Rs. 1651.5701 crores. Similar In-Principle approval has also been given to M/s HFCL and M/s Shyam Telelink Limited for Punjab and Rajasthan service areas respectively and they have been given 15 days time w.e.f 19.10.2007 to pay the requisite fee. Subsequently on 22.10.2007 M/s TATA who are UASL operators in 20 service areas have also applied for Dual Technology spectrum (i.e. for GSM in addition to CDMA technology). A decision is required to be taken in this case also.

4. DoT is also to decide on methodology of processing the pending UAS applications keeping all aspects in view. We may request Learned Solicitor General to provide his opinion on methodology proposed by DoT with regard to grant of new UAS licences and usage of dual technology spectrum, based on availability of spectrum in each service area.

5. A brief to Learned Solicitor General seeking his opinion as above is placed below **(4/c)** for kind consideration and approval before sending it to Learned Solicitor General.

Submitted for consideration and approval please."

This note does not record that Sh. Nitin Jain discussed the matter with anyone before recording it and proposing seeking of opinion of learned SG. As per record, this note would be attributed to Sh. Nitin Jain and to none else.

456. On recording the note, Sh. Nitin Jain marked it to PW 60 Sh. A. K. Srivastava, who agreed to it and marked to Member (T) PW 77 Sh. K. Sridhara, who also agreed to it.

Member (T) marked the note to Secretary (T) PW 36 Sh. D. S. Mathur. He also agreed to it and marked to the then MOC&IT Sh. A. Raja. He approved the note with his noting dated 25.10.2007, Ex PW 36/B-5, which reads as under:

"Approved as modified"

Thus, all the officers, including Sh. D. S. Mathur, had agreed to the note that opinion of learned SG may be obtained regarding the processing of applications for new UAS licences.

457. The case of the prosecution is that Sh. A. Raja had already decided to keep the cut-off date as 25.09.2007, as is clear from the modified draft, Ex PW 36/B-3 (5/c), which was placed on record either by Sh. A. Raja or at his instance. The relevant part of modified draft reads as under:

"**Alternative II:**
LOIs to all those who applied by 25-9-2007 (the date on which the cut-off date for receipt of applications were made public through press) may be issued in each service area as it is expected that only serious players will deposit the entry fee and seniority for licence/ spectrum be based on

(i) the date of application

or

(ii) the date/ time of fulfillment of all LOI conditions."

458. It is of some interest to take note of two more notes, that is, note dated 25.10.2007, Ex PW 36/B-6, recorded by Secretary (T) PW 36 Sh. D. S. Mathur and note dated 26.10.2007, Ex PW 36/B-7, recorded by DDG (AS) PW 60 Sh.

A. K. Srivastava. It may be noted that when the note dated 24.10.2007, Ex PW 36/B-2, was approved by the Minister Sh. A. Raja on 25.10.2007 vide his note, Ex PW 36/B-5, the file was marked downward to Secretary (T). On receipt of the file, in its downward journey, Secretary (T) PW 36 Sh. D. S. Mathur recorded the following dissenting note, Ex PW 36/B-6, which reads as under:

> "Opinion of Solicitor General may be obtained as per the draft approved by MCIT. However, the attention of MCIT may be drawn to NTP 99 para 3.1.1. The policy has stipulated that availability of adequate frequency spectrum is essential for entry of additional operators. Hence the options to issue LOIs/ licences to all 575 applicants do not stand in the light of this provision. NTP 99 was approved by the Union Cabinet and only the Cabinet can effect a change in the policy."

This note of Sh. D. S. Mathur reveals two things. One, he suffers from fickle-mindedness in the sense that first he agreed to the proposal to be sent to the learned SG, but when the file came downwards from the Minister, he suddenly acquired all the knowledge about the NTP 1999 and other things, which was not in his possession when he initially agreed with the note during upward movement of the file. Secondly, he is in the habit of putting unnecessary objections at the wrong time. He should have taken this objection when he marked the file to the Minister. As Secretary, he must have known that even right things are to be done at the right time. He was expected to be well acquainted with the provisions of NTP 1999 in the

first instance itself. The note also reveals that he was fully aware of the modified draft. This modified draft was not unknown to him. He did not record any objection about this modified draft, which is at the root of the controversy in the instant case.

459. The file was marked downward by Sh. D. S. Mathur and to take note of the objections of Secretary (T) PW 36 Sh. D. S. Mathur, the following detailed note dated 26.10.2007, Ex PW 36/B-7, was recorded by PW 60 Sh. A. K. Srivastava, which reads as under:

> "**Note on page 2/N & 3/N refers:-**
>
> The statement of case for obtaining the opinion of Ld. Attorney General of India / Solicitor General of India with modification as approved, is placed below at **6/c**. The same will be forwarded to Secretary Law for seeking opinion of Ld. Attorney General of India/Solicitor General of India.
>
> 2(a) The attention of Hon'ble MOC&IT is hereby drawn, as asked by Secretary (T) on page 2/N, on stipulations in para 3.1.1 of NTP 1999 relating to Cellular Mobile Service Providers as narrated below:
>
> • Availability of adequate frequency spectrum is essential not only for providing optimal bandwidth to every operator but also for entry of additional operators.
>
> • The entry of more operators in a service area shall be based on the recommendation of the TRAI who will review this as required and no later than every two years.
>
> (b) NTP 99 has also stipulated licences for fixed service providers and inter alia stipulates that
>
> • While market forces will ultimately determine the number of fixed service providers, during transition, number of entrants have to be carefully decided to eliminate non-serious players and allow new

entrants to establish themselves.

• The number of players and their mode of selection will be recommended by TRAI in a time-bound manner.

(c) However, both the above categories of Access Service providers, namely, Cellular Mobile Service Providers and Fixed Service Providers were permitted to migrate to Unified licensing regime in November 2003 where they can provide both the services under one license called Unified Access Service License. The addendum to NTP 99 states the Government decision that now there shall be inter alia the following category of licenses for telecom service,

• Licence for Unified Access (Basic and Cellular) Services permitting Licensee to provide Basic and /or Cellular Services using any technology in a defined service area.

(d) The guidelines for grant of Unified Access Service Licenses was announced by the Government on 11.11.2003 and subsequently amended guideline which is in force till date, was announced on 14.12.2005. The following stipulations in the UASL guidelines dated 14.12.2005 are worth mentioning.

• Licences shall be issued without any restriction on the number of entrants for provision of Unified Access Services in a Service Area.

• The access service includes but not limited to wireline and/ or wireless service including full mobility, limited mobility as defined in clause 12 (c) (i) and fixed wireless access.

• Initially a cumulative maximum of up to 4.4 MHz + 4.4 MHz shall be allocated in the case of TDMA based systems @ 200 KHz per carrier or 30 Khz per carrier or a maximum of 2.5 MHz + 2.5 MHz shall be allocated in the case of CDMA based systems @ 1.25 MHz per carrier, on case by case basis subject to availability.

(e) TRAI has also examined the issue whether there is a need to put limit on the number of Access

Service providers in each service area. TRAi after due examination and consideration have stated as below in their recommendations on review of license terms and conditions and cap on number of Access Service providers received by DOT on 29.8.2007.

• The Authority has thus reviewed various arguments and counter arguments, evidences cited by the stakeholders representing conflicting viewpoints in this matter. The Authority has extensively surveyed the empirical evidences on its own, through published material and has carefully examined the sector experiences and the existing provisions of the license agreement governing access service provision. The Authority has also examined the whole issue from the standpoint of the current and upcoming technological developments. Principles of competition and other vital economic criteria have also guided the Authority in understanding this crucial issue of entry regulation in the access service market. Separately, the Authority has examined issues relating to the utilization of spectrum keeping in view the emerging scenario of spectrum availability, optimum use of spectrum, requirements of market and competition in the market. It is noteworthy that these are the guiding principles that have been laid down in NTP, 1999. **(Para 2.35 of TRAI's Recommendation)**

• Having considered all the above aspects and considering the implications of having to suggest a framework covering other issues that have been referred by the Government; the Authority is not in favour of suggesting a cap on the number of access service providers in any service area. It is not advisable to exogenously fix the number of access service providers in a market which is in a dynamic setting. **(Para 2.36 of TRAI's Recommendation)**

• Accordingly, the Authority recommends that no cap be placed on the number of access service providers in any service area. **(Para 2.37 of TRAI's Recommendation)**

(f) In view of above, all the options for reference to Attorney General/ Solicitor General of India are open to the Government. If approved, the reference may be sent to Law Secretary for seeking opinion of Ld. Attorney General of India/ Solicitor General of India **(6/c)**.

Submitted for approval please."

This note records the changes in the policy since the introduction of NTP 1999. It summarizes that initially two category of licences were there, that is, CMTS and fixed. However, both the above categories were allowed to migrate to UASL regime in 2003 and that a UAS licensee is free to provide basic and/or cellular services using any technology. It is also noted that an addendum to the NTP 1999 was issued and it was issued on 11.11.2003. To that extent, the elements of NTP 1999 stood changed or diluted or substituted. It is to be noted that the language of note is subtle, loaded and layered and as such open to many interpretations. In a sense, note is difficult to understand. This applies to almost all the notes recorded in the file.

460. This note was marked upward to Member (T) PW 77 Sh. K. Sridhara, who agreed to the note and marked the file directly to the Minister Sh. A. Raja, as Secretary (T) Sh. D. S. Mathur was on tour. It may be noted that after putting objections and without waiting for their resolution, Sh. D. S. Mathur made himself scarce by proceeding on tour.

461. The Minister approved the file on the same day and accordingly, letter dated 26.10.2007, Ex PW 60/C, was sent to

the Law Ministry under signature of PW 77 Sh. K. Sridhara.

462. The response of Law Ministry was received on 01.11.2007 vide note, Ex PW 66/A, of Joint Secretary (Law), which reads as under:

> "I agree.
>
> In view of the importance of the case and various options indicated in the statement of the case, it is necessary that the whole issue is first considered by an empowered group of Ministers and in that process legal opinion of AG can be obtained."

463. This response was put up before Sh. A. Raja on 02.11.2007, who ordered the matter to be discussed. After discussion, note dated 02.11.2007, Ex PW 36/B-8, seeking approval for issue of LOIs, was recorded by Director (AS-I) PW 110 Sh. Nitin Jain, which reads as under:

> "As approved on page 4-5/N, the reference was sent to Law Ministry (7/c) seeking opinion of Ld. Attorney General of India/ Solicitor General of India. Responses received from Ministry of Law and Justice, Department of Legal Affairs may kindly be seen as placed on page 8/c and 9/c.
>
> 2. The opinion of Hon'ble Minister of Law and Justice at page 9/c was discussed with Hon'ble MOC&IT. Ministry of Law and Justice has given their views that in view of the importance of the case and various options indicated in the statement of the case the issues be considered by Group of Ministers.
>
> 3. The matter was discussed with the DDG (AS) and Member (T) who had in turn discussed with the Hon'ble MOCIT.
>
> It was discussed and felt in the meeting that the proposed advice is out of context. It is, therefore, advisable that we may follow the existing policy for grant of new licences as suggested by the Secretary

(T) in the meeting chaired by Hon'ble MOCIT. DOT has till now been following a process of first come first served for grant of UASL licenses.

In view of TRAI recommendation of no cap on number of operators, large number of applications were being received in the DOT. Therefore it was decided that no more applications shall be received after 1-10-2007 till further orders. Till the cut-off date for receipt of UASL application, 575 applications were received fro, 46 companies for 22 service areas. The list of these applications along with date of receipt, company wise and service area wise are placed at p.10/c and 11/c respectively. In order to avoid any legal implications of cut off date, all the applications received till the announcement of cut off date in the press i.e. 25-09-2007 may be processed as per the existing policy and decision on remaining applications may be taken subsequently.

4. WPC has indicated (in the linked file) an availability of circle wise spectrum based on the internal exercise and likely availability once M/O Defence vacates the spectrum being used by them. Since 75 MHz has been earmarked for 2G in 1800 band of which a maximum of about 15 MHz has been released. Therefore, approximately 60 MHz is left unused so far which could be utilized for new licences and additional requirement of existing operators. Since the availability of spectrum is not immediately guaranteed in all the service areas as it needs to be vacated by the Defence, **a clause may be inserted in the LOI that spectrum allocation is not guaranteed and shall be subject to availability**.

5. In view of above a decision may be taken on the number of LOI's to be issued in each circle. While deciding on the number of LOI's it may also be taken in to account that only serious players may deposit the entry fee who can afford non-availability or delays in spectrum allocation and roll out using wire-line technology only. It may also be noted that

large number of operators per circle will lead to real competition and bring down prices of telecom services.

6. LOI has been redrafted in view of large number of applications and is placed below and will be legally vetted by LA(T) before issue. It will be vetted before by the Legal Adviser before issue. Since the applications are very large in number, a comprehensive evaluation has not been done and shall be completed after taking detailed clarifications / compliances / documents from the applicants along with LOI. The responses to LOI will be evaluated by the committee already approved by the Secretary (T). A copy of LOI issued earlier to one of the licensees is also placed at 12/c for reference purposes.

7. With regard to application of M/s TATA (TTSL & TTML) for dual technology, it is submitted that since matter is sub-judice in TDSAT, a decision on this may be taken after decision of TDSAT.

8. Therefore, file is submitted for orders on following issues:

1. Issuing of LOI's to new applicants as per the existing policy,
2. Number of LOI's to be issued in each circle,
3. Approval of Draft LOI,
4. Considering application of TATA's for Dual technology after the decision of TDSAT on Dual technology.
5. Authorising Shri R. K. Gupta, ADG (AS-I) for signing the LOIs on behalf of President of India."

464. The note was marked upward to DDG (AS) PW 60 Sh. A. K. Srivastava who agreed to the note and, in turn, marked it to Member (T) PW 77 Sh. K. Sridhara, who also agreed to it and marked it directly to the Minister Sh. A. Raja, as Secretary (T) PW 36 Sh. D. S. Mathur was on tour. Here again,

it may be noted that Sh. D. S. Mathur was not available even when such important decisions were being taken by the DoT. It shows the attitude of Sh. D. S. Mathur towards his official duties as Secretary (T).

Sh. A. Raja approved the note on the same day by recording note, which reads as under:

> "Approved: LOI may be issued to the applicants received upto 25.09.2007."

Thus, Sh. A. Raja approved that LOIs may be issued to applications received upto 25.09.2007. The controversy is about this date. Who suggested this date? Where from did it come?

On approval by Sh. A. Raja, the file was marked to Member (T), as Secretary (T) was on tour.

On 03.11.2007, Member (T) Sh. K. Sridhara marked the file to Secretary (T) Sh. D. S. Mathur by recording that Secretary (T) may kindly see the file.

When the file reached Secretary (T) PW 36 Sh. D. S. Mathur, he recorded note dated 05.11.2007, Ex PW 36/B-9, which reads as under:

> "Action may be initiated after orders of the MCIT are obtained clearly on the above issues. He has expressed his desire to discuss them further."

465. Here again, when the things were being decided in DoT, Secretary (T) made himself unavailable, but on his return, as per his habit, again recorded objections and the Minister readily agreed to look into that, as is clear from the note itself.

466. The developments in the file, upto this point, indicate that Secretary (T) Sh. D. S. Mathur had objected to the action of the DoT after the approval of the Minister at least twice. These developments also make it clear that officers in DoT were free to express their opinion, whenever and wherever deemed necessary by them. These developments also show the working style of Sh. D. S. Mathur, which has also already been taken note of. It may also be noted that in file D-5 also, when the Recommendations of TRAI, including permission to dual technology applicants, were approved by Sh. A. Raja vide his note dated 17.10.2007, Ex PW 36/A-15, the file was seen and signed by Sh. D. S. Mathur without any objection in its downward journey. However, when the decision was being communicated to the pending applicants on the next day, he objected to it vide note dated 18.10.2007. This shows the attitude of Sh. D. S. Mathur that he first agrees to a decision and later on resiles from it.

467. For seeking the opinion of learned SG, note dated 24.10.2007, Ex PW 36/B-2, was recorded by Sh. Nitin Jain. The first draft, Ex PW 36/B-1, which is available at 4/c, is also mentioned in the note, Ex PW 36/B-2, of Sh. Nitin Jain. It is the case of the prosecution that this draft was prepared by Sh. Nitin Jain. It is also the case of the prosecution that when the file reached the office of the Minister, the modified draft, Ex PW 36/B-3 (5/c), containing the aforesaid Alternative II about date of 25.09.2007, as already referred to above, was placed on the file and was approved by Sh. A. Raja. On approval of Sh. A.

Raja, the final draft, Ex PW 36/B-4 (6/c), was sent to the Law Ministry vide letter dated 26.10.2007, Ex PW 60/C (7/c), under the signature of PW 77 Sh. K. Sridhara. It is the case of the prosecution that the date of 25.09.2007 originated from draft, Ex PW 36/B-3 (5/c), Alternative II, already referred to above, as this draft was placed on the file either by Sh. A. Raja or at his instance. The case of the prosecution is that this draft is the first manifestation of the conspiracy hatched by Sh. A. Raja.

468. However, the defence has disputed this version submitting that this draft, Ex PW 36/B-3 (5/c) was placed on the file by the officers of DoT and Alternative II was also proposed by them.

469. All the four officers who were involved in this process, have been examined as witness and have deposed about the three drafts of the brief proposed to be sent to the Law Ministry, seeking opinion of learned SG regarding the procedure to be followed for disposal of the large number of applications for UAS licences.

470. It is the case of the prosecution that this date of 25.09.2007 originated in the modified draft, placed on the file in the office of Sh. A. Raja.

471. It would be easier to understand the case of parties from following cross-examination of DW 1 Sh. A. Raja dated 17.07.2014, page 3, which reads as under:

> "……It is wrong to suggest that this draft was inserted in the DoT file by me on my own and later on showed the same corrected and approved. It is wrong to suggest that this was done by me as

alternative II mentioned in this draft was not the idea initiated by the department, as mentioned in draft Ex PW 36/B-1. It is wrong to suggest that on receipt of the file from Ministry of Law and Justice on 02.11.2007, I decided the cut-off date of 25.09.2007 as the same matches with alternative II as mentioned in Ex PW 36/B-3."

472. DW 1 Sh. A. Raja in his further cross-examination dated 22.07.2014, page 3, deposed as under:

> ".....It is wrong to suggest that my above answer is wrong as 5/C was my own creation....."

473. Since all the four officers have been examined as witness, let me take note of their evidence on this point.

474. PW 110 Sh. Nitin Jain in his examination-in-chief dated 21.03.2013, pages 1 and 2, deposed about reference to Law Ministry, as under:

> ".....I have been shown DoT file D-7, already Ex PW 36/B, wherein I have been shown note dated 24.10.2007, already Ex PW 36/B-2, wherein my signature appears at point C at the end of the note. I had prepared this note. This note was recorded as large number of applications were received for UAS licences, which were quite unprecedented and, as such, the DoT thought of obtaining opinion of learned SG. I had also prepared a draft for sending to learned SG and that draft is at page 4/C in the file and is already Ex PW 36/B-1, pages 30 to 26. This is the same draft prepared by me. In this draft, opinion was sought on the two alternatives which are as under: (1) it was proposed to process the applications in first-come first-served basis in chronological order of receipt of application as per the existing procedure; and (2) certain number of LOIs, say about two times the number of applicant,

as proposed in alternative (1) above may be issued in each service area in phase I……..”

Sh. Nitin Jain originated the proposal for seeking opinion of learned SG. Sh. Nitin Jain also prepared the draft, Ex PW 36/B-1. It was his proposal to seek the opinion of learned SG.

475. PW 110 in his further examination-in-chief dated 21.03.2013, page 2, deposed as under:

“……..I have been shown note dated 25.10.2007 in the handwriting of the then MOC&IT, already Ex PW 36/B-5, page 2/N. However, another draft was placed on the file, which is now available at page 5/C, already Ex PW 36/B-3, and it was this draft which was approved by the then Minister with some corrections. Finally, a final draft was prepared and it was this draft, which is now available at page 6/C, already Ex PW 36/B-4.
Ques: Who had prepared the draft Ex PW 36/B-4, which was finally approved by the Minister?
Ans: This draft was prepared by Sh. A. K. Srivastava, DDG (AS) and it was approved on 26.10.2007, page 5/N…….”

476. Here, Sh. Nitin Jain deposed that Sh. A. K. Srivastava prepared the draft, Ex PW 36/B-4. He did not say anything about draft, Ex PW 36/B-3, except that it was the draft which was approved by Sh. A. Raja.

477. PW 110 in his further examination-in-chief dated 21.03.2013, page 3, deposed as under:

“……I have been shown note dated 02.11.2007 in the handwriting of the then MOC&IT Sh. A. Raja at page 7/N. In this note, Sh. A. Raja had approved

issuance of LOIs to applicants whose applications were received up to 25.09.2007.
Ques: Could you please point out any material/ note sheet in which it was so proposed by the department?
Ans: This proposal is contained in para 8 of Ex PW 36/B-8, but no such date was proposed....."

478. Thus, Sh. Nitin Jain tried to wriggle out of the situation by deposing that Sh. A. Raja had approved issue of LOIs to applicants whose applications were received upto 25.09.2007, but it was not a proposal and the proposal is contained in the last paragraph of the note.

479. PW 110 in his cross-examination dated 22.03.2013, pages 2 to 5, deposed as under:

".....It is correct that during my posting in DoT, Director (AS-I), I was reporting to Sh. A. K. Srivastava and working under his instruction. It is correct that Sh. A. K. Srivastava used to report to Member (T) as he was his immediate superior.

Note dated 02.11.2007, already Ex PW 36/B-8, in file D-7, Ex PW 36/B, was prepared by me.
Ques: Kindly take a look on para 3 of the aforesaid note already marked X, and therein date 25.09.2007 has been proposed, though in your chief you have stated that "no such date was proposed" in para 8. Please explain this?
Ans: Para 3 contains gist of the discussion which took place in the Ministry, of which I was not a part. I was asked to record these discussions and I accordingly recorded it.
Ques: I put it to you that in this para 3 cut-off date of 25.09.2007 was proposed by the department, as per the discussions?
Ans: This date appears in the paragraph as per the discussion.

Court Ques: Was this date a proposal by the department or is it just a record of discussion?
Ans: This matter was discussed in the meeting and may be considered a proposal of the department.

The earlier procedure adopted by the department was to process the applications sequentially and take up the next applicant after the earlier had been given LOI. It is correct that in some cases, after the LOI was granted, LOI holders asked for extension of time and the same was granted. As long as this procedure was in operation, no situation arose which could make us to think of any other procedure.
Ques: I put it to you that it was so as the number of applications were limited?
Ans: I cannot say so, but multiple applications did not come on the same day.
Ques: Since the applications were limited and one application was processed at one time, the issue of seniority did not arise?
Ans: No issue of seniority arose in the past as far as my knowledge goes. However, multiple approvals for grant of LOIs were received on the same day, but for issuance of LOIs to different applicants, gap of at least one day was kept.
Ques: I put it to you that in October-November 2007, the number of pending applications was quite large and earlier procedure of sequential processing and extended time for compliance would have led to inordinate delay?
Ans: This was an unprecedented situation on account of receipt of large number of applications and on account of this there would have been delay. That is the reason that draft Ex PW 36/B-1 was prepared, of which para 7 is a part wherein this fact finds mention.
Ques: I put it to you that on account of this situation, that is, receipt of large number of applications, you had proposed alternative No. I in this draft?

Ans: That is correct. Alternative No. I was based on discussion in the department and that alternative is "LOI may be issued simultaneously to applicants (the number will vary based on availability of spectrum to be ascertained from WPC wing) who fulfill the eligibility conditions of the existing UASL Guidelines and are senior most in the queue".

File Ex PW 36/DL-9 (D-15) contains a note dated 12.11.2007 of Sh. A. K. Srivastava, already Ex PW 36/DL-10, and in the downward journey of this file, this file came to me also on 07.12.2007 and in this regard my signature appears at point C on page 6/N. Similarly, remaining files for 21 service areas, pertaining to grant of LOIs, had also come to me. It is correct that on 07.12.2007 I became aware of the aforesaid note of Sh. A. K. Srivastava, that is, Ex PW 36/DL-10, which has been replicated in all the files and I knew that LOIs were to be distributed as per this note. It is correct that this note contains, inter alia, "as per discussion with Secretary (T) & Hon'ble MOC&IT, LOIs are to be issued simultaneously to prima facie eligible applications who have submitted their applications up to 25.09.2007.....".

Ques: Whether there is any power in UASL Guidelines to extend time for compliance of the LOIs?

Ans: I am unable to recall this fact now.

I have gone through the UASL guidelines dated 14.12.2005, and therein I do not find any clause containing power for extending the period for compliance of LOIs. There have been few cases where time for compliance of LOIs was extended.

Ques: I put it to you that time for compliance of LOIs was extended under discretionary powers of the Minister?

Ans: The extension was done with the approval of the Minister."

480. In this cross-examination, the witness conceded that

the date of 25.09.2007 may be considered a proposal by the department and the LOIs were to be issued keeping in view the availability of spectrum. However, he was evasive about extension of time for compliance of LOIs. The extension of time for compliance of LOIs by the DoT is being cited as defence by the accused for switching to priority from date of application to date of compliance. In the cross-examination, the witness is highly guarded and hesitant and avoided to answer questions in straight manner.

481. However, on the prayer of the prosecution, the witness was re-examined on 16.07.2013 and in his re-examination, page 1, he deposed as under:

> "**Ques**: Kindly take a look on your note dated 02.11.2007, already Ex PW 36/B-8, and after going through the note, please tell this Court as to whether the date 25.09.2007 was proposed as cut-off date to consider applications received upto that date only?
> **Ans**: I did not propose any cut-off date in my note.
> **Ques**: Why this date 25.09.2007 is mentioned in your note Ex PW36/B-8 and what does it denote?
> **Ans**: This date is mentioned in my note because on this date a press release was announced in the press. There is no other significance of this date."

482. Thus, Sh. Nitin Jain is wavering about this date of 25.09.2007 being a proposal of DoT, though on reading the note, it is clear that the paragraph in which the date appears, when read with paragraph 8, makes it clear that it was a proposal, despite the witness and the prosecution attempting to read them differently.

483. PW 110 Sh. Nitin Jain in his further cross-

examination dated 16.07.2013, pages 1 and 2, deposed about drafts, Ex PW 36/B-3 and B-4, but did not make it clear as to who had placed draft, Ex PW 36/B-3, on record. His deposition reads as under:

> ".....Earlier when I appeared as a witness in this Court, I had understood the questions put to me, both in Hindi and English, and replied to them truthfully. I signed my earlier statements in the Court after reading and understanding the same and finding them to be correctly recorded. I have been shown note dated 26.10.2007 recorded by Sh. A. K. Srivastava, already Ex PW 36/B-7 (D-7), and this note was seen by me during the downward movement of the file on that date itself. I have also seen page 6/C, already Ex PW 36/B-4.
> **Ques**: Whether note Ex PW 36/B-4 was prepared after discussion in the department?
> **Ans**: This statement of case was initially put up for consideration on page 2/N, which was placed at 4/C and Minister approved it on 25.10.2007 and wrote "approved as modified". Based on the modified approval of the Minister, Sh. A. K. Srivastava, DDG (AS), had proposed 6/C, that is, Ex PW 36/B-4.
> **Ques**: Is it correct that in this note Ex PW 36/B-4, there is an alternative II, which mentions "LOIs to all those who applied by 25.09.2007 (the date on which the cut-off date for receipt of applications was made public through press) may be issued...." and because of this, the date of 25.09.2007 finds mention in your note Ex PW 36/B-8?
> **Ans**: It is correct that alternative II is mentioned in Ex PW 36/B-4, but in my note, there is a mention of this date, that is, 25.09.2007, in para 3. This para is a record of discussion, which was told to me by DDG (AS) Sh. A. K. Srivastava and in that meeting, I was not present. There is no mention of alternative II of 6/C in para 3 of my note and, as such, the two have no connection."

484. PW 110 Sh. Nitin Jain in his further cross-examination dated 16.07.2013, page 2, deposed as under:

> ".....It is correct that note 4/C dated 24.10.2007, already Ex PW 36/B-1, was proposed and the MOC&IT Sh. A. Raja approved note 5/C on the next day, already Ex PW 36/B-3....."

485. PW 110 Sh. Nitin Jain in his further cross-examination dated 16.07.2013, pages 3 and 4, deposed as under:

> ".....The press release dated 24.09.2007, as mentioned in Ex PW 36/B-2, was uploaded on the website of PIB on that date itself. This was meant to bring the press release to the public notice. Note 4/C, already Ex PW 36/B-1, was prepared by me for consideration of learned SG. In this note, I proposed two alternatives.
> **Ques**: I put it to you that on the basis of alternative II mentioned in your note Ex PW 36/B-1, you proposed processing of certain number of applications in phase I and if calculated in the light of processing of that number of applications, the date comes to 25.09.2007?
> **Ans**: It is incorrect."

486. Thus, Sh. Nitin Jain owned up draft, Ex PW 36/B-1. He also deposed that modified draft, Ex PW 36/B-3, was approved by the Minister and based on that, final draft, Ex PW 36/B-4, was sent to the Law Ministry. However, again he nowhere deposed as to who prepared draft, Ex PW 36/B-3. He also tried to deny that Alternative II of draft, Ex PW 36/B-1, meant disposal of applications in phases. However, this denial is

not correct. Why? Because processing of applications was subject to availability of spectrum. Naturally, only those number of applications would be processed for which sufficient spectrum was available and this naturally meant processing/ disposal of applications in phases.

The conclusion from the above discussion is that Sh. Nitin Jain deposed contrary to official record. He also deposed in hesitant and roundabout manner. He remained silent on crucial draft, Ex PW 36/B-3. He did not display any quality of a good witness. In the end, his deposition is not trustworthy.

487. PW 60 Sh. A. K. Srivastava in his examination-in-chief dated 01.08.2012, pages 5 to 10, deposed about the entire issue of seeking opinion of learned SG, preparation of drafts, sending the file to the Law Ministry, return thereof and the opinion of the Law Ministry, as under:

> ".....After the decision of the Minister on 17.10.2007, considering the fact that number of applications received was very large, some modalities were required to be arrived at for processing the same for the grant of UAS Licence. I have been shown DoT file D-7, already Ex PW 36/B, pertaining to UAS Licensing policy. This file was opened in the AS section in the official course of business. I have been shown pages 1/N and 2/N, which contain a note of Sh. Nitin Jain, Director (AS-I), dated 24.10.2007. It bears signature of Sh. Nitin Jain at point C, which I identify. This note deals with the subject of seeking opinion of learned Solicitor General on grant of new unified access service (UAS) licences and approval for use of dual technology spectrum by UAS licencees. The note is already Ex PW 36/B-2. This note was put up to me by Sh. Nitin Jain. I read the note and understood it and

thereafter, marked it to Member (T) Sh. K. Sridhara, he in turn marked the file to the then Secretary (T) Sh. D. S. Mathur. My signature appears at point D and that of Sh. K. Sridhara at point E. As per para 5 of this note, a brief to the learned SG seeking his opinion as per note was placed in the file for consideration and approval. The note referred to in para 5 is available at pages 26 to 30 and is already Ex PW 36/B-1. It was prepared in my section. I had also seen it. There are certain corrections in the note. The corrections at pages 26 and 27 are in the handwriting of Sh. D. S. Mathur. A spelling correction was done by Sh. K. Sridhara at page 28 at point A. Whenever, a file is sent to the office of the Minister from the office of Secretary, the same is sent to him directly and not through AS section. The draft Ex PW 36/B-1 was sent to the then Minister through the then Secretary Sh. D. S. Mathur.

I have been shown another draft on the same subject, available at pages 31 to 35, which is already Ex PW 36/B-3. This draft was not prepared in the AS section. This draft has certain modifications on the last page, that is, page 31, at points A to A and B to B, and these modifications are in the handwriting of the then Minister Sh. A. Raja. If such a draft is to be got typed by the Minister, the same would be done in his office as he has secretarial assistance. The draft approved by the Minister at note sheet page 2/N is the draft marked Ex PW 36/B-3, vide endorsement Ex PW 36/B-5 at page 2/N. These handwriting and signature are of Sh. A. Raja, the then Minister, MOC&IT, dated 25.10.2007. I came to know about the modifications when the file came to me and draft Ex PW 36/B-3 was taken to be the final modified draft as this was done by the Minister. After the approval of the draft, the file had come to Secretary (T) and he recorded a note of even date and the same is already Ex PW 36/B-6, pages 2/N and 3/N. After recording his note Ex PW 36/B-6, Sh. D. S. Mathur marked the file to Member (T) Sh. K.

Sridhara, whose signature is at point B at page 3/N, and he marked the file to me. In view of the note of Sh. D. S. Mathur, I recorded a note dated 26.10.2007, already Ex PW 36/B-7, pages 4/N and 5/N, explaining the provisions of NTP-1999 and UASL Guidelines dated 14.12.2005 and TRAI recommendations. My signature appears at point B, page 5/N. In para f of the note I recorded that if deemed necessary, the opinion of learned SG or AG may be obtained through Law Secretary and a draft of letter was placed at page 6/C, based on Ex PW 36/B-3 (5/C). The draft is already Ex PW 36/B-4, pages 63 to 67. It has some annexures also. I marked the note to Member (T) Sh. K. Sridhara, who, after recording "Secretary (T) on tour", directly marked the file to the then Minister Sh. A. Raja and he approved my note as well as the draft Ex PW 36/B-4. The approval of Sh. A. Raja by putting his signature is at point A dated 26.10.2007. Signature of Sh. K. Sridhara is at point C on the same page, which I identify. After approval, Sh. A. Raja marked the file to Member (T) Sh. K. Sridhara. Sh. K. Sridhara prepared a DO letter addressed to the Law Secretary and marked the file to me. I accordingly issued the letter and the letter is dated 26.10.2007. The letter bears the signature of Sh. K. Sridhara at point A, which I identify, and the same is now Ex PW 60/C. The endorsement for sending of this letter is in my hand at point D on page 5/N. The DO letter was accompanied by certain annexures as mentioned therein including the note Ex PW 36/B-4 prepared for learned SG or AG.

Consequent to the reference being sent to the Law Ministry, Joint Secretary, Law, called me and Sh. Nitin Jain for discussion in the Law Ministry. The discussions which took place have been recorded in the note Ex PW 36/DK-16. The discussions were regarding policy and procedure for grant of UAS licences. The note signed by Sh. P. K. Malhotra, Joint Secretary and Government Counsel, Department of

Legal Affairs, at point B. Sh. P. K. Malhotra recorded that documents sent were not sufficient for the Law Officer to give any opinion and returned the same to the DoT asking it to submit full facts and documents. The note sheet is dated 31.10.2007. When the file came back to the DoT, I saw the file and also showed the note to Member (T) Sh. K. Sridhara, who put his signature dated 01.11.2007 at point C. However, the file was asked by Sh. P. K. Malhotra to be sent back as the Law Ministry wanted to record a further note. On this, I recorded a note dated 31.10.2007 and the same bears my signature at point A and is now Ex PW 60/C-1 and sent the file back to Sh. P. K. Malhotra. The date recorded below my signature at point D is of 31.10.2007. However, it was recorded inadvertently in place of 01.11.2007. Thereafter, I was not called for any discussion in the Law Ministry. I have been shown a note sheet dated 01.11.2007 of the Ministry of Law and Justice, Department of Legal Affairs. It bears the signature of Sh.T. K. Vishwanathan, the then Law Secretary, Government of India, at point A and I identify the same. He had recorded a note which is already Ex PW 36/DK-17. Then, the file was marked to the then Law Minister. He also recorded a note on 01.11.2007 itself. The same is now Ex PW 60/C-2. He marked the file to the Law Secretary. Law secretary recorded a note and marked the file to JS&GC. The endorsement and signature of Sh. T. K. Vishwanathan at point B on Ex PW 36/DK-17. Sh. P. K. Malhotra returned the file to the Secretary (DoT) by recording his observation on the back of page 70 (9/C). The file was received back in the office of DoT on 02.11.2007. The file was received by the PS to the Secretary and after recording that Secretary was on tour, he marked the file to Member (T). Member (T) Sh. K. Sridhara recorded a note for putting the file before the MOC&IT. The note is Ex PW 60/C-3. The then Minister Sh. A. Raja recorded “discuss pl.” on 02.11.2007 and again marked the

file Member (T). The note and signature of Sh. A. Raja is at point A.

The view of the Law Ministry on the proposal of DoT was that in view of the importance of the matter, the matter may be first considered by an empowered group of Ministers and in that process, legal opinion of AG may be obtained....."

488. Perusal of the above evidence reveals that Sh. A. K. Srivastava was ambivalent about the draft, Ex PW 36/B-3. He only deposed that the draft, Ex PW 36/B-3, was not prepared in his Section and if such a draft was to be got typed by the Minister, he had Secretarial assistance, thus, he indirectly blamed the Minister. This draft is at the root of the controversy, but Sh. A. K. Srivastava also remained silent on this. His evidence also shows as to how the Law Ministry first declined to give any opinion and thereafter how he (Sh. A. K. Srivastava) unauthorizedly took the file again to Law Ministry and obtained an entirely different opinion.

489. PW 60 in his further examination-in-chief dated 01.08.2012, page 13, deposed as under:

".....In the final note sent for learned SG and AG, already Ex PW 36/B-4, four alternatives were proposed for grant of UAS Licences and opinion of learned AG and SG was sought thereon. **Alternative I** was to process the applications on first-come first-served basis in chronological order of receipt of all 575 applications. These 575 applications consisted of all applications received up to 01.10.2007 including applications received pursuant to press release dated 24.09.2007 fixing the cut-off of date....."

490. PW 60 in his further examination-in-chief dated

08.08.2012, pages 1 to 9, deposed in detail as to how, after finding the opinion of Law Ministry to be out of context, LOIs were decided to be issued to the applicants who had applied upto 25.09.2007, as under:

> ".....I have been shown DoT file D-7, already Ex PW 36/B wherein at page 6/N and 7/N, there is a note of Sh. Nitin Jain, Director (AS-I) dated 02.11.2007. Note is already Ex PW 36/B-8. On receipt of this file from the Law Ministry, after its remarks that the matter may be placed before the empowered Ministers, the matter was discussed between the then MOC&IT Sh. A. Raja and Member (T) K. Sridhara on 02.11.2007 itself. On this date I had also attended the office. On that day, Sh. K. Sridhara called me and briefed me about his discussions with Sh. A. Raja. He told me that the view of the Law Ministry regarding the matter referred to empowered group of Ministers was out of context and he should follow the existing policy for the processing of USAL applications. Thereafter, I briefed Sh. Nitin Jain, Director (AS-I), regarding my discussion with the Member (T) and asked him to put a note accordingly. Thereon, Sh. Nitin Jain put up the note dated 02.11.2007, already Ex PW. 36/B-8, and his signatures at point B, which I identify. This note was put up to me and I marked the file to Member (T), who in turn, marked the file to Minister, MOC&IT as the Secretary (T) was on tour. Approval of the Minister is at point A at page 7/N. My signature is at point C, that of Sh. K. Sridhara at point D and that of Mr. A. Raja at point E. The approval was granted by Sh. A. Raja by recording 'approved; LOI may be issued to the applicants received up to 25.09.2007'.
>
> **Ques:** In the note Ex PW 36/B-8 there are 8 paragraphs. However, in this note there are contradictions between the recommendations recorded in paragraphs 2 and 3 and the

recommendations recorded in paragraphs 5 to 8. Since you had concurred with the recommendations contained in this note by appending your signature at point C, could you please explain these contradictions? (Objected to by Mr. Vijay Aggarwal, Ld. Advocate on the ground that it is a leading question as it leads the witness to believe that there is a contradiction and also that opinion of the witness is being sought. Sh. R. N. Mittal, Ld. Sr. Advocate also objects to the question on the ground that he is not the author of the note and contents of the note cannot be got explained from him. Sh. Hariharan, Ld. Advocate also objects of the ground that Sh. Nitin Jain is also a cited witness and he can better explain it.)

The objections are countered by the Ld. Sr. PP on the ground that the note Ex PW 36/B-8 was put up by Sh. Nitin Jain on the asking of the witness. He further submits that he was not asking opinion of the witness on any point but is only asking for an explanation for the contradictions in the note as the note was initiated at the instance of the witness.

Court Order: Question allowed subject to objections.

Ans: Para 2 of the note records the fact that views of Ministry of Law and Justice has been received. Para 3 records the discussions which I had with Member (T) as per his briefing to me about his discussion with the MOC&IT in this matter. Para 5 to 8 records the views of AS Cell while processing the matter for decision/orders. The approval of the then Minister is at point A. In para 3 it is mentioned that in order to avoid any legal implication of cut off date all the applications received till the announcement of cut off date in the press i.e. 25.09.2007 may be processed as per existing policy and decision on remaining applications may be taken subsequently. However, para 5 mentions that in view of above (i.e. para 4), a decision may be taken on number of LOIs to be issued in each circle, among other things. In

para 8, the file has been submitted for orders on the issues mentioned therein, including, inter alia, issuing of LOIs to new applicants as per the existing policy and number of LOIs to be issued in each circle.

After the approval of the Minister as recorded at point A at page 7/N, the file was received downward and it was marked to Member (T) as the then Secretary (T) Sh. D. S. Mathur was on tour. However, Member (T) again marked the file to Secretary (T) by recording "Sec (T) may kindly see" at point F. Secretary (T) recorded his note dated 05.11.2007, already Ex PW 36/B-9 and marked the file to Member (T), who in turn marked the file to DDG (AS) i.e. myself and I marked the file to Sh. Nitin Jain. On receipt of this note of Secretary (T), already Ex PW 36/B-9, there was a meeting called by Sh. A. Raja, the then Minister on 06.11.2007, which was attended by Secretary (T) Sh. D. S. Mathur, Member (T) Sh. K. Sridhara, Additional Secretary (T) and myself. In that meeting the modalities for processing of pending UASL applications and issuance of LOIs were discussed.

After this meeting, I had briefed Sh. Nitin Jain about the discussions which took place in the meeting and I asked him to put up a self contained note accordingly. Accordingly, he put up a note dated 07.11.2007, pages from 9/N to 12/N, already Ex PW 36/B-10. Signature of Sh. Nitin Jain is at point D. Note was put up to me. I saw the note, read and understood the same and agreed to it and marked the file to Member (T), who was on tour, so, the file was submitted through the then Member (S) Sh. G. S. Grover, who in turn marked the file to Secretary (T). Secretary (T) marked the file to Minister Sh. A. Raja, Sh. A. Raja approved the note by appending his signature at point C. My signature is at point E, that of Sh. G. S. Grover at point F, that of Secretary at point A.

Ques: Please tell this Court as to how many LOIs

were decided to be issued through this note after the approval of the Minister? Whether the LOIs to be issued were limited to the applications received up to 25.09.2007 as decided in the note Ex PW 36/B-8 ?

Ans: The proposal in para 5 of the note, inter alia, had sought the decision on number of LOIs to be issued in each service area. On this proposal Secretary (T) and Minister, MOC&IT had put their signatures, thereby the number of LOIs to be issued in each service area remained an open issue.

Court Ques: Do you mean that no decision was taken on the number of the LOIs to be issued in each service area and also about the date of receipt of applications which were to be issued LOIs ?

Ans: It is correct.

I have been shown my note dated 08.11.2007 at page 12/N, which was recorded by me asking for legal vetting of proposed draft LOI. The said note bears my signature at point G and marked the file to Sh. Nitin Jain, Director (AS-I), who in turn marked the file to ADG (AS-I) and thereupon ADG (AS-I) Sh. R. K. Gupta put up a noting regarding legal vetting of proposed draft LOI at page 13/N. I identify his signature at point A and the note is now Ex PW 60/H. After recording this note, ADG (AS-I) marked the file to Sh. Nitin Jain, Director (AS-I) and Sh. Nitin Jain marked the file to me and I marked the file to LA (T). When the file was pending with LA (T), he called me for discussion. However, LA (T) sent the file back without recording anything on it despite having discussion with me. On receipt of the file back I recorded a note in my hand dated 08.11.2007, which is now Ex PW 60/H-1 and is about my discussion with the LA (T). Signature of Sh. Nitin Jain is at point B and myself at point C and D on page 13/N. After recording my note dated 08.11.2007, I had marked the file to DDG (LF).

When this file Ex PW 36/B was pending with the DDG (LF), Member (T) expressed his desire to

me to see the file. Accordingly, I called the file back from DDG (LF) and recorded my note dated 12.11.2007 on the margin of the page 13/N regarding recall of the file from DDG (LF). This note is Ex PW 60/H-2. Thereafter, I again recorded a note dated 14.11.2007 at page 14/N, which is now Ex PW 60/H-3 and marked the file to Member (T), who in turn marked the file to Member (Finance), who in turn marked to file to Advisor (Finance), who in turn marked the file to DDG (LF). My signature is at point B, that of Member (T) K. Sridhara at point C and that of Member (F), Mrs. Manju Madhvan at point D. The DDG (LF) marked the file to Director (LF-III), Sh. Shah Nawaz Alam and he recorded a note already Ex PW 36/DQ-22 dated 23.11.2007 and marked the file to DDG (LF), who in turn marked the file to Advisor (F), who in turn marked the file to Member (F). Member (F) recorded her note at page 18/N, already Ex PW36/B-11 and marked the file to the then Secretary (T) Sh. D. S. Mathur, who in turn marked the file to MOC&IT Sh. A. Raja on 30.11.2007. The note of Minister is available at pages 18/N to 20/N, already Ex PW 36/B-13. Through this note, it was decided by the Minister Sh. A. Raja that approval on page 7/N regarding issue of LOIs should be implemented i.e. LOI may be issued to applicants received up to 25.09.2007 and for this purpose the LOI performa as issued in the past may be used for LOIs in these cases also.

After the decision by Sh. A. Raja, as contained in note Ex PW36/B-13 dated 04.12.2007, he marked the file to Secretary (T), and who in turn marked the file to Member (F), and he in turn marked the file in turn to Member (T), and he in turn marked the file to me, and I marked the file to Sh. Nitin Jain, and he marked the file to Sh. R. K. Gupta, and he marked the file to S.O. Sh. Madan Chaurasia. Signature of the then Minister Sh. A. Raja is at point A, that of Secretary (T) at point B, that of Member (F) at point C, that of Member (T) at point D, myself at point E

and that of Sh. Nitin Jain at point F and that of ADG (AS-I) Sh. R. K. Gupta at point G, which I identify.

A proforma of old LOI as issued by DoT to M/s Aditya Birla Telecom Ltd. on 21.11.2006 is available at pages 147 and 148 and it is this proforma which was approved by Mr. A. Raja. It is now Ex PW 60/H-4.

On receipt of the file by Section Officer Sh. Madan Chaurasia on 10.12.2007 he put up a note of even date regarding processing of the pending UASL applications and procedure to be followed therefor. I identify his signature at point A and the note is now Ex PW 60/H-5. After recording the note, he marked the file to ADG (AS-I), who in turn marked the file to Director (AS-I) and he marked the file to DDG (AS) i.e. myself. I approved the note of Sh. Madan Chaurasia. Signature of Sh. R. K Gupta are at point B, that of Sh. Nitin Jain at point C and myself at point D. It was decided that clarifications may be obtained from applicant companies which had applied up to 25.09.2007, the date as decided by Sh. A. Raja. As per the note sheet of Sh. Madan Chaurasia, a list of applicant companies was also prepared which had applied up to 25.09.2007 and is available at pages 118 to 120. The list is now Ex PW 60/H-6. A draft letter to be sent to different applicant companies seeking clarifications/ information was also referred to in the note sheet and is available at page 121 to 129 and the same is collectively Ex PW 60/H-7.

Secretary (T) had decided the modalities to be followed in processing the UASL applications and different officers were designated to examine different aspects of the applications. A copy of these modalities is already Ex PW 36/DK-9 available at page 109....."

491. A bare perusal of the above testimony reveals that the idea that the opinion of Law Ministry, to refer the matter to

EGoM, was stated to be out of context by him (Sh. A. K. Srivastava) to Sh. K. Sridhara and not by Sh. A. Raja. It also reveals that the note dated 02.11.2007 was put up by Sh. Nitin Jain after discussing the matter with Sh. A. K. Srivastava and the same was approved by Sh. A. Raja on the same day. The most important thing is that the note was put up as per the briefing given by Sh. A. K. Srivastava to Sh. Nitin Jain. However, in the examination-in-chief, he very readily and cleverly agreed with the prosecution that there is a contradiction between the recommendations contained in paragraphs 2 and 3 and 5 to 8, though there is none. The reason for alleged contradiction, as claimed by prosecution, is that the number of LOIs to be issued service area wise, was not decided by the Minister. However, if paragraphs 3 and 8 are read together, the number of LOIs to be issued would depend upon eligible applicants who had applied upto 25.09.2007. His evidence indicates how a very senior officer endeavoured hard to disown and discredit the official record created by him alone and to malign the Minister.

In this note, Ex PW 36/B-8, Sh. Nitin Jain and Sh. A. K. Srivastava also introduced the idea of draft LOI. There is no material on record to indicate that the idea of draft LOI was that of Sh. A. Raja. The officers introduced the idea of priority from date of compliance of LOI based on receipt of entry fee. There is no evidence that this was the idea of Sh. A. Raja.

492. The above evidence also indicates that the Secretary was on tour when the note dated 02.11.2007 was approved by

Sh. A. Raja. However, on his return, Secretary (T) recorded an objection and the Minister very readily agreed to consider it. To consider the objection of Sh. D. S. Mathur, the matter was discussed again on 06.11.2007 by Sh. A. Raja with Sh. D. S. Mathur, Sh. K. Sridhara, Additional Secretary (T) and DDG (AS) Sh. A. K. Srivastava. Following the discussion, note dated 07.11.2007, Ex PW 36/B-10, was recorded. This note reads as under:

> "Notes and approval at page 6-7/N may kindly be seen.
>
> 2. The modalities for processing pending applications for UASL and issuance of LOIs were further discussed in a meeting taken by Hon'ble MOC&IT on 6.11.2007 with Secretary (T) and Addl. Secretary (T) where DDG (AS) was also present. DDG (AS) in turn has discussed the matter with Director (AS-I).
>
> 3. Secretary (T) has desired to examine whether LOIs/ Licences for UAS can be granted without assured availability of spectrum. In this regard, it is mentioned that NTP-99 provided for two categories of Access Services Providers viz. Cellular Mobile Service Providers (CMSP) and Fixed Service Providers (FSP).
>
> 3.1 Regarding CMSPs, NTP-99 (para 3.1.1), inter alia, stipulates that
>
> ***".....Availability of adequate frequency spectrum is essential not only for providing optimal bandwidth to every operator but also for entry of additional operators..... It is proposed to review the spectrum utilisation from time to time keeping in view the emerging scenario of spectrum availability, optimal use of spectrum, requirements of market, competition and other***

interest of public. The entry of more operators in a service area shall be based on the recommendation of the TRAI who will review this as required and no later than every two years.....”

3.2 With regard to Fixed Service Providers, NTP-99 (para 3.1.2), inter alia, stipulates that
“.....While market forces will ultimately determine the number of fixed service providers, during transition, number of entrants have to be carefully decided to eliminate non-serious players and allow new entrants to establish themselves. Therefore, the option of entry of multiple operators for a period of five years for the service areas where no licences have been issued is adopted. The number of players and their mode of selection will be recommended by TRAI in a time-bound manner.....

.....As in the case for cellular, for WLL also, availability of appropriate frequency spectrum as required is essential not only for providing optimal bandwidth to every operator but also for entry of additional operators. It is proposed to review the spectrum utilisation from time to time keeping in view the emerging scenario of spectrum availability, optimal use of spectrum, requirements of market, competition and other interest of public.....”

4. The Union Cabinet in a meeting held on 31-10-2003, approved the recommendations of the Group of Ministers (GOM) on telecom matters. The following recommendations of GOM were, inter-alia, approved by the Cabinet. The relevant extracts of the para 2.4.6 of the Cabinet Note (Page 77/C of the linked file No. 808-26/2003-VAS) is reproduced below:
“***.....The scope of NTP-99 may be enhanced to***

provide for licensing of Unified Access Service for basic and cellular license services and Unified Licensing comprising all telecom services. Department of Telecommunications may be authorized to issue necessary addendum to NTP-99 to this effect. [Para 2.4.6 (i)]

……..The recommendation of TRAI with regard to implementation of the Unified Access Licensing Regime for basic and cellular services may be accepted.

DoT may be authorized to finalise the details of implementation with the approval of Minister of Communications & IT in this regard including the calculation of the entry fee depending upon the date of payment based on the principles given by TRAI in its recommendations. [Para 2.4.6 (ii)]

……..If new services are introduced as a result of technological advancements, which require additional spectrum over and above the spectrum already allotted/ contracted, allocation of such spectrum will be considered on payment of additional fee or charges; these will be determined as per guidelines to be evolved in consultation with TRAI. [Para 2.4.6 (vi)]"

4.1 In terms of above approvals, NTP-99 was amended (**22-23/N** of linked file No. 808-26/2003-VAS). The amendment of NTP-99, inter-alia, provided that there shall also be the following categories of licences for telecommunication services:

"Licence for Unified Access (Basic and Cellular) Services permitting Licensee to provide Basic and /or Cellular Services using any technology in a defined service area."

4.2 In terms of the above said cabinet decision, Union Cabinet authorised DoT to finalise the details

of implementation with the approval of Hon'ble MOC&IT keeping in view the recommendations of TRAI.

4.3 Thereafter, in view of the above Cabinet decision, Guidelines for Unified Access Services Licence (for migration from CMTS/FSP to UASL) were announced on 11-11-2003 with the approval of the Hon'ble MOC&IT (Page 24/N of the linked file No. 808-26/2003-VAS).

4.4 Subsequently on 13.12.2005, Hon'ble MOC&IT approved the Guidelines for Unified Access Services licence (issued on 14-12-2005 placed Appendix-II of 6/C) on page 3/N of linked file No. 10-21/2005-BS.I (Vol II). The guidelines, inter-alia, stipulates that:

(i) Licences shall be issued without any restrictions on the number of entrants for provision of Unified Access Services in a Service Area. **(para 11).**

(ii) …….The access service includes but not limited to wireline and/ or wireless service including full mobility, limited mobility …..... and fixed wireless access. (**para 12(a)(i)**).

(iii) The ***application shall be decided, so far as practicable, within 30 days*** of the submission of the application and the applicant company shall be informed accordingly. In case this applicant is found to be eligible for grant of licence for UNIFIED ACCESS Service an Letter of Intent (LOI) will be issued....**(para 23)**

(iv) In case the applicant is found to be not eligible for the grant of licence for UNIFIED ACCESS service the applicant shall be informed accordingly. Thereafter the applicant is permitted to file a fresh application if so desired. **(para 24).**

(v) Initially a cumulative maximum of upto 4.4 MHz + 4.4 MHz (Spectrum) shall ***be allocated in the case of TDMA based systems*** @ 200 KHz per carrier or 30 Khz per carrier or a maximum of 2.5

MHz + 2.5 MHz shall be allocated in the case of CDMA based systems @ 1.25 MHz per carrier, ***on case by case basis subject to availability.*** **(para 37)**

5. During the discussions, it was considered appropriate that for processing of pending applications for grant of new UAS licences, the following procedure may be adopted.

(i) The pending applications for UASL shall be processed as per the existing policy.

(ii) To expedite the processing of applications, a committee (as already approved by Secretary (T), 14/C) consisting of Officers from AS, LF division and IP Cell shall examine the applications for eligibility and other parameters as per the guidelines/ terms and conditions of licence agreement and government policy. Opinion of legal Advisor, DoT is to be taken wherever required.

(iii) Separate file for each applicant company shall be processed for obtaining the approval for issuance of LOIs. LOIs may be issued to eligible applicants, whose applications are compliant to the eligibility conditions. In case there are some minor observations/ deviations in any application, the same may also be considered for issuance of LOIs. However in such case, we may seek complete compliance alongwith the acceptance of LOI from the applicant company. This will also require approval from competent authority in each case separately based on the observations made by the examining committee.

(iv) As per the existing policy, the LOIs were granted based on date of applications to satisfy the principle of first come first served basis. This principle was also placed before parliament in reply to Rajya Sabha question No. 1243 answered on 23.08.2007 (copy placed at 15/C).

(v) Number of LOI's to be issued in each service is to be decided.

(vi) Application of M/s TTML, M/s TTSL and M/s

RTL for dual technology may be considered as per direction of TDSAT on dual technology.
(vii) Shri R. K. Gupta, ADG (AS-I) may be authorized for signing the LOIs on behalf of President of India.
(viii) A copy of draft LOI is placed below for kind perusal/ approval. This will be legally vetted after the approval of policy and before issue.
…….
……."

493. Everybody agreed with the note and it was approved by Sh. A. Raja on 07.11.2007. From this note, opinion of Law Ministry was not discussed at all. Nobody raised the question of this opinion. The issue of cut-off date of 25.09.2007 was also not discussed or raised by anyone. However, again the idea of draft LOI was introduced in this note also. There is no material on record to indicate that the idea of draft LOI was the idea of Sh. A. Raja. When the vetting of LOI started, everything agreed to by everyone and approved by the Minister was disowned and fresh objections were put by LF Branch, which objections were also readily agreed to by Sh. D. S. Mathur.

494. Other important feature of this note is that the idea of seeking clarifications from the companies was introduced and the clarifications were sought. There is no evidence on record that this was also the idea of Sh. A. Raja. The clarifications sought through letter, Ex PW 60/H-7, dated 10.12.2007 are so detailed that it virtually amounts to re-writing the guidelines.

495. PW 60 Sh. A. K. Srivastava in his further examination-in-chief dated 24.08.2012, page 21, deposed as

under:

> ".....I have been shown DoT file D-7, already Ex PW 36/B, pertaining to UAS Licensing policy and on pages 63 to 67, there is a reference letter, Ex PW 36/B-4, sent to the Law Ministry as per the directions of Sh. A. Raja vide his note Ex PW 36/B-5, page 2/N. The final approval for sending the letter was granted by Sh. A. Raja vide his signature at point A on page 5/N of this file and the fact of letter having been sent was taken on record vide endorsement at point D on the same page, dated 26.10.2007....."

496. PW 60 Sh. A. K. Srivastava in his cross-examination dated 11.09.2012, pages 6 and 7, deposed regarding Ex PW 36/B-1 and PW 36/B-3, as under:

> ".....It is correct that the proposal dated 24.10.2007 as initiated by Sh. Nitin Jain, Director (AS-I), regarding seeking of opinion of learned SG, already Ex PW 36/B-2, in DoT file D-7, already Ex PW 36/B, was also agreed to by me by appending my signature at point D, page 2/N. In draft already Ex PW 36/B-1 available in this file at pages 26 to 30, there are certain corrections in the handwriting of the then Secretary (T) Sh. D. S. Mathur. I had discussed the draft note with the Member (T) and Secretary (T) before the finalization of the same. It is wrong to suggest that after the corrections were made by Secretary (T) in the draft Ex PW 36/B-1, I had discussed the matter again with Secretary (T) and Member (T). It is also wrong to suggest that I prepared a revised draft after any such discussions. Confronted with portion A to A of statement dated 04.03.2011, Ex PW 60/DD (A-1), where it is so recorded. **Volunteered**: This was an inadvertent statement, which was later on corrected in my subsequent statement.
>
> It is wrong to suggest that I did not make any

corrective statement to the IO. It is wrong to suggest that the portion mark A to A reflects the correct statement.

Volunteered: The modified draft as approved by the then MOC&IT Sh. A. Raja was only retyped and placed in the file at pages 63 to 67, already Ex PW 36/B-4……."

497. Portion A to A of statement, Ex PW 60/DD, referred to above, reads as under:

"The draft brief for Ld. SG available in the file at page 30 to 26 contain certain corrections probably in the handwriting of Sh. D S Mathur, Secretary, DoT. The draft was re attempted (based on discussion with Member (T) and Secretary, DoT) and revised draft is placed at page 35 to 31 which contains certain modifications probably in the handwriting of Sh A Raja, MOC&IT."

498. Thus, Sh. A. K. Srivastava contradicted himself on a very material point that the draft, Ex PW 36/B-3, was not prepared in the AS Section. This contradiction on a material point without any explanation puts a question mark on the truthfulness of the witness.

499. PW 60 Sh. A. K. Srivastava in his further cross-examination dated 11.09.2012, pages 8 to 10, deposed regarding cut-off date of 25.09.2007 as under:

"**Ques**: In the light of note dated 25.10.2007, already Ex PW 36/B-6, as recorded by the then Secretary (T) Sh. D. S. Mathur, whether it was required to draw a line somewhere regarding the number of applicants who can be allotted UAS Licences?

Ans: It is a matter of opinion.

It is correct that up to 25.09.2007, 232

applications were received for grant of UAS licence. I am not in a position to say if before that UAS licencees were required to wait for quite sometime awaiting allocation of spectrum as spectrum allocation was not my subject. As per note dated 02.11.2007, Ex PW 36/B-8, in DoT file D-7 Ex PW 36/B, an internal exercise was done by the WPC wing to ascertain the likely availability of spectrum and the said WPC file was linked with this file. I am not in a position to say anything about the facts recorded by the TRAI in its consultation paper regarding availability of spectrum as neither DoT is a party to consultation process nor the same was studied by me. It is a common knowledge that TRAI holds an open house session seeking opinion of the stakeholders. It is wrong to suggest that DoT participates in the consultative process. **Volunteered**: DoT is in the role of decision maker and, as such, does not attend the open house session of TRAI.

I do not know as to on what basis the decision dated 02.11.2007 was taken by the then MOC&IT for grant of UAS licences to the applications received up to 25.09.2007. However, it is correct that availability of spectrum was one of the factors for grant of UAS licences as mentioned in the note dated 02.11.2007 of Sh. Nitin Jain, already Ex PW 36/B-8 (D-7), pages 6/N and 7/N and all the factors which were mentioned in the file were considered.

It is correct that existing policy of DoT did not provide for any limit on number of LOIs that can be issued in a service area. It is correct that the TRAI recommendation to the effect that there should be no cap on the number of service providers in a service area was accepted by the DoT and this was no longer an open issue.

I have been shown note dated 12.11.2007, already Ex PW 36/DL-7 (D-13), recorded by me to the effect that LOIs were to be issued simultaneously to all the applicants who had submitted their

applications till 25.09.2007, as discussed with Secretary (T) and MOC&IT and this note was replicated in all the files.
Ques: You have referred to discussion with Secretary (T) and MOC&IT in the aforesaid note. Would you please tell this Court as to on which date, time and place the aforesaid discussion took place?
Ans: This discussion took place on 06.11.2007 in the office of the then MOC&IT Sh. A. Raja in Sanchar Bhawan, which was attended by Secretary (T), Member (T), Additional Secretary (T) and myself, as mentioned in note dated 07.11.2007 already Ex PW 36/B-10 (D-7), page 9/N."

500. In this deposition, Sh. A. K. Srivastava is evasive about disposal of applications in phases by evading to answer the question and replying that it was a matter of opinion. However, he conceded that some internal exercise was done by WPC to ascertain likely availability of spectrum and this was one of the factors for fixing 25.09.2007 as the cut-off date. However, he again tried to evade responsibility by deposing that he did not know as to how the decision dated 02.11.2007 was taken by the Minister when he approved the note, Ex PW 36/B-8. He disowned the record which was prepared at his instance. However, he was categorical that the discussion regarding the date of 25.09.2007 took place on 06.11.2007 also in which all senior officers of DoT were present. Thus, Sh. A. K. Srivastava is inconsistent and is blowing hot and cold at the same time.

501. PW 60 Sh. A. K. Srivastava in his further cross-examination dated 18.09.2012, page 9, deposed regarding cut-off date of 25.09.2007 as under:

"**Ques**: I put it to you that decision pertaining to

processing of the applications received till 25.09.2007 was taken collectively by the DoT and you were party to that collective decision?
Ans: No. The decision was taken by the Minister."

502. This question and answer shows as to how irresponsible Sh. A. K. Srivastava is. The note dated 02.11.2007, Ex PW 36/B-8, was recorded by Sh. Nitin Jain on the briefing of Sh. A. K. Srivastava and in this note, it is clearly mentioned that in order to avoid legal implications of cut-off date, all applications received till the cut-off date, that is, 25.09.2007, may be processed. Not only the briefing was given by Sh. A. K. Srivastava, the note was also signed by him. Furthermore, as noted above, he himself admitted that the date of 25.09.2007 as mentioned in the replicated note dated 12.11.2007, Ex PW 36/DL-7 (D-13), was discussed on 06.11.2007 in a meeting attended by Sh. A. Raja, Sh. D. S. Mathur, Sh. K. Sridhara, he himself (Sh. A. K. Srivastava) and the Additional Secretary.

503. Perusal of the lengthy deposition of Sh. A. K. Srivastava reveals that he is not categorical about draft, Ex PW 36/B-3, which was allegedly placed on the file at the instance of Sh. A. Raja for introducing the date of 25.09.2007. Furthermore, he has contradicted himself on a material point with his statement, Ex PW 60/DD, made to the investigating officer, wherein he stated that this draft was re-attempted after discussion with the Member (T) and Secretary (T). This is a material contradiction and goes to the root of the matter. Further, he has tried to wriggle himself out of note dated 02.11.2007, Ex PW 36/B-8, in which it was proposed that

applications received upto 25.09.2007 may be processed. In a sense, he has tried to disown entire official record in the preparation of which he himself was an important participant and had also signed the same. The end result is that his testimony is not good enough to be relied upon. His evidence deserves to be discarded in toto.

504. PW 77 Sh. K. Sridhara in his examination-in-chief dated 10.12.2012, pages 9 and 10, deposed about cut-off date of 25.09.2007, as under:

> ".....I have been shown DoT file D-7, Ex PW 36/B, wherein there is a forwarding letter dated 26.10.2007, already Ex PW 60/C, signed by me at point A, which was sent to Ministry of Law seeking opinion of learned Attorney General through Ministry of Law on the issues contained in its annexures Ex PW 36/B-4. The issue of inter se seniority between initial allocation of spectrum to the existing licencees vis-a-vis dual technology applicants is also mentioned in para 8 (b) of Ex PW 36/B-4. One of the issues referred to the Law Ministry was to fix a cut-off date for the issuance of LOIs to the applications received till 25.09.2007. The four alternatives mentioned in the letter were also suggested by the Minister and later seen by the Secretary (T) and further examination was to be done after receiving the recommendation of the learned Solicitor General. The discussion took place between me and the Minister Sh. A. Raja and Secretary (T) Sh. D. S. Mathur and I suggested that the availability of spectrum being different in different service areas, the cut-off should be different for different service areas. However, it was decided that we may write to learned Solicitor General, as emerged during the discussion, and to take a decision after receiving his opinion. The draft Ex PW 36/B-1, as approved by the Secretary (T), and the

final letter Ex PW 36/B-4, which was sent to the Law Ministry are not same as far as alternative II is concerned.....”

505. PW 77 Sh. K. Sridhara in his cross-examination dated 10.12.2012, pages 12 and 13, deposed as under:

“.....It is correct that in the file D-7, Ex PW 36/B, there are two drafts, Ex PW 36/B-1 and B-3 respectively, proposed to be sent to the learned SG through Law Ministry seeking his opinion. It is correct that both the drafts contain corrections made by the then Secretary (T) Sh. D. S. Mathur. It is correct that both the drafts reached the Secretary (T) through DDG (AS) and myself. Once a draft is corrected and is put up again to the competent authority, it is not necessary that it should pass the entire hierarchy and may reach the competent authority directly after correction. Generally, all the drafts are kept in the file. In the final letter sent to the Law Ministry, Ex PW 36/B-4, the fourth alternative was “any other better approach which may be legally tenable and sustainable for new licences”. On the basis of the corrections in the earlier two drafts, final letter Ex PW 36/B-4 was prepared and sent.....”

506. Perusal of the evidence of Sh. K. Sridhara reveals that he has introduced a new version of events. He deposed that all the four alternatives mentioned in draft, Ex PW 36/B-4, were suggested by Sh. A. Raja. This is factually incorrect also as it is only a modified version of earlier draft, Ex PW 36/B-1, and not a new draft. However, two witnesses discussed above are silent on this point.

Not only this, Sh. K. Sridhara has contradicted Sh. A. K. Srivastava regarding preparation of draft, Ex PW 36/B-3. He

also contradicted himself on the point that the four alternatives were suggested by the Minister, as in the cross-examination he deposed that both the drafts reached Secretary (T) through DDG and he himself (Sh. K. Sridhara). If the drafts, Ex PW 36/B-1 and B-3 reached the Secretary through these two officers, where is the question of Sh. A. Raja suggesting the four alternatives. Where is the question of Sh. A. Raja placing draft, Ex PW 36/B-3, on the file? There is no evidence at all that these drafts were first discussed in a meeting, chaired by Sh. A. Raja where he suggested the alternatives, and thereafter these drafts were prepared. Sh. Nitin Jain who initiated this note is silent on this point. Here, Sh. K. Sridhara has deposed against the record. Not only this, Sh. K. Sridhara is categorical that both drafts, Ex PW 36/B-1 and B-3, contain correction made by Sh. D. S. Mathur and that both the drafts reached Secretary (T) through Sh. A. K. Srivastava and he himself, that is, Member (T), though Sh. D. S. Mathur disowns the correction. If drafts, Ex PW 36/B-1 and Ex PW 36/B-3 were prepared in AS Section, how can Sh. A. Raja be held responsible for Alternative II in draft Ex PW 36/B-3. It may be noted that there is no evidence that Sh. A. Raja had directed the preparation of these drafts. He also did not support the prosecution version that draft, Ex PW 36/B-3, was placed on record by Sh. A. Raja. Thus, the evidence of Sh. K. Sridhara is also of no avail to the prosecution.

507. PW 36 Sh. D. S. Mathur, the then Secretary (T), in his examination-in-chief dated 09.04.2012, pages 13 to 15, deposed about the three drafts prepared to be sent to learned

SG, as under:

> ".....I have been shown file of DoT, D-7, regarding UAS Licensing Policy. This file is of the DoT and is now collectively Ex PW 36/B. I have been shown note 1/N and 2/N initiated by Sh. Nitin Jain, Director (AS-I), dated 24.10.2007 regarding seeking of the opinion of Ld. Solicitor General of India on grant of new unified access service licences and approval for use of dual technology spectrum by such licencees. For sending the matter to the learned Solicitor General, a brief was also prepared and it was submitted through Sh. A. K. Srivastava, DDG (AS) and Sh. K. Sridhara, Member (T). The brief alongwith note sheet finally reached me. The brief is available at pages 26 to 30 (4/C). The brief is dated 24.10.2007 and is now Ex PW 36/B-1. The brief was put up by me alongwith the file to the then Minister on 24.10.2007 and my signature in this regard is at point A on 2/N. The note sheet is Ex PW 36/B-2. The brief which was meant for learned Solicitor General has certain corrections, but I have no idea as to who made the same. I have also been shown a brief at pages 31 to 35 (5/C) of the same file. The corrections made in brief Ex PW 36/B-1 have not been incorporated in this note 5/C. This note is now Ex PW 36/B-3. I am saying this after comparing the two drafts.
>
> There are corrections in Ex PW 36/B-3 and I cannot say as to who made these corrections. I have been shown another draft at pages 63 to 67 (6/C) and is now Ex PW 36/B-4. After looking at the three drafts I cannot say as to which of the draft was finally approved by the then Minister, MOC&IT, for sending to the learned SG, vide endorsement at 2/N made by the Minister dated 25.10.2007. I identify the endorsement alongwith the signature at point B on page 2/N of the then Minister Sh. A. Raja and the same is now Ex PW 36/B-5. Thereafter, this file was again marked to me by the Minister. When the file came to me, I recorded a note to the effect that

when the National Telecom Policy was decided by the Union Cabinet in 1999, the Cabinet had laid down a condition that new licences should be given only when there is availability of spectrum. The background of the note was that large number of applications were being received in the DoT after TRAI recommendations dated 28.08.2007 and if licences were given to all of them or a large number of them, then they may not be able to get spectrum. This note is dated 25.10.2007, pages 2/N and 3/N and is now Ex PW 36/B-6. My signature is at point A on page 3/N. The effect of this note was that the matter was again examined by the DoT and the file was put up to me. However, as I was on tour, the file was straightaway was put to then Minister Sh. A. Raja. I have been shown note at pages 4/N and 5/N whereby the matter was reexamined after my aforesaid note. This note was initiated by Sh. A. K. Srivastava, DDG (AS), on 26.10.2007. After going through the note I find that my concern as recorded in my note Ex PW 36/B-6 was not addressed. The file was put up to the Minister after the matter was reexamined and as I was on tour, the file straightaway was submitted to the Minister. The note on pages 4/N and 5/N is now Ex PW 36/B-7. The signature of Sh. A. Raja is at point A on page 5/N, which I identify. As per note Ex PW 36/B-7 of Sh. A. K. Srivastava, there is a mention of a note 6/C, which was to be sent to the learned Solicitor General. I did not see this note as I was on tour. I have been shown note sheet 9/C, page 70, in the correspondence part of file D-7. As far as I think this note sheet was regarding the note to be sent to learned SG by the DoT. This note sheet is of department of Law and Justice....."

508. Perusal of the evidence of Sh. D. S. Mathur reveals that he did not say that the draft, Ex PW 36/B-1, was prepared after discussion with Sh. A. Raja. Thus, it was the initiative of

Sh. Nitin Jain alone. He did not say anything as to who prepared draft, Ex PW 36/B-3, but simply says that corrections made in draft, Ex PW 36/B-1, were not incorporated in draft, Ex PW 36/B-3. He had no idea who prepared draft, Ex PW 36/B-3. However, as noted above, Sh. K. Sridhara deposed that both the drafts were corrected by Sh. D. S. Mathur. Furthermore, when the draft was approved by Sh. A. Raja and the file came downwards, he objected to it on the ground that NTP 1999 was not taken note of. However, he did not explain as to why this objection was not taken by him when he had agreed to the note in the first instance and as to why and how he got sudden knowledge of provisions of NTP 1999. Furthermore, his viewpoint was considered and again note dated 26.10.2007, Ex PW 36/B-7, was recorded, but he still said that his concerns were not addressed. He did not explain his concerns and as to how these were to be addressed. However, the note is detailed one and takes note of the developments since the introduction of NTP 1999, as such his deposition that his concerns were not addressed is not correct. It may be noted that he is also not categorical in the deposition. His attitude is cautious, guarded and hesitant. It is unfortunate that such an important issue was being deliberated and discussed in the department and a note was prepared for seeking opinion of learned SG, but the Secretary (T) had no contribution therein except to record objection after the decision and to say that his concerns were not addressed without specifying them in clear terms. Anyway, he did not say much about draft, Ex PW 36/B-3.

509. PW 36 Sh. D. S. Mathur in his further examination-in-chief dated 09.04.2012, pages 15 to 18, deposed about the approval dated 02.11.2007, Ex PW 36/B-8, which was also objected to by him and his objection dated 05.11.2007, Ex PW 36/B-9 and the note/ approval dated 07.11.2007, Ex PW 36/B-10, which was as per his satisfaction and to which he agreed, both when file reached him in the upward journey as well as in the downward journey, as under:

> ".....I have been shown page 6/N of D-7. This note is about the return of file from Ministry of Law and Justice with the opinion that the matter may be referred to a Group of Ministers. This note sheet is about the subject matter as is referred to in the note sheet 9/C of the department of Law and Justice. When the file was received from the Ministry of Law and Justice with the aforesaid opinion that the matter may be referred to a Group of Ministers, the matter was discussed by the then Minister with Member (T) Sh. K. Sridhara and Sh. A. K. Srivastava, DDG (AS). It was considered that the view of the Ministry of Law and Justice regarding referring the matter to a Group of Ministers was out of context. It was also decided that since 575 applications had come for new UAS Licences and some decisions were taken regarding the finalization of these applications. The issues on which the opinion of the learned SG was sought are mentioned in paras 10, 11, 12 and 13 of this brief available in 6/C, Ex PW 36/B-4, as various alternatives suggested.
>
> The note as contained on pages 6/N and 7/N in file D-7 was marked to me but as I was on tour it was straightaway put before the Minister. The same is now Ex PW 36/B-8. The approval of the Minister in his handwriting alongwith his signature is available at page 7/N, point A, which I identify. The five issues which were flagged in para 8 of note Ex

PW 36/B-8 were approved by the Minister and he also recorded that the applications received up to 25.09.2007, LOIs may be issued to these applicants, on 02.11.2007. After the aforesaid approval of the Minister, the file was again marked to Secretary, DoT, by him. However, since I was on tour, the file was straightaway put up to Member (T) Sh. K. Sridhara. The Member (T) again marked the file to me for my information and then I recorded my note dated 05.11.2007 at pages 7/N and 8/N of D-7. My signature appears at point A and the note is now Ex PW 36/B-9. I recorded this note after seeing the order of the then Minister dated 02.11.2007 as fixing the date of 25.09.2007 may be considered arbitrary and it may give rise to legal complications later on. I took the file personally to the then Minister and told him that this decision needs to be reconsidered, though I did not record these facts on the file, that is, the decision may be considered arbitrary and it may give rise to legal complications. When I spoke to the Minister he told me that the aforesaid decision would be reconsidered and he wanted to discuss the matter in future.

I have been shown note 9/N to 12/N in file D-7. This note was initiated by Sh. Nitin Jain, Director (AS). This note dealt with NTP-1999 as well as the issue as to whether adequacy of spectrum was a pre-condition for issuance of new UAS Licences. This note records certain decisions taken by the then Minister in a meeting held on 06.11.2007, in which Member (T) Sh. K. Sridhara, Additional Secretary (T), DDG (AS) Sh. A. K. Srivastava and myself were present. Other issue discussed in the meeting was grant of dual technology licence to Tata was also considered. This note is now Ex PW 36/B-10. This file was put up to me on 07.11.2007 and I marked the file to the Minister, who approved it on the same date. The file again came to me on 08.11.2007 and I marked the file to DDG (AS). My signatures appear at points A and B at page 12/N and that of Minister

Sh. A. Raja at point C. The decision taken was to the effect that new UAS Licences would be granted as per the existing policy....."

510. In this deposition, Sh. D. S. Mathur did not say as to who had termed the opinion of Law Ministry as out of context. Whether it was the opinion of Sh. A. Raja or it was the opinion of officers, that is, Sh. K. Sridhara and Sh. A. K. Srivastava? The case of the prosecution is that these words were used by Sh. A. Raja, but there is no evidence in support of that. Furthermore, Sh. D. S. Mathur, who is in the habit of recording objection after objection, that too after decision has been taken on a particular point, has introduced oral evidence to justify himself. He has deposed that he took the file to the Minister and told him that the decision of fixing of cut-off date of 25.09.2007 may be considered arbitrary, but he did not record it. However, he also conceded that when he so told the Minister, he (Sh. A. Raja) agreed to reconsider the same. This shows the attitude of the Minister to take note of the opinion of others seriously. Consequently, a meeting was called by Sh. A. Raja on 06.11.2007 and note dated 07.11.2007, Ex PW 36/B-10, was recorded as already noted above.

511. What were the concerns of Sh. D. S. Mathur? His concerns were that decision should be taken in the light of NTP 1999 taking note of availability of spectrum. The case of the prosecution is that in the notes, Ex PW 36/B-8, dated 02.11.2007 and Ex PW 36/B-10, dated 07.11.2007, the department proposed that the number of LOIs to be issued in

each service area was to be decided, in the light of availability of spectrum, but it was not decided. Hence, the concerns of Sh. D. S. Mathur remained unaddressed. It may be noted that these notes dated 02.11.2007 and 07.11.2007 were recorded by a director level offier Sh. Nitin Jain and was agreed to by Sh. A. K. Srivastava, Member (T) and in case of note dated 07.11.2007, it was agreed to by Sh. D. S. Mathur also before they reached the Minister. It was the duty of the officers to propose as to how many LOIs were to be issued service area wise. It appears that senior officers were just passing the buck without suggesting anything specific. They did not propose any number of LOIs service area wise. What for these senior officers were meant, if everything was to be decided by the Minister?

It is to be noted that the job of Secretariat is to carry out comprehensive and detailed scrutiny of an issue before putting the file to the Minister. Secretariat is meant to assist the Minister and not to confuse him by recording layered notes. As such, Sh. D. S. Mathur did not tell the truth, more so, when he agreed to the note dated 07.11.2007, both ways when the file went upward as well as came downward. However, these two notes are not to be read separately but are to be read collectively, as the note dated 07.11.2007 is in continuation of the note dated 02.11.2007 and the note of 07.11.2007 was recorded only to take note of the objection of Sh. D. S. Mathur as far as availability of spectrum is concerned. There is no mention of 25.09.2007 in the note of 07.11.2007. Why? Why did the officers agree to it when they were not sure of the date

of 25.09.2007, more so, when Sh. D. S. Mathur was insisting that all pending applications could not be processed. This is because while seeking approval vide note dated 07.11.2007, Ex PW 36/B-10, all officers knew that LOIs were to be issued to all eligible applicants who had applied by 25.09.2007, as was decided vide note dated 02.11.2007. Sh. D. S. Mathur was in full agreement with this note. If the view of Sh. D. S. Mathur is accepted, then this note dated 07.11.2007 was against his note dated 25.10.2007, Ex PW 36/B-6 wherein he recorded that LOIs cannot be issued to all 575 applications. It meant that if LOIs could not be issued to all 575 applicants, then it would be issued to some lesser number of applicants and these lesser number of applicants would be those who had applied upto 25.09.2007. Hence, there is no merit in the submission that number of LOIs in each service area was not decided, because in the heart of heart everybody knew that LOIs were to be issued to all eligible applicants who had applied by 25.09.2007, though, in the witness box everybody tried to wriggle out of that. Thus, blame for the cut-off date of 25.09.2007 cannot be laid at the door of Sh. A. Raja alone.

512. Not only this, in this note, it was proposed that applications of TTML, TTSL and RTL for dual technology may be considered as per direction of TDSAT on dual technology. This note was recorded to the satisfaction of Sh. D. S. Mathur and all subordinate officers, but for delay in dual technology to TTML/ TTSL, these witnesses would blame Sh. A. Raja alone as would be seen in the subsequent pages.

513. Furthermore, the real catch in this case lies in the proposal regarding draft LOI, through which everybody was free to carry out changes as per his whims, even though not provided in the guidelines.

514. PW 36 Sh. D. S. Mathur in his further examination-in-chief dated 10.04.2012, pages 1 and 2, reveals his tendency to forget things, and deposed as under:

> ".....I have been shown file D-7, Ex PW 36/B, and my attention has been drawn to a note proposed to be sent to the learned SG, already Ex PW 36/B-4, and the existing policy of the Government is mentioned as alternative 1 in para 11 of this note.
>
> At this stage, the witness submits that yesterday he made a mistake while making his statement regarding draft Ex PW 36/B-1. He wishes to volunteer something on this point and he is permitted to do so.
>
> In this draft the corrections were made by me in my hand.
>
> I have been shown draft already Ex PW 36/B-3. In this draft also, there are corrections in paragraphs 12 and 13. I do not know as to who made these corrections in pencil. My attention has been drawn to three drafts, proposed to be sent to the learned SG, already Ex PW 36/B-1, B-3 and B-4. There is no change in alternative 1 as mentioned in para 11 of Ex PW 36/B-1 and B-3. However, there is a change in alternative 1 as mentioned in Ex PW 36/B-4. I have been shown draft Ex PW 36/B-1, which was put up to me and this draft ends in para 9, points X to X. My attention has been drawn to draft already Ex PW 36/B-3 and in this draft, after paragraph 9, additional paragraphs have been added as numbered paragraphs 10 to 14. As such, there are some additions in this draft in between, though alternative 1 is common in both the drafts....."

515. Thus, Sh. D. S. Mathur failed to recognize his own handwriting regarding the corrections made by him in the draft, Ex PW 36/B-1. This also puts a question mark on his credibility because he can forget and remember things as per his convenience. He did not know who made corrections in draft, Ex PW 36/B-3, but Sh. K. Sridhara deposed that these corrections were made by Sh. D. S. Mathur. When questioned about this, in cross-examination on 18.04.2012, page 2, he tried to get out of this citing mistake as defence, and deposed as under:

> ".....Before leaving the Court on 09.04.2012, I had read my statement and on the next day I realized that I had made a mistake. Since on 09.04.2012, the Court had risen, I availed the first opportunity on 10.04.2012 to get it corrected. It is wrong to suggest that I was briefed by the CBI to change my statement. I do not remember if the draft Ex PW 36/B-1 was shown to me by the IO. I do not remember if I told the IO anything in reference to this correction in this draft. I have been shown my statements under Section 161 CrPC dated 16.12.2010, 09.02.2011 and 28.03.2011, now Ex PW 36/DO, DO-1 and DO-2, and there is no reference therein about any correction made by me....."

516. PW 36 in his cross-examination dated 16.04.2012, pages 9 and 10, deposed about correction in the drafts, as under:

> ".....I have been shown a draft for seeking legal opinion on 4/C, already Ex PW 36/B-1. Paragraph 7 of this note talks about receipt of large number of applications and delay resulting from sequential

processing of these applications. This draft mentions only two alternatives. This draft was corrected and approved by me.

I have been shown another draft already Ex PW 36/B-3. It is correct that this draft mentions three alternatives and fourth alternative is recorded in hand. However, I cannot say as to who recorded the fourth alternative in hand. When the file came back to me on 25.10.2007, I recorded a note Ex PW 36/B-6 saying that in view of para 3.1.1 of NTP-1999, the option to issue LOI/ licences to 575 applicants does not stand and I recorded that the attention of the Minister be drawn to this paragraph. In draft Ex PW 36/B-3, this was suggested as the third alternative. It is correct that a note already Ex PW 36/B-7 was recorded by Sh. A. K. Srivastava, the then DDG (AS), on this point mentioning alongwith TRAI recommendations and UASL Guidelines for reference to the then Minister. It is correct that in this note, Sh. A. K. Srivastava also suggested that all options as set out in draft Ex PW 36/B-4 were open to the Government and this was recorded by him despite my aforesaid note Ex PW 36/B-6 dated 25.10.2007 to the effect that issuance of licences to all 575 applicants does not stand.

I have been shown filed D-7, already Ex PW 36/B, wherein on page 69 there is photocopy of a note sheet of Ministry of Law and Justice, as per para 2 of which Sh. A. K. Srivastava and Sh. Nitin Jain discussed the matter with Sh. P. K. Malhotra, Joint Secretary of Department of Legal Affairs. The said note sheet is now Ex PW 36/DK-16. However, I am saying this after reading the document and not from my personal knowledge. The file was again sent back to Ministry of Law and Justice....."

517. Here also, Sh. D. S. Mathur is trying to evade all knowledge about draft, Ex PW 36/B-3 and the correction therein. However, he conceded that despite his objection, vide

note dated 25.10.2007, Ex PW 36/B-6, Sh. A. K. Srivastava recorded note dated 26.10.2007, Ex PW 36/B-7, that all options were open to the government. What does it mean? Government may decide to process limited number of applications or it may process all the applications. Sh. A. K. Srivastava suggested this because scope of NTP-99 was enhanced due to addendum dated 11.11.2003. The Secretary discredited both Sh. A. K. Srivastava and Sh. A. Raja.

518. PW 36 Sh. D. S. Mathur in his cross-examination dated 17.04.2012, pages 2 to 7, admitted that in all the files in which LOIs were proposed to be issued, PW 60 Sh. A. K. Srivastava had recorded note dated 12.11.2007 that LOIs were to be issued to prima facie eligible applicants who had submitted their applications upto 25.09.2007 and in this regard his deposition, pages 2 and 3, reads as under:

> ".....I have been shown file D-10, already Ex PW 36/G, wherein on page 7/N there is a note dated 12.11.2007 of Sh. A. K. Srivastava, already Ex PW 36/G-2. As per this note, the LOIs were to be issued simultaneously to the prima facie eligible applicants who had submitted their applications till 25.09.2007, as per the discussion with myself and the then Minister. This file came to me on 30.11.2007 and my signature appears at point A on page 10/N, and my note is now Ex PW 36/DL-5 of the same date....."

519. It may be noted that this note was replicated in all the files and the witness owned up this in his further deposition, pages 3 to 7. He further deposed, page 7, that he did not object to it and the deposition reads as under:

"..... In all these files Sh. A. K. Srivastava recorded, inter alia, that as per discussion with Secretary (T) (myself) and the then Minister (A. Raja), LOIs are to be issued simultaneously to prima facie eligible applicants who have submitted their applications up to 25.09.2007. It is true that I did not record in all these files that there is any error in the note recorded by Sh. A. K. Srivastava as these notes of Sh. A. K. Srivastava were not put up to me. It is correct that all these files containing the notes of Sh. A. K. Srivastava as referred to above were put up to me on 30.11.2007....."

520. Thus, the date of 25.09.2007, is conceded by Sh. D. S. Mathur, as having been discussed with him. Not only this, PW 60 Sh. A. K. Srivastava in his cross-examination dated 11.09.2012, page 10, as already noted, deposed that discussion about this replicated note dated 12.11.2007 took place on 06.11.2007. This means that the discussion about this date of 25.09.2007 took place amongst all important functionaries of DoT and the decision to issue LOIs to applicants who had applied upto 25.09.2007 was a well-considered decision of DoT and not that of Sh. A. Raja alone.

521. He has referred to note, Ex PW 36/G-2. This note in file D-10, in which applications of STPL were processed, reads as under:

"As per discussions with Secretary (T) & Hon'ble MOC&IT, LOIs are to be issued simultaneously to prima-facie eligible applications who have submitted their applications upto 25.09.2007. Proposal contained in **para 5, 6 & 7** above may kindly be seen. Necessary clarifications / compliances shall be obtained as compliance to LoI conditions. It is to be

decided that the compliances shall be taken as on date of application or any date till the date of issue of LOI **(Kindly refer para 2 on pre-page).**

'X' on pre-page will be suitably included in the LOI.

LOI draft shall be separately vetted by Finance Branch and Legal Advisor. The vetted draft LoI shall be used for issue of LoIs after the approval of the competent authority."

522. The above note makes things clear that date of 25.09.2007 was discussed with Sh. D. S. Mathur, however, in witness box, he tried to disown all responsibility about this date.

523. PW 36 Sh. D. S. Mathur in his further cross-examination dated 18.04.2012, pages 5 and 6, went into total amnesia making him unworthy of reliance, and deposed as under:

".....I do not remember if after the fixing of cut-off date of 25.09.2007, I constituted a committee to process the applications. I do not remember if pursuant to the fixing of this cut-off date by the Minister, the processing of applications started. I do remember that the processing of the applications started during my tenure. I cannot tell the approximate period when the processing of the applications started. I do not remember if I ever constituted a committee for processing of the applications for issuance of LOIs.

I have been shown note dated 07.11.2007 of Sh. Nitin Jain, already Ex PW 36/B-10 (D-7), wherein at para 5 sub-para ii, there is a reference to constitution of committee already approved by Secretary (T). I do not remember if this committee was constituted by me or was in existence from before. My signature at point A, page 12/N, does not indicate that the committee was constituted with my

approval. It is mentioned in letter Ex PW 36/DK-9 dated 15.10.2007 that different cells have been allocated responsibility for processing of applications.

I am not sure if DDG (AS) is of the rank of Joint Secretary to Government of India....."

524. In this deposition, Sh. D. S. Mathur forgot all important decisions. Thus, his memory is a matter of convenience.

525. PW 36 Sh. D. S. Mathur in his further cross-examination dated 18.04.2012, pages 7 to 10, again deposed that he did not know as to which of the drafts was approved by the Minister, abdicating all responsibility, which reads as under:

".....It is correct that a Secretary to the Government of India is a Principal Advisor to the Minister in all matters within his responsibility and his responsibility is complete and undivided. I have been shown file already Ex PW 36/B (D-7), wherein on page 1/N there is a note sheet, already Ex PW 36/B-2. It is correct that as per this note sheet, DoT considered it appropriate to seek the opinion of learned SG in view of the receipt of 575 applications for UAS Licences after receipt of TRAI recommendations. I appended my signature at point A indicating my concurrence with the note regarding seeking of opinion of learned SG. I have been shown final draft of the letter sent to the learned SG, already Ex PW 36/B-4. This draft contains four alternatives. When I appended my signature at point A at page 2/N, I did not know it to be the final draft. I have been shown draft Ex PW 36/B-3 wherein three alternatives are mentioned in type and fourth one is mentioned in hand. In my note sheet already Ex PW 36/B-6, I meant that whatever draft is approved by the Minister. I do not know if the draft approved by the Minister is Ex PW 36/B-3 or B-4.

The Minister had approved the draft on the note sheet and I said in the note sheet that opinion of learned SG be sought as per the draft approved by the Minister. I do not know if I saw the draft approved by the Minister or not. I cannot say if it is expected of the administrative head of a department to see such a draft. Note Ex PW 36/B-6, is subsequent to the approval of the draft of the Minister. The minister recorded at point A on Ex PW 36/B-5 that the draft has been approved as modified. It was not my duty to see the draft once finally approved by the Minister. The noting by me as Ex PW 36/B-6 is a policy of the Government. I am not sure if I recorded this note after seeing the final draft. It is wrong to suggest that I had seen the draft finally approved by the Minister and now I am being evasive about this. Note Ex PW 36/B-2 refers to various issues that arose for consideration. I have been shown draft Ex PW 36/B-1 and this draft contains certain facts pertaining to processing of applications for UAS Licences and in the end mentions two alternatives for the same. In this draft I have mentioned in hand that request of Tatas shall be taken up alongwith new applicants as per alternative 1. This was recorded in reference to alternate technology. I had made this correction. The correction made by me in Ex PW 36/B-1 was not taken care of in draft Ex PW 36/B-3. In para 10 of Ex PW 36/B-3, it was mentioned that "their request for permission shall be taken up alongwith new applicants as per in para 11 below". It is correct that prior to my correction in Ex PW 36/B-1, there was no suggestion by anyone. Alternative 1 in draft Ex PW 36/B-1 is the existing procedure of DoT. It was the procedure during my tenure as Secretary, DoT. The procedure regarding this is mentioned in alternative 1 in Ex PW 36/B-1 at points B to B. In draft Ex PW 36/B-3, the compliance to eligibility conditions as on the date of issue of LOI may be accepted. However, in draft Ex PW 36/B-4 also, the

position is the same. According to draft Ex PW 36/B-1, applications for dual technology were to be considered only from those applicants who had already met the roll-out obligations. This fact is also mentioned in draft Ex PW 36/B-3 and B-4, para 10....."

526. Sh. D. S. Mathur admitted that he was Principal Adviser to the Minister. However, he did not know as to which of the drafts was approved by the Minister, that is, Ex PW 36/B-3 or B-4. His irresponsible attitude is writ large on the face of the record. He deposed that it was not his duty to see which draft was approved by the Minister.

527. PW 36 Sh. D. S. Mathur, in his further cross-examination dated 19.04.2012, page 10, finally conceded that his concerns were addressed by note, Ex PW 36/B-10, and deposed as under:

".....It is wrong to suggest that I did not tell the Minister that fixing of a cut-off date may be considered arbitrary and may give rise to legal complications. It was not necessary for me to record this discussion with the Minister on the file. It is correct that note already Ex PW 36/B-10, page 9/N, addresses my concerns regarding NTP-1999. This note was initiated by Sh. Nitin Jain and was forwarded by Sh. A. K. Srivastava upwards, as mentioned at points D and E. Para 5 of this note finalizes the procedure to be followed for processing the applications and the people mentioned in this para are named by designation in para 2. It is also mentioned that applications of TTML and TTSL shall be decided after the decision of Hon'ble TDSAT. As per this note, eligibility of the applicant was to be examined by the committee. I do not know if any modifications were suggested by AS department in

the LOI format....."

528. Here, Sh. D. S. Mathur deposed that note dated 07.11.2007, Ex PW 36/B-10, addressed his concerns. However, a format of draft LOI was inserted in this note which was to be got vetted. On the pretext of getting the draft LOI vetted, entire approval of the Minister was again sought to be set at naught through the LF Branch. This has been done by the note of Sh. Shah Nawaz Alam dated 23.11.2007, Ex PW 36/DQ, and note of Ms. Manju Madhavan dated 30.11.2007, Ex PW 36/B-11.

529. PW 36 Sh. D. S. Mathur in his cross-examination dated 23.04.2012, pages 1 and 2, deposed that draft, Ex PW 36/B-1, used the word 'phase one' for processing of applications and placed the blame for draft, Ex PW 36/B-3, on the Minister, and the deposition reads as under:

> ".....The maintenance of record by the WPC wing was commented upon by TRAI in its report dated 28.08.2007, already Ex PW 2/DD, on page 51 in para 2.88. I have been shown draft already Ex PW 36/B-1 in file D-7, already Ex PW 36/B, wherein in alternative II, the number of LOIs suggested is double of the number of LOIs suggested in alternative I and this was done to ensure that only serious players deposit the entry fee. In alternative I, the number of LOIs suggested is three in each service area, whereas in alternative II, the number of LOIs suggested is six. This draft was amended by me in my hand. This draft does not suggest that 575 applications were to be processed in phase I. However, this document says that till that time 575 applications were received. Alternative II uses the word "phase I". By "phase I" it was meant that whatever may be the number of application

processed, the number of LOIs issued in each circle may not exceed six.

I have been shown draft already Ex PW 36/B-3, wherein as per alternative II, LOIs were suggested to be issued to all applicants who had applied by 25.09.2007. As per this draft, seniority as on the date of application or seniority on the date of compliance of LOI for UAS Licence was suggested. The alternative II proposed by the Minister in draft Ex PW 36/B-3 was not contained in the draft Ex PW 36/B-1 put up by the office and corrected by me. The number of LOIs to be six for each service area as suggested by draft Ex PW 36/B-1 was not suggested by the Minister. The date of 25.09.2007 was not suggested by the draft corrected by me, but it was suggested by the Minister in his draft Ex PW 36/B-3.

There are 22 service areas in India. As per alternative II suggested by draft Ex PW 36/B-1, the number of LOIs issued in all 22 circles could have been 22 X 6. I do not know if the licences issued were only 122 as by that time I had already superannuated. I came to know through the media that Hon'ble Supreme Court has cancelled 122 licences. The draft Ex PW 36/B-3, suggested by the Minister, contains alternative IV also to the effect that any other better approach which may be legally tenable and sustainable may be suggested....."

530. Thus, processing of applications in phases originated in draft, Ex PW 36/B-1, and this fact is admitted by the Secretary also. However, here he blamed Sh. A. Raja for suggesting date of 25.09.2007 in draft, Ex PW 36/B-3. However, as already noted, there is no evidence on record that draft, Ex PW 36/B-3, was placed on the file by Sh. A. Raja or at his instance. This date is the result of an internal exercise done by DoT to dispose of limited number of applications in phase I,

keeping availability of spectrum in mind.

531. PW 36 Sh. D. S. Mathur in his further cross-examination dated 23.04.2012, page 10, deposed about the confusion in his mind about correction in draft, Ex PW 36/B-1, as under:

> "**Ques**: When you made the statement regarding draft Ex PW 36/B-1, after seeing the same that you do not remember as to who made the corrections, were you not able to recognize your own handwriting?
> **Ans**: Regarding draft Ex PW 36/B-1, I had earlier deposed that I do not remember as to who has made corrections therein as there was some confusion in my mind, but later on, on the next day I corrected it."

532. Thus, Sh. D. S. Mathur tried to get out even of draft, Ex PW 36/B-1, so that he is absolved of all responsibility.

533. PW 36 Sh. D. S. Mathur in his further cross-examination dated 23.04.2012, pages 11 to 13, deposed about receipt of large number of applications and fixing of cut-off dates of 01.10.2007 and 25.09.2007 as under:

> ".....After receipt of TRAI recommendations dated 28.08.2007, the DoT was receiving applications on continuous basis for UAS Licences. I cannot say if up to 25.09.2007, the total of 108 applications were received for UAS Licences. Applications for UAS Licences were also received between 26.09.2007 to 01.10.2007, but I do not know if these applications numbered 343. I am not in a position to say that large number of applications were received for the reason that TRAI recommended no cap on the number of service providers in a particular service area. I had given my statements to the IO on different dates during investigation. I had told the IO

that Sh. A. K. Srivastava had initiated a note on 24.09.2007 regarding receipt of TRAI recommendations and that applications were pouring in.

I have been shown DoT file D-6, Ex PW 36/E. As per note sheet Ex PW 36/E-1, the proposal to have a cut-off date was initiated by Sh. A. K. Srivastava on 24.09.2007. This cut-off date was suggested for the purpose of receiving new UASL applications. Sh. K. Sridhara, Member (T), and myself agreed to this proposal. The Minister fixed the cut-off date of 01.10.2007 instead of 10.10.2007 suggested by Sh. A. K. Srivastava in view of the reasons recorded by the Minister as mentioned in Ex PW 36/E-2.

I have been shown DoT file D-7, Ex PW 36/B, wherein Sh. Nitin Jain in his note Ex PW 36/B-8, points X to X, recorded about processing of applications. It is not my understanding that Sh. Nitin Jain proposed that applications received up to 25.09.2007 may be processed and remaining may be taken subsequently. It is wrong to suggest that Nitin Jain proposed that only applications received up to 25.09.2007 may be processed and the remaining may be taken subsequently. It is wrong to suggest that the then Minister Sh. A. Raja did not change, revise or alter the cut-off date. The decision of the Minister was an administrative decision. It is wrong to suggest that the Minister did not fix any cut-off date and he merely approved the processing of applications received up to 25.09.2007……."

534. Here, Sh. D. S. Mathur deposed that after receipt of TRAI Recommendations, DoT was receiving applications on continuous basis for UAS licences when cut-off date vide note, Ex PW 36/E-1, dated 24.09.2007 was proposed. However, this is contrary to record, as till this date only two companies had

applied. He also tried to say that Sh. Nitin Jain did not propose the date of 25.09.2007, but this also is contrary to record as already noted above. Thus, the above deposition about 25.09.2007 is contrary to record. At the same time, he also deposed that the decision of the Minister about this date was administrative one. He himself did not fault the decision nor did he depose about any circumstance by which the decision could be faulted. In a sense, he justified the decision of the Minister.

535. PW 36 Sh. D. S. Mathur in his further cross-examination dated 24.04.2012, pages 1 and 2, took a wholly contrary and contradictory stand in the sense that in his note, Ex PW 36/B-6, he recorded that option to issue LOIs to all 575 applications did not stand to reason, whereas when lesser number of applications received upto 25.09.2007 were proposed to be processed for issue of LOIs vide note, Ex PW 36/B-8, he again opposed it and recorded note, Ex PW 36/B-9, and his deposition reads as under:

> ".....I have been shown DoT file D-7, Ex PW 36/B, wherein there is a note sheet, pages 2/N and 3/N, already Ex PW 36/B-6. In this note sheet, I had recorded that option to issue LOI/ licences to all 575 applicants does not stand. This was in view of the fact that as per NTP-1999, availability of spectrum was essential for entry of additional operators. It is correct that the then Minister Sh. A. Raja had verbally expressed his desire to me to issue LOIs to all applicants who had applied up to 01.10.2007. It is not clear from the documents that the decision to process applications received up to 25.09.2007 only was based on my note Ex PW 36/B-6. It is incorrect

to suggest that my note Ex PW 36/B-6 dated 25.10.2007 was responsible for the decision to process applications received up to 25.09.2007 only. I have been shown draft, already Ex PW 36/B-3. On seeing this draft, it is wrong to suggest that I was aware of the insertions of alternative II in this draft or that I had approved the same. It is wrong to suggest that I was aware of the fixation of 25.09.2007 as the date up to which applications received would be processed and that my subsequent protestations are false.

I have been shown my note dated 05.11.2007, already Ex PW 36/B-9. It is correct that the cut-off date for receipt of applications remained 01.10.2007, but the applications were to be processed, which were received up to 25.09.2007....."

536. Sh. D. S. Mathur conceded that Sh. A. Raja had expressed his desire to issue LOIs to all 575 applicants. However, Sh. D. S. Mathur was not satisfied both ways, that is, if LOIs/ licences were issued to all 575 applicants and at the same time he was also not satisfied, if LOIs/ licences were issued to lesser number of applicants, that is, 232 received upto 25.09.2007. There is no material on record to show that Sh. D. S. Mathur was suggesting a different and better way of processing of applications. It would not be wrong to say that he was just obstructing the processing of applications. Not only this, he conceded that Sh. A. Raja had verbally expressed his desire to issue LOIs to all applicants who had applied upto 01.10.2007. However, this is contrary to his earlier deposition dated 18.04.2012, page 13, wherein he deposed as under:

".....I do not know if the then MOC&IT wanted to

issue LOIs to all 575 applicants. I do not remember if I told the IO that the then MOC&IT wanted to issue LOIs to all 575 applicants. I have been shown my statement to the IO, already Ex PW 36/DO, wherein at page 2 at line 2, between points X to X, it is mentioned that I stated so to the IO. It is wrong to suggest that I knew this point and wanted to be evasive in the Court. I do not know if the motive of the then MOC&IT was to increase competition by issuing LOIs to all the applicants. I did not discuss the logic of this with the Minister....."

537. Not only this, PW 36 Sh. D. S. Mathur in his cross-examination dated 19.04.2012, page 1, deposed as under:

".....I met the then Minister, MOC&IT, Sh. A. Raja and drew his attention to NTP-1999 particularly with reference to para 3.1.1 of the policy, which pertains to availability of spectrum for grant of new licences. This was brought by me to the notice of the Minister when he expressed his desire to grant new licences to all 575 applicants....."

538. Thus, Sh. D. S. Mathur kept changing his deposition everyday, as referred to above. On three dates, that is, on 18.04.2012, 19.04.2012 and 24.04.2012, he changed his version as to what was told to him by Sh. A. Raja. In view of the aforesaid detailed discussion, it is clear that the deposition of Sh. D. S. Mathur is contrary to record and also lacks assertiveness. No reliance can be placed on his deposition. His testimony also deserves to be discarded in its entirety.

539. Thus, the four senior officers of the department, deposed not only in different and contradictory tone but contrary to record also. There is no material on record in the

testimony of these four witnesses that the date of 25.09.2007 was arrived at by Sh. A. Raja alone and that too as a result of conspiracy with other accused.

540. It is also useful to take a look on the deposition of Sh. A. Raja about the receipt of applications for Unitech, date of 25.09.2007 and the three drafts.

DW 1 Sh. A. Raja in his cross-examination dated 17.07.2014, pages 2 and 3, deposed about the drafts and cut-off date as under:

> ".....It is correct that the file was received from the Ministry of Law and Justice on 02.11.2007 with its observations and the cut-off date of 25.09.2007 was decided on the same date in the department. **Volunteered**: This date of 25.09.2007 is meant for processing the applications and the same was intimated to the Hon'ble Prime Minister on 02.11.2007 itself.
>
> No discussion took place either with the Law Minister or with the Hon'ble Prime Minister for deciding the date of 25.09.2007 as that was not necessary, but it was discussed in the Ministry in the context of policy documents and availability of spectrum. I do not remember if I met the SG on 02.11.2007 for deciding the date of 25.09.2007, but the entire file was sent to him later on for his approval, where this date is available in the file notings.
>
> The first draft prepared in the DoT of a reference to be sent to the Ministry of Law and Justice is Ex PW 36/B-1. However, I was shown another draft, Ex PW 36/B-3, with which the earlier draft was also available in the file. I modified draft Ex PW 36/B-3 and approved it. It is wrong to suggest that draft Ex PW 36/B-3 was not prepared in the DoT. I do not know if the preparation of this draft is reflected in the note sheets of department or

not. However, modification of this draft and its approval by me is reflected in this file. **Volunteered**: Had it been prepared by me on my own, no modification would have been necessary therein, as has been done by me personally in the draft Ex PW 36/B-3.

It is wrong to suggest that this draft was inserted in the DoT file by me on my own and later on showed the same corrected and approved. It is wrong to suggest that this was done by me as alternative II mentioned in this draft was not the idea initiated by the department, as mentioned in draft Ex PW 36/B-1. It is wrong to suggest that on receipt of the file from Ministry of Law and Justice on 02.11.2007, I decided the cut-off date of 25.09.2007 as the same matches with alternative II as mentioned in Ex PW 36/B-3.

Ques: I put it to you that the idea of having cut-off date of 25.09.2007 was existing in your mind from before, even before the date of receipt of file from Ministry of Law and Justice?

Ans: Initially, I was of the opinion that all 575 applications could be disposed of, since there was no bar. However, as per the noting of Secretary (T), where he says that disposing of all 575 applications may not stand scrutiny of NTP-1999, the decision was taken to have this cut-off date in the department, as also indicated by the Secretary (T) in the file and therefore, the suggestion is incorrect and contrary to the record....."

DW 1 Sh. A. Raja in his further cross-examination dated 22.07.2014, page 3, deposed as under:

".....It is wrong to suggest that my above answer is wrong as 5/C was my own creation....."

541. Thus, in his deposition Sh. A. Raja deposed that the date of 25.09.2007 was decided in the department and the

same was communicated to Hon'ble Prime Minister also on the same day. He also denied that he had placed draft, Ex PW 36/B-3 (5/c), on the file. He also deposed that he was of the opinion that all 575 applications could be disposed of since there was no bar, but he did not do so in view of the objection of Sh. D. S. Mathur. His deposition matches with the official record as narrated above. Very interestingly, the prosecution is very forthright in suggesting to Sh. A. Raja that draft, Ex PW 36/B-3, was inserted by him in the file. However, it was silent or highly guarded on this point when examining its own witnesses, namely, Sh. Nitin Jain, Sh. A. K. Srivastava, Sh. K. Sridhara and Sh. D. S. Mathur.

542. Not only this, PW 60 Sh. A. K. Srivastava in his letter dated 06.10.2010, page 343, DoT file Ex PW 60/DC (Additional Document No. 5, Vol. VIII), had justified the fixing of cut-off date of 25.09.2007 due to limited availability of spectrum, as under:

> "..... ....**iii) Justification for the decision of processing of application received upto 25.09.2007 initially for grant of UAS Licences.**
> Department of Telecom has been implementing the First-Come-First-Served (FCFS) policy for grant of UAS licences since 2003 as explained above. Although UAS licences were issued on FCFS basis since 2003 on continuous basis, the applications were kept pending for want of likely availability of GSM spectrum in the concerned service areas. It can be ascertained that application received in certain service areas from March, 2004 to March, 2006 were granted licences in December, 2006 and even

one UAS licence was granted with effective date of March 2007 in respect of application received in December, 2004. The UAS licences granted in December, 2006 had been awaiting allocation of spectrum which could be allocated only in 2008.

As such, when the large number of applications were received in the department as a result of TRAI recommendations of 2007 on "No Capping", which the department accepted, the issue of grant of UAS licences was discussed in the absence of likely availability of spectrum to enable grant of UAS licences to all the applicants. The then Secretary, DoT observed on 25.10.2007 in the file that "Opinion of Solicitor General may be obtained as per the draft approved by MCIT. However, the attention of MCIT may be drawn to NTP 99, para 3.1.1" (*which inter alia states that availability of adequate frequency spectrum is essential not only for providing additional bandwidth to every operator but also for entry of additional operators*). "The policy has stipulated that availability of adequate frequency spectrum is essential for entry of additional operators. Hence, the options to issue LOIs/licences to all 575 applicants do not stand in the light of this provision. NTP 99 was approved by the Union Cabinet and only the Cabinet can effect a change in the Policy".

Therefore, the existing policy of grant of UAS licences on FCFS was to be followed keeping in view the likely availability of spectrum. Accordingly, an internal exercise was made by WPC wing of DoT on likely availability of spectrum. After taking into consideration the likely availability, it was decided that LOIs may be issued to all those applicants who applied upto 25.09.2007. Accordingly, 232 applications received upto and including 25.09.2007 were taken up for consideration. The remaining 343 applications received between 26.09.2007 and the

cut-off date of receiving applications i.e. 01.10.2007 are still pending consideration by the department and have not been processed till date."

543. Perusal of this note reveals that DoT was trying to reconcile, and perhaps rightly the "No cap" policy with the limited availability of spectrum. On the one hand, there was excessive demand for additional spectrum, as there were already six to nine operators in each service area, on the other hand, TRAI still recommended "No cap" policy. This recommendation appears to be contradictory and puzzling. If spectrum is limited, how can unlimited number of licences can be issued? "No cap" policy means as many licences as one wishes to grant. If availability of spectrum is to be taken into account, then naturally there is an indirect cap on the number of operators and all applications cannot be considered at one time. Recommendation of "No cap" policy in a sense conveys that some operators may roll out wireline services alone without waiting for spectrum. Such an indication is also found in TRAI Recommendations dated 28.08.2007, wherein the Authority in paragraph 2.55 recommended as under:

"Today the spectrum allocation follows grant of UAS License. On payment of certain entry fee, the applicant is given the license and subject to availability, he is given a certain amount of spectrum in the 2G band. In case the applicant does not require this spectrum for providing the access service, he may want to use only wire-line or may want to provide services using some other spectrum, e.g. BWA, there is no clear cut path for him. He is required to pay the full license entry fee. The Authority in the past has also recommended that the

license fee should be separate from the spectrum fee. With the advent of new technologies where spectrum other than 2G band will be used, resolution of this issue is becoming critical. As recommended earlier, the Authority again reiterates that spectrum should be de-linked from the licensing regime. There is also a need to clearly specify the license fee charges without spectrum. The Authority is of the view that license fee charges should be on a reduced scale to facilitate penetration of telecom services. Bifurcating present entry fee in to license fee and spectrum charge is difficult. It is also a fact that entry fee determined in 2001 does not bear any relationship to present spurt in the telecom market. Keeping in mind that spectrum is a scarce resource, **the Authority recommends that the DoT should examine the issue early and specify appropriate licence fee for UAS licensees who do not wish to utilize the spectrum**."

544. Thus, "No cap" policy can work only on the premise that some licensees would not need spectrum or at least they may not need the spectrum, which is scarce one. The TRAI always knew that number of service providers would always be limited due to limited availability of spectrum and that is why in paragraph 5.4 of TRAI Recommendations dated 27.10.2003, it observed as under:

> ".....The restriction on the number of CMSPs by licensor due to limitations of availability of spectrum at a particular time should not be claimed as a contractual right."

545. In the end, all applications which had piled up, either due to inefficiency of the DoT or the stopping of processing of applications awaiting TRAI Recommendations, on

the advice of Sh. D. S. Mathur, vide his note dated 18.05.2007, Ex PW 60/J-48 (D-44), could not have been processed in one go or could have been processed only on the premise that everybody would not need spectrum.

546. The conclusion from the above discussion is that there is no material on record to show that the date of 25.09.2007 was fixed unilaterally, arbitrarily and without due deliberation by Sh. A. Raja in conspiracy with the accused companies. Thus, the prosecution has failed to prove its case that cut-off date of 25.09.2007 is the result of any conspiracy.

Assessment of Availability of Spectrum

547. It is the case of the prosecution that date of 25.09.2007 was fixed by Sh. A. Raja in conspiracy with other accused persons to brighten their prospects in the matter of allocation of spectrum, without assessing the availability of spectrum service area wise. It is the case of the prosecution that despite the letter of Hon'ble Prime Minister dated 02.11.2007, Ex PW 82/C, impressing upon Sh. A. Raja the need for processing of large number of applications for fresh licences in a transparent manner against the backdrop of inadequate spectrum to cater to overall demand, no assessment of spectrum was carried out. It is the case of the prosecution that before deciding the cut-off date of 25.09.2007, no assessment of spectrum, service area wise, was carried out. It is further the case of the prosecution that as per NTP-99, UAS licences are to be granted keeping in view the availability of spectrum. It is

further its case that mobile services are the order of the day, for the operation of which spectrum is a condition precedent and in such a situation UAS licences ought not to have been granted without considering the availability of spectrum. It has been repeatedly emphasized by the learned Spl. PP, by reading vertiginous mass of documents, including NTP-99, deposition of witnesses and other DoT files, that no assessment of spectrum was carried out in the instant case and this was done with mala fide intention to accommodate the two accused companies, that is, STPL and Unitech group of companies. The objection of Sh. D. S. Mathur vide note dated 25.10.2007, Ex PW 36/B-6, pointing out paragraph 3.1.1 of NTP 1999 regarding assessment of availability of spectrum before grant of licences has been referred to. This has been done to emphasize that assessment of availability of spectrum was essential before issuing LOIs to applicants who had filed applications upto 25.09.2007.

548. On the other hand, the case of the defence is that paragraph 3.1.1 of NTP 1999 was applicable to a CMSP licence, which has since been replaced by a UAS licence and such a licensee may or may not need spectrum. It is the case of the defence that paragraph 3.1.1 is not applicable to a UAS licensee as the then existing licencing regime has been replaced by UAS licencing regime. Hence, the rigour of availability of spectrum is not applicable to a UAS licensee. Even otherwise, the defence argued in great detail by referring to mass of documents and deposition of witnesses that assessment of spectrum was duly carried out and likely coordination of spectrum by Defence

services was also taken into account. It is repeatedly submitted that even if there was some shortage of spectrum, it was likely to be made up in the very near future on coordination of spectrum by Defence. It is also their case that there was precedent also of DoT granting UAS licences without availability of spectrum as a UAS licensee can always commission wireline/ fixed line services awaiting allocation of spectrum. It is the case of the defence that a detailed assessment of availability of spectrum was carried out before issuing licences in 2007-08, but it was also kept in mind that some licensees either may not need spectrum or may roll out wireline services awaiting allocation of spectrum.

Allocated 2G Spectrum for Mobile Services

549. It may be noted that 25 MHz+25 MHz of spectrum in 890-915/935-960 band and 75 MHz+75 MHz in 1710-1785/1805-1880 band has been allocated for 2G services. This is clear from a letter dated 24.12.2002, page 1 (CD-14, Ex PW 131/D), which DoT had written to TRAI seeking recommendations for introduction of additional operators, that is, 5th and 6th operators, for CMTS, in which it had also referred to the availability of 2G spectrum in paragraphs 2 and 2.1, which read as under:

> "**2**. For Cellular Mobile Telephone Service, GSM technology was prescribed in India in the beginning. Even though, subsequently, licenses were made technology – neutral and additional licenses were granted accordingly, however, the operators, old as well as new, have continued with the GSM

technology.

> 2.1 National Frequency Allocation Plan – 2002 (NFAP – 2002) has allocated frequency bands of 890-915/935-960 (25 + 25) MHz and 1710-1785/1805-1880 (75 + 75) MHz for Cellular Mobile Telephone Services. Most of the spectrum in the latter frequency band is under Government usage; it has been felt that this spectrum is not being efficiently utilized. It is expected that sufficient spectrum out of this will become available for providing commercial services for public. Therefore, additional operators can be granted Licenses."

This letter shows that only 100 MHz spectrum has been allocated for cellular mobile services in the two bands.

550. As per file CD-7 also, Ex PW 73/DB, a committee was constituted on 18.01.2003 on efficient use of spectrum. The committee gave its report, extracts of which were noted in note dated 08.08.2003, recorded by Sh. R. J. S. Kushvaha, Deputy Wireless Advisor (T), which were approved by the then Minister on 18.03.2003. Para 2.2 of the same reads as under:

> "In order to meet the further growth of services, requirement of additional spectrum can be met only when existing networks in 1800 MHz are re-located, which would facilitate release of substantial portion of band or the entire 75 + 75 MHz band in the long run. The time frame for such a coordination/ re-location is about 3-4 years and might require considerable compensation/ budgetary support."

This note indicates that future requirement of spectrum for 2G services was to be met only from 75 MHz+75 MHz allocated in 1800 band, which was likely to be vacated in

3-4 years. It may be noted that this note was recorded on 18.03.2003 and the period of 3-4 years matches up, roughly upto 2007-08, the years in which controversy relating to issue of 122 licences erupted.

Introduction of UAS Licencing Regime and its Impact on Assessment of Spectrum

551. The first question is: Whether paragraph 3.1.1 of NTP 1999 is strictly applicable to a UAS licensee?

NTP-99 initially envisaged Cellular Mobile Service Providers (CMSP) and Fixed Service Providers, that is, Basic Services. However, when Government of India accepted TRAI Recommendations dated 27.10.2003, on introduction of unified access licencing regime, the scope of NTP 1999, Ex PW 11/DA, was enhanced. The TRAI Recommendations on unified access licencing regime were accepted by the Government of India vide Cabinet decision dated 31.10.2003, Ex PW 11/DB (D-591, page 371). Accordingly, Addendum dated 11.11.2003, Ex PW 11/DD was issued. Consequent to this two new categories of licence for access services, viz. Unified Licence for all telecom services and Unified Access Service Licence for basic and cellular services were created, which can provide both wireline and/or wireless services. Now the question is: Whether the utmost rigour of NTP-99 as contained in para 3.1.1 for issue of a CMSP licence was applicable to a UAS licensee?

552. It is instructive to take note of relevant parts of NTP-1999, Cabinet Note dated 31.10.2003, vide which UAS licencing

regime was introduced and scope of NTP-99 was enhanced.

The relevant parts of NTP-99, Ex PW 11/DA, read as under:

> "3.1 Access Providers
> *3.1.1 Cellular Mobile Service Providers*
> The Cellular Mobile Service Providers (CMSP) shall be permitted to provide mobile telephony services including permission to carry its own long distance traffic within their service area without seeking an additional licence. Direct interconnectivity between licenced CMSP's and any other type of service provider (including another CMSP) in there are of operation including sharing of infrastructure with any other type of service provider shall be permitted. Interconnectivity between service providers in different service areas shall be reviewed in consultation with TRAI and the same would be announced by August 15, 1999 as a pert of the structure for opening up national long distance. The CMSP shall be allowed to directly interconnect with the VSNL after opening of national long distance from January 1, 2000. The CMSP shall be free to provide, in its service area of operation, all types of mobile services including voice and non-voice messages, data services and PCOs utilizing any type of network equipment, including circuit and/or packet switches, that meet the relevant International Telecommunication Union (ITU)/ Telecommunication Engineering Center (TEC) standards.
>
> CMSP would be granted separate licence, for each service area. Licences would be awarded for an initial period of twenty years and would be extendible by additional periods of ten years thereafter. For this purpose, service areas would be categorized into the four metro circles and Telecom circles as per the existing policy. CMSP would be eligible to obtain licences for any number of service

areas.

Availability of adequate frequency spectrum is essential not only for providing optimal bandwidth to every operator but also for entry of additional operators. Based on the immediately available frequency spectrum band, apart from the two private operators already licenced, DOT/MTNL would be licenced to be the third operator in each service area in case they want to enter, in a time bound manner. On order ensure level playing field between different service providers in similar situations, licence fee would be payable by DoT also. However, as DoT is the national service provider having immense rural and social obligations, the Government will reimburse full licence fee to the DoT.

It is proposed to review the spectrum utilisation from time to time keeping in view the emerging scenario of spectrum availability, optimal use of spectrum, requirements of market, competition and other interest of public. The entry of more operators in a service area shall be based on the recommendation of the TRAI who will review this as required and no later than every two years.

CMSP operators would be required to pay a one time entry fee. The basis for determining the entry fee and the basis for selection of additional operators would be recommended by the TRAI. Apart from the one time entry fee, CMSP operators would also be required to pay licence fee based on a revenue share. It is proposed that the appropriate level of entry fee and percentage of revenue share arrangement for different service areas would be recommended by TRAI in a time-bound manner, keeping in view the objectives of the New Telecom Policy.

553. Thus, for entry of a Cellular Mobile Service Provider (CMSP), availability of adequate frequency spectrum was

essential. Not only this, the entry of additional operator in a service area was to be based on TRAI Recommendations in the light of review of spectrum utilization. In a sense, entry of a CMSP was not free, as it was subject to availability of spectrum.

> "3.1.2 Fixed Service Providers
>
> The Fixed Service Providers (FSP) shall be freely permitted to establish 'last mile' linkages to provide fixed services and carry long distance traffic within their service area without seeking an additional licence. Direct interconnectivity between FSP's and any other type of service provider (including another FSP) in their area of operation and sharing of infrastructure with any other type of service provider shall be permitted. Interconnectivity between service providers in different service areas shall be reviewed in consultation with TRAI and the same would be announced by August 15, 1999 as a part of the structure for opening up of national long distance. The FSP shall be allowed to directly interconnect with the VSNL after the opening up of national long distance from January 1, 2000. The FSP may also utilize last mile linkages or transmission links within its service area made available by other service providers. The FSP shall be free to provide, in his service area of operation, all types of fixed services including voice and non-voice messages and data services, utilizing any type of network equipment, including circuit and/or packet switches, that meet the relevant International Telecommunication Union (ITU)/Telecommunication Engineering Center (TEC) standards.
>
> The FSP shall be granted separate licence, on a non-exclusive basis, for each service area of operation. Licences would be awarded for an initial period of twenty years which shall be extended by additional

periods of ten years thereafter. The FSPs shall be eligible to obtain licences for any number of service areas.

While market forces will ultimately determine the number of fixed service providers, during transition, number of entrants have to be carefully decided to eliminate non-serious players and allow new entrants to establish themselves. Therefore, the option of entry of multiple operators for a period of five years for the service areas where no licences have been issued is adopted. The number of players and their mode of selection will be recommended by TRAI in a time-bound manner.

The FSP licences would be required to pay a onetime entry fee. All FSP licencees shall pay licence fee in the form of a revenue share. It is proposed that the appropriate level of entry fee and percentage of revenue share and basis for selection of new operators for different service areas of operation would be recommended by TRAI in a time-bound manner, keeping in view the objectives of the New Telecom Policy.

As in the case for cellular, for WLL also, availability of appropriate frequency spectrum as required is essential not only for providing optimal bandwidth to every operator but also for entry of additional operators. It is proposed to review the spectrum utilisation from time to time keeping in view the emerging scenario of spectrum availability, optimal use of spectrum, requirements of market, competition and other interest of public.

The WLL frequency shall be awarded to the FSPs requiring the same, based on the payment of an additional one time fee over and above the FSP entry fee. The basis for determining the entry fee and the basis for assigning WLL frequency shall be

recommended by the TRAI. All FSP operators utilizing WLL shall pay a licence fee in the form of a revenue share for spectrum utilization. This percentage of revenue share shall be over and above the percentage payable for the FSP licence. It is proposed that the appropriate level of entry fee and percentage of revenue share for WLL for different service areas of operation will be recommended by TRAI in a time-bound manner, keeping in view the objectives of the New Telecom Policy.

.....

....."

554. Thus, entry of Fixed Service Providers was free and their number in a service area was ultimately to be determined by market forces. The entry of fixed service providers was not saddled by the availability of spectrum. However, for WLL services, frequency assignment was necessary and the basis of assignment of WLL frequency was to be recommended by TRAI.

The relevant parts of Cabinet note dated 31.10.2003, Ex PW 11/DB, read as under:

"....

....

2.4 4th Term of Reference :- To chart the course to a Universal Licence.

2.4.1 The GoM took note of the exercise that had already been initiated by Telecom Regulatory Authority of India (TRAI) in regard to Unified Licensing Regime in the Telecom Sector, Chairman, TRAI, and Chairman, HDFC, who were specifically invited, made presentation before the GoM.

2.4.2 TRAI submitted its recommendations to the Government on this matter on 27.10.2003. TRAI has recommended that the present system of licensing in the Telecom Sector should be replaced by Unified Licensing/ Automatic Authorization

Regime. The Unified Licensing/ Automatic Authorization Regime has been recommended to be achieved in a two-stage process with the Unified Access Regime for basic and cellular services in the first phase to be implemented immediately. This is to be followed by a process of consultation to define the guidelines and rules for achieving a fully Unified Licensing/ Authorization Regime. TRAI has recommended that it will enter into a consultation process so that the replacement of the existing licensing regime by a Unified Licensing Regime gets initiated within 6 months. Broad rationale, key recommendations and some key policy issues that have been addressed by TRAI are listed in the **Annexure-IV (Page 19-21)**.

2.4.3 The salient points of TRAI recommendations in regard to the Unified Access Licensing (basic and cellular mobile) are as under:

(i) Unification of licenses to be done in two stages.

(a) Unified access regime for basic and cellular services in the first phase immediately.

(b) Unified authorization regime encompassing all telecom services in the second phase.

(ii) Fee paid by fourth cellular operator to be benchmark for migration of basic players to the new access regime.

(iii) Cellular operators not to pay any entry fee for migration to the unified access regime while basic operators to pay the difference between fourth cellular operators licence fee and the BSO fee already paid by them.

(iv) Reliance Infocomm required to pay Rs. 1096 crores for migration in addition to penalty of Rs. 485 crores for offering cellular type services.

(v) Process of migration to the new regime to be voluntary.

(vi) The existing BSOs after migration to Unified Access Licensing Regime may offer full mobility, however, WLL (M) operators after migration will be

required to offer limited mobility service for such customers who so desire.

(vii) No additional fee to be paid for any of the circles where there is no fourth cellular operator.

2.4.4 Enhancing the scope of current Telecom Policy (NTP-99) to provide category of Unified License and Unified Access Service License

NTP-99 recognises access service providers as a distinct class. For the purpose of licensing, this has been sub-divided into cellular, fixed and cable service providers. NTP-99 also states that convergence of both markets and technologies is a reality that is forcing realignment of the industry. This convergence now allows operators to use their facilities to deliver some services reserved for other operators necessitating a re-look at NTP-94 policy framework.

For bringing into effect the regime of Unified Access Service for basic and cellular service licenses and Unified Licensing comprising all telecom services, it would be necessary to enhance the scope of NTP-99 to include these as distinct categories of licenses as part of NTP-99.

2.4.5 TRAI recommendations on entry fee for WLL (M) based on TDSAT judgement:

TRAI has also submitted its recommendations in regard to additional entry fee payable by basic service operators for providing WLL (M) service on which Government had sought its recommendations based on the judgment of TDSY dated 8/8/03 in the WLL (M) case. TRAI has given detailed reasoning on this matter and has recommended additional entry fee for such of the Basic Service Operators who provide WLL (M) service. The salient features are in **Annexure-V (Page 22)**.

2.4.6 Based on the above, the GoM has recommended the following course of action :

(i) The scope of NTP-99 may be enhanced to provide for licensing of Unified Access Service for basic and cellular license services and Unified

Licensing comprising all telecom services. Department of Telecommunications may be authorized to issue addendum to NTP-99 to this effect.

(ii) The recommendations of TRAI with regard to implementation of the Unified Access Licensing Regime for basic and cellular services may be accepted.

DoT may be authorized to finalise the details of implementation with the approval of the Minister of Communications & IT in this regard including the calculation of the entry fee depending upon the date of payment based on the principles given by TRAI in its recommendations.

(iii) The recommendations of TRAI in regard to the course of action to be adopted subsequently in regard to the implementation of the fully Unified License/ Authorization Regime may be approved.

DoT may be authorized to finalise the details of implementation with the approval of the Minister of Communications & IT on receipt of recommendations of TRAI on this behalf.

(iv) The recommendations of TRAI in regard to additional entry fee payable by basic service operators for providing WLL (M) service on which Government sought its recommendations based on the judgment of TDSAT dated 8/8/03 in the WLL (M) case may be accepted.

(v) While there appears to be no case for giving any compensation package to them, because of the perception that the finances of the cellular operators are strained and because of the effects these may have on financial institutions, Finance Ministry would address the difficulties of the cellular operators, if any, separately and appropriately.

(vi) If new services are introduced as a result of technological advancements, which require additional spectrum over and above the spectrum already allotted/ contracted, allocation of such spectrum will be considered on payment of

additional fee or charges; these will be determined as per guidelines to be evolved in consultation with TRAI.

.....

....."

555. In view of this Cabinet Note, the scope of NTP-99 was enhanced and an addendum dated 11.11.2003, Ex PW 11/DD was issued, which reads as under:

> **"SUB: Addendum to the New Telecom Policy – 1999 (NTP-99)**
>
> Given the central aim of NTP-99 to ensure rapid expansion of teledensity; given the unprecedented expansion of telecom services that competition has brought about; given the steep reductions in tariffs that competition has ensured; given the fact that advances in technologies erase distinctions imposed by earlier licensing systems; given the fact that even more rapid advances in technologies are imminent; given the steep reduction in costs of providing telecom services; given the rapid convergence of tariffs for wireless services; given the fact that the provision of such services at the cheapest possible rates and by the most reliable mode is the sine qua non for India to consolidate its position as a leading hub of Communications systems, Information Technology, IT enabled services, and of establishing itself as a leader in new disciplines such as bioinformatics and biotechnology; given the recommendations of TRAI in this regard; Government, in the public interest in general and consumer interest in particular and for the proper conduct of telegraphs and telecommunications services, has decided that there shall also be the following categories of licences for telecommunication services:

(i) Unified Licence for Telecommunication Services permitting Licensee to provide all telecommunication/ telegraph services covering various geographical areas using any technology;

(ii) Licence for Unified Access (Basic and Cellular) Services permitting Licensee to provide Basic and /or Cellular Services using any technology in a defined service area."

Thus, the then existing licensing regime for access services, in which there were three categories of access service providers, that is, CMSP, Fixed Service Providers and Cable Service Providers, was replaced by a unified access licensing regime.

556. In the consultation paper, Ex PW 131/B-1 (CD-11), on "Unified Licensing for Basic and Mobile services", issued in 2003, while commenting upon consolidation in the telecom service sector, Chapter 4, para 4.4 (page 34), it was observed by TRAI as under:

"Under the unified licensing regime, with the emergence of a single entity for basic and mobile service providers, the definition of the market will get widened to include both these services. Also, in the unified licensing regime based on present Licensees, there could be up to seven eight service providers offering both Basic and Mobile Services in any service area; the number could be higher given that basic service has open competition without any restriction on the number of operators. The detailed guidelines for Merger and Acquisition would have to be prepared for examining the Merger and Acquisition proposals under unified licensing regime."

557. It may be noted that this paragraph indicates that there was free and open competition in the basic services and that a UAS licensee can offer both fixed and mobile services. This paragraph also indicates that based on the then existing licences, there could be seven-eight service providers in a service area. It also notes that the number could be higher as the basic services had open competition.

558. It is important to take note of paragraphs 7.8 and 7.35 of TRAI Recommendations dated 27.10.2003, which read as under:

> Para 7.8:
>
> "In the Unified Access Licensing Regime, the service providers may offer basic and/ or cellular services using any technology. Existing BSOs may offer full mobility in the circle under the Unified Access Licensing Regime. Existing CMSPs could offer limited mobility facility at appropriate tariffs through concepts such as home zone operations, etc. For migration BSOs, they would be required to continue the limited mobility service for such class of consumers, who so desire."
>
> Para 7.35:
>
> "The technology neutral stance of the present licencing policy shall continue. Service Providers shall also be free to use any media (e.g. telephone wire, telegraph wire, TV cable, electricity wire, wireless) to provide telecom services."

Perusal of the two paragraphs reveals that the UAS licensees were free to provide basic services or cellular services or both.

559. Paragraph 7.37 of TRAI Recommendations dated 27.10.2003 reads as under:

> "On the issue of introducing more competition, the TRAI has always been in favour of open and healthy competition. In its recommendations on the introduction of the 5th and 6th Cellular Mobile license, the TRAI opined that
>
> > "Induction of additional mobile service providers in various service areas can be considered if there is adequate availability of spectrum for the existing service providers as well as for the new players, if permitted."
>
> Taking cognisance of spectrum availability, the TRAI is in favour of introducing more competition. However, we feel that it in lieu of more cellular operators, it would be more appropriate to have competition in a Unified Licensing framework which will be initiated after six months."

560. Perusal of the paragraph reveals that this Recommendation is applicable to CMSP operators only and not to UAS licensees, which were to come into effect in future on TRAI Recommendations dated 27.10.2003, being accepted by the government. This paragraph is being read out of context by the prosecution to argue that this was applicable to UAS licensees also.

561. With the acceptance of TRAI Recommendations by the Cabinet on 31.10.2003, scope of NTP 1999 was enhanced by issuing an Addendum and Guidelines for UAS licence were also to be issued and for that note dated 10.11.2003, 23/N (D-591) was recorded by Sh. A. S. Verma, Director (VAS-III), which

was approved by the then MOC&IT on 11.11.2003, relevant part of which reads as under:

> "..... .....
>
> 2. The GoM took note of the exercise that had already been initiated by Telecom Regulatory Authority of India (TRAI) in regard to Unified Licensing Regime in the Telecom Sector. TRAI submitted its recommendations to the Government on this matter on 27.10.2003. TRAI recommended that the present system of licensing in the Telecom Sector should be replaced by Unified Licensing/Automatic Authorization Regime. The Unified Licensing/Automatic Authorization Regime has been recommended to be achieved in a two-stage process with the Unified Access Regime for basic and cellular services in the first phase to be implemented immediately. This is to be followed by a process of consultation to define the guidelines and rules for achieving a fully Unified Licensing/Authorization Regime. TRAI had recommended that it will enter into a consultation process so that the replacement of the existing licensing regime by a Unified Licensing Regime gets initiated within 6 months.
>
> 3. The recommendations of TRAI on the above issue were accepted by the GoM in toto and were, inter-alia, included for the Cabinet Note of DoT dated 31.10.2003 submitted for consideration of the Cabinet. The Cabinet has also approved the recommendations of GoM, thereby the recommendations of TRAI.
>
> 4. As such, the Cabinet has approved the following course of action:-
> Unification of licenses to be done in two stages.
> (a) Unified access regime for basic and cellular services in the first phase immediately;

(b) Unified authorization regime encompassing all telecom service in the second phase.

4.1 Accordingly, the draft guidelines for Unified Access (Basic & Cellular) Services licence have been worked out. This licence will be named as Unified Access Services Licence.

5. It was also noted that NTP-99 recognises access service providers as a distinct class. For the purpose of licensing, this has been sub-divided into cellular, fixed and cable service providers.

For bringing into effect the regime of Unified Access Service for basic and cellular service licenses and Unified Licensing comprising all telecom services, it would be necessary to enhance the scope of NTP-99 to include these as distinct categories of licenses as part of NTP-99.

5.1 Accordingly, enhancing the scope of New Telecom Policy (NTP-99) to provide categories of Unified License for Telecom Services and Unified Access Services License, was also approved by the Cabinet.

.....

....."

562. This is indicative of the fact that CMSP licence and fixed service licence recognized by NTP 1999 stood replaced by a new licence, named UAS licence. The condition recognized for an old licence cannot automatically be read to be a condition for issue of a new licence also. The condition for a cellular licence issued before 11.11.2003 was that availability of spectrum was a must. However, a fixed line service did not require any spectrum except for providing WLL service. When these two licences were unified into a new licence, this condition of availability of spectrum cannot be read automatically, in strict

sense, as a condition for a new licence, that is, UAS licence also.

563. The following paragraphs of TRAI Recommendations dated 28.08.2007, Ex PW 2/DD, would make it clear:

> "2.55 Today the spectrum allocation follows grant of UAS License. On payment of certain entry fee, the applicant is given the license and subject to availability, he is given a certain amount of spectrum in the 2G band. In case the applicant does not require this spectrum for providing the access service, he may want to use only wire-line or may want to provide services using some other spectrum, e.g. BWA, there is no clear cut path for him. He is required to pay the full license entry fee. The Authority in the past has also recommended that the license fee should be separate from the spectrum fee. With the advent of new technologies where spectrum other than 2G band will be used, resolution of this issue is becoming critical. As recommended earlier, the Authority again reiterates that spectrum should be de-linked from the licensing regime. There is also a need to clearly specify the license fee charges without spectrum. The Authority is of the view that license fee charges should be on a reduced scale to facilitate penetration of telecom services. Bifurcating present entry fee in to license fee and spectrum charge is difficult. It is also a fact that entry fee determined in 2001 does not bear any relationship to present spurt in the telecom market. Keeping in mind that spectrum is a scarce resource, **the Authority recommends that the DoT should examine the issue early and specify appropriate license fee for UAS licensees who do not wish to utilize the spectrum**."
>
> 4.4 Since November, 2003, after the introduction of Unified Access Service License (UASL) regime both wire-line and wireless services can be offered by UAS licensee. However, it is important to recall the evolution of technology and licenses for an objective

evaluation of the Department's intent/objective and also the burden of legacy. Indian telecom sector had the facility of wire-line, i.e. basic telephony as the singular means of service. The services were offered by the Department of Telecom and Mahanagar Telephone Nigam Limited (MTNL), a public sector unit therefore no separate license was issued. In 1994-95 the telecom sector was opened up for cellular mobile telephone services (CMTS). Also the sector was no longer restricted to Government monopoly and private licenses were awarded first in metros followed by other service areas. Around the same time MTNL experimented with CDMA technology which was operational in the 800 MHz band. This service was restricted to local loop, i.e. usage within specified and limited distance. The cellular mobile telecom service licenses were permitted first only in 900 MHz band. The initial CMTS license was amended by an order dated 01.10.1999 of DoT and the license was made technology neutral. Before the amendment, it was mandatory for the licensees to use the GSM technology."

564. It is also interesting to take note of paragraphs 5.22 and 5.23 relating to wireline services, which read as under:

"5.22 The determination of date for the purpose of roll out obligation is another critical and also contentious issue. Given the facts that the issue of license and allocation of spectrum is not co-terminus it is necessary that the period for roll out obligation is reckoned from the date of spectrum allocation. **The Authority elsewhere in these recommendations has recognized that the UAS licensees can start wire-line telecom services without the roll out obligation. Presently, the time for roll out is reckoned from the effective date of license. In the past there have been many cases where there was a huge time lag between**

the effective date of license and the date for allocation of initial spectrum. There have been delays in the past in the allocation of spectrum as it is subject to availability. As per clause. 23.5 of UAS licensing regime, based on usage, justification and availability, spectrum may be considered for assignment, on case by case basis. If the UAS licensee plans to provide mobile services then it would not be possible for him to start rolling out his network without spectrum. Therefore, without spectrum allocation, fulfillment of roll out obligation is not possible, if the date is reckoned from the effective date of license. Moreover, main growth is happening in the wireless segment and the growth in fixed services subscriber base is stagnant. Therefore, if spectrum is not allocated to the licensee who is interested in offering only wireless services then it would not be reasonable to expect from him to roll out using wire line network."

5.23 The Authority therefore recommends that for licencees interested in offering mobile services, the time for roll-out should be reckoned from the effective date of licence or date of spectrum allocation whichever is later……"

565. Thus, a bare perusal of these four paragraphs makes it clear that a UAS licensee is free to offer wireline services awaiting allocation of spectrum for mobile services. These Recommendations also note that a UAS licensee can start wireline services without incurring roll-out obligation. TRAI Recommendations, extracted above, when read with other material on record, make it clear that a UAS licensee can start wireline services alone awaiting allocation of spectrum, if it plans to provide mobile services also.

566. It is beneficial to take a look on the cross-examination dated 02.04.2012, page 8, of PW 35 Sh. T. Narasimhan, Deputy CEO of Sistema Shyam Teleservices, which reads as under:

> ".....For rolling out wireless services, wireless operating licence issued by WPC on first-come first-served basis is required. In the absence of wireless operating licence, a UAS Licence holder can only roll out wireline services....."

He further deposed on pages 13 and 14 as under:

> "......After getting UAS Licence, the licencee company can decide either to provide wireless services or wireline services. If a company, after obtaining UAS Licence, decides to provide only wireline services, it need not apply to the WPC wing for spectrum. Only if a licencee company decides to provide wireless services, then it need to apply from WPC wing for spectrum either of GSM or CDMA technology....."

567. A mere look on the evidence of PW 35 Sh. T. Narasimhan, Deputy CEO of Sistema Shyam Teleservices, reveals that a UAS licensee can roll out wireline services, as spectrum would be required only in case of mobile services.

568. Thus, it is on record that a UAS licensee can start wireline service alone and may await allocation of spectrum for rolling out services which require spectrum. The condition of 3.1.1 of NTP 1999 is thus not strictly applicable to a UAS licence, as it combines features of CMSP licence as well as fixed service licence. It may be noted that earlier separate licence agreements used to be signed with basic service operators and cellular mobile service providers. There were differences among

the two licence agreements in terms of entry fee, roll out obligations, spectrum allocation and its charges etc. These two licences have been merged into one with single licence and common terms and conditions. Thus, terms and conditions of an earlier licence cannot be read in toto in a new licence. Evidence recorded and discussed further would also substantiate this conclusion, though it is different matter that subsequently due to technological developments and falling prices of mobile services, mobile services became the order of the day leading to excessive demand on spectrum. PW 60 Sh. A. K. Srivastava also explained this in his note dated 26.10.2007, Ex PW 36/B-7.

569. It may also be noted that when Sh. D. S. Mathur raised objection regarding assessment of spectrum in the light of paragraph 3.1.1 of NTP 1999 vide his note, Ex PW 36/B-6, dated 25.10.2007, the whole issue was examined by the department and Sh. A. K. Srivastava recorded note dated 26.10.2007, Ex PW 36/B-7, pointing out that the scope of NTP 1999 had been enhanced and thereafter licences shall be issued without any restriction on number of entrants for provision of Unified Access Services in a service area. He also recorded that in view of the replacement of earlier licences by a Unified Access Service Licence, all options were open to the government. This also fortifies the point that rigour of paragraph 3.1.1 of NTP 1999 was not strictly applicable to a UAS licence. Thus, there need not be a mathematical precision and matching up in the availability of spectrum and grant of

licences.

Whether Availability of Spectrum was assessed?

570. Now the question is: Whether any assessment of availability of spectrum was carried out by DoT or not? Let me take note of the relevant documents and evidence in this regard.

571. The case of the prosecution is that before deciding the date of 25.09.2007, no assessment of spectrum service area wise was carried out. Let me find out if this submission of the prosecution is supported by any evidence.

572. The question of assessment of availability of spectrum before grant of UAS licences in 2007 arose on account of the note of Secretary (T) Sh. D. S. Mathur, dated 25.10.2007, Ex PW 36/B-6 (D-7), pages 2-3/N, which reads as under:

> "Opinion of Solicitor General may be obtained as per the draft approved by MCIT. However, the attention of MCIT may be drawn to NTP 99 para 3.1.1. The policy has stipulated that availability of adequate frequency spectrum is essential for entry of additional operators. Hence the options to issue LOIs/ licences to all 575 applicants do not stand in the light of this provision. NTP 99 was approved by the Union Cabinet and only the Cabinet can effect a change in the policy."

573. In response to the aforesaid note of Secretary (T) PW 36 Sh. D. S. Mathur, PW 60 Sh. A. K. Srivastava, DDG (AS), recorded the following note dated 26.10.2007, Ex PW 36/B-7 (D-7):

> "The statement of case for obtaining the opinion of Ld. Attorney General of India / Solicitor General of

India with modification as approved, is placed below at **6/c**. The same will be forwarded to Secretary Law for seeking opinion of Ld. Attorney General of India/Solicitor General of India.

2(a) The attention of Hon'ble MOC&IT is hereby drawn, as asked by Secretary (T) on page 2/N, on stipulations in para 3.1.1 of NTP 1999 relating to Cellular Mobile Service Providers as narrated below:

•Availability of adequate frequency spectrum is essential not only for providing optimal bandwidth to every operator but also for entry of additional operators.

•The entry of more operators in a service area shall be based on the recommendation of the TRAI who will review this as required and no later than every two years.

(b) NTP 99 has also stipulated licences for fixed service providers and inter alia stipulates that

•While market forces will ultimately determine the number of fixed service providers, during transition, number of entrants have to be carefully decided to eliminate non-serious players and allow new entrants to establish themselves.

•The number of players and their mode of selection will be recommended by TRAI in a time-bound manner.

(c) However, both the above categories of Access Service providers, namely, Cellular Mobile Service Providers and Fixed Service Providers were permitted to migrate to Unified licensing regime in November 2003 where they can provide both the services under one license called Unified Access Service License. The addendum to NTP 99 states the Government decision that now there shall be inter alia the following category of licenses for telecom service,

•Licence for Unified Access (Basic and Cellular)

Services permitting Licensee to provide Basic and /or Cellular Services using any technology in a defined service area.

(d) The guidelines for grant of Unified Access Service Licenses was announced by the Government on 11.11.2003 and subsequently amended guideline which is in force till date, was announced on 14.12.2005. The following stipulations in the UASL guidelines dated 14.12.2005 are worth mentioning.

•Licences shall be issued without any restriction on the number of entrants for provision of Unified Access Services in a Service Area.

•The access service includes but not limited to wireline and/ or wireless service including full mobility, limited mobility as defined in clause 12 (c) (i) and fixed wireless access.

•Initially a cumulative maximum of up to 4.4 MHz + 4.4 MHz shall be allocated in the case of TDMA based systems @ 200 KHz per carrier or 30 Khz per carrier or a maximum of 2.5 MHz + 2.5 MHz shall be allocated in the case of CDMA based systems @ 1.25 MHz per carrier, on case by case basis subject to availability.

(e) TRAI has also examined the issue whether there is a need to put limit on the number of Access Service providers in each service area. TRAI after due examination and consideration have stated as below in their recommendations on review of license terms and conditions and cap on number of Access Service providers received by DOT on 29.8.2007.

•The Authority has thus reviewed various arguments and counter arguments, evidences cited by the stakeholders representing conflicting viewpoints in this matter. The Authority has extensively surveyed the empirical evidences on its own, through published material and has carefully examined the sector experiences and the existing provisions of the license agreement governing access service

provision. The Authority has also examined the whole issue from the standpoint of the current and upcoming technological developments. Principles of competition and other vital economic criteria have also guided the Authority in understanding this crucial issue of entry regulation in the access service market. Separately, the Authority has examined issues relating to the utilization of spectrum keeping in view the emerging scenario of spectrum availability, optimum use of spectrum, requirements of market and competition in the market. It is noteworthy that these are the guiding principles that have been laid down in NTP, 1999. **(Para 2.35 of TRAI's Recommendation)**

•Having considered all the above aspects and considering the implications of having to suggest a framework covering other issues that have been referred by the Government; the Authority is not in favour of suggesting a cap on the number of access service providers in any service area. It is not advisable to exogenously fix the number of access service providers in a market which is in a dynamic setting. **(Para 2.36 of TRAI's Recommendation)**

•Accordingly, the Authority recommends that no cap be placed on the number of access service providers in any service area. **(Para 2.37 of TRAI's Recommendation)**

(f) In view of above, all the options for reference to Attorney General/ Solicitor General of India are open to the Government. If approved, the reference may be sent to Law Secretary for seeking opinion of Ld. Attorney General of India/ Solicitor General of India **(6/c)**.

Submitted for approval please."

574. What does this note indicate? The note indicates that the requirement of NTP about availability of spectrum was

a condition for a CMSP licence only and the entry of more operators/ CMSPs would be recommended by TRAI, who would review this every two years. However, NTP also stipulated fixed service providers (FSP), where entry was free and the number of FSPs was to be ultimately determined by market forces. However, the Addendum to NTP 1999 issued on 11.11.2003 replaced the two licences with a single licence called Unified Access Service (UAS) licence for access services and a UAS licensee could provide both basic and/or mobile service. UAS licences are to be issued without any restriction. It may be noted that this note was written in response to the note of Sh. D. S. Mathur wherein he had emphasized availability of spectrum before issuing licence. The gist of this note of Sh. A. K. Srivastava is that the condition of 3.1.1 of NTP 1999 does not strictly apply to a UAS licence and as such all options were open to the government.

575. PW 60 Sh. A. K. Srivastava in his examination-in-chief dated 31.07.2012, pages 3 and 4, deposed as to how two category of licences have been replaced by one, as under:

> ".....UAS licence means unified access service licence. These licences are permitted to operate both wireline and wireless services. It is granted to registered Indian companies on making of an application as per DoT guidelines dated 14.12.2005, which are the extant guidelines. When I re-joined DoT on being repatriated from TCIL, I was generally briefed by my junior officers about the prevailing policies and the changes which took place during my deputation to TCIL from 2002 to 2007. The main policy change which I noted was migration of basic and cellular operator to unified access service regime

and grant of UAS Licences as per guidelines of 14.12.2005. Before that, the guidelines applicable were of 11.11.2003 and before this period, the licences of access services were in two separate streams, that is, basic service and cellular mobile telephone service....."

576. It may be noted that it is not that the DoT or the Minister was completely oblivious to the requirement of availability of spectrum. The earliest note recorded in the case is dated 24.09.2007, Ex PW 36/E-1 (D-6), vide which cut-off date was proposed to be fixed by PW 60 Sh. A. K. Srivastava and in this note itself, inter-alia, it is recorded that:

".....It was also decided separately by Hon'ble MOC&IT that new UASL applications are to be processed only after receipt of TRAI recommendations and LOI is to be granted after receiving comments of WA on availability of spectrum....."

577. Thus, Sh. A. Raja was emphasizing from the earliest possible point of time that LOIs were to be issued after receiving the comments of Wireless Adviser on the availability of spectrum. Prosecution has examined several witnesses on this point. Let me take note of the evidence of the witnesses on the point as to whether availability of spectrum was assessed or not before fixing the cut-off date of 25.09.2007?

578. PW 57 Sh. R. J. S. Kushwaha remained posted as Joint Wireless Adviser from 31.05.2007 to 26.08.2008 in DoT.

He deposed in his examination-in-chief dated 12.07.2012, page 1, as under:

> ".....WPC wing is the nodal agency for spectrum management and radio regulatory functions. The cases of frequency assignment and grant of licences to various wireless users, which include among others, the government ministries and departments, public sector units and private sector is done by this wing. The requirement of spectrum by private sector is both for captive as well as public services. Captive services means the spectrum used by the private user for its own internal communications. However, the spectrum requirement by telecom service providers is considered after grant of service licence by DoT. Whenever a licence is granted to a private operator for providing public services, the type of services are governed by the service licence....."

The witness deposed that spectrum requirement is considered by WPC, which is nodal agency for spectrum, after grant of licence.

He has further deposed in his examination-in-chief on 16.07.2012, pages 2 to 4, about assessment of availability of spectrum, as under:

> ".....Spectrum is made available to the DoT in coordination with Ministry of Defence and this is continuous exercise. There is a unit in the Ministry of Defence known as Joint Communication and Electronic Staff (JCES) and WPC wing in DoT and these two units coordinate the availability of spectrum. The account of availability of spectrum is maintained in the WPC wing in close coordination with JCES. This is applicable to 1800 MHz band. The assessment of availability of spectrum is normally done before decision to grant service licences. To my knowledge, no such assessment was carried out during my aforesaid tenure.
>
> During my aforesaid tenure, there was one more post of Joint Wireless Advisor. This post was

held by Dr. Ashok Chandra and it was dealing with policy planning and the post was known as Joint Wireless Advisor (PP).

I have been shown DoT file D-75, already Ex PW 36/DR-12, pertaining to availability of spectrum in GSM 1800 MHz band. This file was maintained in the official course of business to assess the availability of spectrum in GSM 1800 MHz band as on 29.03.2007. The first note was put up by Sh. Dinesh Jha, Assistant Wireless Advisor (V), on 29.03.2007. I can identify his signature. His signature is at point C and the said note of Sh. Dinesh Jha is already Ex PW 36/DR-13. The file has been submitted to Deputy Wireless Advisor (V), that is, Sh. B. Gunashekhar. I identify his signature at point D. Then the file has been marked to the then Joint Wireless Advisor Dr. Ashok Chandra. I identify his signature at point E. The file was marked by him to the then Wireless Advisor Sh. P. K. Garg and I identify his signature at point F alongwith endorsement. He marked the file to the then Member (T) Sh. K. Sridhara and I identify his signature also at point G. Sh. K. Sridhara marked the file to the then Secretary (T) Sh. D. S. Mathur and finally to Minister, MOC&IT, Sh. Dayanidhi Maran. I identify signature of Sh. D. S. Mathur at point A and that of the Minister, MOC&IT, at point B. The chart in the file, running into five pages, and signed by Dr. Ashok Chandra at point A, speaks about the availability of spectrum as on 29.03.2007 service area wise. The chart is already Ex PW 36/DR-14.

I have been shown DoT file D-7 part II, already Ex PW 36/DK-18, pertaining to availability of spectrum in 1800 MHz band as on 02.11.2007. The note contained in this file was generated by Dr. Ashok Chandra, Joint Wireless Advisor (PP), in his official capacity on 02.11.2007 regarding the aforesaid subject matter. I identify his signature at point A. The note of Dr. Ashok Chandra is now Ex PW 57/A. The file was marked by him to the then

Wireless Advisor. However, he was on tour and so the file was put up before Member (T) Sh. K. Sridhara. His signature appears at point B, which I identify. He marked the file to DDG (AS) Sh. A. K. Srivastava. I identify his signature at point C. He recorded his note and the note is now Ex PW 57/B. In this file there is a chart, running into two pages and is signed by Dr. Ashok Chandra at point A on both pages. This chart speaks about spectrum availability as per WPC records in GSM 1800 MHz band (2G) as on 02.11.2007. The chart is already Ex PW 36/DK-19. This file pertains to my earlier tenure in DoT....."

579. Thus, Sh. R. J. S. Kushwaha first deposed that no assessment of spectrum was carried out during his tenure from 31.05.2007 to 26.08.2008, but later on admitted that assessment of availability of spectrum was carried out by WPC once on 29.03.2007 vide Ex PW 36/DR-14 and later on 02.11.2007 vide Ex PW 36/DK-19.

He has deposed in his cross-examination dated 20.07.2012, page 3, about assessment of spectrum, as under:

".....I have been shown DoT file D-72, already Ex PW 36/DK-7. At pages 13/N and 14/N, there is a noting initiated by Sh. Dinesh Jha, already Ex PW 36/DK-8, which was also marked to me and my signature appears at point D. This note mentions about assessment of spectrum utilization in para 4. However, this assessment was carried out before my joining and, as such, Sh. Dinesh Jha would be in a better position to explain it. I have been shown DoT file D-68, already Ex PW 57/E, wherein at page 36/N, there is a noting by Sh. Dinesh Jha regarding assessment of spectrum utilization, which is already Ex PW 57/E-1. This noting was not put up to me as I was busy somewhere else. Sh. Dinesh Jha would be

in a better position to explain this....."

580. He also deposed in his cross-examination dated 23.07.2012, pages 7 to 9, about licences being issued in the past without availability of spectrum, as under:

> ".....In December 2006, DoT had issued some UAS licences. I have been shown DoT file D-589, already Ex PW 36/DQ-2, wherein there is a copy of the letter dated 22.12.2006 showing grant of 22 UAS licences in December 2006 and a copy thereof was also endorsed to Wireless Advisor. The letter is already Ex PW 36/DS-12. I do not remember if WPC wing was consulted before grant of these licences nor having seen any document showing such consultation. I have been shown Ex PW 36/DS-12, containing list of 22 UAS licences and spectrum availability chart Ex PW 57/DH-2. In December 2006, licences were issued to Aircel and Idea Cellular for Mumbai service area, as per Ex PW 36/DS-12. These licences were granted by AS cell. The requirement of start up GSM spectrum of these two companies was up to 4.4 + 4.4 MHz and up to 4.4 + 4.4 MHz. However, as on 20.03.2006, spectrum availability has been shown as NIL in Mumbai service area in Ex PW 57/DH-2. As per list Ex PW 36/DS-12, licence was also granted to Aircel Limited for Delhi service area on 05.12.2006. However, in the availability of spectrum chart Ex PW 57/DH-2, the available GSM spectrum for Delhi service area as on 20.03.2006 has been shown to be 1.4 + 1.4 MHz in the 1800 MHz band. Similarly, Essar Spacetel (P) Limited was granted licence on 05.12.2006 as per the aforesaid list Ex PW 57/DH-2 for J&K service area and the availability of spectrum for this service area as on 20.03.2006 has been shown to be NIL in 1800 MHz band.
>
> Idea Cellular and Aircel Limited were granted licences on 05.12.2006 and 06.12.2006 respectively by the DoT as per document Ex PW 20/C (D-597),

page 285. However, they were allotted spectrum on 11.01.2008 as per this document at point C. I do not know if the availability of spectrum in Delhi service area as on 29.03.2007 was shown to be NIL by the WPC wing. I have been shown DoT file D-75, already Ex PW 36/DR-12, wherein there is a chart already Ex PW 36/DR-14, in which availability of spectrum in various service areas has been shown and availability of spectrum in Delhi service area has been shown to be NIL in balance column. However, I was not involved in the preparation of this chart. I have been shown DoT file D-54, already Ex PW 57/P, wherein there is a note sheet dated 09.07.2007. It bears my signature at point A at page 20/N. The note sheet is collectively Ex PW 57/DJ, that is pages 19/ and 20/N. In this note sheet, it has been recorded that allotment of spectrum to Aircel for Delhi service was approved on 09.01.2008. This spectrum was proposed to be allotted to Aircel as it was not being used by the defence as mentioned in detail in the note sheet. I cannot say if the licence to Aircel was granted by AS cell for Delhi service area in December 2006 in view of the expected availability of spectrum. I cannot say if licences are issued by the AS cell considering the present and future availability of spectrum.

Future availability of spectrum is assessed in coordination with JCES, vacation of spectrum by defence etc....."

581. Perusal of the evidence of PW 57 Sh. R. J. S. Kushvaha reveals that he was posted as Joint Wireless Advisor in DoT from 31.05.2007 to 26.08.2008. First, he deposed that to his knowledge no assessment of spectrum was carried out during the aforesaid period. However, in the examination-in-chief itself he admitted that availability of spectrum was noted by Dr. Ashok Chandra, the then Joint Wireless Advisor, on

29.03.2007 vide chart Ex PW 36/DR-14. He also admitted that again on 02.11.2007, Dr. Ashok Chandra prepared a chart, Ex PW 36/DK-19, regarding availability of spectrum. In his cross-examination also, he admitted that on 20.03.2006 and 29.03.2007, charts about availability of spectrum were prepared vide Ex PW 57/DH-2 and PW 36/DR-14. He also admitted that in 2006, licences were granted in service areas where spectrum availability was NIL.

582. It may also be noted that Sh. R. J. S. Kushwaha had made a presentation pertaining to Spectrum Allocation Policy in Cabinet Secretariat on 20.11.2007 and in this regard letter, Ex PW 36/DM (D-363), of even date was written, copy of which was also marked to Sh. T. K. A. Nair; Principal Secretary to Prime Minister, Sh. D. S. Mathur; Secretary; DoT, Dr. D. Subba Rao; Finance Secretary, Sh. Vijay Singh; Defence Secretary, Sh. Madhukar Gupta; Home Secretary and Sh. Sanjeev Mishra; Dy. Secretary; Cabinet Secretariat. A copy of the presentation is Ex PW 36/DM-1. At page 12 of the presentation, recent efforts made by the DoT for vacation of spectrum are listed. The last slide of the presentation on page 12 shows that 15 MHz of 2G spectrum was to be released in December 2007. It also shows release of 25 MHz of 2G spectrum in most areas with the completion of phase-II (March 2008). It may also be noted that, that presentation was attended by Finance Secretary Dr. D. Subba Rao also, who has been examined as PW 78. It is also to be noted that copy of the presentation was sent to all important functionaries of the government including Defence Secretary, as

Defence is the custodian of all spectrum. This shows that efforts were being made for vacation of spectrum and 15 MHz+15 MHz was expected to be released in December and 25 MHz+25 MHz was expected to be released in March onwards.

583. PW 121 Sh. T. K. Varada Krishnan, Joint Wireless Adviser, in his cross-examination dated 10.05.2013, page 24, deposed about allocation of spectrum, as under:

> ".....It is correct that before grant of licences to applicants to whom LOIs were issued on 10.01.2008, DoT granted spectrum to three categories of applicants, namely, additional GSM spectrum to existing operators, initial GSM spectrum to UASL licences of 2006 and initial GSM spectrum for dual technology to Reliance, which got the licence amended by January 2008....."

This deposition indicates that the spectrum was allocated in 2008 to licensees to whom licences were issued in 2006.

584. PW 87 Sh. Dinesh Jha, Dy. Wireless Adviser also deposed about exercise done relating to assessment of availability of spectrum in his examination-in-chief dated 04.12.2012, pages 3 to 5, as under:

> ".....I have been shown WPC wing file D-75, already Ex PW 36/DR-12, pertaining to availability of 2G spectrum. In this file, there is a note dated 29.03.2007, already Ex PW 36/DR-13, and this note was recorded by me. It bears my signature at point C. This note was recorded because adequate spectrum was not available with DoT for allocation to all the applicants, who have signed licence agreement with the DoT. Moreover, the Defence was not coordinating (vacating) any spectrum. So, DoT

thought the spectrum which was not used by Defence nor assigned to it, should be vacated by it and be put in use. I marked the note to the then Deputy Wireless Advisor and ultimately the note reached the then MOC&IT Sh. D. Maran, who approved it vide his note of the even date by appending his signature at point B. Alongwith the note, already Ex PW 36/DR-13, a chart, already Ex PW 36/DR-14, as prepared by the then Joint Wireless Advisor, showing the availability of spectrum service area-wise, was also attached.

I have also been shown WPC file, part of D-7, already Ex PW 36/DK-18, pertaining to availability of spectrum in 1800 MHz band. In this file also, there is a note dated 02.11.2007, already Ex PW 57/A, recorded by Sh. Ashok Chandra, the then Joint Wireless Advisor. This note is also regarding availability of spectrum as on date. A chart is also attached with this note showing service area-wise availability of spectrum and the chart is already Ex PW 36/DK-19. The note bears the signature of Sh. Ashok Chandra at point A, which I identify.

I have also been shown WPC file D-76 pertaining to spectrum availability for 2G spectrum. This is a genuine official file and was opened in the WPC wing in the official course of business. The same is now collectively Ex PW 87/A. In this file, there is a note dated 20.02.2008, which was recorded by me. It bears my signature at point A and is now Ex PW 87/A-1. The note pertains to a summary of availability of spectrum at that time, that is, as on 31.01.2008. Alongwith this note also, a chart regarding availability of spectrum was also prepared and the same is now Ex PW 87/A-2. I marked the note to the then Joint Wireless Advisor Sh. Ashok Chandra and ultimately the note reached Secretary (T), in official course of business. The then Secretary (T) Sh. Sidharath Behura also recorded a note. I identify his signature at point B and the note is now Ex PW 87/A-3. Sh. Sidharath

Behura is present in Court today.....”

Thus, the witness also deposed that availability of spectrum was assessed in DoT on 29.03.2007, 02.11.2007 and 18.01.2008.

585. PW 87 Sh. D. Jha in his cross-examination dated 05.12.2012, page 1, also deposed regarding exercise done for assessing availability of spectrum, as under:

> “.....I have been shown WPC file D-72, already Ex PW 36/DK-7. In note sheet Ex PW 57/D, a chart has been referred to regarding availability of spectrum in different service areas as on 20.03.2006, already Ex PW 57/DH-2, and this chart was also prepared by me. In this chart, I have prepared three column under the heading: coordinated spectrum (1800 MHz band), earmarked spectrum and spectrum availability (both in 1800 MHz band). By coordinated spectrum I mean spectrum vacated by Defence services and by earmarked spectrum I mean which has already been assigned to different service providers and available spectrum means balance spectrum which can be assigned to service providers. In the same file, note dated 17.12.2007, already Ex PW 36/DK-8, was also initiated by me. In para 4, I had referred to spectrum beyond which has been coordinated by Defence, and by this I meant that spectrum which was available for allocation.....”

586. PW 11 Sh. Nripendra Misra, in his cross-examination dated 16.03.2012, page 6, has deposed about likely availability of spectrum as under:

> “.....I have also been shown paragraph 6.43, page 99, of this consultation paper, which states that "20 Mhz of spectrum in 1800 band, is likely to be vacated by the Defence in near future.....”

Thus, while granting UAS licence, likely availability of spectrum is also taken into consideration and not exact or mathematical availability.

PW 11 Sh. Nripendra Misra in his further cross-examination dated 21.03.2012, pages 1 and 2, deposed regarding wireline and wireless services and UAS and WPC licences, as under:

> ".....UAS Licence holder can provide wireline and wireless services subject to compliance of roll-out obligation. I cannot say if on non-payment of spectrum usage charges, only WPC wireless operating licence is liable to be cancelled and not the UAS Licence. Once spectrum usage charges are paid, an operator, whose WPC wireless operating licence was cancelled, can re-apply for earmarking of spectrum. In such a case where approval is granted afresh for wireless operating licence, he would be allotted spectrum subject to availability. UAS Licence is the mother licence which enables issuance of wireless operating licence. The two are separate but linked licences....."

The deposition indicates that UAS licensee can also provide wireline services alone. Roll-out obligations arise only on allocation of spectrum.

587. PW 36 Sh. D. S. Mathur in his cross-examination dated 16.04.2012, pages 11 to 13, deposed about assessment of spectrum as under:

> ".....I have been shown page 70 of file Ex PW 36/B and as per this page the file was again received back from Ministry of Law and Justice on 01.11.2007 and this page is now Ex PW 36/DK-17.
>
> I have been shown file D-7, Ex PW 36/B, note

sheet already Ex PW 36/B-8 wherein at para 3, Sh. Nitin Jain recorded that all applications received up to cut-off date of 25.09.2007 be processed to avoid any legal complications. This para also refers to a meeting chaired by MOC&IT in which a suggestion by Secretary (T) is mentioned. As per this note, 575 applications were received up to 01.10.2007. It is correct that in the note Ex PW 36/B-6 I had mentioned that LOIs could not be issued to all the 575 applicants in view of the non availability of the spectrum, but this was mentioned by me in the light of NTP-1999. It is wrong to suggest that in view of my note there was a need to draw a line to determine as to how many applications were to be processed. It is correct that NTP-1999 mandated assessment of spectrum availability. It is also correct that UASL Guidelines dated 14.12.2005 mandated grant of licence on continuous basis. It is also correct that TRAI had recommended no cap on the number of service providers in a service area. It is correct that DoT had to take a decision taking all the three things into account. It is correct that the second alternative mentioned in Ex PW 36/B-3 is that applications received up to 25.09.2007 be granted LOIs. The number of applications received up to this date is mentioned on page 11/C. Some of the applications may get rejected, but each application has to be examined separately. I am not aware if out of the applications mentioned on page 11/C, 110 were rejected. I do not know if in the consultation paper issued by TRAI, it was mentioned that 20 MHz of spectrum in 1800 band is likely to be vacated by defence. It is correct that some licencees had to wait up to a year for getting spectrum. It is wrong to suggest that considering the likely number of eligible applicants, likely availability of spectrum and precedent of licencees waiting for spectrum allocation, alternative No. 2, as mentioned in Ex PW 36/B-3, was the best one in the light of NTP-1999, UASL Guidelines and TRAI recommendations. It is

wrong to suggest that this alternative divides the applicants into two categories, that is, applications received up to 25.09.2007 and applications received thereafter till 01.10.2007. It is correct that the decision by the DoT to award LOIs to the applicants whose applications were received up to 25.09.2007 was taken by the Minister on 02.11.2007. I do not know the background in which the Minister had taken this decision of 02.11.2007. I do not know if the Minister considered the aforesaid three factors while taking this decision. I have been shown file pertaining to WPC wing, which is part of file D-7 itself. The file is now Ex PW 36/DK-18. In this file, there is a chart which gives availability of GSM spectrum in each service area in 1800 band. The chart is now Ex PW 36/DK-19 (two pages). As per this document, the reconciliation of defence usage in part of the band was being finalized in respect of claims of users over large areas. This does not show district wise availability of spectrum in a service area....."

Here, Sh. D. S. Mathur pleaded complete ignorance about the Minister considering likely number of eligible applicants, availability of spectrum and past precedent.

588. PW 36 Sh. D. S. Mathur in his further cross-examination dated 18.04.2012, page 6, deposed again about availability of spectrum as under:

".....I have been shown file D-7, already Ex PW 36/B, wherein there is a note, already Ex PW 36/B-8, at pages 6/N and 7/N. In the left margin opposite para 4, at point X, it is noted that WPC file for availability of spectrum is also attached with it. The note is dated 02.11.2007. After the order regarding issuance of LOIs was passed on 02.11.2007, the WPC file was de-linked on 07.11.2007 as mentioned at point X....."

589. PW 36 Sh. D. S. Mathur in his further cross-examination dated 18.04.2012, pages 11 to 13, deposed about likely availability of spectrum as under:

> ".....I have been shown file D-363, already Ex PW 36/DH, wherein at page 418, there is a draft of a note for Cabinet Committee on Economic Affairs. This note is of January 2008 and does not pertain to my tenure. This matter might have gone to the Cabinet Committee in January 2008 and, as such, I cannot say anything about it. I cannot say if 20 MHz of spectrum was to be released by Indian Air Force in 1800 MHz band.
>
> I have been shown link file to file D-7, already Ex PW 36/DK-18, wherein on page 2, there is a document already Ex PW 36/DK-19 and as per this document, availability of spectrum in various circles, including Delhi, is mentioned therein. As per this, 15 MHz of spectrum in 1800 MHz band in Delhi service area is mentioned as balance available as on 07.11.2007.
>
> I have been shown file CD-16, already collectively Ex PW 11/DJ, wherein at page 37 there is a letter written by Sh. Nripendra Mishra, the then Chairman, TRAI, to Secretary, DoT, that is, myself, whereby a consultation paper was forwarded to me. I have been shown consultation paper, already Ex PW 21/DM, which was sent to me as per the aforesaid letter. As per page 99 of this paper, wherein it is mentioned that 20 MHz of spectrum in 1800 band is likely to be vacated by defence in near future. This consultation paper is dated 12.06.2007. This availability of the spectrum might have been at the back of my mind when I recorded that three new licences in every service area may be granted in draft note Ex PW 36/B-1.
>
> I have been shown three drafts already Ex PW 36/B-1, B-3 and B-4, and in these drafts there are

material changes in alternative 1. In Ex PW 36/B-3, it is mentioned that those who fulfill the stipulation of LOI, their seniority for licence/ spectrum will be on the basis of their application date. This I do not find in alternative 1 of Ex PW 36/B-1.

In my view, alternative 1 was the best alternative and the same was in accordance with procedure and policy. I do not know if the then MOC&IT wanted to issue LOIs to all 575 applicants. I do not remember if I told the IO that the then MOC&IT wanted to issue LOIs to all 575 applicants. I have been shown my statement to the IO, already Ex PW 36/DO, wherein at page 2 at line 2, between points X to X, it is mentioned that I stated so to the IO. It is wrong to suggest that I knew this point and wanted to be evasive in the Court. I do not know if the motive of the then MOC&IT was to increase competition by issuing LOIs to all the applicants. I did not discuss the logic of this with the Minister.

MOC&IT never asked me to favour anyone of the 575 applicants....."

In this deposition, the witness conceded that 20 MHz of spectrum was likely to be vacated.

590. PW 36 Sh. D. S. Mathur in his further cross-examination dated 19.04.2012, pages 8 and 9, deposed about availability of spectrum as under:

".....I have been shown DoT file D-7, already Ex PW 36/B, wherein there is a note sheet dated 02.11.2007, already Ex PW 36/B-8. In this note Sh. Nitin Jain had proposed regarding processing of applications in para 3 at points X to X. This note was initiated by Sh. Nitin Jain and was put up to DDG (AS) Sh. A. K. Srivastava, who put it up to Member (T). On this note, the then Minister Sh. A. Raja ordered that LOIs be issued to applicants whose applications were received up to 25.09.2007. He started his note by recording "approved". It is wrong

to suggest that this was not an order of the Minister and was merely an approval. In this note, existing policy has been reiterated and that policy was the policy followed by the department at that time. Availability of spectrum is also mentioned in the note on vacation by defence. As per this note, the availability of spectrum was also being considered while considering decision on the pending UASL applications. Para 5 of the note expresses the opinion regarding increase in competition on introduction of new players....."

591. PW 36 Sh. D. S. Mathur in his further cross-examination dated 20.04.2012, page 1, deposed about spectrum allocation as under:

".....I have been shown DoT file D-363, already Ex PW 36/DH. I had a meeting in Cabinet Secretariat on 20.11.2007 at 5 PM, where the presentation as mentioned in Ex PW 36/DM-1 was made. The copy of the presentation was sent to Sh. T. K. Nair, Sh. D. Subbarao, Sh. Vijay Singh and Sh. Madhukar Gupta, but I am not sure if they were present during presentation or not. The presentation was circulated by Sh. R. J. S. Kushwaha, the then Joint Wireless Advisor, but I am not sure if this was prepared by him or not. This presentation was regarding guidelines for spectrum allocation....."

This deposition indicates that Cabinet Secretariat, PMO and Finance Ministry were kept abreast as to what was happening in DoT regarding spectrum allocation.

592. PW 36 Sh. D. S. Mathur in his further cross-examination dated 20.04.2012, pages 2 to 4, deposed about allocation of spectrum as under:

".....As per NTP-1999, there were two licences

namely cellular mobile service providers licence as mentioned in para 3.1.1 and fixed service providers licence as mentioned in para 3.1.2. In October 2003, by Cabinet decision NTP-1999 was amended and there was only one category of licence, that is, unified access service licence. The amendment, that is, addendum to the new telecom policy is already Ex PW 11/DD. When I was the Secretary, DoT, only one category of licence, that is, UAS Licence, was issued and that was in view of the Guidelines dated 14.12.2005, Ex PW 2/DB, and these guidelines also contemplated only one category of licence.

I have been shown DoT file D-5 vol. I, already Ex PW 36/A-3, wherein on page 214, there is a press release dated 19.10.2007, already Ex PW 36/DK-12, wherein it is mentioned that in case of non-allocation of spectrum to a UAS Licencee due to non-availability he shall endeavor to roll-out services using wireline technology. If a licencee was unable to get spectrum due to non-availability of spectrum, he was under obligation to start wireline service.

Ques: I put it to you that your note already Ex PW 36/B-6, dated 25.10.2007, in file Ex PW 36/B (D-7), is contrary to the aforesaid position. What do you have to say?

Ans: At that time India was heading towards a mobile service revolution and the emphasis was on mobile service and not on wireline service. Therefore, non-availability of adequate spectrum would have been a serious handicap in roll-out of mobile service and that was not the intention with which the licences were being issued. Therefore, my note was forward looking and definitely not contrary to the press release.

It is wrong to suggest that wireline service is more important to the Indian population being affordable. Wireline services definitely give internet connectivity but majority of population do not use internet and use mobile services.

It is wrong to suggest that my aforesaid note

Ex PW 36/B-6 was out of context as para 3.1.1 of NTP-1999 pertains to cellular service providers licence which has been stopped as stated earlier after introduction of UAS Licences. Press release is issued for the information of general public so that everything comes in public domain in a transparent manner and becomes known to the stakeholders. Copy of the press release was sent to Sh. T. K. A. Nair, Principal Secretary to Hon'ble Prime Minister, under my signatures, vide letter Ex PW 36/E-6. In this it was reiterated that the pending applications for UAS Licences would be processed as per existing policy. As far as I remember there was no response from the office of Hon'ble PM to this letter regarding press release Ex PW 36/DK-20. I cannot say if this press release sent to the office of Hon'ble PM later than the letters of the then Minister Sh. A. Raja already Ex PW 7/A and 7/B, both dated 02.11.2007. In press release already Ex PW 36/DK-12, it is mentioned that the spectrum for the alternate technologies, CDMA or GSM, as the case may shall be allocated in the applicable frequency band subject to availability after payment of prescribed fee. The press release also said that no additional spectrum may be allocated to licencees without fulfilling the roll-out obligations....."

In this deposition, Sh. D. S. Mathur conceded that after addendum dated 11.11.2003, Ex PW 11/DD, to the NTP 1999, there was only one category of licence, that is, UASL. He also conceded that in case of non-allocation of spectrum, the licensee was to endeavour to roll out wireline service alone and in such case roll-out obligations would be reckoned from the date of spectrum allocation. He has also conceded that he opposed grant of licences without considering availability of spectrum due to the fact that the country was heading towards

mobile revolution, but such futuristic things are of no use in criminal law. Things have to be decided as per the existing rules and procedure. The net result of this deposition is that a UAS licence can be granted even without current availability of spectrum. Sh. D. S. Mathur conceded that NTP 1999 had been amended and two categories of licence had been replaced by one licence, but denied that his note dated 25.10.2007, Ex PW 36/B-6, regarding availability of spectrum before issue of licence, was out of context, though it certainly is, as paragraph 3.1.1 of NTP applied to CMSP licence, since replaced by UAS licence.

593. PW 36 Sh. D. S. Mathur in his further cross-examination dated 20.04.2012, pages 16 and 17, deposed regarding availability and assessment of spectrum as under:

> ".....I have been shown DoT file D-75, now Ex PW 36/DR-12, wherein on pages 1 to 5, there is a chart showing availability of spectrum as on 29.03.2007. I do not know if the WPC wing was submitting information about availability of spectrum to the Secretary, DoT, from time to time. The availability of spectrum in 2G band was submitted to me by the WPC wing on 29.03.2007. The note sheet regarding submission of this chart was initiated by the assistant wireless advisor and my signature appears at point A. The note sheet is now Ex PW 36/DR-13. This information was marked by me to the then Minister Sh. Dayanidhi Maran. The chart is Ex PW 36/DR-14. The availability of spectrum in Delhi circle is shown as NIL.
>
> I have been shown DoT file, link file of D-7, already Ex PW 36/DK-18, wherein on page 1/C, there is a chart showing availability of spectrum, already Ex PW 36/DK-19 as on 02.11.2007. The

availability of spectrum as balance in Delhi circle is shown as 2 X 15 MHz. It is incorrect to suggest that WPC wing was not maintaining correct records and was also not providing accurate information to DoT in this regard. I cannot explain the difference between chart Ex PW 36/DR-14 and 36/DK-19 regarding availability of spectrum in Delhi circle. I am not aware if improper maintenance of record by the WPC wing regarding availability of spectrum was also highlighted by TRAI in its recommendations of August 2007....."

The witness is evasive and contradictory in his deposition, as he even did not know that WPC was submitting availability of spectrum to DoT from time to time. He must have known it as he was the administrative head of DoT.

594. PW 36 Sh. D. S. Mathur in his further cross-examination dated 24.04.2012, pages 1 and 2, deposed as under:

".....I have been shown DoT file D-7, Ex PW 36/B, wherein there is a note sheet, pages 2/N and 3/N, already Ex PW 36/B-6. In this note sheet, I had recorded that option to issue LOI/ licences to all 575 applicants does not stand. This was in view of the fact that as per NTP-1999, availability of spectrum was essential for entry of additional operators. It is correct that the then Minister Sh. A. Raja had verbally expressed his desire to me to issue LOIs to all applicants who had applied up to 01.10.2007. It is not clear from the documents that the decision to process applications received up to 25.09.2007 only was based on my note Ex PW 36/B-6. It is incorrect to suggest that my note Ex PW 36/B-6 dated 25.10.2007 was responsible for the decision to process applications received up to 25.09.2007 only. I have been shown draft, already Ex PW 36/B-3. On

seeing this draft, it is wrong to suggest that I was aware of the insertions of alternative II in this draft or that I had approved the same. It is wrong to suggest that I was aware of the fixation of 25.09.2007 as the date up to which applications received would be processed and that my subsequent protestations are false.

I have been shown my note dated 05.11.2007, already Ex PW 36/B-9. It is correct that the cut-off date for receipt of applications remained 01.10.2007, but the applications were to be processed, which were received up to 25.09.2007....."

595. The witness tried hard to evade all responsibility in the matter. The Minister desired to grant LOIs to all applicants, he opposed it citing inadequacy of spectrum. The Minister decided to grant LOIs to lesser number of applicants, he opposed it too, without suggesting anything better. It is clear from his deposition that assessment of spectrum availability was a continuous process.

596. PW 60 Sh. A. K. Srivastava in his cross-examination dated 11.09.2012, page 8, deposed regarding assessment of spectrum as under:

".....It is correct that up to 25.09.2007, 232 applications were received for grant of UAS licence. I am not in a position to say if before that UAS licencees were required to wait for quite sometime awaiting allocation of spectrum as spectrum allocation was not my subject. As per note dated 02.11.2007, Ex PW 36/B-8, in DoT file D-7 Ex PW 36/B, an internal exercise was done by the WPC wing to ascertain the likely availability of spectrum and the said WPC file was linked with this file....."

The witness tried to evade all responsibility by pleading ignorance about people waiting for allocation of spectrum after grant of licence, more so, when he conceded that an internal exercise was done to assess availability of spectrum.

597. PW 60 in his cross-examination dated 12.09.2012, pages 6 and 7, deposed regarding assessment of spectrum as under:

> ".....It is correct that WPC file, Ex PW 36/DK-18, was linked with DoT file, already Ex PW 36/B, and the first file was later on delinked by me on 07.11.2007. The file Ex PW 36/DK-18, that is, WPC file, deals with the availability of spectrum. It is correct that after 07.11.2007, this file was not put up to the Secretary (T). **Volunteered**: This was not done as a decision dated 07.11.2007 had already been taken and the file was delinked.
>
> It is correct that vide note dated 18.02.2008, already Ex PW 60/L-46, in file Ex PW 36/B, the then Secretary (T) Sh. Sidharath Behura had enquired about the availability of spectrum vis-a-vis LOI holders and the Joint Wireless Advisor informed him vide his note dated 20.02.2008, already Ex PW 60/L-47, that spectrum availability was being worked out and would be put up separately. It is correct that whenever grant of LOI used to be recommended by the AS cell, a copy of draft LOI would accompany the recommendation....."

The deposition again shows that assessment of availability of spectrum was carried out by WPC and the file was delinked from file D-7, the policy file.

598. PW 77 Sh. K. Sridhara in his cross-examination dated 10.12.2012, pages 11 and 12, deposed as under:

> ".....Point No. 11 of UASL Guidelines dated

14.12.2005 says that licences shall be issued without any restriction on the number of entrants for provision of unified access service in a service area. It is correct that as per TRAI recommendations, there was to be no cap on number of service providers in a service area. It is correct that till 01.10.2007, a total of about 575 applications has been received for grant of UAS Licences. It is correct that view of the then Secretary (T) Sh. D. S. Mathur was that LOIs could not be issued to all the 575 applications because of non-availability of spectrum and as per guidelines of NTP-1999. It is correct that as per note Ex PW 52/A dated 10.01.2008, in file Ex PW 36/B (D-7), a total of 232 applications had been received till 25.09.2007. It is generally found that some of the applications may not be eligible for LOIs and may get rejected. It is correct that out of these applications, 110 were found to be ineligible and were rejected. At that time, some of the licencees were waiting for allocation of spectrum for sometime, though I cannot say for how long they were waiting. It is correct that efforts were being made to get more spectrum available through various methods including release of spectrum from Defence. TRAI generally gives consultation paper before recommendations are made on all matters. In this case also, consultation paper was issued. The consultation paper was never put up before us and, as such, I am not aware about its contents. It is correct that while issuing licences, DoT had to take into consideration NTP-1999, UASL Guidelines, TRAI recommendations, likely number of eligible applicants, likely availability of spectrum and precedent of licencees waiting for allocation of spectrum……."

Sh. K. Sridhara clarified the whole issue. He deposed that Sh. D. S. Mathur was opposed to issue of LOIs to all 575 applicants due to non-availability of spectrum. Not only

this, he further clarified that 110 LOIs were issued taking into consideration all aspects including the likely availability of spectrum. He is categorical in stating that availability of spectrum was duly assessed and efforts were being made to get more spectrum vacated.

599. PW 77 Sh. K. Sridhara in his further cross-examination dated 10.12.2012, pages 13 and 14, deposed as to how the availability of spectrum was duly considered and the same reads as under:

> ".....It is correct that on 02.11.2007 a meeting chaired by the then Minister Sh. A. Raja and attended by myself and DDG (AS) Sh. A. K. Srivastava took place in which it was decided that the existing policy, as suggested by Secretary (T), be followed for grant of UAS licences. It is correct that as per note Ex PW 36/B-8 in the same file, a total of 60 MHz of spectrum was lying unused, that is, unused by mobile operators and that may be utilized by new licencees as and when the same was vacated. In this note, it was implied that spectrum was unutilized by the mobile operators and was lying with other users, though it is not so specifically mentioned. This file was shown to me by the IO. During my tenure as Member (T), no spectrum was vacated by Defence.
>
> It is correct that it was decided in the meeting that considering availability of spectrum, including future availability, discussion with various officers and to avoid legal complications, to issue LOIs only to applications received up to 25.09.2007. It was told in the meeting by the Minister that once we were following the existing policy, there was no need to seek opinion of Law Ministry and hence out of context....."

600. Investigating officer PW 153 Sh. Vivek Priyadarshi in his cross-examination dated 20.11.2013, page 9, deposed as under:

> ".....I cannot say if no spectrum was vacated by any service provider or by defence or any other agency during the March 2007 to January 2008 and must be a matter of record. It is correct that as per Ex PW 36/DK-19 (D-7), availability of spectrum has been shown for Delhi service area 2 X 15 MHz as per note sheet Ex PW 57/A. It is wrong to suggest that I deliberately did not examine this witness, that is, Sh. Ashok Chandra, as he would have told the correct availability of spectrum, contrary to prosecution case....."

The investigating officer could not say anything about the vacation of spectrum during March 2007 to January 2008. He also did not examine Sh. Ashok Chandra, who had prepared the relevant chart showing availability of spectrum.

601. The examination of the evidence of the above witnesses clearly indicates that availability of spectrum was duly considered before the fixation of date of 25.09.2007. Arithmetical accuracy is not required, as likely availability of spectrum is also taken note of in the light of the fact that coordination/ vacation of spectrum by defence is a continuous exercise and also a licensee, who has been granted licence, but could not be allocated spectrum, may roll out wireline service alone awaiting allocation of spectrum, though subsequent events showed that everyone required spectrum, as mobile services became more popular and wireline (fixed) services lost attraction. As such, there is no evidence on record to show that

availability of spectrum was not considered by DoT due to conspiracy with the accused persons.

602. Not only this, A. Raja himself appeared as witness in his own defence and was examined as DW 1. The relevant parts of his statement on the assessment of availability of spectrum before issue of LOIs and grant of UAS licences in 2008 are extracted as under:

603. DW 1 Sh. A. Raja in his examination-in-chief dated 01.07.2014, pages 5 to 11, deposed in detail as to how availability of spectrum was considered, as under:

> ".....As per record, 575 UASL applications were received till 01.10.2007.
> **Ques**: Kindly take a look on letter dated 26.10.2007, already Ex PW 60/C, and its enclosure, Ex PW 36/B-4, in DoT file D-7, already Ex PW 36/B. Would you please tell this Court, if you had seen this letter with its enclosure, if so, under what circumstances it was sent to Ministry of Law and Justice?
> **Ans**: Having received 575 applications in the department for UAS licences, discussions took place in the DoT as to how to deal with such large number of applications, which was unprecedented in a fair and equitable manner. It was decided that the department may ask opinion of the learned AG or SG through the Law Ministry, where various options were enumerated after discussions in the enclosure/ statement of case. During the discussions, a draft of the statement of the case, to be sent to the Ministry of Law and Justice, Ex PW 36/B-3, was shown to me. I had seen this draft and I added one more option "any other better approach which may be legally tenable and sustainable for issuance of new licence" in my writing, as mentioned at points B to B, and this was carried into the final draft also, which is already Ex PW 36/B-4.

I was apprised by my officers that consequent to the aforesaid letter, some discussion took place amongst the officers of Ministry of Law and Justice and DoT. Then on 02.11.2007, the file was shown to me, then I called the officers for discussion.

Ques: Would you please tell this Court as to what discussions took place in DoT on this?

Ans: On 02.11.2007, discussion took place in the DoT, where DDG (AS) and the Member (T), who is the administrative head of the AS branch, attended the discussion with me, since the Secretary (T) was not in the headquarters. The decisions taken during discussions are reflected in the note sheet dated 02.11.2007, already Ex PW 36/B-8 (D-7).

Ques: Kindly take a look on note sheet, Ex PW 36/B-8, wherein it is mentioned "it was discussed and felt in the meeting that the proposed advice is out of context". Kindly explain this sentence?

Ans: The matter which was referred to the Ministry of Law and Justice was as to what type of procedure should be followed regarding the disposal of the 575 applications, as referred in the statement of case, wherein it was also recorded that all options were open to the Government. The Ministry of Law and Justice returned the file with the observation that the matter may be referred to EGoM. This was discussed under the context of the extant policy of the Government and the provisions of the Transaction of Business Rules 1961 and it was felt that the procedures for disposal of the applications were well within the domain of DoT and did not require any inter-ministerial consultation. Accordingly, it was recorded by the officers that the observation of Ministry of Law and Justice was out of context and that was approved by me.

Ques: Would you please tell this Court as to how the decision to issue LOIs to the applications received up to 25.09.2007 was arrived at?

Ans: Initially I was of the opinion that all eligible applicants amongst the 575 can be issued LOIs since

there is no bar in the UASL guidelines 2005. In this regard, I also made a statement in the Lok Sabha when a specific question was asked by an Hon'ble Member of Parliament in November 2007. However, my attention was drawn by the Secretary (T) on the file itself that para 3.1.1 of NTP has to be kept in mind while disposing the applications on the ground of availability of spectrum. During the discussions, this was refuted by some of the officers that this paragraph of NTP-1999 was meant for CMTS and not for UAS licences. Further, it was disclosed out of my direction that some amount of spectrum had been identified by way of coordination. So, keeping these provisions, the availability of spectrum, future availability of spectrum and the past precedent that the applicants were waiting for want of spectrum for more than a year in mind, this decision was taken to issue LOIs to the applicants who had applied by 25.09.2007 and it was also discussed that tentative eligible applications may coincide with the availability of spectrum in near future as the coordination of spectrum was to continue even after the issuance of licences.

Ques: At that time were you aware of the availability of spectrum circle-wise?

Ans: A rough exercise was done in the WPC wing under my direction. Accordingly, a chart was shown to me when I approved the note sheet dated 02.11.2007, Ex PW 36/B-8, and I was also aware that further coordination was going on. However, at that time we were not aware of the exact amount of available spectrum, but a rough picture was there and we were confident that all eligible applicants, who had applied till 25.09.2007, could be accommodated. The consultation paper issued by TRAI also mentioned that 15 MHz of spectrum was going to be released by other agencies.

Ques: In note sheet, Ex PW 36/B-8, in para 8, there is a sentence “number of LOIs to be issued in each circle”. Kindly explain the meaning of this sentence,

and if any decision was taken in this regard, if not why?

Ans: This was discussed in para 5 of the note sheet. Para 5 is nothing but a continuation of paras 3 and 4 of note sheet. In para 5 it has been observed that in view of the above, the decisions may be taken on the number of LOIs to be issued in each circle. Hence, by the number of LOIs mentioned in this note is meant eligible LOIs within the consideration zone of 25.09.2007, which date is not disturbed by this observation.

No proposal was put up before me regarding number of LOIs to be issued circle-wise. The recommendation of TRAI in this regard is that no cap be put on the number of LOIs to be issued circle-wise. The department had not put any other proposal before me.

Ques: After the decision as reflected in note sheet dated 02.11.2007, already Ex PW 36/B-8, was taken, what role did you play subsequently in this regard?

Ans: I wrote a letter dated 02.11.2007, Ex PW 7/A, to the Hon'ble Prime Minister, explaining the decision taken in the department that advice of Ministry of Law and Justice was out of context and that the DoT had decided to go ahead with the issuance of LOIs to applicants who had applied by 25.09.2007.

Prime Minister is competent to constitute GoM/ EGoM and that is the reason that I wrote the aforesaid letter to him.

Ques: Did you have any discussion with the then Minister of Law and Justice after 02.11.2007 regarding this subject?

Ans: I had several discussions with the then Law Minister Sh. H. R. Bhardwaj regarding this subject and explained policy and procedure contemplated for issuance of LOIs and allotment of spectrum. He endorsed my views and admitted that had it been explained earlier, that is, before the aforesaid

observation in the file, he would not have made the aforesaid observation.

These discussions took place during the Cabinet meetings, in Parliament house and also in the Ministry of Law and Justice. During these discussions, he accepted the stand of the DoT and subsequently he supported all actions of DoT before Hon'ble TDSAT, Hon'ble Delhi High Court, CAG and Hon'ble Supreme Court. The Law Minister also acknowledged before me that the Hon'ble Prime Minister was in touch with him in this regard.

Ques: In note sheet dated 07.11.2007, Ex PW 36/B-10, the decision taken in a meeting dated 06.11.2007 is shown to have been recorded. Could you please explain as to why this meeting was held?

Ans: As I said earlier, when I signed the file on 02.11.2007, the then Secretary (T) Sh. D. S. Mathur was on tour. The file was put up to him by Member (T) on 03.11.2007. Secretary (T) wanted to discuss further in this regard and to that effect, he made an observation on 05.11.2007, Ex PW 36/B-9, and marked the file to AS section. Therefore, the aforesaid meeting was called just to discuss the point of view of Secretary (T).

In that meeting, Secretary (T) wanted to know whether UAS licences could be granted without assured availability of spectrum. This was discussed by the Member (T) and DDG (AS) while the earlier note was approved on 02.11.2007. Since Secretary had not attended meeting of 02.11.2007, he wanted to bring all discussions held on 02.11.2007 on record, namely, para 3.1.1 of NTP-1999, provisions of UASL guidelines and the decision of Union Cabinet of 2003 and also other policies and procedures, as recorded in the note sheet. Accordingly, it was recorded and the file came to me where the cut-off date of 25.09.2007 was again not disturbed and I approved the file on 07.11.2007....."

604. Thus, Sh. A. Raja has explained as to how the availability of spectrum was kept in mind while fixing the cut-off date of 25.09.2007 and grant of LOIs to eligible applicants who had applied by this date. He also deposed as to how objections of Sh. D. S. Mathur were taken note of and the matter was again examined to his satisfaction. His testimony matches with the material available on record.

605. DW 1 Sh. A. Raja in his further examination-in-chief dated 01.07.2014, pages 12 to 16, deposed about the background under which letter, Ex PW 82/C, received from the Hon'ble Prime Minister was dealt with and how the same was replied to by him vide letter, Ex PW 7/B, particularly relating to spectrum issues and his meetings with the Hon'ble Prime Minister, as under:

> "**Ques**: Kindly take a look on another letter dated 02.11.2007, Ex PW 7/B, written by you to the Hon'ble Prime Minister. Would you please explain the circumstances under which this letter was written by you to the then Hon'ble Prime Minister?
> **Ans**: When the letter dated 02.11.2007, Ex PW 7/A, with regard to cut-off date and the opinion of Law Ministry was dispatched, letter, Ex PW 82/C, was placed before me at my camp office, which was received from the Hon'ble Prime Minister. I went through this letter carefully and felt that the issues raised in the annexure to this letter neither reflected the correct policy and procedure of the department nor were in accordance with the relevant statutes. I further felt that the Hon'ble Prime Minister/ PMO was completely misguided by the vested interests, who had taken the same stand before the Hon'ble TDSAT for same issues. In the Parliament also, such a confusing questions were asked by Hon'ble

Members of Parliament by way of plantation by vested interests. So, I took the issue seriously and replied to the Hon'ble Prime Minister same day by writing the aforesaid letter, Ex PW 7/B, explaining the correct legal position.

Ques: Before sending the aforesaid letter, Ex PW 7/B, to the Hon'ble Prime Minister, did you discuss the same with the concerned officers of DoT?

Ans: Having received the letter at 7 PM at my camp office, I called the officers of the DoT and dictated the aforesaid letter to my personal staff in the presence of officers of DoT and the corrections were made by the officers of DoT and they confirmed that the averments in the letter were correct. I recall that the then Member (T) Sh. K. Sridhara came to my camp office with one more officer, whose name I am unable to recall now.

Ques: Did you have any discussion with the then Hon'ble Prime Minister on the issues raised in the aforesaid letter, subsequent to the writing of the aforesaid letter?

Ans: I had many discussions with the Hon'ble Prime Minister, in the second and third week of November, both at 7 RCR and at office of Hon'ble Prime Minister at South Block. In the first meeting, I explained the entire policy and legal framework governing issuance of licences and allotment of spectrum and I disclosed that there is a cartel force wanting to stop the legitimate efforts of the DoT to boost the tele density and reduce the tariff by way of injecting competition, which are the main objectives of NTP-1999 and I further disclosed how pressure was put on me through legal and other means to restrain myself from these efforts. Hon'ble Prime Minister told me that he got the letter and it was discussed at length in the PMO, where a separate Joint Secretary is posted to look after DoT in the PMO to apprise all these issues. I submitted relevant papers in a folder to the Hon'ble Prime Minister. Further he shared with me that the members of the

Cabinet were also completely under confusion created by vested interests and he handed over a letter to me which was written by Sh. Kamal Nath, the then Union Minister, addressed to Hon'ble Prime Minister, which raised the same issues and wanted constitution of group of Ministers on these issues. Since Hon'ble Prime Minister has fully concurred with my views, he directed me to write a reply to Sh. Kamal Nath. Accordingly, I did it and thereafter, reverted back to the Hon'ble Prime Minister on 15.11.2007.

During the course of my discussion with the Hon'ble Prime Minister, I apprised him that adequate spectrum was going to be available to accommodate these applicants, who had applied up to 25.09.2007, as mentioned in my earlier letter, which was not known to the Hon'ble Prime Minister. Then the Hon'ble Prime Minister directed me to have discussion with Sh. Pranab Mukherjee, the then Minister for External Affairs, who was heading the empowered group of ministers on vacation of spectrum. The Hon'ble Prime Minister called Sh. Pranab Mukherjee on telephone in my presence with a request to hear me and to advice me in taking the decision. Accordingly, I met the then Hon'ble Minister for External Affairs, both in the Parliament office as well as in his North Block office. In the first meeting, I explained the policies and the availability of spectrum and the intention of the DoT to issue more licences to bring competition in the field, to reduce tariff and to boost tele density. Till then, he was also completely in dark about the availability of spectrum. I explained him that non-disclosure of available spectrum itself was surreptitious act in connivance with the officers of the DoT which prevented the real competition with fruitful results to the general public. I further explained that the COAI, which had vested interest over this issue filed frivolous litigation before the Hon'ble TDSAT and it was effectively defended by the DoT through the

then learned SG Sh. G. E. Vahanwati. The Minister for External Affairs advised me to call the learned SG with a brief note from his side in the next meeting and accordingly, matter would be decided. Accordingly, a meeting was held by the then Minister for External Affairs in December 2007, which was attended by me and the then learned SG....."

606. DW 1 Sh. A. Raja in his further examination-in-chief dated 02.07.2014, pages 1 to 3, deposed about his discussions with the then External Affairs Minister, the then Solicitor General and the background in which he again wrote a letter dated 26.12.2007, Ex PW 7/C, to the Hon'ble Prime Minister, as under:

".....After the direction of the then Hon'ble Minister for External Affairs to get a brief note from the Solicitor General in this regard, since he was defending the DoT before Hon'ble TDSAT and various Courts at that time, I met the Solicitor General and apprised him of the conversation between myself and the then Minister for External Affairs. He (SG) accepted that he was going to prepare a brief note on the various issues agitated before the Hon'ble TDSAT and raised in the media including the points raised in the PM's letter. Thereafter, I got the appointment from the Minister for External Affairs for the triangular meeting between Minister for External Affairs, SG and myself and I also intimated to the SG the date and venue of the meeting and requested him to attend the meeting with a brief note, which he had agreed to prepare. Accordingly, on the date and time of the meeting, probably in the first week of December 2007, SG came to my camp office and both of us together went to the North Block office of the Minister for External Affairs. Accordingly, in the office of the Minister, an extensive discussion took

place between Minister for External Affairs, SG and myself, issue-wise, as mentioned in the brief, namely, subscriber based criteria for allotment of spectrum, dual technology, new UASL applications for issuance of new licences and allocation of spectrum. At the end of the meeting, Minister for External Affairs shared with me that he was going to give a separate note to the Hon'ble Prime Minister in this regard and further directed me to apprise the Hon'ble Prime Minister separately.

Ques: Did you ever meet the Hon'ble Prime Minister in this regard after this meeting?

Ans: Soon after the meeting, I met the Hon'ble Prime Minister and apprised him of the happenings and outcome of the aforesaid meeting and I promised and undertook to give a detailed note in this regard. Accordingly, I sent a detailed letter containing issue based description to the Hon'ble Prime Minister on 26.12.2007. This letter alongwith its annexure is already Ex PW 7/C, in file D-361. The issues covered included subscriber linked spectrum allocation criterion for UAS licences, use of dual technology by UAS licencees, issue of new licences etc. The letter as well as annexure was prepared under my dictation.

Ques: After you met the Hon'ble Prime Minister, was there any change in the situation in the DoT regarding aforesaid matters?

Ans: My point of view was accepted by the Hon'ble Prime Minister and he directed me to go ahead on the line indicated by me in my letters.

Again I met the Hon'ble Prime Minister in the first week of January 2008 on the eve of the issuance of LOIs and Hon'ble Prime Minister had consistently endorsed the views of the department, as highlighted in my letters, and he acknowledged that the matter was discussed at length independently in the PMO……."

It may be noted that this version of Sh. A. Raja

matches with the official record, as note of learned SG, Ex PW 102/C, note of the then External Affairs Minister, Ex PW 82/DC-2, and letter dated 26.12.2007, Ex PW 7/C, written by Sh. A. Raja to Hon'ble Prime Minister, are available on the record. By and large, his entire deposition is as per the official record.

607. DW 1 Sh. A. Raja in his cross-examination dated 08.07.2014, pages 6 to 10, deposed about availability of spectrum as under:

> "**Ques**: Kindly take a look on note dated 02.11.2007, already Ex PW 36/B-8. Para 3 of this note refers to receipt of 575 applications up to 01.10.2007, list of which was appended to the note at pages 10/C and 11/C. Was any separate list of applications received up to 25.09.2007 placed alongwith the note?
> **Ans**: As I recollect, no such segregation was done of the applications received up to 25.09.2007 and the applications received thereafter. I was particular about the number of the applications received up to 01.10.2007, as mentioned in the note sheet, page 6/N, and not with other details.
> **Ques**: Whether any analysis was done of the available spectrum which could satisfy any category of applicants, that is, date-wise, sector-wise, circle-wise etc., or existing vis-a-vis new applicants?
> **Ans**: Irrespective of the category, as mentioned in the question, ever since the report of the TRAI was accepted in the department, I directed the WPC to assess, coordinate, to make the availability of spectrum and, as such, as per my recollection it was a continuous exercise done by WPC wing before issuance of LOIs as well as after the issuance of LOIs.
> **Ques**: Is this exercise evident from note dated 02.11.2007, Ex PW 36/B-8, upon which you took decision on 02.11.2007 itself?
> **Ans**: This is mentioned in para 4 of note dated 02.11.2007, Ex PW 36/B-8. I do not recollect if I had

seen the link file referred to in this para, that is, file Ex PW 36/DK-18.

It is correct that on 02.11.2007, Secretary (T) was not present in the headquarters. I cannot say if Wireless Advisor was also not present in the office on that day as link file was not placed before me, in which it is reflected that he is not available being on tour.

Ques: Now please take a look at link file Ex PW 36/DK-18. On seeing this file, would you please tell this Court whether there is any analysis of the available spectrum which could satisfy certain class of applicants, that is, applications received up to a certain date or in a particular sector or circle etc.?

Ans: As I said earlier, after the TRAI recommendations when the department was in thought of issuing UAS licences, the availability of spectrum was also simultaneously being analyzed as per my direction and as set out in para 4, the tentative availability of spectrum, availability of spectrum instantly and earlier precedent to wait for spectrum by the licencees were taken into consideration when the decision was taken on 02.11.2007.

Court Ques: You thought that there was nothing wrong in issuing UAS licences without availability of spectrum as the licencees were in the habit of waiting for spectrum, as was the case before you took over the charge of the Ministry?

Ans: As per the advice given by the officers, both in the WPC branch and AS branch, that in very near future availability of spectrum was going to be done by coordination internally and the spectrum was going to be released by the other user agencies, as mentioned in the TRAI consultation paper and the applicants could be accommodated, as mentioned in the approval given on 02.11.2007. As per the past practice also, the licencees were waiting for want of spectrum more than a year in the department and, as such, it is not unknown to the department to issue

licences without availability of spectrum with reasonable expectation of spectrum being available in future.

Ques: Would you please point out any document, apart from the file/ note referred to above, where analysis of availability of spectrum is available on the record of the department, which could satisfy a particular number of applicants?

Ans: I cannot recollect if any such document was put up to me. However, it was mentioned in the files, before issue of LOIs and after issuance of LOIs, that coordination of spectrum was going on.

Ques: I put it to you that there was no analysis done either in the WPC file or in the note in question, that is, Ex PW 36/B-8, or anywhere else to determine the number of applicants who could be satisfied and allotted spectrum in the light of availability of spectrum?

Ans: It is incorrect.

Ques: I put it to you that this exercise of passing the order on 02.11.2007, that is, recording of note at point A as part of note Ex PW 36/B-8, was deliberately done while Secretary (T) as well as Wireless Advisor, who are important persons in the respective departments, were not available?

Ans: It is incorrect. These officers were effectively involved in the process and they did not give any dissenting note at any point of time.

Ques: I put it to you that this decision dated 02.11.2007, as ordered by you, by which cut-off date was changed was deliberately not publicized?

Ans: It is incorrect. The cut-off date was not at all changed as explained by me earlier that two dates mentioned in the file, one for receiving the applications till further orders and another for processing the applications for UAS licences.

Ques: I put it to you that you being head of the department, it was not possible for the aforesaid two officers to put any dissenting note after your decision?

Ans: It is incorrect. There are observations available in the file itself where these officers expressed their desire wanting either to discuss the matter or to invite my attention according to their wisdom, which were accommodated by me democratically and no such incident is available in the file, where their advice was overruled or ignored.
Ques: I put it to you the decision taken by you to change the cut-off date to 25.09.2007 was without any reason on the file or coming from any of the papers appended to the file?
Ans: It is incorrect. I was of the opinion to issue LOIs to all 575 applications. However, this date was arrived on the basis of the deliberations which took place in the department under the context of policy documents mentioned as above in my statement.
Ques: I put it to you that this decision of yours was taken to favour Unitech applications in particular?
Ans: It is incorrect."

This deposition of Sh. A. Raja is also as per the available official record. He also denied that the date of 25.09.2007 was fixed to help Unitech group of companies.

608. DW 1 Sh. A. Raja in his further cross-examination dated 14.07.2014, pages 3 and 4, deposed about grant of licences without any cap or restriction as per UASL Guidelines dated 14.12.2005 and assessment of spectrum, as under:

".....The recommendation of "no cap" was given by TRAI on a reference of the department. It is correct that the DoT had taken a decision of no cap on the number of service providers in a service area in the year 2007. However, I cannot say if any such decision was also taken by the DoT itself w.e.f 13.12.2005.
Court Ques: Licences for a particular service area were required to be issued subject to availability of spectrum. Won't it put an indirect cap on number of

service providers?
Ans: That is correct. That is why the decision was taken by harmonious reading of para 3.1.1 of NTP-1999, under which the availability of spectrum should be taken into consideration, which was not accepted to by some of the officers in the department who wanted to rely on UASL Guidelines 2005, which says that licences can be issued without any restrictions on the number of service providers. All these points might have been in the mind of the TRAI as specific paragraphs were available in its recommendations, which say that even without spectrum one can have the licence to operate the same through wireline."

Thus, the TRAI Recommendations were that there would be no cap on number of licensees in a service area. UASL Guidelines dated 14.12.2005 also lay down that licences shall be issued without any restriction in a service area. However, the availability of spectrum has also to be considered. Hence, a balanced view is required to be taken to reconcile the two conflicting view points.

609. DW 1 Sh. A. Raja in his further cross-examination dated 15.07.2014, page 1, deposed about UASL Guidelines mandating no restriction on the number of licensees in a service area, as under:

".....Note sheet dated 07.11.2007, Ex PW 36/B-10, in DoT file D-7, Ex PW 36/B, inter alia, contains "Licences shall be issued without any restriction on the number of entrants for provisions of unified access services in a service area". It is not a decision of the Minister. Rather it is a stipulation quoted in the note sheet from UASL Guidelines 2005. The Guidelines dated 14.12.2005 were approved by the then Minister for MOC&IT and were issued in the

name of President of India and the aforesaid stipulation is a part of these guidelines. It is correct that NTP-1999 also speaks about entry of more operators in a service area based on TRAI recommendations....."

610. DW 1 Sh. A. Raja in his further cross-examination dated 15.07.2014, pages 5 to 7, again deposed as to how the availability of spectrum was assessed and his deposition matches with the official record, which reads as under:

"**Ques**: Did you ask the officials of DoT to put the data regarding availability of spectrum before you while deciding the cut-off date for processing of applications received up to 25.09.2007 on 02.11.2007?
Ans: In the note sheet dated 02.11.2007 itself, para 4, it has been discussed about the current and future availability of spectrum.
Ques: As per your aforesaid reply, the availability of spectrum, current as well as future, was before you, when the decision about the date of 25.09.2007 was taken, what prevented you from deciding the issuance of LOIs circle-wise, as is proposed in para 8 of note Ex PW 36/B-8?
Ans: The para 8 has to be read alongwith remaining paragraphs of note sheet. The number of LOIs as mentioned in para 8 is connected with number of LOIs in the consideration zone of 25.09.2007, as discussed in para 3. This para speaks about number of LOIs to be issued circle-wise, till the cut-off date of 25.09.2007.
It is wrong to suggest that para 3 of aforesaid note sheet does not talk of issuance of LOIs circle-wise.
Ques: As per you the number of LOIs to be issued circle-wise was decided in terms of para 3 of the aforesaid note sheet. I put it to you that if it was so, Nitin Jain would not have put up this proposal again

in note sheet dated 07.11.2007, Ex PW 36/B-10, as reflected in para 5 (v)?

Ans: It is incorrect. The decision was already taken that LOIs should be issued up to 25.09.2007, as mentioned in para 3 of note sheet 02.11.2007. The note of Sh. Nitin Jain is not asking for a fresh decision but his query is in reference to para 3 of note sheet 02.11.2007. However, in corroboration of the decision, file notings were available in all individual files where it has been clearly mentioned that on 12.11.2007 by Sh. A. K. Srivastava "As per discussion with Secretary (T) and the Hon'ble MOC&IT, LOIs are to be issued simultaneously to prima facie eligible applicants, who have submitted their applications up to 25.09.2007". This paragraph is available in all the files in which grant of LOIs was considered.

It is wrong to suggest that I am giving evasive reply on this point. It is wrong to suggest that I decided the cut-off date of 25.09.2007 for processing of applications received up to this date only without any basis, as the records as to how the cut-off date was decided is available in the files and the decision was taken after due deliberations. It is wrong to suggest that no deliberations took place in the DoT when the aforesaid cut-off date of 25.09.2007 was approved by me. It is wrong to suggest that this cut-off date was decided without any information to me about availability of spectrum circle-wise....."

611. The prosecution is trying to emphasize that number of LOIs per circle was not decided. However, as already noted, the Minister is right in saying that all those who had applied upto 25.09.2007 and were found to be eligible were to be issued LOIs. Both the paragraphs of note dated 02.11.2007, Ex PW 36/B-8, are to be read together. Paragraph 8 of the note is to be read with the remaining paragraphs. The prosecution is trying

to read each paragraph separately and to create things which are not there on the record.

612. DW 1 Sh. A. Raja in his further cross-examination dated 16.07.2014, page 2, again deposed about assessment of spectrum being a continuous exercise, as under:

> "**Ques**: Does the file D-7 show availability of spectrum circle-wise as on 07.01.2008?
> **Ans:** Since these notes were in continuation of earlier decisions taken from 02.11.2007 onwards, it was not necessary to mention again in the file note about the availability of spectrum as it was a continuous process being done from the date of receiving the TRAI recommendations itself till the licences were signed and even thereafter."

Thus, Sh. A. Raja explained, both in his examination-in-chief as well as in cross-examination, as to how the assessment of availability of spectrum was carried out and how a balance was sought to be struck between two conflicting viewpoints, that is, issue of licences without any cap or restriction and also availability of spectrum, which is limited one. In the end, the conclusion is that the deposition of Sh. A. Raja matches with the official record and appears to be cogent and truthful and as such acceptable.

613. DW 2 Sh. J. B. S. Rawat, Joint Director, Lok Sabha Secretariat, placed a copy of Lok Sabha report dated 26.11.2007, Ex DW 2(A-1)/X, on record, in which following question and answer in Lok Sabha, page 15, is relevant:

> "Shri P. S. Gadhvi: Sir, so nice of you and so kind of you.
> My second supplementary is whether the New

Telecom Policy of 1999 guideline of issuing new licencees subject to availability of spectrum has been superseded by the new guidelines issued to implement the Cabinet decision of October, 2003 which suggested that the Government may issue licences for provision of universal access services in service area on all India basis. if so,why have these guidelines not been implemented and whether the Government is contemplating to issue LOI's to all applicants who have applied for licences?

Mr. Speaker: I want a brief answer.

Shri A. Raja: Sir, the hon. Member's observation is correct. It is true that earlier when the National Telecom Policy was declared in 1999, there was a categorical observation in the Policy that wherever the licenses are issued, it must be in accordance with the availability of spectrum. In other words, if the spectrum is not available, the Government should not give new licences. It was referred to the Group of Ministers in the year 2003 wherein the unified access licence policy came into existence. The paragraph 11 of the Guidelines which were approved by the Group of Ministers and were also placed before the Cabinet said that the licences shall be issued without any restrictions on the number of entrants for provisions of unified access services in the service area. The Government is sticking to it. We are going to permit the new entrants according to the new guidelines which are available with the Ministry."

614. It may be noted that the answer matches with NTP 1999 and the addendum to it issued on 11.11.2003 and subsequent Guidelines dated 11.11.2003 and 14.12.2005.

615. Perusal of the copious evidence led on record and extensively referred to above, clearly shows that the assessment

of availability of spectrum was duly carried out by DoT. However, mathematical precision is not required, as coordination of spectrum is a continuous exercise and likely vacation of spectrum has also to be taken note of. Moreover, a licensee can also start wireline services awaiting allocation of spectrum. Not only this, there was precedent in the DoT of people awaiting allocation of spectrum after grant of licence and issue of licensee awaiting allocation of spectrum by itself does not amount to conspiracy.

616. Let me take note of as to how licences were granted in the past and the people waited for spectrum.

Whether any assessment of spectrum was carried out in 2006 when 22 licences were granted?

617. It is the case of the defence that in the past also, there was instances when licences were issued without considering availability of spectrum. It is the case of the defence that there is no guarantee that spectrum would be allocated immediately on grant of UAS licence. It is the case of the defence that twenty-two licences were issued in 2006 also without assessing availability of spectrum and these licensees waited for long time for allocation of spectrum. My attention has been invited to Ex PW 36/DS-12.

618. However, the case of the prosecution is that as per NTP 1999, no licence can be granted without availability of spectrum and whatever action was taken by Sh. A. Raja was result of conspiracy, as he wanted to accommodate the two

accused companies.

619. On perusal of the record, I find that in file D-590, on 17.10.2006 (48/N), six LOIs were approved to be issued to Essar Spacetel Limited for Assam, Bihar, Orissa, HP, J&K and North-East service areas, one LOI was approved to be issued to Idea Cellular Limited for Mumbai service area, seven LOIs were approved to be issued to Aircel Limited for Maharashtra, Karnataka, Rajasthan, Delhi, Gujarat, Andhra Pradesh and Mumbai service areas and one LOI was approved to be issued to Aditya Birla Telecom Limited for Bihar service area.

620. In file D-589, Ex PW 36/DQ-2, seven LOIs were approved to be issued to Dishnet DSL Limited on 22.11.2006 for Madhya Pradesh, Punjab, Haryana, Kerala, Kolkata, UP(E) and UP(W) service areas, at 42/N.

621. One LOI was approved to be issued to Essar Spacetel Limited for Madhya Pradesh service area on 28.02.2007 at 60/N (D-590).

622. The applications of Dishnet DSL Limited were processed in D-589, the applications of Aircel Limited were processed in D-587, the applications of Essar Spacetel were processed in D-590 and application of Aditya Birla Telecom Limited was processed in file Sl. No. 124, Ex PW 110/DD. The list of the licences granted in 2006 is Ex PW 36/DS-12 (D-589). In these files, I do not find anything showing assessment of availability of spectrum. These files do not indicate that availability of spectrum was at all considered before approving these LOIs.

623. As already noted above, perusal of the NTP-99 shows that it had created two categories of access service providers, that is, Cellular and Fixed. However, on 31.10.2003, Cabinet approved TRAI Recommendations that the present system of licensing in telecom sector should be replaced by Unified Licensing/ Automatic Authorization regime and this was to be implemented in two stages. Unified Access regime for basic and cellular services was to be implemented immediately in the first phase. Consequently, addendum dated 11.11.2003 to the NTP-99 was issued. In such a situation, para 3.1.1 of NTP-99 has lost some of its rigors as fixed service providers did not require any spectrum nor was there any limit on the number of operators that can be permitted in a service area. On the other hand, for a mobile operator, spectrum was an essential requirement and additional operators were to be introduced on the recommendation of TRAI considering the availability of spectrum. The UAS licence replaced both of them and in place of two licences only a single licence was introduced for providing both/ or landline or mobile services. As such, availability of spectrum was no longer considered to be a condition precedent for grant of a UAS licence by the DoT, though its availability was frequently assessed because mobile services were becoming order of the day. The deposition of Sh. A. Raja, already referred to, is also on these lines. However, it must always be kept in mind that in a criminal case guilt of the accused is to be judged by the standard of the day, that is, law or rule applicable when the offending act was committed and

not by subsequent developments. Thus, mobile services subsequently becoming order of the day leading to increased demand of spectrum would not be of much importance in the instant criminal case.

624. The fact that the requirement of assessment of spectrum for introduction of additional CMSP operators in a service area as per the recommendations of TRAI, as mandated in paragraph 3.1.1 of NTP 1999 was no longer strictly valid was taken note of by learned SG also in his note, Ex PW 102/C, submitted to the then External Affairs Minister, the relevant part of which reads as under:

> ".....**IV. The issue of new telecom licences**
>
> COAI has no legal right or authority to contend that new licences cannot be issued. The NTP (99) broadly categorises service providers as Access Service Providers. The whole basis of this changed on 31 October 2003 when the UASL system was brought about. Paragraph 11 of the amended guidelines issued on 14 December 2005 expressly provides that licences shall be issued, without any restriction on the number of entrants for provision of Unified Access Services. As a matter of fact, a specific reference was made to TRAI as to whether there should be a cap for the number of licences in any area. TRAI recommended that there should be no cap on the number of service providers for a service area. This has been accepted by the Government. Thus Government is obliged to scrutinize the pending applications and if the applicants are found eligible, to issue licences on a first-come-first-served basis. Once an applicant becomes licencee after complying with the LOI conditions, the applicant then becomes eligible for spectrum as per the WPC guidelines."

The perusal of deposition of witnesses reveals that availability of spectrum was assessed by the DoT from time to time and it was not that there was total disregard of the availability of spectrum. On introduction of UASL, the scenario had changed as some of the licensees may like to operate wireline services and a slight mismatch between the number of UAS licences issued and availability of spectrum was a normal feature of the working of DoT. No mathematical precision was being followed. Twenty-two licences were issued in 2006, but there is no record of assessment of availability of spectrum. In such a situation, if there was some mismatch in the year 2007-08 also between the number of new licences issued and the availability of spectrum, it cannot be said that there was total disregard of the policy and procedure of the DoT.

625. Furthermore, TRAI had itself noted that UAS licensee could provide some services which do not require spectrum or require a spectrum whose availability is not in short supply. It is instructive to take a look on paragraph 2.32 of TRAI Recommendations dated 28.08.2007, which reads as under:

> "Further, the Authority noted the provisions in the existing license agreement wherein it is seen that the license is for access services. A major implication of placing a cap on the number of access providers is that, such a policy would mean even if an access service which does not require the spectrum or a service which requires spectrum of a band whose availability is not in short supply will also be not available to the society. Unified licensing regime was recommended by the Authority in January 2005 with the key objective of encouraging free growth of

new applications and services leveraging on the the technological developments in the information and communication technology sector. Therefore, limiting the number of players in the access service market in India would be construed as a retrograde step."

626. It is clear from the aforesaid evidence on record that after the introduction of UASL, the requirement of assessing availability of spectrum appears to have been relaxed to a certain extent, as in the absence of spectrum, a licensee can start wireline service alone without incurring the obligation of meeting roll-out obligations. It is useful to take a look on para 5 of note dated 02.11.2007, Ex PW 36/B-8, recorded by PW 110 Sh. Nitin Jain, which reads as under:

"..... ..... In view of above a decision may be taken on the number of LOI's to be issued in each circle. While deciding on the number of LOI's it may also be taken in to account that only serious players may deposit the entry fee who can afford non-availability or delays in spectrum allocation and roll out using wire-line technology only. It may also be noted that large number of operators per circle will lead to real competition and bring down prices of telecom services. ...."

This note itself shows that the department was also aware that a UAS licensee can roll out services by using wireline technology alone, though the mobile services were becoming more prevalent and popular.

627. Accordingly, I do not find any merit in the submission of prosecution that the availability of spectrum was not assessed by Sh. A. Raja in terms of para 3.1.1 of NTP 1999 before issuing the licences in the year 2008. The submission is wholly without merit.

Letter to Prime Minister: Misrepresentation of Facts and Misleading the Prime Minister:

628. It is the case of the prosecution that A. Raja decided the cut-off date of 25.09.2007 vide note dated 02.11.2007, Ex PW 36/B-8 (D-7) and on deciding this date, he wrote a letter dated 02.11.2007, Ex PW 7/A, to the Hon'ble Prime Minister misrepresenting the facts and fraudulently justifying the cut-off date of 25.09.2007. It is the case of prosecution that Sh. A. Raja also misled him (Hon'ble Prime Minister) by incorrectly stating that the opinion of Ministry of Law and Justice to refer the matter to EGoM to be out of context. It is the case of the prosecution that on the same day, when the letter of Sh. A. Raja was in transit, the then Hon'ble Prime Minister wrote letter, Ex PW 82/C, to Sh. A. Raja flagging several issues as mentioned in Annexure to the letter. It is also the case of the prosecution that due to this letter Sh. A. Raja was caught on wrong foot and he again wrote letter, Ex PW 7/B, to the then Hon'ble Prime Minister assuring him that there was no single deviation or departure from the existing rules and procedures and the decisions were being taken by the DoT with full transparency. It is the case of the prosecution that in this letter also, Sh. A. Raja

misrepresented the facts with dishonest intention. It is the case of the prosecution that through these letters, Sh. A. Raja misled the then Hon'ble Prime Minister.

629. On the other hand, the defence argued that through these letters, the Minister had conveyed the correct position and these letters were read, processed and duly taken note of in the PMO and as such there is no question of the Hon'ble Prime Minister being misled by Sh. A. Raja.

630. These letters, PMO files and the evidence recorded in the witness box have been read at the bar at great length by the parties to emphasize their respective point of view.

631. It may be noted that the issue of cut-off date of 25.09.2007 was dealt with by Sh. A. Raja in letter dated 02.11.2007, Ex PW 7/A. The case of the prosecution is that this cut-off date was arbitrarily fixed by Sh. A. Raja without taking note of availability of spectrum. It is the case of prosecution that such a cut-off date was also in violation of first-come first-served policy. When there was violation of first-come first-served policy, even then Sh. A. Raja was assuring the Hon'ble Prime Minister that there was no violation of existing procedure by writing letter, Ex PW 7/B, in response to the letter of Hon'ble Prime Minister, Ex PW 82/C.

632. Let me take note of the letter dated 02.11.2007, Ex PW 7/A, written by Sh. A. Raja, which reads as under:

> "Respected Sir,
>
> After the announcement of TRAI Recommendations on Review of Licence Terms and Conditions for (Telecom) Access Service Providers

on 28th August, 2007, an unprecedented number of applications were being received by the Department due to Recommendation of TRAI recommending "No Cap" on number of Licences in a Service Area.

2. As unprecedented number of applications were being received, a cut-off date of 1st October, 2007 was announced by the Department on 24th September, 2007 and a Press Release was given. In all 575 applications for 22 Service Areas were received.

3. The Department wanted to examine the possibility of any other procedure **in addition to** the current procedure of allotment of Licences to process the huge number of applications. A few alternative procedures as debated in the Department and also opined by few legal experts were suggested by the Department of Telecom to Ministry of Law & Justice to examine its legal tenability to avoid future legal complications, if any. Ministry of Law and Justice, instead of examining the legal tenability of these alternative procedures, suggested referring the matter to empowered Group of Ministers. Since, generally new major policy decisions of a Department or inter-departmental issues are referred to GOM, and, needless to say that the present issue relates to procedures, the suggestion of Law Ministry is totally **out of context**.

4. Now, the Department has decided to continue with the existing policy (first-cum-first-served) for processing of applications received up to 25th September, 2007, i.e. the date when the news-item on announcement of cut-off date appeared in the newspapers. The procedure for processing the remaining applications will be decided at a later date, if any spectrum is left available after processing the applications received up to 25th September 2007.

5. As the Department is not deviating from the existing procedure, I hope this satisfy the Industry.

6. You will appreciate that I am wiring this letter

to apprise you about the latest developments in the Department.

I take this occasion to extent my warm Diwali Greetings.

With regards,

You Sincerely
(A. Raja)

Dr. Manmohan Singh,
Prime Minister of India,
New Delhi."

633. It is to be noted that on receipt of large number of applications for UAS licences, DoT deemed it desirable to seek the opinion of learned SG as to how these applications could be processed and this was approved by Sh. A. Raja on 26.10.2007 and accordingly letter, Ex PW 60/C, was written to the Law Ministry for seeking opinion of the learned SG. It is the case of the prosecution that Law Ministry gave its opinion that in view of the importance of the case, it was necessary to refer the matter to EGoM and in that process, the opinion of SG may be obtained. It is the case of the prosecution that Sh. A. Raja dismissed this as out of context as he was in conspiracy with other accused and decided to process the applications received upto 25.09.2007 only. It is the case of the prosecution that fixing a cut-off date and asserting that the applications were being processed as per the existing policy and dismissing the opinion of Law Ministry as out of context were misleading observations and the then Hon'ble Prime Minister was misled at least on these two counts, that is, regarding the cut-off date as well as the opinion of Law Ministry being out of context. It is also the case of the prosecution that the facts were again

misrepresented to the then Hon'ble Prime Minister when Sh. A. Raja wrote letter, Ex PW 7/B, assuring that there was not even a single deviation or departure from the existing rules.

634. Let me examine the whole issue of Hon'ble Prime Minister being misled by Sh. A. Raja.

635. PW 82 Sh. P. K. Sharma, Section Officer, PMO, proved the correspondence between Sh. A. Raja and the then Hon'ble Prime Minister and also deposed as to how the letters of Sh. A. Raja were processed in the PMO. In his examination-in-chief dated 26.11.2012, page 3, he deposed as to how letter, Ex PW 7/A, dated 02.11.2007 written by Sh. A. Raja to the Hon'ble Prime Minister was processed in the PMO, and his deposition reads as under:

> ".....On letter Ex PW 7/A, the endorsements at points B and C are of Hon'ble Prime Minister. At point D, the portion mark D-1 is in the handwriting of Hon'ble Prime Minister while the portion mark D-2 is in the handwriting of his Principal Secretary Sh. T. K. A. Nair, which I identify....."

636. It may be noted that at points B and C, on the face of the aforesaid letter, Hon'ble Prime Minister wrote "urgent" and "please discuss" in his own handwriting on 03.11.2007 and marked the letter to Principal Secretary Sh. T. K. A. Nair at point D-1. After discussing the matter, the Principal Secretary Sh. T. K. A. Nair recorded at point D-2 "Discussed with PM" and marked the letter to Joint Secretary Ms. Vinni Mahajan. Thereafter, there is no noting on the face of the letter.

637. The notings on the face of the letter do not indicate

as to how it was processed, but these notings do show that the letter was taken up as urgent and considered seriously in the PMO. However, the file in which this letter was processed in the PMO has not been produced before the Court. The letter was discussed by the Hon'ble Prime Minister with the Principal Secretary. No one from the PMO has been examined as a witness nor the relevant file has been produced before the Court. The then Hon'ble Prime Minister has also not been examined as a witness. As such, there is no material on record as to what was the fate of this letter in the PMO.

638. As far as letter, Ex PW 7/B, written by Sh. A. Raja in response to the letter, Ex PW 82/C, of the Hon'ble Prime Minister is concerned, PW 82 Sh. P. K. Sharma has just proved the letter. He has not deposed anything as to how this letter was dealt with in the PMO. No record has been produced as to how this letter was processed. There is not a scrap of evidence on the record even to show that letter, Ex PW 7/B, was placed before the Hon'ble Prime Minister or at least brought to his notice. As per letter Ex PW 82/A, letter Ex PW 7/B is the original copy. On this letter there is no noting by anyone. PW 82 Sh. P. K. Sharma in his cross-examination deposed that he did not know if this letter was deliberated upon in the PMO or not. In this situation, there is no material on record as to how this letter was dealt with in the PMO.

639. In this fact situation, the case of the prosecution is that facts were misrepresented by Sh. A. Raja to the then Hon'ble Prime Minister through the two letters, that is, Ex PW

7/A and PW 7/B. It is also the case of the prosecution that the then Hon'ble Prime Minister was misled by Sh. A. Raja about the opinion of Law Ministry to refer the matter to EGoM by characterizing the same as out of context. It is to be noted that as per Transaction of Business Rules 1961, Prime Minister is the competent authority to constitute Group of Ministers (GoM) or an Empowered Group of Ministers (EGoM). Cases are to be referred to Cabinet when there is difference of opinion between two or more Ministries and a Cabinet decision is desired. The Law Minister desired the matter to be referred to EGoM, but Sh. A. Raja was opposed to it and conveyed it to the Hon'ble Prime Minister. Now the question is: When the letter was duly discussed and considered by the Hon'ble Prime Minister, and no one from the PMO has been examined as a witness nor the relevant files with processing notes have been produced before the Court, how can one say that the facts were misrepresented or that the Hon'ble Prime Minister was misled regarding the opinion of Law Minister for referring the matter to EGoM? There is no material on record to indicate that the Hon'ble Prime Minister was misled or the facts were misrepresented to him.

640. The Law Minister opined vide his note, Ex PW 60/C-2, that the whole issue be considered by an Empowered Group of Ministers. When the matter was placed before Sh. A. Raja, he discussed the matter with PW 77 Sh. K. Sridhara, who had discussed the matter with PW 60 Sh. A. K. Srivastava, DDG (AS), and only thereafter, the opinion of Law Ministry was

characterized as out of context, vide note dated 02.11.2007, Ex PW 36/B-8. There is no evidence that it was Sh. A. Raja who characterized the opinion of Law Ministry to be out of context. It is to be noted that instant case is a criminal case and evidence is required to link accused to a particular act. The letter to the Hon'ble Prime Minister is reflective of note dated 02.11.2007, Ex PW 36/B-8. On the same day after taking the decision regarding the opinion of the Law Ministry being out of context and also about the cut-off date of 25.09.2007, vide aforesaid note, Ex PW 36/B-8, the aforesaid letter, Ex PW 7/A, was written by Sh. A. Raja to the Hon'ble Prime Minister. It may be noted that in para 4 of the note, Ex PW 36/B-8, the availability of spectrum was also considered. The Law Minister proposed a particular course of action, that is, referring the matter to EGoM, with which Sh. A. Raja did not agree and after characterizing the same as out of context, wrote a letter on the same day, that is, 02.11.2007, to the Hon'ble Prime Minister, the competent authority to constitute EGoM. The competent authority discussed the matter with the Principal Secretary. There is no evidence on record as to what action the Hon'ble Prime Minister took on the letter after discussing the same. The action of DoT shows that the opinion of Law Minister was considered out of context after due deliberation in the DoT and the competent authority to constitute Group of Ministers, that is, Hon'ble Prime Minister was duly informed. Accordingly, there is no material on record to conclude that the facts were misrepresented to the Hon'ble Prime Minister or that he was

misled about constitution of EGoM or the cut-off date or the first-come first-served policy, which has been discussed in in the following pages of this judgment. However, in the absence of any legally admissible evidence, the prosecution is trying to prove its case merely by arguments across the bar, which is not a correct approach. Their submissions are based on conjectures and speculations alone.

641. It is also the case of the prosecution that the Hon'ble Prime Minister was misled by Sh. A. Raja and one more reason for that is that the letters written by Sh. A. Raja were not processed in the departmental files of DoT. My attention has been invited to the deposition of PW 36 Sh. D. S. Mathur, the then Secretary (T) dated 10.04.2012, page 14, which reads as under:

> ".....I have been shown letter, D-359, dated 02.11.2007 received from the Hon'ble Prime Minister and addressed to Sh. A. Raja, the then Minister, MOC&IT. I have not seen this letter being processed in any file of DoT. The letter is now mark PW 36/A.
>
> I have been shown two letters, both dated 02.11.2007, written by Sh. A. Raja to the Hon'ble Prime Minister, already Ex PW 7/A and 7/B (D-358). I have not seen these letters being processed in any file of DoT.
>
> I have been shown original copy of letter Ex PW 36/E-6 dated 06.11.2007, which was written by me to Principal Secretary to the Hon'ble Prime Minister, Sh. T. K. A. Nair, D-360. This letter bears my signature at point A and is now Ex PW 36/H....."

642. Defence argued that high government officials, Secretaries and Ministers included, can write to each directly

without the matter being processed in the official files and such letters also form part of the record. It is the case of the defence that there is no bar against a Minister directly writing such letters to other Minister or to the Prime Minister. My attention has been invited to the evidence of PW 78 Dr. D. Subba Rao, where he wrote the letter dated 22.11.2007, Ex PW 36/C-1, directly to the Secretary (T) without the letter being processed in the files of Ministry of Finance.

643. However, if a Minister writes directly to the Hon'ble Prime Minister, that does not by itself mean that Prime Minister would be misled. Furthermore, there is no material on record indicating that a Minister cannot directly write to the Prime Minister.

644. Accordingly, this is no ground to say that Hon'ble Prime Minister was misled by Sh. A. Raja, as he wrote the letters on his own without getting the same processed in the DoT files. In the end, I do not find any merit in submission of the prosecution that the Hon'ble Prime Minister was either misled by Sh. A. Raja or that the facts were misrepresented to him. The arguments have been taken up by the prosecution just to prejudice the mind of the Court by invoking the high name and authority of Hon'ble Prime Minister of the country.

Whether opinion of Law Ministry was bona fide?

645. Even otherwise, the record reveals that the opinion of the Law Ministry was not bona fide one and was rightly characterized as out of context by the DoT. Why? The reference

to the Law Ministry was sent vide letter dated 26.10.2007, Ex PW 60/C (page 7/c). On receipt of this reference, Joint Secretary (Law) Sh. P. K. Malhotra recorded note dated 31.10.2007, Ex PW 36/DK-16 (page 8/c), which reads as under:

> "Department of Telecommunications may refer to d.o. letter No. 20-161/2007-AS-I dated the 26th October, 2007 from Member (Technology) on the issue of seeking opinion of learned AG/SG on grant of new Unified Access Service (UAS) Licenses and approval for use of Dual Technology Spectrum by UAS Licensee(s).
>
> 2. The matter was further discussed by the undersigned with Shri A. K. Srivastava, DDG (AS) and Shri Nitin Jain, Director (AS-I). During discussion, it transpired that issue of LOI/License under the UASL scheme does not automatically confer right on the Licensee for spectrum allocation. The question of grant of license for spectrum allocation has to be dealt with independently by WPC Wing after the LOI/License is granted by the Department of Telecommunications.
>
> 3. However, in the statement of case referred to us for opinion of Law Officer, we find that the issue for grant of LOI/License to the 575 applicants has been clubbed with the issue of LOI to M/s Tata Communications for usage of Dual Technology Spectrum based on their application received after 18.10.2007.
>
> 4. It is not clear from the reference whether the Department intends to seek opinion of Law Officer on the issue of disposal of 575 applicants for grant of LOI/License only or want to obtain opinion of Law officer on the issue of License for usage of Dual Technology Spectrum also. During the course of discussion, it also transpired that the question of

allotment of spectrum to the eligible Licensees is separately under consideration of the Department of Telecommunications and a report from TEC is expected shortly.

5. In case opinion of Law Officer is desired on the issue of spectrum also, as is referred to in para 13, full facts and documents on this issue will be required to enable the Law Officer to express his view in the matter.

6. Position in this regard may please be clarified.

7. All the papers are returned in original."

646. Thus, after discussing the matter with Sh. Nitin Jain and Sh. A. K. Srivastava, Sh. P. K. Malhotra in his wisdom returned the reference to DoT on the ground that full facts were not there and marked the file to Sh. K. Sridhara, the officer under whose signature the reference was sent. When the file returned to DoT, it was seen by Sh. K. Sridhara on 01.11.2007 itself, as is clear from his signature at point C on Ex PW 36/DK-16 and he marked the file to DDG (AS) Sh. A. K. Srivastava. Thus, the reference had officially returned to the custody of DoT with the opinion of Law Ministry that full facts were required for Law Officer to give opinion.

However, on the same day, PW 60 Sh. A. K. Srivastava recorded a note, Ex PW 60/C-1, observing that the file was again called by Sh. P. K. Malhotra, which reads as under:

"JS Mr. Malhotra spoke to me and wanted the file back. Accordingly, it is sent back to Department of Legal Affairs."

Accordingly, the file was again sent by Sh. A. K. Srivastava to Law Ministry.

647. It may be noted that the file was approved to be sent to the Law Ministry by Sh. A. Raja and it was duly sent under the signature of Sh. K. Sridhara, an officer of the rank of ex-officio Secretary to the Government of India. The file was duly received back in the Ministry and was seen by Sh. K. Sridhara. However, the file was again sent to the Law Ministry by Sh. A. K. Srivastava on his own initiative without the approval either of Sh. K. Sridhara, Sh. D. S. Mathur or of Sh. A. Raja. The file ought to have been moved out of the custody of DoT with the permission of the competent authority, but it was sent unauthorizedly by Sh. A. K. Srivastava fully knowing well that the reference had been returned unanswered by the Law Ministry on the ground of incomplete facts and documents.

648. In the Law Ministry, the then Law Secretary PW 66 Sh. T. K. Vishwanathan recorded note dated 01.11.2007, Ex PW 36/DK-17, page 70, to the effect that issues referred were too broad and required to be refined further and his note reads as under:

> "The matter relates to the grant of new Unified Access Service (UAS) Licences and approval for use of Dual Technology Spectrum by UAS licencees.
> The Ministry of Communications & Information Technology (Department of Telecommunications) have outlined 4 alternatives to deal with the 575 applicants for the grant of UAS and allotment of spectrum to various categories of spectrum. In that connection the Administrative Ministry have sought

the views of the Ld. Attorney General / Solicitor General on the different alternatives.
The questions posed for the opinion of Attorney General / Solicitor General appear to be too broad and the issue of disposal of the applications for UAS appears to be mixed up with the allotment of Spectrum. Before the request for seeking the views of the Ld Attorney General/ Solicitor General, the issues will have to be refined further.
MLJ may see for directions."

649. When the file had already been returned on the ground of incomplete facts and documents, there was no reason for the Law Secretary to recall the file and again repeat the same thing by using different language to the effect that the issues were too broad and needed refinement. However, instead of returning the file to DoT with this observation, he marked the file to the Law Minister.

650. The Law Minister recorded note dated 01.11.2007, Ex PW 60/C-2, which reads as under:

"I agree.
In view of the importance of the case and various options indicated in the statement of the case, it is necessary that the whole issue is first considered by an empowered group of Ministers and in that process legal opinion of AG can be obtained."

651. The Law Minister in his great wisdom agreed that the issues were needed to be refined further. When he agreed with the Law Secretary, the file ought to have been returned to the DoT, but instead of returning the file, he without any reason suggested that the matter may be referred to EGoM. On recording this note, he marked the file to Law Secretary, who

recorded a note, which reads as under:

> "MLJ's minutes above may be seen. Action accordingly"

652. He marked the file to Joint Secretary (Law). Sh. P. K. Malhotra, Joint Secretary (Law), recorded note dated 01.11.2007, Ex PW 66/A, which reads as under:

> "From overleaf:
>
> May please refer D.O. No. 20-161/2007-AS-I dated 26.10.2007 from Member (T) to Secretary, Department of Legal Affairs reg. grant of new UAS licences.
>
> May kindly see the observations of Hon'ble MoLJ overleaf for appropriate action please."

Sh. P. K. Malhotra marked the file to the Secretary (DoT). The file reached DoT on 02.11.2007. However, the Secretary (T) was on leave and the file reached Member (T). Member (T) Sh. K. Sridhara recorded note dated 02.11.2007, Ex PW 60/C-3, marking the file to MOC&IT, which reads as under:

> "Put up to Hon'ble MOC&IT for further orders"

Sh. A. Raja recorded "Discuss please" and marked the file to Member (T). On this Member (T) discussed the matter with DDG (AS) Sh. A. K. Srivastava and thereafter with Sh. A. Raja and thereafter only vide note dated 02.11.2007, Ex PW 36/B-8, the aforesaid opinion was characterized as out of context.

653. Here, two issues are involved, first: when Sh. P. K. Malhotra, Joint Secretary (Law) had returned the file to DoT,

recording that full facts and documents would be required to enable the Law Officer to express his view in the matter and the file had officially reached the DoT and was seen by an officer of the rank of Special Secretary, how could an officer of the rank of Joint Secretary take the file out of precincts of DoT without the approval of his superior officers and obtain a wholly contrary opinion thereon? Second: How could Law Ministry recall a file by oral orders and give an opinion entirely opposite to earlier one?

654. It may be noted that when the file was put up before the Law Secretary PW 121 Sh. T. K. Vishwanathan, he vide his note, Ex PW 36/DK-17, also found that before the request for seeking the view of learned Attorney General/ Solicitor General was considered, the issues were required to be refined further. There was no proposal from the Law department that the matter should be referred to the EGoM. However, the Law Minister without any proposal from below and without citing any good reason, on his own, all of a sudden introduced this idea of referring the matter to EGoM. The Joint Secretary (Law) as well as Secretary (Law) were of the opinion that further documents were required to clarify the issues and the issues were required to be refined further, but the Law Minister suddenly recorded that the matter be referred to EGoM. This opinion is entirely contrary to the earlier opinion conveyed to the DoT by Joint Secretary (Law) vide his note, Ex PW 36/DK-16. No government department is expected to give two contradictory opinions on the same issue without citing good

reasons or change of circumstances. In this case, not only the file was unauthorizedly summoned by the Law Ministry from the DoT, but was also unauthorizedly taken to it and a wholly contrary opinion was obtained. This is breach of official discipline and protocol. Such conduct by senior government functionaries may lead to administrative chaos. The circumstances in which this contrary opinion was given were wholly unreasonable and suspicious. It appears that the contrary opinion was aimed not at facilitating smooth disposal of applications by DoT, but stalling the process of issue of new licences by it. This may be the reason that the prosecution has not deliberately produced the relevant file from the PMO in which the letters dated 02.11.2007, Ex PW 7/A and PW 7/B, written by Sh. A. Raja, were dealt with. In the absence of any contrary material, it is reasonable to presume that the Hon'ble Prime Minister agreed with the view of Sh. A. Raja that there was no need to refer the matter to EGoM, and the opinion of Law Ministry had been rightly characterized as out of context, more so, when the facts and circumstances rightly show that the opinion of Law Ministry, on the face of it, was malafide having been obtained against established procedure of government working.

655. I had questioned the learned Spl. PP as to how could the file be taken out of the precincts of DoT by Sh. A. K. Srivastava without the approval of superior officers, once the same had been received from the Law Ministry and a wholly contrary opinion obtained, but he had no answer to that. In

such a situation, the opinion of Law Ministry was rightly characterized as out of context by DoT. In this regard, it is interesting to take a look on the cross-examination of the investigating officer PW 153 Sh. Vivek Priyadarshi dated 13.11.2013, pages 5 and 6, wherein he deposed as under:

> ".....It is correct that letter dated 09.03.2011, already Ex PW 82/A, written by PMO was received in response to my letter of the even date, as mentioned therein.
> **Ques**: Did you specifically ask for six letters, referred as D-358 to D-362, or for the record generally?
> **Ans**: As far as I remember, I had visited the PMO and saw the concerned records, after which I sought relevant records from the PMO vide my letter dated 09.03.2011 and obtained the aforesaid six letters there itself.
>
> Apart from the aforesaid six letters, no other record was received or summoned from the PMO during investigation in the instant case. I thoroughly went through the aforesaid six letters. The files in which the aforesaid letters were processed were also not sought from the PMO, though these files were seen by me. I did not summon the documents referred in the note recorded by PMO at point C on the face of letter Ex PW 7/C (D-361). Apart from Sh. P. K. Sharma, I did not record the statement of any official of PMO including the Hon'ble PM. It is correct that all these letters had also been seen by the senior officials of the PMO including the Hon'ble Prime Minister. I did not examine any other letter written by accused A. Raja as MOC&IT to the Hon'ble Prime Minister. I have been shown note already Ex PW 82/DD (PMO file 3(b)) and this did not come across to me during investigation....."

He further deposed, page 6, as under:

> ".....I also did not investigate as to how many

meetings took place between the Hon'ble Prime Minister and the then Finance Minister and MOC&IT between aforesaid period. I also did not investigate as to how many meetings took place between Hon'ble Prime Minister and Sh. A. Raja during the aforesaid period....."

656. The investigating officer is clear that he did not summon the files in which the letters written by Sh. A. Raja to the Hon'ble Prime Minister were processed in the PMO. He also did not examine any witness from the PMO on this point. These facts also indicate that the PMO also might have not found any substance in the opinion of Law Ministry.

Need and Timing for Introduction of Additional Operators:

657. It is the case of the prosecution that for introducing new UAS operators in a service area, DoT is required to seek TRAI Recommendations under Section 11 of TRAI Act 1997. It is further its case that officers of DoT, particularly Secretary (T) had drawn the attention of Sh. A. Raja vide note dated 25.10.2007 to para 3.1.1 of NTP 1999, which requires DoT to seek TRAI Recommendations for introducing new operators in any service area. It is the case of the prosecution that Sh. A. Raja in pursuance to the conspiracy brushed aside this legal position and did not seek any TRAI Recommendations on need and timing for introducing new operators and arbitrarily decided the cut-off date of 25.09.2007 on 02.11.2007, meaning thereby that all those who had applied by this date and were found eligible would be granted UAS licences disregarding the

need and timing requirement.

658. The prosecution has specifically invited my attention to the note dated 25.10.2007, Ex PW 36/B-6 (D-7), recorded by Secretary (T) PW 36 Sh. D. S. Mathur, for emphasizing that fresh TRAI Recommendations were required and the note reads as under:

> "Opinion of Solicitor General may be obtained as per the draft approved by MCIT. However, the attention of MCIT may be drawn to NTP 99 para 3.1.1. The policy has stipulated that availability of adequate frequency spectrum is essential for entry of additional operators. Hence the options to issue LOIs/ licences to all 575 applicants do not stand in the light of this provision. NTP 99 was approved by the Union Cabinet and only the Cabinet can effect a change in the policy."

659. On the other hand, the case of the defence is that no such recommendations were required, as TRAI Recommendations were already there and TRAI had recommended "No Cap Policy". It is further submitted that even otherwise TRAI Recommendations are required only for a new category of licence, being introduced due to technological innovations and not for introducing a new operator for operating an additional licence in an already existing service. It is the case of the defence that after introduction of UAS Licencing Regime, licences were to be issued on continuous basis.

660. Both parties have invited my attention to the NTP 1999, TRAI Act 1997, TRAI Recommendations and evidence on record. I proceed to examine the evidence on this point.

Section 11 of TRAI Act, 1997 provides as under:

> **"Functions of Authority**- [(1) Notwithstanding anything contained in the Indian Telegraph Act, 1885 (13 of 1885), the functions of the Authority shall be to-
>
> (a) make recommendations, either *suo motu* or on a request from the licensor, on the following matters, namely:-
>
> (i) need and timing for introduction of new service provider;
>
> (ii) terms and conditions of license to a service provider;....."

Both parties have repeatedly read this Section at the bar to emphasize their respective point of view.

661. The first question is: Whether fresh TRAI Recommendations were required, apart from the Recommendations dated 28.08.2007, to satisfy need and timing requirement? It may be noted that the migration package was effective from 01.08.1999 and from this date multipoly regime was introduced. After this, the view of the government was that it was at liberty to introduce as many additional operators for cellular services as it thought fit. Accordingly, government issued guidelines dated 05.01.2001 for the fourth CMTS, Clause 15 of which reads as under:

> "Additional licences may be issued from time to time in future also without any restriction on number of operators."

662. Paragraph 2.9 of TRAI Recommendations dated 27.10.2003, Ex PW 36/DC, reads as under:

> "Under Unified Licensing Regime in effect number of service providers offering telecom services may

change, therefore, Clause Nos. 11(1) (a) (i) & (ii) of TRAI (Amendment) Act, 2000 dealing with the issues "need and timing for introduction of new service provider" and "terms & conditions of license to a service provider" respectively also become relevant in this context. The relevance of new service providers offering cellular mobile services has to be seen from the angle of growth of wireless subscribers and the likely market size of about 100 million wireless subscribers by December, 2005 as brought out in Para - 6 subsequently."

663. A perusal of the Recommendations in this paragraph reveals that while recommending UAS Licencing Regime, the TRAI kept Section 11 of TRAI Act, 1997, referred to above, in mind and recognized its relevance. It noted that under this scheme the number of service providers may change and the reason for the change is the growth of wireless subscribers and size of the market.

664. In effect, it means that need and timing for introducing a new service provider depends upon the size of the market and in an expanding market there was felt need for introducing additional operators. This is also clear from the following paragraphs of TRAI Recommendations dated 27.10.2003.

665. Paragraph 5.4 of TRAI Recommendations dated 27.10.2003, which deals with opposition to unification/ merger of mobile and fixed service licence, reads as under:

"The cellular operators/COAI/few consumer groups mentioned that they are not in favour of the Unified Regime. CMSPs/COAI mentioned that the CMSPs have contractual rights under the policy/their

licenses and basic license should not be merged with CMSPs license to eliminate the concept of limited mobility. They apprehended that the real ***raison d'etre*** of the consultation exercise was to legitimize WLL(M) as a full cellular mobile service. In consideration of the acceptance by the licensee, of the terms and conditions contained in the offered migration package, for migration to the revenue sharing regime under, NTP'99, the CMSP license agreement was amended as follows:-

> "The Licensee shall forego the right of operating in the regime of limited number of operators after 01.08.1999 and shall operate in a multipoly regime, that is to say that the Licensor may issue additional licenses for the Service without any limit in the Service Area where the Licensee Company is providing Cellular Mobile Telephone Service."

This implies that CMSPs at the time of migration to revenue share regime had accepted a multi-poly regime. The restriction on the number of CMSPs by licensor due to limitations of availability of spectrum at a particular time should not be claimed as a contractual right."

666. This paragraph reiterates that the licensor/ Government may issue additional licences for mobile services without any limit and the limitation of availability of spectrum cannot be claimed as a contractual right. This paragraph also indicates that there was need for introducing more operators.

Paragraph 6.5 reads as under:

> "To achieve hundred million wireless subscribers (Cellular and WLL Growth) the required investment is of the order of Rs.50,000 Crore. We are of the view that the size of the cake is big enough for both

Cellular and WLL operators to co-exist....."

Furthermore, paragraphs 7.38 to 7.40 read as under:

"**Time and need for introduction of more service providers:**

7.38 As already mentioned earlier, with the continuing growth trend, the expected wireless subscriber base by December, 2005 will be 100 million. To achieve 100 million wireless subscribers (cellular & WLL both) the required investment is of the order of Rs.50,000 crores. As brought out in para 6.5 this highlights a need at present itself for greater efforts by existing and new service providers to expand the investment and to meet the market demand for telecom services and help achieve the objectives of telecom growth and development in the country.

7.39 As brought out in Para-7.37 above, the induction of additional mobile service providers in various service areas can be considered if there is adequate availability of spectrum. As the existing players have to improve the efficiency of utilisation of spectrum and if Government ensures availability of additional spectrum then in the existing Licensing Regime, they may introduce additional players through a multi-stage bidding process as was followed for 4th cellular operator.

7.40 Considering the above, the role of existing and new players in wireless services at the present juncture is well established."

667. The perusal of the aforesaid paragraphs reveals that the need for introducing more service providers in the market was clearly established. The growing market was capable of

providing substantial number of subscribers to even a new entrant so that it could sustain itself in the growing and competitive market. These paragraphs took note of both situations, that is, introduction of UAS Licensing Regime by the government as recommended or in the alternative of the situation in which these Recommendations were not accepted by the government, then under the then existing regime of Cellular and WLL Operators, the need and timing for more operators was clearly established.

668. The market size and its competitive environment was also considered by TRAI in its Recommendations dated 28.08.2007, Ex PW 2/DD, from paragraphs 2.1 to 2.36 and that is why in paragraph 2.37 it recommended that no cap be placed on the number of service providers in any service area. This clearly meant that the Authority was satisfied that there was need for introducing more access service providers in every service area and the time for the same was also right.

669. Let me take note of the cross-examination of PW 36 Sh. D. S. Mathur dated 20.04.2012, page 7, wherein he deposed on unlimited competition as under:

> ".....The acceptance of TRAI recommendations by the telecom commission regarding no cap on number of service providers in any service area meant that the number of licences will remain unlimited but it did not do away with the question of availability of spectrum....."

The witness admitted that any number of licence can be issued subject to availability of spectrum.

670. Even otherwise, there is no evidence on record that any such issue was seriously raised by anyone including Secretary (T) PW 36 Sh. D. S. Mathur, who had only emphasized availability of adequate spectrum for entry of additional operators and nowhere questioned the need and timing for introducing more operators.

Hence, there was no need for asking further Recommendations from TRAI to satisfy need and timing requirement for introducing more operators.

671. Now the next question is: Whether TRAI Recommendations are required each time an additional licence is to be issued in an existing category/ service or are they required only when a new service is being introduced due to technological advancements?

672. Let me take note of the evidence on record.

673. PW 36 Sh. D. S. Mathur in his examination-in-chief dated 09.04.2012, pages 2 to 4, deposed as under:

> ".....I have been shown D-834, already Ex PW 11/J, which is a file of DoT. In this file, I have been shown a letter dated 14.09.2006, already Ex PW 11/L. This letter was written by Chairman, TRAI, addressed to me as Secretary, DoT, wherein the Chairman, TRAI, had written to the DoT that the TRAI would make recommendations to the DoT either suo motu or on request made by the department to it. In the same file, there is a note sheet on page 1/N, whereby this letter Ex PW 11/L was processed in the department and a line of action suggested by the department was noted herein, which was finally approved by me on 19.10.2006. My signature appears at point A and the note sheet is now Ex PW 36/A. A letter was written to the

Chairman, TRAI, in reply to his letter Ex PW 11/L and that letter is dated 19.10.2006 and it was sent under my signature at point A and a copy of the same is now Ex PW 36/A-1, page 104 of file Ex PW 11/J. The thinking of the department was that for the kind of licences being issued in routine, recommendations of TRAI were not required.

I have been shown file of DoT, D-835, already Ex PW 11/N collectively. At pages 216 and 217 thereof, there is a letter dated 14.11.2006 written by Chairman, TRAI, addressed to me as Secretary, DoT, already Ex PW 11/P, wherein after referring to my letter Ex PW 36/A-1, Chairman, TRAI, also referred to the provisions of Section 11 of TRAI Act and reiterated his earlier stand and also suggested that legal opinion of the Law Ministry may be taken on this matter. This letter Ex PW 11/P was processed by the DoT in file D-835, already Ex PW 11/N, vide note sheet 1/N to 8/N, note sheet now collectively Ex PW 36/A-2. Finally it was decided by the department after consultation with me that since DoT has already written to TRAI on number of access providers in the service area in the light of scarcity of spectrum, therefore, we should await the recommendations of TRAI and this matter finally rested over there as per note sheet dated 22.05.2007....."

674. It may be noted that DoT sought TRAI Recommendations vide reference dated 13.04.2007 and the same were issued by TRAI on 28.08.2007. Sh. D. S. Mathur in his above examination-in-chief deposed that thinking of the department was that for issue of licences in routine, TRAI Recommendations were not required. Sh. D. S. Mathur also deposed that in view of the letters of Chairman, TRAI, the department finally decided to await the TRAI

Recommendations. What does this indicate? It indicates that the thinking of the DoT was that the Recommendations to be issued by TRAI in response to DoT reference dated 13.04.2007 would satisfy the need and timing requirement also.

675. However, PW 36 Sh. D. S. Mathur in his cross-examination dated 19.04.2012, pages 6 to 7, deposed in a confusing and contradictory manner as under:

> ".....I do not remember if the view of the DoT was that TRAI recommendations were to be sought for a new category of licences and not for introduction of a new operator in same category of licence. I have been shown DoT file D-826A, Ex PW 11/O, wherein there is a letter of Chairman, TRAI, addressed to Secretary (T), Ex PW 11/K, as well as DoT file D-835, Ex PW 11/N, wherein there is a letter under my signature as Secretary (T), already Ex PW 11/M. The view of the department is contained in letter Ex PW 11/M to the effect that recommendations of TRAI are required whenever new category of licence is to be issued. This was the view of the department after consultation with the legal advisor....."

676. PW 36 Sh. D. S. Mathur in his further cross-examination dated 20.04.2012, pages 7 to 8, deposed as under:

> ".....During my tenure as Secretary, DoT, it continued issuing UAS Licences despite letters received from Sh. Nripendra Mishra, Chairman, TRAI, though a suitable reply was sent to him. The licences were issued according to then extant policy of the department before 13.04.2007, the date on which reference was sent to TRAI....."

Sh. D. S. Mathur conceded that during his tenure, DoT kept issuing licences without seeking TRAI Recommendations each time an additional licence was issued.

677. PW 11 Sh. Nripendra Misra in his cross-examination dated 19.03.2012, page 3, deposed on need and timing, as under:

> ".....It is correct that as per my understanding of Section 11 (1)(a)(i) of TRAI Act, each time DoT wishes to issue licence under Section 4 of Telegraph Act, it is required to obtain the specific recommendation of TRAI for issue of licence of a telecom service provider in terms of need, timing and terms and conditions.
> **Ques**: Is it axiomatic, as per your understanding of Section 11, that whenever an applicant files an application before DoT for any licence under Section 4 of Telegraph Act, the application must be sent as reference to the TRAI seeking its recommendation?
> **Ans**: As per my understanding, the applications for telecom service provider can be considered if the need and timing is already evaluated and then each individual specific applications are not to be referred to TRAI and the intent of Section 11 is met.
> It is wrong to suggest that I am not consistent in my interpretation of Section 11 of TRAI Act. It is further wrong to suggest that I take self-serving stand as it suits me....."

Thus, Sh. Nripendra Misra also deposed that his view was that each time DoT wished to issue a licence, it was required to obtain specific recommendation of TRAI to satisfy the requirement of need and timing. However, he also qualified it by deposing that if the need and timing was already evaluated, then each individual application was not required to be referred to TRAI as the intent of Section 11 was already met. This is a reasonable and acceptable view and reflects correct interpretation of Section 11 by Sh. Nripendra Misra.

678. PW 102 Sh. G. E. Vahanvati, the then Attorney General of India, in his cross-examination dated 28.02.2013, page 13, deposed on need and timing as under:

> ".....I have been shown DoT file D-833, wherein there is a photocopy of an opinion dated 06.09.2011 given by me and the same is already Ex PW 60/DK-1. It bears my signature at point A, which I identify. My opinion is to the effect that there is no question of referring the matter back to the authority if a new licence is to be granted to another service provider in the same category, namely, UAS Licences and it speaks for itself."

679. DW 1 Sh. A. Raja in his cross-examination dated 15.07.2014, pages 4 and 5, in response to Court Question, deposed as under:

> "**Court Ques**: The recommendations of TRAI were about "cap or no cap" of licences in a particular service area. Were fresh recommendations required regarding need and timing for introduction of new licencees in any service area? Did the aforesaid recommendations of TRAI dated 28.08.2007 satisfy the requirement of need and timing, as required by Section 11 of TRAI Act also?
> **Ans:** As per the understanding of DoT, the need and timing for introduction of fresh licencees is applicable only to the new category of licences going to be introduced. As per my memory, there was a difference of opinion between the TRAI, of which Sh. Nripendra Misra was chairman at that time, and the DoT on this issue. However, it was admitted that licences were issued without any such recommendations in the DoT when Sh. Nripendra Misra himself was Secretary (T). So the understanding of the DoT, as per my recollection, was that no fresh recommendations were required for need and timing for introduction of new

licencees. In my view, recommendations were required for new category/ type of licences, as discussed in the DoT."

Perusal of the evidence reveals that Sh. D. S. Mathur, Sh. G. E. Vahanwati and Sh. A. Raja were of the view that TRAI Recommendations were required for introduction of a new category of licence only and not for every additional licence issued in routine in an already existing category, though Sh. Nripendra Misra, the then Chairman, TRAI, thought otherwise, but with a caveat.

680. It is also interesting to take note of Cabinet approval on the introduction of UAS licensing regime vide note dated 31.10.2003, Ex PW 11/DB, paragraph 2.4.6 (vi) of which reads as under:

> **"2.4.6 Based on the above, the GoM has recommended the following course of action:**
> .....
> .....
> (vi) If new services are introduced as a result of technological advancements, which require additional spectrum over and above the spectrum already allotted/ contracted, allocation of such spectrum will be considered on payment of additional fee or charges; these will be determined as per guidelines to be evolved in consultation with TRAI."

This paragraph also speaks of new services being introduced as a result of technological advancement and allocation of spectrum on recommendations of TRAI. The evidence of PW 36 Sh. D. S. Mathur also shows that the DoT was of the view that TRAI Recommendations were required only

when new services are introduced as a result of technological advancement, that is, a new category of licence is being introduced. Sh. A. Raja as DW 1 has also deposed on these lines, as noted above.

681. Now, there are two views as to whether fresh TRAI Recommendations were required each time an additional licence was to be issued in an existing category? To answer this question, sub-clauses (i) and (ii) of Clause (a) of Section 11 of TRAI Act, 1997 are required to be read together. As per sub-clause (i), TRAI Recommendations are required to determine need and timing for introduction of a new service provider. As per sub-clause (ii), they are also required for determining terms and conditions of a licence to a service provider. If both Clauses are read together, the result is that TRAI Recommendations are required for determining need and timing for introduction of a new service provider, whose terms and conditions are also to be determined. It may be noted that terms and conditions once determined for a specific category of licence, need not be determined each time an additional licence is issued in that category. Once need and timing has been determined for introduction of a new service provider and its terms and conditions settled, then Recommendations are not required for issuing an additional licence in that category itself. These two clauses are required to be read together for the reason that sub-clause (i) uses the words “new service providers” and sub-clause (ii) uses the words “service providers”. To determine the need and timing for a new service provider and its terms and

conditions, Recommendations are required only once. To illustrate, when UAS licencing regime was introduced vide Recommendations dated 27.10.2003, TRAI had issued its Recommendations suo motu and thereafter its terms and conditions were laid down. On the terms and conditions being laid down, 51 UAS licences were issued till 2007. There is no material on record to show that terms and conditions were determined each time a licence was issued or that every application was referred to TRAI to satisfy need and timing requirement.

682. Thus, TRAI Recommendations are not required to be sought each time a fresh licence is issued in the same category. If it is so, it would add to burden of everyone, TRAI included and the whole process of licensing would become cumbersome and time consuming. Instead of facilitating competition it would impede competition, as it would be a drag on the system. The reason for making recommendations mandatory in relation to sub-clauses (i) and (ii) is that two crucial factors, which are interlinked, are required to be determined, that is, the need and timing for introduction of a new licence as well as its terms and conditions, both of which are complicated and time consuming process and require expertise, of which TRAI is the storehouse. Untimely introduction of service providers may destabilize financial position of existing licensees leading to crisis in the economy.

683. In paragraph 2.9 of TRAI Recommendations dated 27.10.2003, TRAI also read both the sub-clauses together for

issuing the Recommendations for introduction of UAS Licensing Regime and also talking about its terms and conditions. This view is further fortified by the summary of Recommendations, a part of which reads as under:

> "In the interest of consumers of the telecom sector and to promote and ensure orderly growth of the telecom sector, the Authority recommends that the country should migrate to "Unified Licensing" Regime for all telecom services. As a preparatory step, Unified Access License will be implemented for access services in each circle. Finally, within six months Unified Access Licensing through an Authorisation process for all services and all geographical areas should be initiated. Service providers will be free to offer all services in all geographical areas through automatic licensing/authorisation subject to notifying the Regulatory Authority and compliance with published guidelines. The guidelines will be published by the Government/Regulator to include various terms & conditions of authorisation, e.g., nominal entry fee, Universal Service Obligation (USO), security conditions, etc. Service providers who need spectrum for their services will approach Government of India separately. The guidelines for spectrum allocation which would cover the methodology for spectrum pricing, will also be notified by the Government. Service providers would be given choice to migrate to the new regime or maintain the present position."

684. The underlined part of this summary also speaks about terms and conditions for UAS licence. These terms and conditions need not be changed each time an additional UAS licence is issued. This position becomes more clear when it is contrasted with the terms and conditions of a CMSP licence.

This is clear from paragraph 7.7 of the Recommendations dated 27.10.2003, which reads as under:

> "Existing operators would have the option to continue under the present licensing regime (with present terms and conditions) or migrate to the new Unified Access Licensing Regime in the existing circles."

This paragraph speaks about terms and conditions of a pre-UAS licence. The end result is that once a licence has been introduced for a particular category of service, its terms and conditions will be decided at that time alone unless some changes are required due to changed circumstances. Thus, every time a new licence is issued in a specific category, TRAI Recommendations are not required for determining its need and timing and also its terms and conditions.

Even otherwise, as already noted above, the need and timing was already satisfied in the instant case by TRAI Recommendations dated 27.10.2003 as well as 28.08.2007.

Pre-UAS Position:

685. It may be noted that in the beginning of private participation in telecom sector, two CMTS licences were awarded in November 1994 in each of the four metro cities of Delhi, Mumbai, Kolkata and Chennai and these licensees were selected on Beauty Parade basis. These licences are referred to as **First cellular/ operator**.

686. In the second phase, two CMTS licences each were awarded in December 1995 in eighteen telecom circles and

these licences were selected by Bidding process. These licences are called **Second cellular/ operator**.

687. In 1997, TRAI Act was enacted and Telecom Regulatory Authority of India (TRAI) was established.

688. In the year 1999, Government of India also announced New Telecom Policy (NTP 1999), which came into force with effect from 01.04.1999. Through this policy, government introduced multipoly, and BSNL and MTNL were introduced as **Third Cellular/ operators**. This policy also envisaged that entry of additional operators of cellular service in a service area may be decided on the basis of recommendations of TRAI.

689. Accordingly, vide letter dated 23.04.1999, DoT sought recommendations from TRAI for issue of fresh licences. In response to that, TRAI sent its recommendations dated 23.06.2000, recommending introduction of **Fourth Cellular/ operator**.

690. Again, vide letter dated 24.12.2002 (CD-14, Ex PW 131/D), page 1, (4/c in CD-4), DoT sought recommendations from TRAI for inducting additional operators for mobile services and the same were given by TRAI vide letter dated 20.02.2003, Ex PW 153/M-6 (D-594) (original in CD-4 at 5/c). These were processed by DoT in CD-4, as recommendations for **Fifth and Sixth operators**, and these recommendations were also taken note of by TRAI in paragraph 7.37 of its recommendations dated 27.10.2003. However, before licences could be issued to **Fifth and Sixth operators**, Unified Licencing Regime was

recommended by TRAI. It is useful to take note of paragraph (5) of the letter dated 24.12.2002, which reads as under:

> "The NTP-99 also envisages "to review the spectrum utilization from time to time keeping in view emerging scenario of spectrum availability, optimal use of spectrum, requirements of market, and other interest of public. **The entry of more operators in a service area shall be based on the recommendations of TRAI who will review this as required and no later than every two years**" (Clause 3.1.1). Since the recommendations of TRAI for inducting 4th Cellular Operator had been received more than two years ago, it is felt that action for review as contemplated in NTP-99 requires to be taken now."

This narration clearly shows that DoT had been seeking recommendations of TRAI each time it introduced new mobile operators.

691. Thereafter, TRAI made suo motu Recommendations on Unified Licencing Regime dated 27.10.2003, Ex PW 36/DC, which led to the introduction of UAS licencing regime.

692. It is thus clear that for introducing Fourth and Fifth & Sixth operators, DoT had sought TRAI Recommendations, though later on it changed its stand that TRAI Recommendations are required only when a new category of service is introduced due to technological advancement, with which view, for the reasons noted above, I find myself in agreement. Hence, no fresh Recommendations were required for issuing fresh licences in 2007 and 2008.

693. In any case, need and timing for introducing more

operators was clearly established by TRAI Recommendations dated 27.10.2003 as well as 28.08.2007 and no more Recommendations were required. Accordingly, I do not find any merit in the submission of the prosecution that fresh recommendations were required before DoT could proceed with the issue of new licences in the years 2007 and 2008.

Conclusion:

The conclusion from the above detailed discussion is that there is absolutely no evidence on record that the very concept of cut-off date or the cut-off dates of 01.10.2007 or 25.09.2007 are the result of any conspiracy by the conspiring public servants, that is, Sh. A. Raja and Sh. R. K. Chandolia with Shahid Balwa, Vinod Goenka and Sanjay Chandra. Entire submission of the prosecution is without merit.

II. Issue relating to Violation of First-come First-served Policy: Role of A. Raja, Siddhartha Behura and R. K. Chandolia

First-come First-served: Origin, Meaning, Scope and Proof

694. The issue here is: Whether the policy of first-come first-served was subverted by Sh. A. Raja as a result of conspiracy with the accused companies and their directors? It is the case of the prosecution that since the introduction of UAS licencing regime in 2003, the DoT had been following the principle of first-come first-served for grant of UAS licences for providing telecommunication services. This principle was adopted from the procedure being followed for allocation of

spectrum for WLL services for basic service operators. It is the case of the prosecution that first-come first-served principle meant that an applicant, who applied first in a service area, shall be allocated LOI, licence and spectrum first.

695. The case of the prosecution on this point is found in the following paragraphs of the charge sheet:

> ".....Since introduction of UAS licensing regime in 2003, 51 new UAS licences were issued till March 2007 based on the policy of continuous award on First-Come-First-Served (FCFS) basis. As per this policy the applications which were received first in Department of Telecommunications were issued Letter of Intent first. The applications received later were not considered till the applications received earlier were decided and allocated Letter of Intent (LOI). In case approvals for more than one LOI in the same telecom circle was received simultaneously, the earlier applicant was issued LOI first and the latter one was issued LOI at least a day after, in order to maintain the same priority for signing of UAS Licence as well as allocation of spectrum....."

The gist of allegation is that only one application would be processed at one time and in case approval for more than one LOIs was given on the same day, the earlier applicant would be issued LOI first, so that it maintains his priority in the matter of signing of licence and allocation of spectrum.

696. It is further their case that:

> ".....The investigation has revealed that the DOT had been following the principle of first come first served basis for allocation of UAS Licences since the year 2003 and this principle was adopted from the

procedure followed for the allocation of spectrum for WLL services of Basic telephone operators. The first come first served principle meant that the applicant which applied first shall be allocated LOI, Licence and spectrum first. This existing procedure was also described, almost correctly, as Alternative I in the DOT letter dated 26.10.2007 addressed to Ministry of Law & Justice, which was approved by the MOC&IT himself....."

697. It is further their case that:

".....Investigation has revealed that under the existing procedure / policy for allocation of licences on first come first served principle, LOI was issued first to an applicant who had applied first. Then sufficient time was given for compliance of LOI conditions. The LOI prescribed a time of 7 days for acceptance / compliance of the LOI and 15 days to deposit Entry Fee and Performance Bank Guarantee (PBG) / Financial Bank Guarantee (FBG). Licences were, then, also issued on the same priority as per dates of application. After issuance of licence, the licencee was required to make an application before Wireless, Planning & Coordination (WPC) Wing of DOT for allocation of spectrum. This gap facilitated time lead to an applicant to retain his date of application seniority at all stages....."

698. In brief, the case of the prosecution is that 51 UAS licences were granted from 2003 to 2007 on the basis of first-come first-served since the introduction of UAS Licencing Regime in the year 2003. In this regime, the seniority of the applicant would be determined at all stages from the date of application to the DoT, that is, issue of LOI, grant of licence/signing of licence agreement, application to WPC for allocation of spectrum and actual allocation of spectrum. The

applications received first would be processed first and, if found eligible, would be issued LOI first. Thereafter, on compliance of LOI conditions, the licence would be signed first with the applicant whose application was received first, irrespective of date of compliance. Thereafter, sufficient time would be given to this licensee for filing application before WPC for allocation of spectrum, before any other licence is signed, so that it may maintain its lead and also obtains spectrum first.

699. On the other hand, defence argued that there was no policy of first-come first-served in the form as alleged by the prosecution. It was an entirely different policy and that policy envisaged grant of UAS licence at one stage and whosoever required spectrum, grant of spectrum by the WPC as the second stage. There was no policy that whosoever gets licence first would also get spectrum first. It is the case of the defence that it was a two stage process, that is, grant of UAS licence and grant of WPC licence and both were separate and independent. Both parties agree that there was a policy of first-come first-served but differ as to its meaning and the way of its implementation.

700. It is the case of the prosecution that 122 licences granted by Sh. A. Raja ought to have been granted following the first-come first-served policy as stated above. Now the first question is: Whether the prosecution has been successful in proving that 51 UAS licences were issued as per the policy of first-come first-served as extracted above? What is the scope of first-come first-served policy? What steps are to be taken in

implementing this policy? Is it an integrated process beginning with the processing of application for UAS licence to issue of LOI, signing of licence and allocation of spectrum? It is the case of the prosecution that 51 UAS licences were issued following the policy of first-come first-served, that is, an application received first was processed first, on finding it eligible, the LOI was issued first to it and thereafter on compliance of LOI, the licence agreement was signed with it first and thereafter, spectrum was also allocated to it first. The prosecution has come with a definite case that all 51 licences were granted on first-come first-served basis, that is, at one time only one application was processed in a particular service area.

First-come first-served: Origin and Implementation

701. On introduction of UAS licensing regime in November 2003, Tata Teleservices, vide its application dated 12.11.2003 (1/c) of D-592, had applied for UAS licences in eight service areas. Later on, Bharti Cellular Limited vide its application dated 17.11.2003 had also applied for six UAS licences. These applications were processed vide note dated 20.11.2003, Ex PW 62/B. While processing these applications, it was presumed vide note dated 21.11.2003, Ex PW 36/DE, that new licences in the category 'UASL' would be issued on first-come first-served basis on the basis of date of application. During processing of these applications, note dated 21.11.2003 (4/N), Ex PW 36/DE-1, was recorded by PW 62 Sh. A. S. Verma, paragraph (iii) of which reads as under:

> "As regards the point raised about grant of new licences on first-come-first-served basis, the announced guidelines have made it open for new licences to be issued on continuous basis at any time. However, the spectrum is to be allotted subject to availability. This in effect would imply that an applicant who comes first will be granted the spectrum first so it will result in grant of licence on first come first served basis."

The same was approved by the then MOC&IT on 24.11.2003 at 6/N.

702. Sh. A. S. Verma, who had recorded the aforesaid note regarding first-come first-served has been examined as PW 62. In his examination-in-chief dated 19.09.2012, pages 3 and 4, he deposed as to what first-come first-served policy meant and relevant part of that reads as under:

> "**Ques**: The first-come first-served policy was approved in this file. Could you please explain it briefly?
> **Ans**: The applications received were processed date-wise and one by one.
> **Court Ques**: What do you mean by one by one?
> **Ans**: The application received first would be processed first, that is, one application would be processed in a particular service area. Other applications would be taken up only when the first one stood disposed of. Moreover, at that time not many applications used to be received."

It means that at one time only one application would be processed. It may be noted that applications of TTSL and Bharti Cellular Limited were processed at the same time, though received on different dates with several common service

areas. It is not clear, if he was linking allocation of spectrum to the priority of grant of UAS licence. This is the origin of first-come first-served policy relied upon by the prosecution.

Now the question is: How officers of DoT and others viewed first-come first-served policy?

View of AS Cell

703. Four witnesses have been examined by the prosecution from AS Cell, that is, Sh. A. K. Srivastava; DDG (AS), Sh. D. S. Mathur; the then Secretary (T), Sh. Nitin Jain; Director (AS-I) and Sh. Madan Chaurasia; Section Officer. They deposed as to how this policy was being implemented by the DoT. Relevant parts of their deposition are extracted as under:

PW 60 Sh. A. K. Srivastava in his examination-in-chief dated 01.08.2012, pages 4 and 5, deposed as under:

> ".....When I rejoined the department on 31.05.2007 on repatriation, some applications for UAS Licence were pending in the department. After the reference was sent to TRAI on 13.04.2007, some more applications for UAS licence were also received. However, they were kept in abeyance as per the decision of the then Minister awaiting TRAI recommendations. After the decision of the Minister on 17.10.2007, some more applications for UAS Licence were received in the department. The applications are received at the reception of Sanchar Bhawan in Central Registry (CR) section. The process of receipt of applications is an open and continuous process. Whenever an application is received in CR section, they put a number thereon and get the same receipted in the AS cell. The AS cell takes the applications on its record. The application is processed in a file and a number is

given to the file. The applications are processed company wise. There are twenty two service areas in India. Separate application is required for UAS licence in each service area. The seniority of the applications is maintained as per date of receipt in the CR section. However, if more than one applications are received on the same day for the same service area, their priority is fixed as per the order of receipt in the CR section, which is revealed by the diary number....."

704. As per this witness, seniority is fixed as per date of receipt of application.

In case more than one application is received on the same day, the priority is fixed as per the order of receipt in the CR Section. The date has no relevance in such a case.

705. PW 60 Sh. A. K. Srivastava in his further examination-in-chief dated 22.08.2012, pages 7 to 10, deposed about then existing policy and its genesis as under:

".....I have been shown DoT file D-7, already Ex PW 36/B, pertaining to UAS Licensing policy. I have been shown pages 9/N to 12/N, wherein there is a note recorded by Sh. Nitin Jain, Director (AS-I), on 07.01.2007, whose signature appears at point D and the note is already Ex PW 36/B-10. This note was marked to me by Sh. Nitin Jain.

Ques: Since this note was marked to you by Sh. Nitin Jain and you also dealt with the same. In para 5 (I) of this note it has been recorded, inter alia, that the pending applications for UASL shall be processed as per the existing policy. Could you please explain as to what was the policy in existence at that time?

Ans: The UAS licences were being granted as per UASL guidelines dated 14.12.2005 which were the extant guidelines. The applicant companies submit

their applications in terms of the guidelines which were received in the AS cell. The applications were processed, scrutinized for compliances of various items under the guidelines and necessary clarifications/ information, if required, were sought from the company. If the company was found eligible, the LOIs were issued with due approval of the competent authority and fifteen days time was given for compliance of the LOIs. After the compliance of LOIs is verified, then with the approval of competent authority the licence agreements were signed. The processing of these applications was service area-wise and in the order of priority of receipt of applications in that service area. This policy has been listed as alternative-I broadly in the communication proposed to be sent to the learned SG, already Ex PW 36/B-4, page 64.

Ques: Please explain the genesis of first-come first-served policy?

Ans: When I rejoined the DoT on 31.05.2007 as DDG (AS), old policy files were shown to me and in file D-592, already Ex PW 11/DM-19, there is a decision by the then MOC&IT Sh. Arun Shourie regarding the first-come first-served policy.

This file was also seen by me as it pertains to policy. I have been shown page 2/N of this file, wherein there is a note of A. S. Verma, the then Director (VAS-II), dated 20.11.2003. This is a genuine DoT file opened in it in the official course of business pertaining to grant of UAS licences to the companies mentioned therein. This note was recorded for grant of UAS licence to TTSL and Bharti Cellular Limited for certain service areas. His signature appears at point A and his note is now Ex PW 60/L-36 and after recording his note he marked the file to Sr. DDG (VAS) Sh. J. R. Gupta, who in turn, marked the file to DDG (BS) Sh. P. K. Mittal, who in turn, marked the file to DDG (LF) Sh. B. B. Singh, who in turn, marked the file to Director (LF). The signatures of Sh. J. R. Gupta, Sh. P. K. Mittal and

Sh. B. B. Singh appear at points B, C and D respectively. The note of the then Director (LF) appears at pages 2/N and 3/N, which is already Ex PW 36/DE. In this note, Director (LF), inter alia, recorded that "it is also presumed that such new licences in the category of UASL would be on first-come first-served basis on the basis of applications" and marked the file to DDG (LF) Sh. B. B. Singh. Ultimately, in the course of events, the file reached Director (VAS-II) Sh. A. S. Verma, who recorded a note dated 21.11.2003, available at pages 4/N and 5/N, which is already Ex PW 36/DE-1 and in para iii of this note, he put up a proposal regarding first-come first-served policy recording that "this in effect would imply that the applicant who comes first will be granted the spectrum first and this will result in grant of licence on first-come first-served basis" and marked the file to Sr. DDG (VAS). I identify signature of Sh. A. S. Verma at point A. Ultimately the file reached the then MOC&IT, Sh. Arun Shourie on 24.11.2003, who approved the proposal vide his signature at point A, page 6/N....."

Here, the policy and its genesis has been narrated as was narrated by PW 62 Sh. A. S. Verma.

706. PW 60 Sh. A. K. Srivastava in his cross-examination dated 18.09.2012, page 11, deposed as to how the policy originated as under:

"**Ques**: Could you please tell this Court as to when first-come first-served policy was first notified by DoT for the grant of UAS Licence?
Ans: It was not notified, as far as I remember. It was decided internally in DoT by the competent authority somewhere in the year 2003."

Thus, the first-come first-served policy was not notified to the public. It was an internal decision of DoT. The

operation of the policy was not in public domain.

707. PW 36 Sh. D. S. Mathur in his examination-in-chief dated 10.04.2012, page 2, deposed about first-come first-served policy as under:

> ".....Before issuance of LOI, an application received is registered with date and time mentioned in the register as well as on the application. Then the applications are taken up for processing in chronological order under first-come first-served order. Then different sections of telecom department examines the application from their point of view and if the application is found in order by all the different sections of the telecom department, then it is put up to the Minister through the Secretary, DoT, for approval to issue LOI....."

708. PW 36 Sh. D. S. Mathur in his cross-examination dated 18.04.2012, pages 6 and 7, deposed as to how spectrum is allocated as under:

> ".....The proposal relating to allocation of spectrum is initiated by WPC through the Wireless Advisor taking into consideration the policy relating to allocation of spectrum, entitlement/ eligibility of applicants and availability of spectrum. For start up spectrum, the file does not come to the Secretary. For allocation of additional spectrum, the file does come to the Secretary (T) through Member (T) and the Secretary (T) puts up the file to the Minister for his decision. Secretary (T) himself has no power to allocate spectrum himself....."

Here, Sh. D. S. Mathur did not link up allocation of spectrum to grant of UAS licence, indicating that grant of licence and allocation of spectrum are two different things. He explained that proposal relating to allocation of spectrum is

initiated by WPC as per policy relating to allocation of spectrum. This is what the defence has argued.

709. In letter dated 18.12.2007, Ex PW 36/DN-1, sent by Sh. D. S. Mathur to CVC, he recorded in para 1 as under:

> "The spectrum has been allotted as per the conditions stipulated in the service license agreement. As per the conditions of service license, the service providers are required to obtain a separate licence, from WPC Wing of the Ministry of Communications & IT, which permits utilization of appropriate frequency/band for the establishment & possession and operation of Wireless element of telecom service under the license agreement and specified terms & conditions therein including payment....."

Here, Sh. D. S. Mathur says that WPC licence is a separate licence. He did not link allocation of spectrum to grant of UAS licence, though UAS licence is condition precedent for allocation of spectrum.

PW 36 Sh. D. S. Mathur in his cross-examination dated 23.04.2012, page 6, deposed as under:

> "....The grant of UAS Licence involves processing of applications, issuance of LOI to eligible applicants and thereafter, UAS Licences....."

Again, he did not link allocation of spectrum to issue of UAS licence. This is the case of Sh. A. Raja also.

710. PW 110 Sh. Nitin Jain in his examination-in-chief dated 21.03.2013, page 9, deposed about the meaning of first-come first-served policy as under:

> "**Ques**: Could you please explain the first-come first-served policy which was in vogue till that time?

Ans: On 07.01.2008 I had prepared a note Ex PW 42/DB, pages 22/N to 26/N. This note bears my signature at point A and in this note in para 13, I have mentioned as to what was the first-come first-served policy in vogue at that time and it is to the effect that "an applicant who submits his application earlier to another applicant, will receive LOI first, after it is approved" and licence would be granted based on his priority as per date of receipt of application."

Sh. Nitin Jain also did not link allocation of spectrum to grant of UAS licence. He stopped at issue of LOI and grant of licence.

711. PW 81 Sh. Madan Chaurasia, Section Officer, AS Cell in his cross-examination dated 22.11.2012, page 9, deposed as under:

".....It is correct that prior to 2007 the number of applications were few in number. It is also correct that these applications too were from the existing operators. When I joined the section, I was told that the application received first is processed first. The reason for processing the application date-wise could be that the applications were few and were coming after long interval. At that time, seniority of applicants never became an issue and it was clear that application received first would be issued LOIs first."

According to Sh. Madan Chaurasia, earlier seniority was not an issue as there were a few applicants. However, he also stopped at grant of LOI only by the policy of first-come first-served. In a sense, he put the entire policy of first-come first-served under a cloud.

712. TRAI Recommendations dated 27.10.2003

recommended introduction of UAS Licencing Regime. Summary of Recommendations, page 31, inter-alia, contains as under:

> "Service providers who need spectrum for their services will approach Government of India separately. The guidelines for spectrum allocation, which would cover the methodology for spectrum pricing, will also be notified by the Government."

This recommendation also does not link issue of UAS licence with allocation of spectrum. It only says that those service providers who need spectrum would approach Government of India separately. This recommendation also conveys that some licensees may not need spectrum.

713. PW 11 Sh. Nripendra Misra, the then Chairman, TRAI, in his examination-in-chief dated 23.02.2012, page 9, deposed as under:

> ".....During my tenure as Secretary, DoT, ten licences were given to different service providers. The policy was strictly in accordance with the recommendations of TRAI. During that time, there were very few applications. These applications were examined and the date of application was relevant for taking a final view. Those applicants, which met the recommendations of TRAI and the terms and conditions of UAS Licence, were given first letter of intent and then after a specified period once complied letter of licence....."

This witness also explained the policy as limited to grant of LOI and signing of licence agreement only.

714. PW 11 Sh. Nripendra Misra in his cross-examination dated 15.03.2012, page 9, deposed as under:

> ".....As per paragraph 7.29, the observation is that

spectrum would be allocated for frequency in the 1880-1900 Mhz band on a first-cum-first-served basis. There was no policy of first-come first-served but it was administrative process of decision making in order to be just and fair. During my tenure, as Secretary, DoT, this process continued....."

Here, the witness explained that spectrum used to be allocated on first-come first-served basis. He did not link allocation of spectrum to priority from grant of UAS licence.

715. However, PW 11 Sh. Nripendra Misra in his further cross-examination dated 16.03.2012, page 7, deposed as under:

".....Some wireless operating licences were given during my tenure as Secretary, DoT. After the grant of licence and completion of formalities, the eligible Telecom Service Provider approaches the WPC wing for allocation of spectrum and he is required to execute an agreement and as per clause 43.1 of licence agreement, Ex A-28 (D-238), this agreement is called WPC licence.

I have been shown Ex PW 21/DP, and in clause 1, page 1 of this document, it is recorded that Government reserves its right to curtail the granted spectrum or to rescind the licence. Spectrum is allocated by WPC wing of DoT, as it is a technical matter. However, the final orders are of the Minister, if I recall correctly....."

Here, the witness explained that after grant of licence, existing service providers would approach WPC for allocation of spectrum. Sh. Nripendra Misra is clear that spectrum is allocated by WPC Wing. He did not say that the process of issue of two licences is interlinked.

716. PW 11 Sh. Nripendra Misra in his further cross-examination dated 22.03.2012, page 6, deposed as under:

".....The UASL Guidelines 2005, Ex PW 2/DB (D-586), also state that UAS Licences shall be issued without any restriction on the number of service providers in a service area. In clause 37 it is mentioned that the frequencies shall be assigned by the WPC wing on case by case basis subject to availability.

I do not recall if there is any legal definition of first-come first-served policy. I am not aware if Tata Teleservices and Bharti Airtel applied for licences in Bihar circle on 12.11.2003 and 17.11.2003 respectively but were issued LOIs on 24.11.2003. It may be correct to say that the applications received on different dates in DoT were given LOI on the same date, during my tenure as Secretary, DoT, because the span of applications and decision making for these applications was very short....."

He conceded that applications received on different dates might have been granted LOIs on the same day. There is no mention that at one time only one application used to be processed.

717. PW 42 Sh. Shah Nawaz Alam in his cross-examination dated 28.05.2012, page 1, deposed as under:

".....It is correct that UAS Licence and Wireless Operating Licence are separate and separate applications are required to be made....."

718. All of these witnesses deposed that an LOI is issued first to an applicant and on compliance UAS licence would be signed. These witnesses are mostly from licencing branch. They have not linked allocation of spectrum with issue of UAS licence. Their version is that those service providers who need spectrum would approach WPC separately. No witness has

deposed that there was any conscious effort on the part of DoT to ensure that those who applied earlier would be allowed to maintain lead in the matter of allocation of spectrum also. All the witnesses deposed only about issue of LOI and signing of licence agreement. No witness from AS Cell linked allocation of spectrum to the process of grant of UAS licence.

Now, let me take a look on witnesses from WPC, the cell which allocates spectrum.

View of WPC Cell

719. PW 57 Sh. R. J. S. Kushwaha in his cross-examination dated 20.07.2012, pages 4 and 5, deposed about WPC licence, as under:

> ".....No specific communication is issued to the WPC wing by the AS cell on the issuance of a UAS Licence to a licencee. I do not recall having seen such a communication. The WPC wing comes to know about issuance of a UAS Licence when the licencee files a separate application for allocation of spectrum accompanied by a photocopy of licence agreement. Whenever an application for allotment of spectrum is received in the WPC wing, it is processed either by an Assistant Wireless Advisor or a Deputy Wireless Advisor. In the processing note of AWA or DWA, spectrum availability would be indicated and based on the availability, a proposal would be made for allotment of spectrum to the eligible applicants. After this exercise, the file is put up to the Joint Wireless Advisor and the JWA may or may not make his observations and would mark the file to the Wireless Advisor. I do not remember if before issuance of UAS licences in December 2006, any exercise regarding availability of spectrum was carried out by the WPC wing. I am not in a position

to say as to exactly when the licencees of December 2006 were allocated spectrum by the WPC wing. However, there were some pendency till December 2007. I cannot confirm if all December 2006 licencees were allocated spectrum in January 2008. There was allocation of spectrum in January 2008 to some licencees of December 2006....."

This witness is categorical that on issue of UAS licence, the AS Cell does not issue any communication to WPC. Hence, there can be no priority of allocation of spectrum from the date of signing of licence agreement.

720. PW 57 Sh. R. J. S. Kushwaha in his further cross-examination dated 23.07.2012, pages 7 and 8, deposed as under:

".....In December 2006, DoT had issued some UAS licences. I have been shown DoT file D-589, already Ex PW 36/DQ-2, wherein there is a copy of the letter dated 22.12.2006 showing grant of 22 UAS licences in December 2006 and a copy thereof was also endorsed to Wireless Advisor. The letter is already Ex PW 36/DS-12. I do not remember if WPC wing was consulted before grant of these licences nor having seen any document showing such consultation. I have been shown Ex PW 36/DS-12, containing list of 22 UAS licences and spectrum availability chart Ex PW 57/DH-2. In December 2006, licences were issued to Aircel and Idea Cellular for Mumbai service area, as per Ex PW 36/DS-12. These licences were granted by AS cell....."

Witness is categorical that in 2006 when 22 UAS licences were granted, WPC Cell was not consulted.

721. PW 57 Sh. R. J. S. Kushwaha in his further cross-examination dated 25.07.2012, pages 2 and 3, deposed about

first-come first-served as under:

> ".....UAS licence is an independent licence. A UAS licence holder is required to obtain a separate wireless operating licence....."

His view is that these licences are separate licences. He corroborates the version of PW 42 Sh. Shah Nawaz Alam extracted above. He deposed that WPC Cell comes to know of issue of licence only when licensee files application for allocation of spectrum.

722. PW 87 Sh. D. Jha in his cross-examination dated 05.12.2012, page 8, deposed as under:

> ".....As per service licence agreement, UAS licence and WPC licence are different but both are co-terminus, though the WPC licence is required to be renewed every five years. It is correct that on roll-out itself, Government starts getting revenue for spectrum usage charges. It is in public interest in the way that it contributes to Government Exchequer that the available spectrum should be allocated at the earliest....."

This witness also deposed that two licences are separate and did not link the grant of one licence to another as part of a sequential process. It is a different thing that two licences are sequential, that is, one would get WPC licence after UAS licence.

723. PW 121 Sh. T. K. Varada Krishnan in his cross-examination dated 10.05.2013, page 23, deposed as under:

> ".....It is correct that an applicant has first to get UASL licence and only then, can he apply for allocation of spectrum. The two processes, that is, applying for UASL licence and applying for spectrum

are two separate but sequential processes....."

This witness is also clear that two licences are separate and sequential, that is, first one has to obtain a UAS licence only then WPC licence would be granted. This witness also did not link the process of one licence to another.

724. The officers of WPC have deposed that two licences are independent and WPC licences are processed separately. None of the witnesses from WPC deposed that any conscious effort was made to ensure lead of those who got UAS licence first in the allocation of spectrum. The gist of the evidence is that two licences are separate and independent and those service providers who need spectrum would approach WPC separately.

It may be noted that prosecution did not put any question to any witness from WPC Cell about first-come first-served policy. This shows that the prosecution knew that the two licences are separate and witnesses may not support its case. It shows highly cautious attitude of prosecution.

View of the Investigating Officers

725. Investigating officer PW 153 Sh. Vivek Priyadarshi in his cross-examination dated 25.11.2013, pages 11 and 12, deposed as under:

> "**Ques**: I put it to you that no standard policy had been followed by DoT in the issuance of licences and allocation of spectrum prior to 2008?
> **Ans**: It is incorrect to say so. During 1995 to 1998 the first two CMTS licences in each circle were

allocated by DoT on the basis of a criteria named as beauty parade. Third operator in each circle was included as public sector namely BSNL/ MTNL. The fourth operator was included in 2001 on the basis of auctions. However, since 2003, when the UASL Guidelines of 2003 came into being, the policy of first-come first-served has been largely followed for allocation of LOIs, licences and spectrum on the basis of date of application of the company for licence. Accordingly, since 2003 largely a standard policy of first-come first-served on the basis of date of application has been followed by DoT for allocation of LOIs, licences and spectrum.

By the use of word "largely", I mean to say that in some immaterial situation, this policy of first-come first-served was not followed by DoT....."

This witness made an attempt to link issue of LOI, grant of UAS licence and allocation of spectrum in a single continuous process.

726. PW 147 Dy. SP Rajesh Chahal in his cross-examination dated 16.09.2013, pages 4 to 6, deposed as under:

"Ques: I put it to you that during investigation you became aware that no standard policy had been followed by the DoT in the matter of issuance of licences and allocation of spectrum during 2003 to 2007?

Ans: It is incorrect. However, the DoT has been following a standard policy of first-come first-served in this regard in which date of receipt of application was considered for fixing seniority for issuance of licences and subsequently allocation of spectrum.

It is wrong to suggest that my answer on this point is incorrect. It is further wrong to suggest that the view expressed by me does not find mention in any official record of DoT. There might be some cases when LOIs were issued on the same date to more than one company, though the date of receipt

of application is different. However, the seniority for issuance of licence and spectrum was kept on the basis of date of receipt of application in a particular service area.

There is one instance, as far as I remember, in which DoT issued UAS Licence to an applicant who was later in queue than to the earlier one. I recall that this was in the case of TTSL and Vodafone for UP (West) service area. **Volunteered**: There was no such competition at that time as it was in 2008.

I do not remember if the WPC wing had issued spectrum to more than one applicant on the same day in the same service area, though their date of application of UAS Licences were different. It might be correct that in West Bengal service area, M/s Bharti Airtel Limited, which had applied for spectrum on 17.11.2003, and M/s Vodafone Essar Limited, which had applied on 13.02.2004, were allocated spectrum on the same date, that is, 12.08.2004. **Volunteered**: At that time, the nature of competition and availability of spectrum was different than that of 2008.

I do not remember if prior to 2007, DoT had allocated spectrum to some of the companies who were granted UAS licences later than to the companies who were granted the licences earlier. I do not remember if in UP (West) service area, Reliance Communications was issued licence on 20.07.2001 and spectrum was allocated on 22.01.2003, whereas Bharti Airtel Limited was issued licence on 28.09.2001, but it was allocated spectrum earlier on 03.04.2002, though the same may be available in record, if it was so done."

The first paragraph of the answer contains the case of prosecution.

727. The two investigating officers were attempting to say that both licences are inter-connected and, as such, priority

from date of application is to be maintained at all levels. The investigating officers are endeavouring to link the two licences as part of a single integrated/ composite process of first-come first-served policy, that is, it is a one continuous process from issue of LOI to grant of UAS licence to allocation of spectrum. It is their case that each stage of the process is dependent on the previous stage. It is the case of the prosecution that application to WPC is linked to the date of application for a UAS licence. As per prosecution, it is composed of a succession of events, each of which triggers or initiates the next, that is, it operates like a cascade. Their case is that all events in the process of grant of a UAS licence shall occur en suite, that is, in precise succession due to policy of DoT. The question is: Whether this version is supported by the evidence on record?

View of Applicant

728. PW 41 Sh. Anand Dalal, Sr. Vice President, TTSL, in his cross-examination dated 02.05.2012, page 3, deposed as under:

> ".....The compliances of in-principle approval were deposited on 10.01.2008 itself in the CR section. A separate application is required to be filed before the WPC for allocation of spectrum....."

This witness also deposed that two licences are separate and independent.

Defence Version

729. It is also useful to take note of examination-in-chief

of DW 1 Sh. A. Raja dated 02.07.2014, pages 3 to 4, wherein he explained the meaning of first-come first-served, as under:

> "**Ques**: Are you aware of the policy of first-come first-served, if so, what do you mean by it? Has the policy been defined anywhere in the Government record?
> **Ans**: It appears on the files that the licences and spectrum have been issued under the first-come first-served policy, though the policy has not been defined anywhere in the DoT. It was a procedure conveniently followed by the officers without any definition. The natural understanding by first-come first-served will be that applications for both UAS licences under Telegraph Act and the applications to the WPC under the Wireless Telegraph Act must be dealt with in chronological order. This procedure was not at all altered during my tenure. Only the situational context had changed in 2007, since there were huge number of applications and a decision was democratically taken in the DoT after due discussions with the officers. Simultaneous issuance of LOIs has to be resorted to, to avoid any delay in the process which will benefit the public at large. One more change in the context is having issued LOI, there is no provision in the LOI or any other rule in the department regarding the extension of time to comply with it, including the payment. However, such requests were entertained by my predecessors without any legal sanction as discretionary power, which power I did not wish to exercise. Another important element in the context was the change that earlier the sequential procedure took place regarding the limited applications within the members of COAI. As I said earlier, now the department wanted to inject healthy competition as per the policy, the officers in the DoT unanimously felt that the earlier procedure could not be followed and they felt that it may not be transparent if the Minister is permitted to exercise discretionary

> powers by many extensions regarding compliance of LOIs. All these points were discussed on the files of the DoT several times and all these points were transported into my letters, that is, dated 26.12.2007, to the Hon'ble Prime Minister. As such, there is no deviation from the policy, only the context and circumstances were different. I was guided by the officers that this was the correct way of implementation without any bias or grievance and was granting equal opportunity to all the applicants. During my tenure as MOC&IT, no complaint was received by me from any operator/ applicant that they were aggrieved by this procedure. Even otherwise, there were occasions in the DoT when simultaneous issuance of LOIs took place and this procedure was followed."

Sh. A. Raja also deposed that UAS licence and WPC licence are two different licences issued under two different statutes.

Precise Case of Parties:

730. Let me take note of the cross-examination of DW 1 Sh. A. Raja dated 15.07.2014, page 9. This cross-examination makes the case of both parties very clear. The question concisely and precisely contains the case of the prosecution and the answer contains the case of the defence. The cross-examination of DW 1 Sh. A. Raja reads as under:

> ".....I have been shown note sheet dated 21.11.2003, Ex PW 36/DE-1, in DoT file D-592, which, inter alia, speaks about first-come first-served policy in DoT.
> **Ques**: I put it to you that as per this policy, an applicant who applies first would get the licence first and also the spectrum first in the same manner?

Ans: As I said earlier in my examination-in-chief, the application for UAS licence under Telegraph Act and the application for spectrum to the WPC under the Wireless Act are two different things and, as such, the two cannot be clubbed together. However, individually the two aspects are correct. An applicant who applies first for a UAS licence would get the licence first. Similarly, a licencee who applies first for spectrum would get the spectrum first."

Thus, the prosecution is trying to show that the entire process was integrated and compact one and priority of an applicant, who applied first was to be ensured and maintained at all levels. On the other hand, defence is quite clear that first-come first-served was not an integrated process and the two licences are separate and independent and first-come first-served policy applied separately at both stages, that is, first in the issue of UAS licence and secondly for issue of WPC licence for allocation of spectrum, only in case of those who needed spectrum.

731. It is also useful to take note of further cross-examination of Sh. A. Raja dated 16.07.2014, pages 12 and 13, wherein also he explained that grant of UAS licence and grant of WPC licence are two distinct steps, and the cross-examination reads as under:

".....One cannot get spectrum allocated, without applying to the WPC. For allocation of spectrum, seniority is as per the date of application to WPC. A non-licence holder cannot get spectrum. One should have a licence first for applying to WPC. A licence cannot be issued without first issuing an LOI, which is issued to an applicant only. LOI is issued in chronological order as per the date of application.

Ques: I put it to you that it is the date of application for UAS licence which finally determines seniority for allocation of spectrum?
Ans: It is incorrect. The process for issuance of licence and the process for allotment of spectrum are two separate and distinct process, contemplated in separate statute, namely, Indian Telegraph Act and Indian Wireless Telegraphy Act. This position is clearly mentioned in the TRAI recommendations 2007 also.

It is wrong to suggest that I am evasive in my reply.

Ques: I put it to you that when you assumed the charge of MOC&IT, the practice and policy of DoT for determining the inter se seniority between applicants for UAS licence, who complied with LOI conditions within the stipulated period, was determined on the basis of their date of application?
Ans: It is incorrect. Even in the past, when more than one LOI were issued simultaneously, then the date of compliance will determine the seniority and not on the basis of date of application.
Ques: Could you point out any such instance from the record for the same service area?
Ans: I am not able to recollect exactly when such instances happened in the file, but it is highlighted in the CVC report."

This deposition also makes the respective case of parties quite clear.

Understanding of Law Ministry

732. It is also interesting to take note of the note dated 31.10.2007, Ex PW 36/DK-16, recorded by Sh. P. K. Malhotra, Joint Secretary (Law) while returning the reference dated 26.10.2007 to DoT, which reads as under:

"Department of Telecommunications may refer to d.o. letter No. 20-161/2007-AS-I dated the 26th October, 2007 from Member (Technology) on the issue of seeking opinion of learned AG/SG on grant of new Unified Acess Service (UAS) Liccenses and approval for use of Dual Technology Spectrum by UAS Licensee(s).

2. The matter was further discussed by the undersigned with Shri A. K. Srivastava, DDG (AS) and Shri Nitin Jain, Director (AS-I). During discussion, it transpired that issue of LOI/License under the UASL scheme does not automatically confer right on the Licensee for spectrum allocation. The question of grant of license for spectrum allocation has to be dealt with independently by WPC Wing after the LOI/License is granted by the Department of Telecommunications.

3. However, in the statement of case referred to us for opinion of Law Officer, we find that the issue for grant of LOI/License to the 575 applicants has been clubbed with the issue of LOI to M/s Tata Communications for usage of Dual Technology Spectrum based on their application received after 18.10.2007.

4. It is not clear from the reference whether the Department intends to seek opinion of Law Officer on the issue of disposal of 575 applicants for grant of LOI/License only or want to obtain opinion of Law officer on the issue of License for usage of Dual Technology Spectrum also. During the course of discussion, it also transpired that the question of allotment of spectrum to the eligible Licensees is separately under consideration of the Department of Telecommunications and a report from TEC is expected shortly.

5. In case opinion of Law Officer is desired on the issue of spectrum also, as is referred to in para 13, full facts and documents on this issue will be required to enable the Law Officer to express his view in the matter.

6. Position in this regard may please be clarified.
7. All the papers are returned in original."

This note also records that the two licences are independent and this was recorded in consultation with Sh. A. K. Srivastava and Sh. Nitin Jain.

733. Not only this, Law Secretary Sh. T. K. Vishwanathan also recorded note dated 01.11.2007, Ex PW 36/DK-17, the relevant part of which reads as under:

> ".....The Ministry of Communications and Information Technology (DoT) have outlined 4 alternatives to deal with the 575 applicants for grant of UAS and allotment of spectrum to various categories of spectrum. In that connection the administrative ministry have sought the views of the learned Attorney General/ Solicitor General on the different alternatives.
>
> The questions posed for the opinion of Attorney General/ Solicitor General appear to be too broad and the issue of disposal of the applications for UAS appears to be mixed up with the allotment of spectrum. Before the request for seeking the views of the learned Attorney General/Solicitor General the issues will have to be refined further....."

Perusal of this note also reveals that Law Secretary was also clear that processing of applications for UAS licence and allocation of spectrum are two different issues, that is, grant of UAS licence and allocation of spectrum are separate and independent issues. The Law Secretary desired the reference to be returned, as the two stages were mixed up by the DoT.

734. Thus, the weight of the evidence referred to above in great detail is that the two licences do not constitute a single integrated process, as claimed by the prosecution. Not even a single witness supported the case of the prosecution. No witness deposed that conscious efforts used to be made to ensure the lead of an early mover, that is, first applicant at all three levels, that is, issue of LOI, grant of UAS licence and allocation of spectrum. No witness deposed that since 4.4 MHz+4.4 MHz spectrum is conflated/ bundled with the UAS licence, one who gets the UAS licence first would also get the spectrum first.

Guidelines and TRAI Recommendations

735. Clause 26 of Guidelines dated 25.01.2001, Ex PW 36/DA (D-586), relating to basic services, reads as under:

> "For wireless operations in subscriber access network, the frequencies shall be allocated by WPC Wing from the designated bands prescribed in National Frequency Allocation Plan – 2000. (NFAP-2000). However, the frequency in GSM band of 890-915 MHz paired with 935-960 MHz and 1710-1785 MHz paired with 1805-1880 MHz will not be allocated under any circumstances to the Licensees. *For Wireless Access Systems in local area, not more than 5+5 MHz in 824-844 MHz paired with 869 – 889 MHz band shall be allocated to any Basic Service Operator including the existing ones on first come first served basis. The same principle shall be followed for allocation of frequency in 1880-1900 MHz band for Micro cellular architect based system."*

This Guideline makes no distinction between an

existing licensee and a new licensee. It is a general guideline to the effect that the WPC shall follow first-come first-served principle in allocation of spectrum. It does not predate priority from date of application to DoT for UAS licence.

736. It may also be noted that vide its reference dated 14.10.2003, 16/C (CD-4), DoT had sought TRAI Recommendations on some issues including:

> "..... .....
> (iv) Recommendations on change of existing guidelines for allocation of spectrum to existing and new operators and charges thereof so as to encourage efficient utilization of spectrum which may envisage appropriate reward for efficient usage and penalties for inefficient usage of this scarce resource."

737. In response to above reference dated 14.10.2003, TRAI sent its Recommendations vide letter dated 04.11.2003, 18/C (CD-4), the relevant parts of which are as under:

> "..... .....
> **iv) Recommendations on change of existing guidelines for allocation of spectrum to existing and new operators and charges thereof to encourage efficient utilization of spectrum.**
>
> As spectrum is a scarce resource, it is of utmost importance to ensure that this resource is utilised in the most optimum manner. The necessity to conserve is much more in our case as the growth is demonstrated to be in the wireless segment only. Our recommendations on 'Unified Licensing' also cover this issue.

In our opinion, a detailed spectrum policy is required, on which the TRAI will provide its recommendations to the Government shortly. Till such time wireless services may be provided in the already allocated/contracted spectrum."

738. The aforesaid reference of 14.10.2003 was answered by the TRAI on 04.11.2003. However, in the meanwhile, TRAI had sent its Recommendations on Unified Licencing Regime vide letter dated 27.10.2003, 20/C (CD-4), recommending Unified Licencing Regime.

739. DoT had sought recommendations on change of existing guidelines for allocation of spectrum to existing and new operators vide reference dated 14.10.2003. However, TRAI observed vide letter dated 04.11.2003 that their Recommendations on Unified Licencing cover this issue.

740. The relevant paragraphs relating to allocation of spectrum in the Recommendations on Unified Licencing are 7.29 to 7.31, which read as under:

"**Spectrum related issues**

7.29 Existing three GSM Cellular Operators have been allocated Spectrum in 890-915 MHz paired with 935-960 MHz Band. The 4th Cellular Operator has been allotted spectrum in 1710-1785 MHz, paired with 1805-1880 MHz Bands. The allotted spectrum varies from 4.4+4.4 MHz to 10+10 MHz depending upon the number of subscribers in each service area. Existing BSOs shall be allocated 5+5 MHz in 824-844 MHz paired with 869-889 MHz bands on a first come first served basis. The same principle shall be followed for allocation of frequency in the 1880-1900 MHz band.

7.30 Efficient utilization of spectrum by all service providers is of utmost concern to TRAI especially in a country like India where wireless subscribers are growing at a very fast rate. However, based upon the international statistics (number of cellular subscribers and allotted spectrum, please see annexure-IV), TRAI is of the opinion that existing operators need improvement in efficiency of utilisation of the spectrum TRAI shall provide its recommendations on efficient utilisation of spectrum, spectrum pricing, availability and spectrum allocation procedure shortly. DoT may like to issue spectrum related guidelines based on the recommendations submitted by TRAI.

7.31 Service Providers migrating to the Unified Access Licensing Regime will continue to provide wireless services in the already allocated/contracted spectrum and no additional spectrum would be allotted only because of migration. There shall be no change in the spectrum allocation procedure as part of migration process."

741. The TRAI Recommendations also say that those who need spectrum would be allocated spectrum on first-come first-served basis. It also does not link allocation of spectrum to priority from signing licence agreement.

742. Clause 26 of Basic Service Guidelines dated 25.01.2001 also contains this principle of allocation of spectrum on first-come first-served basis. TRAI reiterated this principle again in 2003, both for existing as well as new operators. The guiding principle for allocation of spectrum is thus first-come first-served, that is, whosoever applies to WPC first would get spectrum first.

What is the case of the prosecution? Its case is that issue of LOI, signing of licence agreement and thereafter allocation of spectrum was an integrated process, that is, an applicant who was granted licence would be allowed time to file an application for allocation of spectrum so that he maintained his seniority throughout the process. However, the witnesses from licencing branch, that is, AS Cell as well as WPC Cell, that is, Wireless Licencing Branch have been examined and referred to above in great detail. No witness deposed that the two processes, that is, grant of UAS licence and allocation of spectrum were to follow sequentially in a well designed and coordinated manner. Of course the two licences are sequential. There is no evidence that the two organizational units, that is, AS Branch and WPC were working in an institutionalized coordination. UASL Guidelines or TRAI Recommendations referred to above also do not support this theory. The weight of the evidence is that WPC licence is an independent licence and whosoever wishes to obtain spectrum would have to approach it separately. Those who approach the WPC Cell for allocation of spectrum would be allocated spectrum on first-come first-served basis. No witness deposed that there was any conscious effort on the part of the DoT to ensure that a licensee, who signed the licence agreement first, would maintain lead even in filing application for allocation of spectrum before the WPC. There is no evidence that the entire process was coordinated and integrated one and a unified whole where one step would seamlessly lead to another as per policy. There is no evidence

on record that DoT was consciously trying to ensure that one event would lead to another.

Prosecution has come with a definite case that the first-come first-served policy was being followed in a specific and certain manner, but it failed to lead any evidence on this point. A policy is a standard guide. There should be no confusion as to what steps are required to be taken in the implementation of policy. However, in the instant case, the policy parameters are not clear. There is no clarity as to whether it was a two stage process or a three stage process or an integrated process. Clarity and certainty are vital coins in the field of law.

Accordingly, I do not find any merit in the submission of the prosecution that first-come first-served policy was applicable, in the way alleged by prosecution, at all the three stages, that is, processing of applications, issue of LOI, signing of licence agreement and allocation of spectrum by WPC. The prosecution is needlessly trying to twist the policy by making a two stage/ multi-stage process into a single stage one.

743. The fact of the matter is that the spectrum allocation is job of WPC and it was doing it on first-come first-served basis, according to which, priority would be determined from the date of application for spectrum allocation to WPC. For example, in file, Ex PW 60/O (D-598), the issue relating to Bharti Airtel Limited asking for startup GSM spectrum on the lines of dual technology allocation to CDMA operators was dealt with. The first note is dated 01.01.2008. AS Cell did not do anything on

this issue but simply marked the letter to WPC vide note dated 03.01.2008 recorded by Sh. A. K. Srivastava with the remarks that WPC Wing may take action as appropriate in the matter. What does this indicate? It indicates that in the matter of spectrum allocation, the issue, including date of priority, was to be exclusively decided by WPC Cell. Thus, the endeavour of the prosecution to link the issue of allocation of spectrum to the date of application filed in DoT for issue of UAS licence is contrary to official record and as such wholly and entirely without any merit.

FCFS in Issue of 51 Licences: Processing of Applications

744. Whether first-come first-served policy was, in fact, followed in issue of 51 licences since the introduction of UAS Licensing Regime? The case of the prosecution is that first-come first-served policy was followed by the DoT and all 51 licences were issued following the principle, that is, an applicant who applied first would get the LOI first, on compliance of LOI would sign the licence first and thereafter would get the spectrum first. The case of the prosecution is that at one time only one application would be taken up and processed and after finding it eligible, the applicant would be issued LOI, thereafter it would sign the licence agreement and thereafter would it get allocation of spectrum. Then only the next application would be taken up in a particular service area. It is the case of the prosecution that Sh. A. Raja ought to have followed this precedent.

745. On the other hand, defence has disputed it arguing that no first-come first-served policy was followed by the DoT in the grant of 51 licences, as many applications were processed simultaneously on the same day. It is the case of the defence that TTSL and TTML had applied for eight licences on 12.11.2003 and Bharti Cellular Limited had applied for six licences on 17.12.2003. It is their case that in some service areas both applicants had sought UAS licences, but their applications were processed at the same time. My attention has been invited to DoT file D-592, Ex PW 11/DM-19, for arguing that there was no first-come first-served policy and things were happening on their own, as at one time there was only one applicant. There was no conscious effort to follow any first-come first-served policy and none could have been followed when there was only one applicant.

In rebuttal, the learned Prosecutor argued that this happened due to teething troubles faced in implementing any new policy, but a definite policy of first-come first-served was followed in the grant of 51 licences.

I proceed to examine as to how first-come first-served policy was implemented in the grant of 51 licences.

Case of TTSL and Bharti

746. The question is: If there was a first-come first-served policy, whether the same was followed?

747. As per note dated 20.11.2003, Ex PW 62/B (D-592), recorded by Sh. G. D. Sharma, Assistant Director (AS-II), TTSL

had applied for UAS licences in eight service areas, that is, Bihar, HP, MP, Orissa, Rajasthan, UP (E), West Bengal and Kolkata on 12.11.2003 and Bharti Cellular Limited had applied for UAS licences in six service areas, that is, Bihar, Orissa, Rajasthan, UP (E), Andaman & Nicobar & West Bengal and J&K on 17.12.2003.

748. It may be noted that both companies had applied in common for UAS licences in five service areas, that is, Bihar, Orissa, Rajasthan, UP (E) and West Bengal. Their applications were filed successively, that is, TTSL filed its applications on 12.11.2003, whereas Bharti Cellular Limited filed its applications on 17.11.2003.

749. If the case of the prosecution is to be believed that only one application was to be processed at one time following the policy of first-come first-served, then TTSL application ought to have been taken first and processed. However, in this case nothing of this sort happened. Though the applications were filed on different dates and both the companies had applied for at least five service areas in common, their applications were processed simultaneously and seven LOIs were issued to TTSL and five LOIs were issued to Bharti Cellular Limited on 24.11.2003. It is thus clear that in processing of the applications of two companies and issuing of LOIs to them, no first-come first-served policy was followed.

750. Furthermore, both companies had applied for UAS licence in West Bengal service area also. However, due to lack of clarity about entry fee, LOIs were not issued for this circle.

This issue was dealt with in a file referred to as D-38 in case titled 'CBI Vs. Dayanidhi Maran and others', which is a part file of DoT file D-592. On clarification being sought by DoT vide letter dated 21.11.2003 from TRAI and it (TRAI) giving its clarification vide letter dated 04.12.2003, the LOIs for both companies were processed simultaneously and LOIs were issued to both companies on 26.12.2003. Here again, it is clear that no first-come first-served policy was followed in this service area also as far as issue of LOI is concerned.

751. It may be noted that TTSL again applied for UAS licence in four service areas, that is, Haryana, Kerala, Punjab and UP (W) vide application dated 02.12.2003 and the LOIs were issued on 17.12.2003, vide notes 8/N and 9/N of D-592. The company signed licence agreements for eleven service areas except Madhya Pradesh on 30.01.2004 vide note 1/N dated 30.01.2004 (Additional Document Sl. No. 126).

752. Bharti Cellular Limited signed the licence agreements for five service areas on 10.02.2004 and for West Bengal service area on 11.02.2004 vide note dated 10.02.2004 and 11.02.2004 at 4/N of Additional Document Sl. No. 126.

753. Perusal of the file does not reveal that there was any conscious effort on the part of the DoT or the companies to follow first-come first-served policy. TTSL approached the DoT with compliance on 30.01.2004 and on the same day signed the licence agreements. Bharti Cellular Limited approached it on 10.02.2004 and 11.02.2004 and signed the licence agreements on the same day. There is no question of any first-come first-

served at the stage of signing of licence agreements also, as there was only one company at the window. Things happened on their own without any conscious effort of DoT. This incidental phenomenon is being touted by the prosecution as an example of first-come first-served policy. A policy is a consciously determined course of action that guides the administration in achieving a specific goal. Things happening out of necessity or due to natural forces cannot be called outcome of a policy. If at one particular time there was only one applicant at the window and he was being served, he was being served out of necessity and not due to any policy. A policy is a result of carefully planned formulation rather than result of opportunistic decisions made on the spur of the moment. Thus, out of 51 licences, for signing sixteen licences no policy of first-come first-served was followed by DoT.

754. PW 110 Sh. Nitin Jain in his cross-examination dated 22.03.2013, page 13, admitted as under about LOIs to TTSL and Bharti Cellular Limited:

> ".....In file Ex PW 11/DM-19 (D-592), my attention has been invited to eight LOIs granted to TTSL and Bharti Cellular Limited for Orrisa, Bihar, Uttar Pradesh (East) and Rajasthan services areas and these eight LOIs are now Ex PW 110/DE-1 to DE-8. All these LOIs were issued on 24.11.2003. TTSL had made applications for aforesaid four service areas on 12.11.2003 and Bharti Cellular had made applications on 17.11.2003....."

755. Where is the question of only one application being processed at one time, as far as the case of TTSL and Bharti

Cellular Limited is concerned. The signing of licence agreements was also opportunistic act, as there was only one person ready for signing the agreements at one time.

756. Now comes the third stage of allocation of spectrum. No record has been produced before this Court as to how the spectrum was allocated to the two companies. There is no record as to on which date these companies filed application for allocation of spectrum and on which date the spectrum was actually allocated. As such, as far as these two companies are concerned, there is no material on record to show that any first-come first-served policy was followed from the stage of issue of LOI to the stage of signing of licence agreement and then allocation of spectrum. Out of the three stages, prosecution could not prove even one, in which first-come first-served was followed. In the first stage, applications were not processed one by one for issue of LOIs. In the second stage, Bharti Cellular Limited had complied with the LOI at a late stage and had to sign licence agreement late, that is, after TTSL. As such one cannot say that it was a conscious act of DoT, by ensuring processing of application of an early mover first and then signing agreement first with it. Things happened as per their own force. For the third stage, that is, for allocation of spectrum, no evidence has been produced as to by which priority these companies were allocated spectrum.

757. Even otherwise the policy of first-come first-served was not clear, definite and explicit and left room for misinterpretation. It was outcome of a situation when there

were few applicants or one applicant at one time. It did not envisage a situation in which there would be large number of applicants, some of them ineligible, some non-serious without any financial resources, who would try to take undue advantage of being an early mover. Because of lack of clarity in the policy, non-serious players and speculators started filing applications. This is clear from the fact that out of 232 applications filed upto 25.09.2007, 110 were rejected for being ineligible. Furthermore, LOI holders resorted to seeking extension for compliance of its conditions.

758. It is clear that the policy was not a result of well-thought-out process and was meant only for limited and staggered applicants, that is, there would be a few applicants and they would come on different dates, automatically facilitating lead in fixing priority. It was also not communicated properly to all concerned, as is clear from deposition of witnesses from WPC Cell. It was not aligned well with the spectrum allocation policy which is contained in Clause 26 of Guidelines dated 25.01.2001. The prosecution is now trying to align this policy with the spectrum allocation policy to rope in the accused in the instant case.

However, after the policy, whatever its worth, was laid down, it was not followed at all and was violated at the first available opportunity itself. The following illustrative cases would also show violation of this policy in the beginning itself during the tenure of the then Minister Sh. Arun Shorie, who laid down the policy.

Illustrations: Case of Alliance Cellular (P) Limited

759. It may also be noted that as per file D-38, an application of Alliance Cellular Private Limited was received on 21.01.2004 for UAS licence for J&K service area and was processed at pages 4/N to 8/N, from 04.02.2004 to 06.03.2004.

760. In the meanwhile, application of Dishnet DSL Limited dated 09.03.2004 was also received for UAS licences in eight service areas including J&K service area and this was processed from 9/N to 13/N. The issue of LOIs to Dishnet DSL Limited was approved to be issued on 05.04.2004 at 13/N and LOIs were actually issued on 06.04.2004. All this while, the application of Alliance Cellular Private Limited for J&K service area remained pending.

761. The application of Alliance Cellular Private Limited was again taken up for processing from 08.04.2004 at 14/N and remained under processing till 04.08.2004, when the application was finally withdrawn by the company as noted at 22/N. Application of Alliance Cellular Private Limited was pending for J&K service area, but its processing was stopped by putting many objections, like J&K area being a sensitive area etc. However, the application of Dishnet DSL Limited received later, was processed and was issued LOI earlier. This shows that the first-come first-served policy was not followed in processing the application for J&K service area. The application of Dishnet Wireless Limited was disposed first by issuing LOI, though the application of Alliance Cellular Private Limited received first,

was kept pending. Where was first-come first-served?

Case of Reliance Infocomm Limited

762. Not only this, as per 22/N of D-592, Reliance Infocomm Limited had also applied for UAS licence for J&K service area on 29.12.2003 and LOI was issued to it on 12.01.2004 at 10/N of the instant file. The company requested for extension for compliance to LOI. Extension was granted first till 26.02.2004, thereafter till 27.03.2004 and finally till 27.05.2004. The company again approached DoT (fourth time) seeking extension of time for 180 days, which was not agreed to. In a sense, the LOI expired.

Accordingly, the company applied afresh on 24.06.2004, page 325 (D-592). The processing of its application started on 29.06.2004 at 22/N. The processing continued till 10.08.2004 at pages 22/N to 24/N. It must be kept in mind that during the processing of the instant application for J&K service area, the application of Alliance Cellular Private Limited was still pending and was under process. As such, two applications of two different companies for the same service area were being processed together. It is different matter that Alliance Cellular Private Limited ultimately withdrew its application and the same was approved on 10.08.2004. Thereafter, fresh LOI to Reliance Infocomm for J&K service area was approved to be issued on 26.08.2004.

As such, subsequent applications were processed first without disposing the earlier applications. The first-come

first-served policy as deposed to by PW 62 Sh. A. S. Verma that application received first would be processed first and at one time only one application would be taken up, was not being followed. Thus, the first-come first-served policy was violated at least in the case of five companies during the tenure of Sh. Arun Shourie itself. There may be other cases also as entire record relating to number of applications is not before the Court. All this adds to the confusion and ambiguity about the meaning and scope of policy.

Violation during the Tenure of Sh. Dayanidhi Maran

763. In file D-592, applications of four companies, that is, Essar Spacetel Limited, Idea Cellular Limited, Aircel Limited and Aditya Birla Telecom Private Limited were approved for issue of LOIs on the same date, that is, on 17.10.2006, though Bihar service area was common to Essar Spacetel Limited and Aditya Birla Telecom Private Limited and Mumbai service area was common to Idea Cellular Limited and Aircel Limited. In this regard, the note dated 01.08.2006, pages 47/N and 48/N, is of interest and reads as under:

> "..... .....
> 04. In view of the above, the case is submitted for kind consideration & approval of following:
> 1. LOIs to M/s Essar Spacetel Ltd. for Assam, Bihar, Orissa, Himachal Pradesh, Jammu & Kashmir & North East as in File No. 20-231/2004-BS-III (Vol.4).
> 2. LOI to M/s Idea Cellular Ltd. for Mumbai Service Area as in File No. 20-231/2004-BS-III (Vol.6).

3. LOIs to M/s Aircel Ltd. for Maharastra, Karnataka, Rajasthan, Delhi, Gujarat, Andhra Pradesh & Mumbai as in File No. 20-231/2004-BS-III (Vol.8).
4. LOI to Aditya Birla Telecom Ltd. for Bihar Service area as in File No. 20-231/2004-BS-III (Vol.9).
5. Director (BS-III) may be authorized to sign the Licence Agreement after fulfilling of conditions stipulated in the LOIs on behalf of Government of India."

764. The issue of LOIs was approved by the then Minister on 17.10.2006. What is the case of the prosecution? The case of the prosecution is that at one time only one application would be processed, but here again several applications were processed at the same time. The learned Special Public Prosecutor attempted to save the situation for prosecution by arguing that despite several applications being processed together, LOIs were issued sequentially on first-come first-served basis on different dates. However, this amounts to changing the case of the prosecution midway. It must be kept in mind that it is a criminal case and prosecution has come with a definite case as alleged in the charge sheet. Prosecution has to stick to its case as alleged in the charge sheet. The case against the accused cannot be changed halfway through nor can a new one be created.

It is instructive to quote an authority reported as **Bhagirath Vs. State of MP, (1976) 1 SCC 20**, wherein in paragraph 15, it was observed as under:

"It is well settled that the prosecution can succeed

> by substantially proving the very story it alleges. It must stand on its own legs. It cannot take advantage of the weakness of the defence. Nor can the court on its own make out a new case for the prosecution and convict the accused on that basis."

Similarly, in another authority reported as **Devi Lal and another Vs. State of Rajasthan, 1971 (3) SCC 471**, Hon'ble Supreme Court observed in paragraph 11 as under:

> "In the present case, it appears that the core of the prosecution case that Brijlal and Nathu carried guns and were present at the bus stand and that Nathu shouted that the enemies should be attacked and that Nathu fired the gun was disbelieved. A new prosecution case could not be reconstructed in the manner suggested in the judgment of the High Court....."

The conclusion is that prosecution failed to prove that 51 licences were issued following policy of first-come first-served as alleged by it.

Proof of First-come First-served in Issue of 51 Licences:

765. Not only this, the case of the prosecution is that 51 UAS licences were issued on first-come first-served basis, in which issue of LOI, grant of licence and allocation of spectrum would follow sequentially based on the date of application to DoT. It is also the case of the prosecution that Sh. A. Raja did not follow this procedure in issue of LOIs, grant of licences and allocation of spectrum in 2008. The question is: Whether prosecution has proved on record that 51 licences were issued in this manner? For proving this, it ought to have proved 51

applications to whom LOIs were issued. In addition to this, the applications which were rejected or withdrawn also had to be proved. In the past, 51 UAS licences were issued following first-come first-served. Accordingly, 51 LOIs issued to these applicants, 51 licence agreements signed by these applicants with date, application to WPC for allocation of spectrum and date of actual allocation of spectrum also ought to have been proved. However, nothing of this sort has been done.

766. When questioned about this, prosecution was happy to refer to pages 612 and 613 of file D-589, Ex PW 36/DQ-2, page 231 of D-590 and page 71 of D-587, which contain a list of licences with other details. However, the details contained in these pages do not constitute the proof of first-come first-served, in the absence of relevant documents/ details. How can one conclude that in issuing 51 licences, the first-come first-served policy, as suggested by the prosecution, was followed at all stages? In this regard, it is useful to take a look on the cross-examination dated 10.09.2013 of PW 147 Dy. SP Rajesh Chahal, page 11, which reads as under:

> ".....During investigation, I found some reference to first-come first-served policy in DoT files, but I found no definition of it as it is a procedural term. **Volunteered**: Explanation of policy is there in DoT files.
>
> I did not seize any file pertaining to implementation of this policy from 2003 to prior to issuance of UAS licence in the year 2008. However, these files were seized by Sh. Vivek Priyadarshi. These files were examined by us. Some of these files are annexed to the instant charge sheet. It is wrong to suggest that remaining files were not annexed to

the charge sheet as they were not convenient to the prosecution....."

767. As already noted above, most of the documents pertaining to the implementation of the policy have not been placed on record. Hence, it cannot be said that 51 licences were issued by the DoT following the policy of first-come first-served as alleged by the prosecution. It is clear from the record that on most of the occasions, only one applicant was there. In case one applicant only was there, it is in the very nature of things that it would get the LOI, thereafter it would sign the agreement and consequently it would get the spectrum also. This chance occurrence of an event can neither be claimed nor accepted as an outcome of a policy.

768. On the contrary, for proving the 120 licences issued during the tenure of Sh. A. Raja, PW 60 Sh. A. K. Srivastava has proved all the applications filed by fourteen companies except that of Bycell. The 120 LOIs issued on 10.01.2008 have also been proved by PW 60 Sh. A. K. Srivastava. PW 88 Sh. R. K. Gupta has proved 120 licence agreements signed with the different companies. As far as STPL is concerned, he has proved thirteen licence agreements, Ex PW 88/A-1 to A-12 and Ex PW 2/DC. For Unitech group of companies, he has proved twenty-one licence agreements, Ex PW 88/B-1 to B-21 and Ex A-28. However, the 51 LOIs and licence agreements issued in the past have not been proved on the record to show that the same were issued following the principle of first-come first-served, as the case of the prosecution is dependent on this premise alone.

769. Furthermore, no record of WPC Cell has been produced to prove that the spectrum was also allocated on first-come first-served basis to all the 51 licences taking their seniority from the date of application to the DoT for licence. The evidence is to the contrary that WPC Cell took seniority of an applicant from the date of application for allocation of spectrum to it and not from the date of application for issue of UAS licence to DoT.

The end result is that the prosecution has not succeeded in proving that there was a first-come first-served policy in the form as alleged by it in the charge sheet and if there was such a policy that it was being followed by the DoT, that is, one application was being processed at one time and the issue of LOI, signing of licence and allocation of spectrum took place in that sequence due to policy and not out of necessity or logic of there being only a single applicant. At best, there are some references in DoT files that LOIs and licences were being issued in few cases on first-come first-served basis. However, there is absolutely no material at all that spectrum was also being allocated on the basis of seniority gained during the process of issue of UAS licence and that the DoT had made conscious effort to ensure that the seniority in issue of licence was maintained during filing of application to WPC and allocation of spectrum also.

770. This becomes all the more clear from the cross-examination of investigating officer PW 153 Sh. Vivek Priyadarshi recorded on 18.11.2013, page 6, which reads as

under:

> ".....It is correct that UAS licences are issued under Indian Telegraph Act. It is correct that for use of wireless spectrum a separate licence is required, but I am not sure if that licence is issued under Indian Wireless Telegraphy Act, and for that a separate application is required to be filed with the WPC. It is correct that WPC considers the applications and allots spectrum as and when it becomes available. It is correct that during 2003-07, DoT had issued 51 UAS licences. I had examined most of the files relating to these licences. However, spectrum was not allotted to all these licencees till 25.09.2007, when press release for new licencees was issued. I do not remember if I had examined the WPC files pertaining to allotment of spectrum to these licencees. It is correct that few of these licencees had waited for more than a year to get spectrum....."

The end result is that prosecution has failed to prove that there was any policy of first-come first-served as alleged by it and if there was such a policy that it was being followed by DoT in the manner alleged by the prosecution. Thus, the policy of first-come first-served remained only an abstract proposition born out of necessity, the details of which were not clear to anyone. It was also violated first by the Minister, who had laid it down. This violation also added to ambiguity in the policy leading to many interpretations. The prosecution case can fail on this ground alone.

Manipulation of First-come First-served Policy

771. It is the case of the prosecution that the first-come first-served policy was in existence and was being followed in

the DoT for issue of LOIs, grant of licences and allocation of spectrum. It is the case of the prosecution that in this policy, an applicant who applied first would get the LOI first, on compliance of LOI, it would be issued UAS licence first and thereafter it would be ensured that he was allocated spectrum first. It is the case of the prosecution that the seniority would be maintained at all stages. It is further its case that this procedure was manipulated by Sh. A. Raja in conspiracy with accused companies, that is STPL and Unitech group of companies and their directors to help them get spectrum out of turn. It is their case that in this manipulated policy, whosoever complied with the LOI first, would get the licence first. It is the case of the prosecution that this manipulation was done by Sh. A. Raja in conspiracy with the accused persons and the first manifestation of it is found in the letter dated 26.10.2007, Ex PW 60/C, written by the DoT to Law Secretary seeking opinion of the learned Solicitor General and that the opinion given by Law Ministry was that the matter may be referred to EGoM. It is the case of the prosecution that this opinion of Law Ministry was termed out of context by Sh. A. Raja. It is the case of prosecution that the note dated 02.11.2007, Ex PW 36/B-8, was recorded by Sh. Nitin Jain in which the emphasis of the DoT was on following existing policy for issue of LOIs and signing of licence agreements and this note was approved by Sh. A. Raja. It is further their case that vide note dated 05.11.2007, Ex PW 36/B-9, Sh. D. S. Mathur recorded his objections to the aforesaid decision. Accordingly, a fresh note dated 07.11.2007,

Ex PW 36/B-10, was recorded by Sh. Nitin Jain, and in this note also, the emphasis was on the existing policy of first-come first-served and this note was also approved by Sh. A. Raja. It is the case of the prosecution that in this note it is clearly mentioned that LOIs would be granted based on the date of application to satisfy the principle of first-come first-served.

772. It is further case of the prosecution that through this note a copy of the draft LOI, Ex PW 42/A, was also placed on the file, which was also required to be legally vetted and para 3 of this LOI contained the provision that the date of payment of entry fee would be priority date for signing of licence agreement and if the date of payment of entry fee in more than one case is same then licence would be first signed with an applicant company whose application was received earlier. It is the case of the prosecution that Sh. A. Raja in conspiracy with other accused persons deleted this. It is further case of the prosecution that when the file went to the Finance (LF) Branch, the officers of the branch objected to the deletion of para 3 of the LOI. It is their case that it was suggested that in terms of para 5 of draft LOI it would be appropriate to clarify the approximate time within which prospective licensee would get the spectrum and in any case for spectrum allocation the date of priority should be the date of application for UAS licence, provided the applicant was found eligible on the date of application and complied with the LOI conditions. It is the case of the prosecution that this note spelled out the policy of first-come first-served and also the manner in which the policy was being

implemented. It is the case of the prosecution that this note was agreed to by Member (Finance) and Secretary (T) also. It is the case of the prosecution that Sh. A. Raja considered this note to be an impediment in the implementation of his ill-conceived design and condemned the officers. It is the case of the prosecution that in this manner the officers of DoT tried to prevent Sh. A. Raja from reshuffling the priority from date of application to submission of compliance. It is the case of the prosecution that in the end Sh. A. Raja directed that the existing LOI proforma be used. It is the case of the prosecution that following his conspiratorial designs, Sh. A. Raja with the help of Sh. R. K. Chandolia wrote letter dated 26.12.2007, Ex PW 7/C, to the Hon'ble Prime Minister misrepresenting to him the first-come first-served policy. It is further the case of the prosecution that this letter was not deliberated in the department and no opinion of learned SG was sought, but it was represented to the Hon'ble Prime Minister that the policy as enunciated in the letter had the concurrence of learned SG. It is the case of the prosecution that in furtherance to the conspiracy, Sh. R. K. Chandolia handed over a copy of the letter dated 26.12.2007 to DDG (AS-I) and directed that the same be treated as 'policy directive'. It is further the case of the prosecution that following this a fresh note dated 07.01.2008, Ex PW 42/DB, was recorded by Sh. Nitin Jain, in which also the existing policy was reiterated, and the policy directive as contained in the letter dated 26.12.2007 was also taken note of in the consequent note, Ex PW 60/L-23, recorded on the same day by Sh. A. K.

Srivastava, which resulted in the alteration of policy of first-come first-served, that is, from the date of application to date of compliance.

773. It is further case of the prosecution that when the matter was put up before Sh. Siddhartha Behura on 07.01.2008, he attached a draft press release, Ex PW 60/L-27, and this press release contained the manner in which LOIs were planned to be issued. It is the case of the prosecution that Sh. A. Raja approved it and asked Sh. Siddhartha Behura to obtain the opinion of learned SG on it, as he was appearing before Hon'ble TDSAT and Hon'ble Delhi High Court in the matters of DoT. It is the case of the prosecution that Sh. Siddhartha Behura took the file to learned SG, who approved the same vide his note, Ex PW 60/L-31, dated 07.01.2008. It is the case of the prosecution that after the approval of learned SG, accused A. Raja struck out the last para of press release, which stated that if more than one applicant comply with the LOI conditions on the same date, the inter-se seniority would be decided by the date of application. It is the case of the prosecution that after this Sh. A. Raja tampered with his (Ld. SG) approval order also, as he inserted the additional words 'press release approved as amended' and by doing so it was fraudulently portrayed to the department that the amended draft of the press release had the approval of learned SG. It is the case of the prosecution that in this manner official record was falsified and the amendment led to redefining the concept of first-come first-served on the basis of priority from submission of compliance to LOIs against the

established practice of priority from the date of application. It is the case of the prosecution that in this manner the whole policy of first-come first-served was altered and manipulated to the benefit of accused companies.

774. On the other hand, the case of the defence is that this change in the policy was discussed and debated in the department several times and a considered decision was taken in the changed circumstances, as the number of pending applications was quite large and non-serious players were required to be eliminated. It is the case of the defence that extension of time by DoT for compliance of LOIs was also creating problem and delay in grant of licences. It is the case of the defence that in order to refine the first-come first-served policy and make it more effective, the change in the priority from the date of application to the date of compliance was contemplated. It is the case of the defence that the note of the LF Branch recorded by Sh. Shah Nawaz Alam, Ex PW 36/DQ-22, was contrary to the existing policy and that was rightly disapproved by Sh. A. Raja. It is also the case of the defence that the entire policy as contained in notes dated 07.01.2008, Ex PW 42/DB and Ex PW 60/L-23, had the concurrence of learned SG. It is the case of the defence that there was no unauthorized deletion from the press release, Ex PW 60/L-27.

775. Both parties have invited my attention in great detail, rather ad nauseum, for days together, to file D-7, three drafts; Ex PW 36/B-1, B-3 and B-4, letter to PM dated 26.12.2007; Ex PW 7/C, draft LOI; Ex PW 42/A, various notes,

statements of witnesses and other material on record to emphasize their respective case.

First Indication of Manipulation

776. It is the case of the prosecution that first indication of the manipulation of first-come first-served policy is manifested from the letter dated 26.10.2007 sent to the learned SG. The allegation of first indication of manipulation of first-come first-served policy is based on the following lines extracted from para 7 of draft, Ex PW 36/B-1 (4/c) (D-7):

> ".....In the present scenario the number of applications is very large and therefore such sequential processing will lead to inordinate delays depriving the general public of the benefits which more competition will bring out....."

These lines are part of draft, Ex PW 36/B-1. The allegation is that first indication of manipulation of first-come first-served policy arises from the letter dated 26.10.2007 sent to the Law Ministry, but this draft was not sent with the letter, as this was not the final draft. The final draft is Ex PW 36/B-4 (6/C). The relevant lines in this draft read differently and are extracted below:

> "In the present scenario the number of applications are very large and spectrum is limited and it may not be possible for the Government to provide LOI/ licence/ spectrum to all applicants at all if the existing procedure is followed. Moreover, existing procedure of sequential processing will also lead to inordinate delays depriving the general public of the benefits which more competition will bring out."

These lines are also contained in draft, Ex PW 36/B-3 (5/C), which as per prosecution, was placed on record and approved by Sh. A. Raja.

777. The prosecution has come with a definite case on the basis of lines extracted above from draft, Ex PW 36/B-1. In brief, the prosecution case on this point hinges on draft, Ex PW 36/B-1. Now, the question is: Who prepared this draft? Whether this draft was prepared at the instance of Sh. A. Raja? Whether this draft was result of the conspiracy as alleged by the prosecution? Whether the aforesaid lines were added at the instance of conspiring public servants in draft, Ex PW 36/B-1? Let me take note of the evidence on this point.

778. PW 110 Sh. Nitin Jain, who prepared the draft, in his examination-in-chief dated 21.03.2013, pages 1 and 2, deposed as under:

> ".....I have been shown DoT file D-7, already Ex PW 36/B, wherein I have been shown note dated 24.10.2007, already Ex PW 36/B-2, wherein my signature appears at point C at the end of the note. I had prepared this note. This note was recorded as large number of applications were received for UAS licences, which were quite unprecedented and, as such, the DoT thought of obtaining opinion of learned SG. I had also prepared a draft for sending to learned SG and that draft is at page 4/C in the file and is already Ex PW 36/B-1, pages 30 to 26. This is the same draft prepared by me. In this draft, opinion was sought on the two alternatives which are as under: (1) it was proposed to process the applications in first-come first-served basis in chronological order of receipt of application as per the existing procedure; and (2) certain number of LOIs, say about two times the number of applicant,

as proposed in alternative (1) above may be issued in each service area in phase I.

I have been shown note dated 25.10.2007 in the handwriting of the then MOC&IT, already Ex PW 36/B-5, page 2/N. However, another draft was placed on the file, which is now available at page 5/C, already Ex PW 36/B-3, and it was this draft which was approved by the then Minister with some corrections. Finally, a final draft was prepared and it was this draft, which is now available at page 6/C, already Ex PW 36/B-4.

Ques: Who had prepared the draft Ex PW 36/B-4, which was finally approved by the Minister?

Ans: This draft was prepared by Sh. A. K. Srivastava, DDG (AS) and it was approved on 26.10.2007, page 5/N."

779. PW 110 Sh. Nitin Jain in his cross-examination dated 22.03.2013, page 4, deposed as under:

"**Ques**: I put it to you that in October-November 2007, the number of pending applications was quite large and earlier procedure of sequential processing and extended time for compliance would have led to inordinate delay?

Ans: This was an unprecedented situation on account of receipt of large number of applications and on account of this there would have been delay. That is the reason that draft Ex PW 36/B-1 was prepared, of which para 7 is a part wherein this fact finds mention."

780. PW 110 Sh. Nitin Jain in his further cross-examination dated 16.07.2013, page 2, deposed as under:

"**Ques**: Whether note Ex PW 36/B-4 was prepared after discussion in the department?

Ans: This statement of case was initially put up for consideration on page 2/N, which was placed at 4/C and Minister approved it on 25.10.2007 and wrote

"approved as modified". Based on the modified approval of the Minister, Sh. A. K. Srivastava, DDG (AS), had proposed 6/C, that is, Ex PW 36/B-4.
Ques: Is it correct that in this note Ex PW 36/B-4, there is an alternative II, which mentions "LOIs to all those who applied by 25.09.2007 (the date on which the cut-off date for receipt of applications was made public through press) may be issued...." and because of this, the date of 25.09.2007 finds mention in your note Ex PW 36/B-8?
Ans: It is correct that alternative II is mentioned in Ex PW 36/B-4, but in my note, there is a mention of this date, that is, 25.09.2007, in para 3. This para is a record of discussion, which was told to me by DDG (AS) Sh. A. K. Srivastava and in that meeting, I was not present. There is no mention of alternative II of 6/C in para 3 of my note and, as such, the two have no connection.

It is correct that note 4/C dated 24.10.2007, already Ex PW 36/B-1, was proposed and the MOC&IT Sh. A. Raja approved note 5/C on the next day, already Ex PW 36/B-3."

781. PW 110 Sh. Nitin Jain in his further cross-examination, page 3, deposed as under:

".....Note 4/C, already Ex PW 36/B-1, was prepared by me for consideration of learned SG. In this note, I proposed two alternatives."

Thus, PW 110 Sh. Nitin Jain owned up the draft, Ex PW 36/B-1, as prepared by him. The contents of draft, Ex PW 36/B-1, cannot be attributed to Sh. A. Raja.

782. PW 60 Sh. A. K. Srivastava in his examination-in-chief dated 01.08.2012, pages 6 and 7, deposed as under:

".....As per para 5 of this note, a brief to the learned SG seeking his opinion as per note was placed in the file for consideration and approval. The note

referred to in para 5 is available at pages 26 to 30 and is already Ex PW 36/B-1. It was prepared in my section. I had also seen it. There are certain corrections in the note. The corrections at pages 26 and 27 are in the handwriting of Sh. D. S. Mathur. A spelling correction was done by Sh. K. Sridhara at page 28 at point A. Whenever, a file is sent to the office of the Minister from the office of Secretary, the same is sent to him directly and not through AS section. The draft Ex PW 36/B-1 was sent to the then Minister through the then Secretary Sh. D. S. Mathur.

I have been shown another draft on the same subject, available at pages 31 to 35, which is already Ex PW 36/B-3. This draft was not prepared in the AS section....."

783. PW 60 Sh. A. K. Srivastava in his cross-examination dated 11.09.2012, page 6, deposed as under:

".....It is correct that the proposal dated 24.10.2007 as initiated by Sh. Nitin Jain, Director (AS-I), regarding seeking of opinion of learned SG, already Ex PW 36/B-2, in DoT file D-7, already Ex PW 36/B, was also agreed to by me by appending my signature at point D, page 2/N. In draft already Ex PW 36/B-1 available in this file at pages 26 to 30, there are certain corrections in the handwriting of the then Secretary (T) Sh. D. S. Mathur. I had discussed the draft note with the Member (T) and Secretary (T) before the finalization of the same. It is wrong to suggest that after the corrections were made by Secretary (T) in the draft Ex PW 36/B-1, I had discussed the matter again with Secretary (T) and Member (T). It is also wrong to suggest that I prepared a revised draft after any such discussions. Confronted with portion A to A of statement dated 04.03.2011, Ex PW 60/DD (A-1), where it is so recorded. **Volunteered**: This was an inadvertent statement, which was later on corrected in my

subsequent statement....."

784. PW 36 Sh. D. S. Mathur in his examination-in-chief dated 09.04.2012, pages 13 and 14, deposed as under:

> ".....I have been shown file of DoT, D-7, regarding UAS Licensing Policy. This file is of the DoT and is now collectively Ex PW 36/B. I have been shown note 1/N and 2/N initiated by Sh. Nitin Jain, Director (AS-I), dated 24.10.2007 regarding seeking of the opinion of Ld. Solicitor General of India on grant of new unified access service licences and approval for use of dual technology spectrum by such licencees. For sending the matter to the learned Solicitor General, a brief was also prepared and it was submitted through Sh. A. K. Srivastava, DDG (AS) and Sh. K. Sridhara, Member (T). The brief alongwith note sheet finally reached me. The brief is available at pages 26 to 30 (4/C). The brief is dated 24.10.2007 and is now Ex PW 36/B-1. The brief was put up by me alongwith the file to the then Minister on 24.10.2007 and my signature in this regard is at point A on 2/N. The note sheet is Ex PW 36/B-2. The brief which was meant for learned Solicitor General has certain corrections, but I have no idea as to who made the same. I have also been shown a brief at pages 31 to 35 (5/C) of the same file. The corrections made in brief Ex PW 36/B-1 have not been incorporated in this note 5/C. This note is now Ex PW 36/B-3. I am saying this after comparing the two drafts.
>
> There are corrections in Ex PW 36/B-3 and I cannot say as to who made these corrections. I have been shown another draft at pages 63 to 67 (6/C) and is now Ex PW 36/B-4. After looking at the three drafts I cannot say as to which of the draft was finally approved by the then Minister, MOC&IT, for sending to the learned SG, vide endorsement at 2/N made by the Minister dated 25.10.2007....."

785. PW 36 Sh. D. S. Mathur in his cross-examination dated 18.04.2012, pages 7 and 8, deposed as under:

> ".....It is correct that as per this note sheet, DoT considered it appropriate to seek the opinion of learned SG in view of the receipt of 575 applications for UAS Licences after receipt of TRAI recommendations. I appended my signature at point A indicating my concurrence with the note regarding seeking of opinion of learned SG....."

PW 36 Sh. D. S. Mathur in his further cross-examination, page 13, deposed as under:

> "......MOC&IT never asked me to favour anyone of the 575 applicants....."

786. PW 77 Sh. K. Sridhara in his cross-examination dated 10.12.2012, pages 12 and 13, deposed as under:

> ".....It is correct that in the file D-7, Ex PW 36/B, there are two drafts, Ex PW 36/B-1 and B-3 respectively, proposed to be sent to the learned SG through Law Ministry seeking his opinion. It is correct that both the drafts contain corrections made by the then Secretary (T) Sh. D. S. Mathur. It is correct that both the drafts reached the Secretary (T) through DDG (AS) and myself. Once a draft is corrected and is put up again to the competent authority, it is not necessary that it should pass the entire hierarchy and may reach the competent authority directly after correction. Generally, all the drafts are kept in the file. In the final letter sent to the Law Ministry, Ex PW 36/B-4, the fourth alternative was "any other better approach which may be legally tenable and sustainable for new licences". On the basis of the corrections in the earlier two drafts, final letter Ex PW 36/B-4 was prepared and sent....."

787. PW 77 Sh. K. Sridhara in his further cross-examination dated 10.12.2012, pages 15 and 16, deposed as under:

> ".....It is correct that in October-November 2007 the number of applications was very large and compliance with this procedure of sequential processing and extension of time could have led to some delay. It is correct that in order to reduce the delay, simultaneous issuance of LOIs has been proposed in para 7 in draft Ex PW 36/B-1. It is correct that for the same reason it was also proposed in the draft that no relaxation would be given in time limit for compliance with the terms of LOI. If the applications were taken one by one, it takes about a month in the processing of one application and total delay would have been of the order of eight to nine months. It was mentioned by the Minister that there was a possibility of trading in LOIs if there was delay in the processing of applications due to processing of applications one after another....."

788. PW 77 Sh. K. Sridhara in his further cross-examination dated 11.12.2012, page 5, deposed as under:

> ".....The draft Ex PW 36/B-1 contains the policy decision of DoT and at the end two alternatives for processing of applications and issuance of LOIs. This draft was prepared by AS cell. It is correct that this draft was prepared on 24.10.2007 after the issuance of press release dated 19.10.2007, after acceptance of TRAI recommendations by the Government....."

789. DW 1 Sh. A. Raja in his cross-examination dated 17.07.2014, pages 2 and 3, deposed as under:

> ".....The first draft prepared in the DoT of a reference to be sent to the Ministry of Law and Justice is Ex PW 36/B-1. However, I was shown

another draft, Ex PW 36/B-3, with which the earlier draft was also available in the file. I modified draft Ex PW 36/B-3 and approved it. It is wrong to suggest that draft Ex PW 36/B-3 was not prepared in the DoT. I do not know if the preparation of this draft is reflected in the note sheets of department or not. However, modification of this draft and its approval by me is reflected in this file. **Volunteered**: Had it been prepared by me on my own, no modification would have been necessary therein, as has been done by me personally in the draft Ex PW 36/B-3.

It is wrong to suggest that this draft was inserted in the DoT file by me on my own and later on showed the same corrected and approved. It is wrong to suggest that this was done by me as alternative II mentioned in this draft was not the idea initiated by the department, as mentioned in draft Ex PW 36/B-1. It is wrong to suggest that on receipt of the file from Ministry of Law and Justice on 02.11.2007, I decided the cut-off date of 25.09.2007 as the same matches with alternative II as mentioned in Ex PW 36/B-3."

790. The case of the prosecution is that the first indication of the conspiracy is found in the letter sent to the Law Ministry wherein plea of large number of applications and limited availability of spectrum was taken by DoT and it was contended that it may not be possible for the government to provide LOI/ Licence/ Spectrum to all the applicants, if the existing procedure of sequential processing is followed. It was also contended in the letter that if the existing procedure of sequential processing was followed, it would lead to inordinate delay and the general public would be deprived of the benefits of enhanced competition.

All witnesses, referred to above, have deposed that draft, Ex PW 36/B-1, was prepared in AS Cell by Sh. Nitin Jain and was agreed to by DDG (AS) Sh. A. K. Srivastava, Member (T) Sh. K. Sridhara and Secretary (T) Sh. D. S. Mathur. This means that the aforesaid contention of DoT was put forward in draft, Ex PW 36/B-1, by the officers of DoT and not by Sh. A. Raja, which is now being made the basis of first indication of conspiracy by the prosecution.

791. It also means that prosecution has given up its case in the Court. As per the charge sheet, the first manifestation of conspiracy is reflected in the aforesaid plea of DoT recorded in draft, Ex PW 36/B-1, at the instance of Sh. A. Raja. However, none of the witnesses have deposed that draft, Ex PW 36/B-1, was prepared at the instance of Sh. A. Raja. All the witnesses are unanimous that this draft was prepared in AS Section. If this draft was prepared for AS Section, Sh. A. Raja cannot be held responsible for this or any issue contained therein. Not only this, there is no evidence at all indicating that the idea of obtaining opinion of SG was put forward by Sh. A. Raja. Note dated 24.10.2007, Ex PW 36/B-2, recorded by Sh. Nitin Jain is silent on this point. There is no oral evidence either on this point. The note does not reveal as to whose idea was it to obtain opinion of learned SG.

792. The case of the prosecution is that draft, Ex PW 36/B-3, was prepared by Sh. A. Raja. This plea has been taken by the prosecution to contend that priority was changed from the date of application to date of compliance of LOIs by this

draft. If this draft was inserted by Sh. A. Raja, as contended by the prosecution, then it is natural that draft, Ex PW 36/B-1, was put forward by the officers of DoT, as deposed to by the witnesses also. In such a situation, Sh. A. Raja cannot be held accountable for anything contained in draft, Ex PW 36/B-1.

793. Accordingly, I do not find any merit at all in the submission of the prosecution that the first manifestation of the conspiracy was in the letter dated 26.10.2007 sent to the Law Ministry, as the relevant fact/ plea in Ex PW 36/B-1 was not put forward by Sh. A. Raja, but by the officers of the DoT as per their own wisdom in the then prevailing circumstances. In other words, the lines containing the allegations are from draft, Ex PW 36/B-1, and not from draft, Ex PW 36/B-3.

Genesis of Priority from Time of Submission of Compliance

794. It is the case of the prosecution that the idea of change of priority from date of application to time of submission of compliance was that of Sh. A. Raja, as manifested from draft, Ex PW 36/B-3, which was prepared at the instance of Sh. A. Raja in his office. In this regard, my attention has been invited to Alternative II as contained in para 11 of this draft, which reads as under:

> "**Alternative II:**
>
> LOIs to all those who applied by 25-9-2007 (the date on which the cut-off date for receipt of applications were made public through press) may be issued in each service area as it is expected that only serious players will deposit the entry fee and seniority for licence/ spectrum be based on

(i) the date of application

or

(ii) the date/ time of fulfillment of all LOI conditions."

795. It is the case of the prosecution that since this draft, Ex PW 36/B-3 (5/C) was not prepared by AS Section, but was prepared in the office of Sh. A. Raja, the idea of priority/ seniority from the date/ time of fulfilment of LOI conditions was incorporated in this draft at the instance of Sh. A. Raja. The gist of prosecution case is that the manipulation of policy from date of application to time of compliance started with this draft.

796. On the contrary, the defence has denied that draft, Ex PW 36/B-3, was placed on record at the instance of Sh. A. Raja. The case of the defence is that this draft also originated in the department and was approved by Sh. A. Raja with some corrections.

Case of Parties

797. What is the case of the prosecution? Its case is that Alternative II, as extracted above, was not the idea of the department. Its case is that Alternative II, which contains the idea of priority from the time of compliance, was the idea of Sh. A. Raja, as is reflected in the cross-examination dated 17.07.2014, page 3, which for ready reference, is extracted again:

> ".....It is wrong to suggest that this draft was inserted in the DoT file by me on my own and later on showed the same corrected and approved. It is wrong to suggest that this was done by me as alternative II mentioned in this draft was not the

idea initiated by the department, as mentioned in draft Ex PW 36/B-1. It is wrong to suggest that on receipt of the file from Ministry of Law and Justice on 02.11.2007, I decided the cut-off date of 25.09.2007 as the same matches with alternative II as mentioned in Ex PW 36/B-3."

This deposition contains the case of parties on this point.

798. However, DW 1 Sh. A. Raja in his examination-in-chief dated 01.07.2014, pages 5 and 6, deposed as to how draft, Ex PW 36/B-3, was shown to him as under:

"**Ques**: Kindly take a look on letter dated 26.10.2007, already Ex PW 60/C, and its enclosure, Ex PW 36/B-4, in DoT file D-7, already Ex PW 36/B. Would you please tell this Court, if you had seen this letter with its enclosure, if so, under what circumstances it was sent to Ministry of Law and Justice?
Ans: Having received 575 applications in the department for UAS licences, discussions took place in the DoT as to how to deal with such large number of applications, which was unprecedented in a fair and equitable manner. It was decided that the department may ask opinion of the learned AG or SG through the Law Ministry, where various options were enumerated after discussions in the enclosure/ statement of case. During the discussions, a draft of the statement of the case, to be sent to the Ministry of Law and Justice, Ex PW 36/B-3, was shown to me. I had seen this draft and I added one more option "any other better approach which may be legally tenable and sustainable for issuance of new licence" in my writing, as mentioned at points B to B, and this was carried into the final draft also, which is already Ex PW 36/B-4."

799. DW 1 Sh. A. Raja in his cross-examination dated

21.07.2014, pages 2 and 3, explained as to how priority was changed from date of application to time of compliance as under:

> "**Ques**: I put it to you that the condition of granting licence first to an applicant who complies with the LOI first was created by you for the first time in your letter dated 26.12.2007, Ex PW 7/C?
> **Ans**: Compliance is always relevant to issue licence. Without compliance licence cannot be issued as per the LOI conditions ever. It is narrated in the letter to the Hon'ble Prime Minister that this issue never arose in the past as at one point of time only one application was processed and LOI was granted and enough time was given to him (LOI holder) for compliance of conditions of LOI. So, the procedure of compliance and the issuance of licence is one and same, only the context and circumstances which were adopted in simultaneous issuance changed, as per decision of DoT, and no time extension to the LOI holder was granted for compliance with the conditions of LOI. Since there is no provision either in LOI conditions or any other document to stop the compliance, it becomes spontaneous and inherent in the process on issuance of LOI. This was considered as a fair and equitable play of events in the department, which were reflected in the files also."

800. Thus, Sh. A. Raja has categorically deposed that draft, Ex PW 36/B-3, was shown to him in the department and he made some corrections therein in his own hand. PW 110 Sh. Nitin Jain is silent on the point as to who placed the draft on the file. He only says, as already noted above, that another draft, Ex PW 36/B-3 (5/C) was placed on the file and it was this draft which was approved by the then Minister with some corrections. He nowhere says as to who prepared this draft and placed on

the file. He nowhere says that this draft was prepared or inserted at the instance of Sh. A. Raja. PW 60 Sh. A. K. Srivastava is ambivalent on this point. He says that draft, Ex PW 36/B-3, was not prepared in the AS Section, but he is not categorical whether it was prepared in the office of the Minister, though he hints this by saying that if such a draft is to be got typed by the Minister, he has secretarial assistance for doing that. He is not categorical that the draft was prepared in the office of the Minister or at his instance. PW 36 Sh. D. S. Mathur, the then Secretary (T), is also silent on this point and simply says that the corrections made in draft, Ex PW 36/B-1, have not been incorporated in draft, Ex PW 36/B-3. Thus, out of the three witnesses, two, that is, PW 110 Sh. Nitin Jain and PW 36 Sh. D. S. Mathur, are silent as to who prepared draft, Ex PW 36/B-3, and the third one, that is, PW 60 Sh. A. K. Srivastava is not categorical, but adopted attitude of studied ambiguity.

801. However, the fourth witness PW 77 Sh. K. Sridhara is categorical that both the drafts, that is, Ex PW 36/B-1 and B-3 were proposed in AS Section to be sent to the learned SG and both contained corrections in the hand of Sh. D. S. Mathur. He is also categorical that both the drafts reached Secretary (T) through DDG (AS), that is, Sh. A. K. Srivastava and he himself (Sh. K. Sridhara). This version was not challenged by the prosecution by way of re-examination or cross-examination.

802. In view of the above discussion and the evidence of the witnesses extracted above, it is clear that draft, Ex PW 36/B-

3, which contains Alternative II as extracted above, regarding priority from time of compliance, was not inserted by Sh. A. Raja, but was placed on record by the officials of the department itself.

803. Even otherwise, these drafts were neither approved by the learned SG nor were they further proceeded with by the department, and as such, lost their relevance and there was no need for the officers to function as per the things mentioned in the drafts. If these drafts indicated thinking of Sh. A. Raja, matter should have been allowed to rest here by the officials of DoT.

804. On the contrary, the first requirement of change in policy was suggested by PW 36 Sh. D. S. Mathur himself, when vide note dated 18.05.2007, Ex PW 60/J-48 (D-44), it was suggested that processing of applications may be taken up after receipt of TRAI Recommendations. In this note itself, Sh. D. S. Mathur recorded that certain applications submitted earlier are pending in some circles and others submitted in other circles at a later date have been processed. What does it mean? It means that as per Secretary (T) himself, the first-come first-served was not being followed and perhaps on receipt of TRAI Recommendations, it needed to be changed or refined, otherwise what could have been the meaning of his suggestion to stop processing of applications awaiting TRAI Recommendations.

805. In view of above discussion, I do not find any merit in the submission of the prosecution that the idea of

manipulation of policy originated in this draft placed in the file at the instance of Sh. A. Raja.

Action of DoT on Return of Reference: Change in Policy

806. The next contention of the prosecution is that the department was emphasizing the existing policy all along, but that policy was manipulated by Sh. A. Raja and in this regard my attention has been invited to the notes dated 02.11.2007; Ex PW 36/B-8, dated 07.11.2007; Ex PW 36/B-10, dated 23.11.2007; Ex PW 36/DQ-22, dated 30.11.2007; Ex PW 36/B-11 and dated 04.12.2007; Ex PW 36/B-13, all in file D-7. It is the case of the prosecution that the first-come first-served policy, as contained in file D-592, Ex PW 11/DM-19, was the correct policy, according to which an applicant who applied first would get the licence first and also the spectrum and this policy ought to have been followed. It is the case of the prosecution that department's officials were so suggesting and emphasizing, but Sh. A. Raja manipulated it.

807. On the other hand, by reading the same notes, the defence has argued that if there was a change in the policy, it was suggested by the officials of DoT.

808. Let me take note of the relevant notes to understand as to what the officials were suggesting. The most important question here is: Whether the officials were proposing to follow the existing policy in toto or were they suggesting any change also?

809. The note dated 02.11.2007, Ex PW 36/B-8, recorded

by Sh. Nitin Jain reads as under:

> "As approved on page 4-5/N, the reference was sent to Law Ministry (7/c) seeking opinion of Ld. Attorney General of India/ Solicitor General of India. Responses received from Ministry of Law and Justice, Department of Legal Affairs may kindly be seen as placed on page 8/c and 9/c.
>
> 2. The opinion of Hon'ble Minister of Law and Justice at page 9/c was discussed with Hon'ble MOC&IT. Ministry of Law and Justice has given their views that in view of the importance of the case and various options indicated in the statement of the case the issues be considered by Group of Ministers.
>
> 3. The matter was discussed with the DDG (AS) and Member (T) who had in turn discussed with the Hon'ble MOCIT.
>
> It was discussed and felt in the meeting that the proposed advice is out of context. It is, therefore, advisable that we may follow the existing policy for grant of new licences as suggested by the Secretary (T) in the meeting chaired by Hon'ble MOCIT. DOT has till now been following a process of first come first served for grant of UASL licenses.
>
> In view of TRAI recommendation of no cap on number of operators, large number of applications were being received in the DOT. Therefore it was decided that no more applications shall be received after 1-10-2007 till further orders. Till the cut-off date for receipt of UASL application, 575 applications were received fro, 46 companies for 22 service areas. The list of these applications along with date of receipt, company wise and service area wise are placed at p.10/c and 11/c respectively. In order to avoid any legal implications of cut off date, all the applications received till the announcement of cut off date in the press i.e. 25-09-2007 may be processed as per the existing policy and decision on remaining applications may be taken subsequently.
>
> 4. WPC has indicated (in the linked file) an availability of circle wise spectrum based on the

internal exercise and likely availability once M/O Defence vacates the spectrum being used by them. Since 75 MHz has been earmarked for 2G in 1800 band of which a maximum of about 15 MHz has been released. Therefore, approximately 60 MHz is left unused so far which could be utilized for new licences and additional requirement of existing operators. Since the availability of spectrum is not immediately guaranteed in all the service areas as it needs to be vacated by the Defence, **a clause may be inserted in the LOI that spectrum allocation is not guaranteed and shall be subject to availability**.

5. In view of above a decision may be taken on the number of LOI's to be issued in each circle. While deciding on the number of LOI's it may also be taken in to account that only serious players may deposit the entry fee who can afford non-availability or delays in spectrum allocation and roll out using wire-line technology only. It may also be noted that large number of operators per circle will lead to real competition and bring down prices of telecom services.

6. LOI has been redrafted in view of large number of applications and is placed below and will be legally vetted by LA(T) before issue. It will be vetted before by the Legal Adviser before issue. Since the applications are very large in number, a comprehensive evaluation has not been done and shall be completed after taking detailed clarifications / compliances / documents from the applicants along with LOI. The responses to LOI will be evaluated by the committee already approved by the Secretary (T). A copy of LOI issued earlier to one of the licensees is also placed at 12/c for reference purposes.

7. With regard to application of M/s TATA (TTSL & TTML) for dual technology, it is submitted that since matter is sub-judice in TDSAT, a decision on this may be taken after decision of TDSAT.

8. Therefore, file is submitted for orders on following issues:
1. Issuing of LOI's to new applicants as per the existing policy,
2. Number of LOI's to be issued in each circle,
3. Approval of Draft LOI,
4. Considering application of TATA's for Dual technology after the decision of TDSAT on Dual technology.
5. Authorising Shri R. K. Gupta, ADG (AS-I) for signing the LOIs on behalf of President of India."

810. This note was approved by Sh. A. Raja on the same day, that is, 02.11.2007. This note speaks of two things, that is, DoT may follow the existing policy and that the LOI has been redrafted in view of large number of applications. What does this redrafted LOI indicate?

811. PW 110 Sh. Nitin Jain, who recorded the note, in his examination-in-chief dated 21.03.2013, pages 2 and 3, deposed about the note as under:

".....I have been shown note dated 02.11.2007, already Ex PW 36/B-8, pages 6/N and 7/N. I had prepared this note and this bears my signature at point B, page 7/N. This note was recorded after reply was received from the Law Ministry on the reference sent to it for seeking the opinion of learned SG. Before recording this note, the matter was discussed in the Ministry and after discussion, I was asked to prepare this note....."

Sh. Nitin Jain did not name the officers who discussed the matter in the Ministry. However, the note records that the matter was discussed by Sh. Nitin Jain, Sh. A. K. Srivastava and Sh. K. Sridhara. After discussion with Sh. Nitin

Jain and Sh. A. K. Srivastava, Sh. K. Sridhara discussed the matter with Sh. A. Raja. Thereafter, note Ex PW 36/B-8, was recorded.

812. PW 60 Sh. A. K. Srivastava in his examination-in-chief dated 08.08.2012, pages 1 and 2, deposed as under:

> ".....I have been shown DoT file D-7, already Ex PW 36/B wherein at page 6/N and 7/N, there is a note of Sh. Nitin Jain, Director (AS-I) dated 02.11.2007. Note is already Ex PW 36/B-8. On receipt of this file from the Law Ministry, after its remarks that the matter may be placed before the empowered Ministers , the matter was discussed between the then MOC&IT Sh. A. Raja and Member (T) K. Sridhara on 02.11.2007 itself. On this date I had also attended the office. On that day, Sh. K. Sridhara called me and briefed me about his discussions with Sh. A. Raja. He told me that the view of the Law Ministry regarding the matter referred to empowered group of Ministers was out of context and he should follow the existing policy for the processing of USAL applications. Thereafter, I briefed Sh. Nitin Jain, Director (AS-I), regarding my discussion with the Member (T) and asked him to put a note accordingly. Thereon, Sh. Nitin Jain put up the note dated 02.11.2007, already Ex PW. 36/B-8, and his signatures at point B, which I identify. This note was put up to me and I marked the file to Member (T), who in turn, marked the file to Minister, MOC&IT as the Secretary (T) was on tour. Approval of the Minister is at point A at page 7/N. My signature is at point C, that of Sh. K. Sridhara at point D and that of Mr. A. Raja at point E. The approval was granted by Sh. A. Raja by recording 'approved; LOI may be issued to the applicants received up to 25.09.2007'....."

It may be noted that Sh. A. K. Srivastava absolves

himself of all discussion. He deposed that Sh. K. Sridhara discussed the matter with Sh. A. Raja. This is contrary to version in the note, Ex PW 36/B-8.

813. PW 77 Sh. K. Sridhara in his examination-in-chief dated 09.11.2012, page 9, deposed as under:

> ".....I have been shown a note dated 02.11.2007, already Ex PW 36/B-8, pages 6/N and 7/N, and it is this note which was put up to him pursuant to my discussion with him on that date. This note was initiated by Sh. Nitin Jain and he marked the file to DDG (AS), who, in turn, marked the file to me. Since Secretary (T) was on tour, I directly marked the file to the Minister....."

814. A bare perusal of the evidence reveals that note, Ex PW 36/B-8, was initiated by PW 110 Sh. Nitin Jain after the matter was discussed by PW 77 Sh. K. Sridhara with Sh. A. Raja. PW 77 Sh. K. Sridhara discussed the matter with PW 60 Sh. A. K. Srivastava. PW 60 Sh. A. K. Srivastava briefed Sh. Nitin Jain about his discussion with Sh. K. Sridhara and thereafter the above note was recorded. There is nothing in the note or in the evidence to show that Sh. A. Raja asked any of the officers to incorporate anything about the alteration of first-come first-served policy. However, paragraph 6 of the note, Ex PW 36/B-8, speaks of a redrafted LOI, page 13/C, which is required to be legally vetted. Paragraph 3 of this reads as under:

> "First come first served criterion shall be followed for award of licence to the applicants complying with the conditions of LOI based on date of receipt of entry fee by DoT within the period prescribed in LOI. If the date of payment by two different LOI holders coincide, then priority will be given to

applicant whose initial application was received earlier."

This paragraph clearly indicates that first-come first-served policy was based on date of receipt of entry fee.

815. In paragraph 8 of note, Ex PW 36/B-8, extracted above, approval was sought for vetting of draft LOI also. The officials were suggesting existing policy as well as change in the policy, as is reflected in the draft LOI, though in a subtle manner. As noted earlier, there is no material on record that Sh. A. Raja suggested any change in the first-come first-served policy when the aforesaid note was being recorded. But the officials on their own suggested change in the policy by way of change in the LOI format incorporating the criteria of priority from date of payment. The idea of alteration in the first-come first-served policy was not coming from Sh. A. Raja, but came from the officials of the department. A policy is meant to guide action of a department not as a timeless principle, but according to evolving needs. Hence, the reason of change of policy was receipt of large number of applications and the reason was perfectly acceptable one.

816. The aforesaid note was seen by PW 36 Sh. D. S. Mathur on 05.11.2007 and he recorded a note, Ex PW 36/B-9, that the Minister had desired to discuss the matter further and on this discussion took place in DoT and a fresh note dated 07.11.2007, Ex PW 36/B-10, was recorded by PW 110 Sh. Nitin Jain. The note reads as under:

"Notes and approval at page 6-7/N may kindly be

seen.

2. The modalities for processing pending applications for UASL and issuance of LOIs were further discussed in a meeting taken by Hon'ble MOC&IT on 6.11.2007 with Secretary (T), Member (T) and Addl. Secretary (T) where DDG (AS) was also present. DDG (AS) in turn has discussed the matter with Director (AS-I).

3. Secretary (T) has desired to examine whether LOIs/ Licences for UAS can be granted without assured availability of spectrum. In this regard, it is mentioned that NTP-99 provided for two categories of Access Services Providers viz. Cellular Mobile Service Providers (CMSP) and Fixed Service Providers (FSP).

3.1 Regarding CMSPs, NTP-99 (para 3.1.1), inter alia, stipulates that

".....Availability of adequate frequency spectrum is essential not only for providing optimal bandwidth to every operator but also for entry of additional operators..... It is proposed to review the spectrum utilisation from time to time keeping in view the emerging scenario of spectrum availability, optimal use of spectrum, requirements of market, competition and other interest of public. The entry of more operators in a service area shall be based on the recommendation of the TRAI who will review this as required and no later than every two years....."

3.2 With regard to Fixed Service Providers, NTP-99 (para 3.1.2), inter alia, stipulates that

".....While market forces will ultimately determine the number of fixed service providers, during transition, number of entrants have to be carefully decided to eliminate non-serious players and allow new entrants to establish themselves. Therefore, the option of entry of multiple operators for a period of five years for the service areas where no licences have been issued is

adopted. The number of players and their mode of selection will be recommended by TRAI in a time-bound manner.....

.....As in the case for cellular, for WLL also, availability of appropriate frequency spectrum as required is essential not only for providing optimal bandwidth to every operator but also for entry of additional operators. It is proposed to review the spectrum utilisation from time to time keeping in view the emerging scenario of spectrum availability, optimal use of spectrum, requirements of market, competition and other interest of public.....”

4. The Union Cabinet in a meeting held on 31-10-2003, approved the recommendations of the Group of Ministers (GOM) on telecom matters. The following recommendations of GOM were, inter-alia, approved by the Cabinet. The relevant extracts of the para 2.4.6 of the Cabinet Note (Page 77/C of the linked file No. 808-26/2003-VAS) is reproduced below:

“***.....The scope of NTP-99 may be enhanced to provide for licensing of Unified Access Service for basic and cellular license services and Unified Licensing comprising all telecom services. Department of Telecommunications may be authorized to issue necessary addendum to NTP-99 to this effect. [Para 2.4.6 (i)]***

.....The recommendation of TRAI with regard to implementation of the Unified Access Licensing Regime for basic and cellular services may be accepted.

DoT may be authorized to finalise the details of implementation with the approval of the Minister of Communications & IT in this regard including the calculation of the entry fee depending upon the date of payment based on the principles given by TRAI in its recommendations. [Para 2.4.6 (ii)]

.....If new services are introduced as a

result of technological advancements, which require additional spectrum over and above the spectrum already allotted/ contracted, allocation of such spectrum will be considered on payment of additional fee or charges; these will be determined as per guidelines to be evolved in consultation with TRAI. [Para 2.4.6 (vi)]"

4.1 In terms of above approvals, NTP-99 was amended (**22-23/N** of linked file No. 808-26/2003-VAS). The amendment of NTP-99, inter-alia, provided that there shall also be the following categories of licences for telecommunication services:

"Licence for Unified Access (Basic and Cellular) Services permitting Licensee to provide Basic and /or Cellular Services using any technology in a defined service area."

4.2 In terms of the above said cabinet decision, Union Cabinet authorised DoT to finalise the details of implementation with the approval of Hon'ble MOC&IT keeping in view the recommendations of TRAI.

4.3 Thereafter, in view of the above Cabinet decision, Guidelines for Unified Access Services Licence (for migration from CMTS/FSP to UASL) were announced on 11-11-2003 with the approval of the Hon'ble MOC&IT (Page 24/N of the linked file No. 808-26/2003-VAS).

4.4 Subsequently on 13.12.2005, Hon'ble MOC&IT approved the Guidelines for Unified Access Services licence (issued on 14-12-2005 placed Appendix-II of 6/C) on page 3/N of linked file No. 10-21/2005-BS.I (Vol II). The guidelines, inter-alia, stipulates that:

(i) Licences shall be issued without any restrictions on the number of entrants for provision of Unified Access Services in a Service Area. **(para 11).**

(ii) .....The access service includes but not limited to wireline and/ or wireless service including full mobility, limited mobility …..... and fixed wireless

access. (**para 12(a)(i)**).

(iii) The ***application shall be decided, so far as practicable, within 30 days*** of the submission of the application and the applicant company shall be informed accordingly. In case the applicant is found to be eligible for grant of licence for UNIFIED ACCESS Service a Letter of Intent (LOI) will be issued....**(para 23)**

(iv) In case the applicant is found to be not eligible for the grant of licence for UNIFIED ACCESS service the applicant shall be informed accordingly. Thereafter the applicant is permitted to file a fresh application if so desired. **(para 24).**

(v) Initially a cumulative maximum of upto 4.4 MHz + 4.4 MHz (Spectrum) shall ***be allocated in the case of TDMA based systems*** @ 200 KHz per carrier or 30 KHz per carrier or a maximum of 2.5 MHz + 2.5 MHz shall be allocated in the case of CDMA based systems @ 1.25 MHz per carrier, ***on case by case basis subject to availability.*** **(para 37)**

5. During the discussions, it was considered appropriate that for processing of pending applications for grant of new UAS licences, the following procedure may be adopted:

(i) The pending applications for UASL shall be processed as per the existing policy.

(ii) To expedite the processing of applications, a committee (as already approved by Secretary (T), 14/C) consisting of Officers from AS, LF division and IP Cell shall examine the applications for eligibility and other parameters as per the guidelines / terms and conditions of licence agreement and government policy. Opinion of Legal Advisor, DoT is to be taken wherever required.

(iii) Separate file for each applicant company shall be processed for obtaining the approval for issuance of LOIs. LOIs may be issued to eligible applicants, whose applications are compliant to the eligibility conditions. In case there are some minor observations/ deviations in any application, the

same may also be considered for issuance of LOIs.

However in such case, we may seek complete compliance alongwith the acceptance of LOI from the applicant company. This will also require approval from competent authority in each case separately based on the observations made by the examining committee.

(iv) As per the existing policy, the LOIs were granted based on date of applications to satisfy the principle of first come first served basis. This principle was also placed before parliament in reply to Rajya Sabha question No. 1243 answered on 23.08.2007 (copy placed at 15/C).

(v) Number of LOI's to be issued in each service is to be decided.

(vi) Application of M/s TTML, M/s TTSL and M/s RTL for dual technology may be considered as per direction of TDSAT on dual technology.

(vii) Shri R. K. Gupta, ADG (AS-I) may be authorized for signing the LOIs on behalf of President of India.

(viii) A copy of draft LOI is placed below for kind perusal/ approval. This will be legally vetted after the approval of policy and before issue.

Submitted for consideration and approval please."

817. Paragraph 5 (i) recorded that pending applications for UAS licences would be processed as per existing policy. Paragraph 5 (viii) of note, Ex PW 36/B-10, spoke of a draft LOI placed at page 16/C, which was required to be legally vetted. When existing policy was to be followed, where was the question of vetting the LOI. Why did Sh. A. K. Srivastava put a note suggesting vetting of LOI? That LOI is Ex PW 42/A. Para 3 of the same reads as under:

"The date of payment of entry fee would be the

priority date for signing of Licence agreement. If the date of payment of entry fee in more than one case is same then licence will be first signed with the applicant company whose application was received earlier."

818. The draft LOI suggested that date of payment of entry fee would be date of priority for signing of licence agreement. This is opposed to priority from date of application for UAS licence to DoT.

819. The above note was approved by Sh. A. Raja on the same date, that is, 07.11.2007. However, the LOI was required to be legally vetted. In order to get the LOI financially vetted from LF Cell, PW 60 Sh. A. K. Srivastava recorded note dated 08.11.2007, Ex PW 60/H-1. Accordingly, the file went to LF Cell where Director (LF) PW 42 Sh. Shah Nawaz Alam recorded note dated 23.11.2007, Ex PW 36/DQ-22, the relevant parts of which are as under:

"……
……
3. The para no. 3 in LOI making the payment of Entry Fee a the priority date has been deleted. However, it would be appropriate to clarify as to what the priority date would be. It appears logical to keep the date of application as date of priority provided the applicant is able to establish that he is eligible as on the date of application and is also eligible when the LOI is being issued. It is suggested that this should be clarified to the applicants by inserting a suitable para in the LOI for the sake of clarity especially in view of the large number of applications received.
……
……

5. In para 5 of the Draft LOI it has been clarified that the payment of entry fee shall not confer right on the licensee for the allocation of radio spectrum which shall be allotted as per existing policy/guidelines as amended from time to time subject to availability. In this regard it is pointed out that the present occasion is unique in the sense that a large number of applications are being processed simultaneously and it would be appropriate for all concerned to know the likelihood of allotment of spectrum to them. NTP 1999 already stipulates that 'availability of adequate frequency spectrum is essential' (9/N) particularly in these days when it is the wireless services that are the order of the day and these services cannot be provided without spectrum. Hence, it would be appropriate that the prospective licensees know the approximate time within which they will get spectrum. In any case for spectrum allocation also, the date of priority should also be the same as the date of his application provided he is found eligible on the date of application and he deposits the Entry Fee and complies to the LOI within the stipulated time.

.....

.....

9. We would recommend that LOI be granted in the existing legally vetted format only after all the eligibility conditions are met and the application is complete in all respects."

820. Sh. Shah Nawaz Alam suggested that priority for both signing of licence and allocation of spectrum should be from date of application to DoT. Let me take note of evidence on this point.

821. PW 110 Sh. Nitin Jain in his examination-in-chief dated 21.03.2013, pages 3 and 4, deposed as under:

".....I have been shown note dated 07.11.2007,

already Ex PW 36/B-10, pages 9/N and 12/N. I had prepared this note and it bears my signature at point D, page 12/N. This note was prepared pursuant to discussions, which took place between the then MOC&IT, the then Secretary (T), Additional Secretary (T), Member (T) and DDG (AS). I was explained the gist of the discussion that took place in the aforesaid meeting and I was asked to prepare the note and I prepared the note accordingly containing the provisions of NTP 1999 and decision of the Cabinet, pursuant to which UASL Guidelines were announced on 11.11.2003. In para 5 of the note, it was proposed, inter alia, that the pending applications shall be processed as per the existing policy, number of LOIs to be issued in each service area be decided, some applications which were pending for dual technology were also proposed for decision....."

Thus, all officers of DoT were involved in the deliberations which led to the recording of note, Ex PW 36/B-10, and all of them signed the same.

822. PW 60 Sh. A. K. Srivastava in his examination-in-chief dated 22.08.2012, page 14, deposed about the draft LOI as under:

".....I have been shown pages 9/N to 12/N of this file, which contain a note of Sh. Nitin Jain, director (AS-I), dated 07.11.2007, already Ex PW 36/B-10, and was marked to me. In para 5 (viii) of this note, a draft LOI was proposed, which draft is available at pages 111 to 115 and is Ex PW 42/A, which is a new draft LOI. This draft originated in the note of Sh. Nitin Jain and requested for its legal vetting and I also concurred with the same and ultimately reached up to the MOC&IT, who also approved the same. In this draft Ex PW 42/A, there are certain additions and deletions, which were not there when I

concurred with Sh. Nitin Jain....."

823. Sh. A. K. Srivastava deposed that in draft LOI, there are certain additions and deletions. Who made the same? It is argued by learned Public Prosecutor at the bar that Sh. A. Raja made the same. The question is: Whether there is any evidence in his regard?

824. PW 36 Sh. D. S. Mathur in his examination-in-chief dated 09.04.2012, pages 17 and 18, deposed as under:

> ".....I have been shown note 9/N to 12/N in file D-7. This note was initiated by Sh. Nitin Jain, Director (AS). This note dealt with NTP-1999 as well as the issue as to whether adequacy of spectrum was a pre-condition for issuance of new UAS Licences. This note records certain decisions taken by the then Minister in a meeting held on 06.11.2007, in which Member (T) Sh. K. Sridhara, Additional Secretary (T), DDG (AS) Sh. A. K. Srivastava and myself were present. Other issue discussed in the meeting was grant of dual technology licence to Tata was also considered. This note is now Ex PW 36/B-10. This file was put up to me on 07.11.2007 and I marked the file to the Minister, who approved it on the same date. The file again came to me on 08.11.2007 and I marked the file to DDG (AS). My signatures appear at points A and B at page 12/N and that of Minister Sh. A. Raja at point C. The decision taken was to the effect that new UAS Licences would be granted as per the existing policy....."

825. The deposition says that UAS licences were to be granted as per existing policy, as recorded in note, Ex PW 36/B-10. Sh. D. S. Mathur agreed to this note and also signed it. This note also contained a draft LOI, which was to be vetted.

826. PW 42 Sh. Shah Nawaz Alam in his examination-in-

chief dated 15.05.2012, pages 2 and 3, deposed about the vetting of draft LOI as under:

> ".....I have been shown DoT file D-7, already Ex PW 36/B, and I identify this file. In this file at pages 15 to 17, there is a note recorded by me on 23.11.2007 regarding vetting of draft LOIs. My signature appears at point B, which I identify. The note is already Ex PW 36/DQ-22. This file was marked to me by DDG (LF) vide endorsement at point A available at page 14/N. This file was marked to me for vetting certain draft LOIs as is clear from the note of Sh. A. K. Srivastava at page 13/N. For vetting the draft LOIs, I was given a draft LOI alongwith this file. The draft LOI is at pages 111 to 115 and is now Ex PW 42/A. Before this, licences were being issued by DoT after issuing LOI on an approved proforma. When I went through the draft LOI Ex PW 42/A, I found that it was not legally vetted at the time when it came to me. It also had an annexure with it seeking compliance/ clarifications, which are normally not part of an LOI and that would have bearing on the eligibility of an applicant. In para 3 also, I found recorded that date of priority would be the date of payment of entry fee. These were the major items which required attention.
>
> The concept of determining seniority from the date of payment of entry fee did not appeal to me because when first-come first-served policy is being implemented, then the application which came first and is eligible should be given the LOI first and then he can be given the opportunity to comply with the LOI. I suggested that the para which made the date of payment of entry fee as the priority date may be deleted. This was the major thrust of my note. I also recorded that instead of drafting a new LOI, the existing legally vetted format of LOI may be used after all eligibility conditions are met and application is complete in all respects. My detailed note in this regard is already Ex PW 36/DQ-22. After recording

my note, I marked the file to DDG (LF) Sh. B. B. Singh, who endorsed my note and thereafter, the filed went to Advisor (Finance) Mrs. S. A. Tirmizi and she also endorsed my note. I identify the signature of Sh. B. B. Singh at point C and that of Mrs. S. A. Tirmizi at point D. Thereafter, the file went to Member (Finance) Ms. Manju Madhavan and she recorded her note dated 30.11.2007, already Ex PW 36/B-11. Thereafter, the file went to the then Minister, MOC&IT, through Secretary, DoT. The Minister rejected the criteria of allocation of spectrum as noted in para 5 of my note. The Minister recorded that the draft LOIs as used in the past may be used. The main point of implementation of first-come first-served policy as suggested by me was rejected.

In the draft LOI the eligibility criteria was also listed as an annexure."

827. PW 42 Sh. Shah Nawaz Alam in his cross-examination, page 5, deposed as under:

".....I do not know as to who had prepared the draft LOI which was sent to me for vetting but it was part of the file. As per this file the draft LOI was seen up to the level of the Minister. The deletion of para 3 of draft LOI, Ex PW 42/A, was suggested by me....."

828. PW 42 Sh. Shah Nawaz Alam in his further cross-examination dated 28.05.2012, pages 3 and 4, deposed as under:

".....In my comments I recommended that existing proforma of LOI may be used after all the eligibility conditions are met and application is complete in all respects. Proforma Ex PW 42/DA was legally vetted and was prevalent in the department. The then Minister and the Secretary also knew about the initiation of draft LOI as is clear from their signatures at points A and C at page 12/N of Ex PW

36/B-10. I cannot say as to what was the idea of AS branch behind proposing a new format of LOI....."

829. The note dated 07.11.2007 was recorded by PW 110 Sh. Nitin Jain after discussing the matter with Sh. A. K. Srivastava, DDG (AS-I). This note was agreed to by DDG (AS-I) PW 60 Sh. A. K. Srivastava, PW 61 Sh. G. S. Grover, Member (T) and PW 36 Sh. D. S. Mathur, Secretary (T) and was finally approved by Sh. A. Raja. None of the witnesses have deposed that Sh. A. Raja suggested any change in the existing policy of first-come first-served, when this note was recorded. However, PW 110 Sh. Nitin Jain annexed a draft LOI to the note placed at 16/C, Ex PW 42/A. In para 3 of this draft LOI, change in priority was suggested to the effect that date of payment of entry fee would be the priority date for signing of licence agreement. All three senior officers, that is, PW 60 Sh. A. K. Srivastava, an officer of the level of Joint Secretary, PW 61 Sh. G. S. Grover, an officer of the level of Special Secretary and PW 36 Sh. D. S. Mathur, Secretary (T) himself agreed to the change in the policy, as they had signed the note, Ex PW 36/B-10. There is no evidence that Sh. A. Raja suggested the priority from date of payment and everybody aligned his views with this and thereafter the above note was recorded. At the cost of repetition, it may be noted that Sh. D. S. Mathur also agreed to the note.

830. It may be noted that the above note was the result of a meeting held in DoT on 06.11.2007 in which Sh. D. S. Mathur himself was present. Not only this, he had also conveyed, vide

his letter dated 06.11.2007, Ex PW 36/E-6, to Sh. T. K. A. Nair, Principal Secretary to the Hon'ble Prime Minister, the information about processing of applications for grant of UAS licences by DoT. This shows that Sh. D. S. Mathur agreed with everything which is recorded in the note, Ex PW 36/B-10, dated 07.11.2007 as well as in the draft LOI, Ex PW 42/A. However, the prosecution is putting forward a case, as if Sh. A. Raja alone was responsible for change in the policy and that too in collusion with the accused persons. Though the officers were recording in the notes that the existing policy would be followed, but by following an indirect route of amending/ redrafting the LOI, they were suggesting change in the policy. Sh. Shah Nawaz Alam says that the concept of determining seniority from date of payment of entry fee did not appeal to him, but he does not say as to who suggested the change. The fact of the matter is that the change came through the redrafted LOI. The question is: When the existing policy was to be followed, where was the need of a redrafted LOI? The LOI already in existence ought to have been used, but the officers had different ideas and hence they tossed around this idea of a redrafted LOI.

831. Not only this, the case of the prosecution is that para 3 of the draft LOI, which suggested priority from date of payment, was deleted by Sh. A. Raja. However, none of the witnesses have so deposed. On the contrary, PW 42 Sh. Shah Nawaz Alam is categorical in his examination-in-chief as well as cross-examination that it was he who suggested the deletion of

para 3 of the draft LOI, Ex PW 42/A. Not only this, PW 42 Sh. Shah Nawaz Alam recorded in the aforesaid note, Ex PW 36/DQ-22, that para 3 in the draft LOI making the payment of entry fee as the priority date has been deleted. If it was already deleted by Sh. A. Raja, when the file reached him, how he could have suggested that it should be deleted? Moreover, in his note, he did not record as to who deleted it. PW 60 Sh. A. K. Srivastava does not say anything as to who deleted para 3 except saying that it was not there when he appended his signature on the note and marked it upward. PW 61 Sh. G. S. Grover and PW 36 Sh. D. S. Mathur have not said anything on this point. The witnesses have thus completely disowned the prosecution case, which in the charge sheet is recorded as under:

> ".....Accused A Raja although approved the note, but with dishonest intentions and in furtherance of the conspiracy deleted para 3 of the draft LOI, which was also put up vide this note. The said para 3 mentioned that "the date of payment of entry fee would be the priority date for signing of licence agreement. If the date of payment of entry fee in more than one case is same then license will be first signed with the applicant company whose application was received earlier".
>
> The aforesaid change in the LOI draft was the manifestation of the malicious design, first indicated in the letter dated 26.10.2007 written to Ministry of Law & Justice, by accused A Raja with an aim to benefit accused private persons / companies by deviating from the existing policy in a manner to be beneficial to the said accused private persons / companies....."

Thus, there is no evidence either to show that the contents of the letter to the Ministry of Law and Justice, as referred to in the charge sheet, were suggested by Sh. A. Raja or to show that he deleted para 3 of the draft LOI.

In any case, the change in the policy of first-come first-served was discussed in the DoT twice, that is, when the notes dated 02.11.2007, Ex PW 36/B-8, and dated 07.11.2007, Ex PW 36/B-10, were recorded and these changes were sought to be introduced by the officials through the route of redrafted LOI. It was also discussed when reference was sent to Law Ministry. As noted above, in their evidence all officers have owned up the note. On the one hand, the officers were emphasizing the existing policy, but on the other hand they were suggesting changes therein through an indirect route. Moreover, the charge sheet is silent as to who was suggesting changes in the first-come first-served policy. The concept of priority from date of payment is found in para 3 of the redrafted LOI. Who introduced it and at whose instance?

832. Not only this, the officials were introducing the change very cleverly. As per para (i) of note, Ex PW 36/B-10, the pending applications for UAS licences were proposed to be processed as per the existing policy. What is the existing policy? The existing policy as claimed by the prosecution, is that an applicant who applied first would get LOI first, licence first and also the spectrum first. However, para (iv) of the aforesaid note gives a restricted meaning to it by recording that as per existing policy, the LOIs were granted based on the date of application to

satisfy the principle of first-come first-served. This paragraph restricts the policy of first-come first-served only upto the point of issue of LOIs. It does not mention grant of licence and allocation of spectrum on this principle. Perhaps, this has been so recorded in para 4, as changes were contemplated in this policy after the issue of LOIs to priority from date of compliance through the route of redrafted LOI. Accordingly, I do not find any merit in the case of prosecution on the point that Sh. A. Raja manipulated the first-come first-served policy to the benefit of accused companies.

Objections by LF Branch and Condemnation of Officers by Sh. A. Raja

833. It is the case of the prosecution that in para 5 of note, Ex PW 36/DQ-22, PW 42 Sh. Shah Nawaz Alam had suggested that for spectrum allocation the date of priority should also be the date of application to DoT for UAS licence, provided the applicant was eligible on the date of application. It is the case of the prosecution that the note of PW 42 Sh. Shah Nawaz Alam, Ex PW 36/DQ-22, dated 23.11.2007 was also endorsed by PW 86 Ms. Manju Madhavan, Member (F) and PW 36 Sh. D. S. Mathur, Secretary (T). It is the case of the prosecution that in this manner the DoT officials tried to prevent Sh. A. Raja from effecting change in the first-come first-served policy, which he was conspiring to introduce for the benefit of two accused companies. It is the case of the prosecution that when the note reached Sh. A. Raja, he

considered it to be an impediment in his conspiratorial design and condemned the officers by recording note dated 04.12.2007, Ex PW 36/B-12, the relevant parts of which read as under:

> "I have perused the notes of L/F Division on page 15/N and Member (F) on 18/N.
>
> It appears from the noting in para (5), on page 16 and the concerned officers have neither up-to-date knowledge of UASL guidelines nor have bothered to carefully go through file (page 4 to 12). The suggestion on the date of priority for allotment of spectrum is clearly defined in the WPC guidelines. Since these suggestions are not factually correct and as such they should be ignored.
>
> These type of continuous confusions observed on the file whoever be the officer concerned do not show any legitimacy and integrity but only their vested interests....."

834. Perusal of note of PW 42 Sh. Shah Nawaz Alam reveals that he introduced a new concept of priority for allocation of spectrum. He recorded in para 5 that in any case for spectrum allocation the date of priority should also be the date of application to DoT for UAS licence, provided the applicant was eligible on the date of application. The question is: Whether this suggestion for spectrum allocation is as per existing guidelines?

Clause 26 of Guidelines dated 25.01.2001, Ex PW 36/DA (D-586), relating to basic services, which contains the basic rule for spectrum allocation reads as under:

> "For wireless operations in subscriber access network, the frequencies shall be allocated by WPC Wing from the designated bands prescribed in

National Frequency Allocation Plan – 2000. (NFAP-2000). However, the frequency in GSM band of 890-915 MHz paired with 935-960 MHz and 1710-1785 MHz paired with 1805-1880 MHz will not be allocated under any circumstances to the Licensees. *For Wireless Access Systems in local area, not more than 5+5 MHz in 824-844 MHz paired with 869 – 889 MHz band shall be allocated to any Basic Service Operator including the existing ones on first come first served basis. The same principle shall be followed for allocation of frequency in 1880-1900 MHz band for Micro cellular architect based system."*

835. What is the case of the prosecution? Its case is that Sh. A. Raja ignored paras 3 and 5 of the note of PW 42 Sh. Shah Nawaz Alam, as he was in conspiracy with the accused companies. What did Sh. A. Raja record in his note? He disapproved para 5 of the note of PW 42 Sh. Shah Nawaz Alam on the ground that priority for allocation of spectrum is clearly defined in WPC guidelines. This is the correct position, as the guidelines, as extracted above, clearly define the process by which the spectrum would be allocated. Thus, it cannot be accepted that Sh. A. Raja wrongly condemned the officers. Rather, they deserved condemnation. Why? PW 42 Sh. Shah Nawaz Alam was suggesting something contrary to the guidelines, which were issued long back in the year 2001 and everybody was expected to be conversant with them, more so an officer of the level of director.

836. Furthermore, what was the role of Finance (LF) Branch? For this, let me refer to the deposition of PW 42 Sh. Shah Nawaz Alam himself. In his examination-in-chief dated

15.05.2012, page 1, he deposed as under:

> ".....I look after financial analysis of various proposals coming from licensing branch of DoT. UAS Licence is given to an applicant and after getting it, it is entitled to operate it in a particular service area for which licence is given. The applications filed by a party for UAS Licence are examined from finance angle in licensing finance branch of DoT. From finance angle, it is examined whether the applicant has prescribed net worth, prescribed paid-up capital etc....."

PW 42 Sh. Shah Nawaz Alam was not expected to foray into the field assigned to the AS Branch (Licencing Branch) or Wireless Planning and Coordination Wing (WPC). His job was to look after the financial parameters. He had no business to suggest any change in the first-come first-served policy, which was the job of the AS Branch. He also had nothing to do with as to how spectrum would be allocated, as it was the job of WPC. He himself admitted this at page 11 of his cross-examination that LF Branch examines applications only from financial angle, though it may also point out any other deficiency, if it comes to its notice. But recommending change in the policy on an aspect, which does not concern the LF Branch, is an entirely different thing. PW 97 Sh. B. B. Singh in his examination-in-chief dated 16.01.2013, page 3, deposed that Ex PW 36/DK-9, page 109 (D-7) categorizes the functions of various branches within the department pertaining to processing of UASL applications and as per this document, the job of LF Branch is related to the issues of networth, paid up equity capital and other eligibility conditions. Sh. B. B. Singh in

his cross-examination dated 17.01.2013, page 2, deposed that LF Branch is not licencing branch and this branch renders only financial advice in the process of issue of a UAS licence. Thus, Sh. A. Raja correctly recorded that officers were creating confusion.

Not only this, prosecution is suffering from the malaise of what is known as "blowing hot and cold". Why? If Sh. A. Raja agrees with the officers, he is in trouble and if does not agree, he is in trouble. As already noted above, there is no material on record indicating that the redrafted LOI as suggested in the note dated 02.11.2007, Ex PW 36/B-8, and in the note dated 07.11.2007, Ex PW 36/B-10, was placed on record at the instance of Sh. A. Raja. The redrafted LOI contains the criteria of priority from date of payment. When the file went to LF Branch, PW 42 Sh. Shah Nawaz Alam in his note dated 23.11.2007 suggested that instead of redrafted LOI, the existing LOI may be used. Sh. A. Raja in his note dated 04.12.2007, Ex PW 36/B-13, approved it. This act of Sh. A. Raja is also being taken otherwise by the prosecution by arguing that he had no option but to approve the previously used proforma of LOI, as the LOI proforma as suggested by the officers would have thwarted his designs. The charge sheet itself admits that the revised proformas of LOI were placed on record by the officers of DoT. This clearly means that the concept of priority from time/ date of payment was introduced by the officers of DoT and not by Sh. A. Raja. The first shoot of change in the policy of first-come first-served is contained in

these proformas. If Sh. A. Raja approved the use of existing proforma, Ex PW 42/DA, (12/C) (D-7), how can he be held responsible for change in the policy? Thus, the prosecution is not sure what its case is all about.

Accordingly, there is no merit in the submission of the prosecution that it was Sh. A. Raja who changed the first-come first-served policy by introducing priority from date of application to date of compliance/ payment.

Letter to PM, Consultation with SG and Issue of Press Release

837. It is the case of the prosecution that letter dated 26.12.2007, Ex PW 7/C, was written by Sh. A. Raja to the Hon'ble Prime Minister intentionally and deliberately misrepresenting the facts about first-come first-served policy, though he had redefined the policy of first-come first-served by changing the priority from date of application to date of compliance. It is the case of the prosecution that this letter was not processed in the departmental files of DoT. It is further the case of the prosecution that this letter was drafted at the residence of Sh. A. Raja with the help of R. K. Chandolia. It is also the case of the prosecution that in this letter Sh. A. Raja mentioned that change in the policy had the concurrence of learned Solicitor General, but in fact no discussion had taken place with him. It is the case of the prosecution that this letter was placed on the file of DoT only on 07.01.2008, when Sh. R. K. Chandolia in conspiracy with other accused gave a copy of

this letter to DDG (AS-I), directing to follow it as policy directive. It is also the case of the prosecution that not only this, when the DoT decided to issue LOIs on 07.01.2008, Sh. Siddhartha Behura prepared a press release, Ex PW 60/L-27, and marked it to Sh. A. Raja. Sh. A. Raja directed Sh. Siddhartha Behura to obtain the opinion of learned Solicitor General of India. Learned Solicitor General of India gave his opinion vide note dated 07.01.2008, Ex PW 60/L-31. It is the case of the prosecution that after the opinion of learned Solicitor General of India was obtained, Sh. A. Raja in conspiracy with Siddhartha Behura deleted a part of the press release, which had stipulation that if more than one applicant complied with LOI conditions on the same date, the inter-se seniority would be decided by date of application. It is the case of the prosecution that this was an unauthorized deletion to project to DoT officers that the amended press release had the concurrence of the Law Officer. It is the case of the prosecution that this amendment in press release led to the redefining of concept of first-come first-served. It is the case of the prosecution that in this manner official record was falsified to cheat the DoT, by manipulating the grant of new licences, in a manner that the two accused companies were benefited.

838. On the other hand, case of the defence is that the letter was result of discussions with the then External Affairs Minister and Solicitor General and also the discussion that took place in the department and recorded in the files. It is the case of the defence that there is no conspiracy in writing this letter.

It is also the case of the defence that learned Solicitor General was consulted before the letter was written. It is also the case of the defence that the deletion of a part of press release was not done after the opinion of learned SG was obtained, but it was done by Sh. A. Raja before the file was sent to him, as the deleted part was not in consonance with the first-come first-served policy, as communicated by Sh. A. Raja to the Hon'ble Prime Minister and also reproduced in the note dated 07.01.2008, Ex PW 60/L-23.

It may be noted that this letter dated 26.12.2007, Ex PW 7/C, was written by Sh. A. Raja when TDSAT as well as Hon'ble Delhi High Court had declined to stay the permission of dual technology, subscriber based criteria etc. issued by DoT.

839. Let me take this letter first. The relevant parts of the letter read as under:

> "Issue of New Licences:-
> .....
> .....
> DoT has been implementing a policy of First- come-First Served for grant of UAS licences. The same policy is proposed to be implemented in granting licence to existing applicants. However, it may be noted that grant of UAS licence and allotment of Radio Frequency is a three stage process.
>
> **I.** Issue of Letter of Intent (LOI): DoT follows a policy of First-Come-First Served for granting LOI to the applicants for UAS licence, which means, an application received first will be processed first and if found eligible will be granted LOI.
>
> **II.** Issue of Licence: The First-Come-First Served policy is also applicable for grant of licence on

compliance of LOI condition. Therefore, any applicant who complies with the condition of LOI first will be granted UAS licence first. This issue never arose in the past as at one point of time only one application was processed and LOI was granted and enough time was given to him for compliance of conditions of LOI. However, since the Government had adopted a policy of 'No Cap" on number of UAS licence, a large number of LOIs are proposed to be issued simultaneously. In these circumstances, an applicant who fulfils the conditions of LOI first will be granted licence first, although several applicants will be issued LOI simultaneously. The same has been concurred by the Solicitor General of India during the discussions.

III. Grant of Wireless Licence: The First-Come-First Served policy is also applicable for grant of wireless licence to the UAS licencee. Wireless licence is an independent licence to UAS licence for allotment of Radio Frequency and authorizing launching of GSM/CDMA based mobile services. There is a misconception that UAS licence authorizes a person to launch mobile services automatically. UAS licence is a licence for providing both wire and wireless services. Therefore, any UAS licence holder wishes to offer mobile service has to obtain a separate wireless licence from DoT. It is clearly indicated in clauses 43.1 and 43.2 of the UAS Licence Agreement of the DoT.

Since the file for issue of LOI to all eligible applicants was approved by me on 2.11.2007, it is

proposed to implement the decision without further delay and without any departure from existing guidelines."

840. This letter justified the change of procedure in the grant of licence by changing the priority from date of application to date of payment, as large number of applications were being processed and large number of LOIs were proposed to be issued. The letter also clarified and rightly so, that WPC licence is a separate licence and only those who require spectrum for mobile services need approach WPC for this licence. The letter conveyed that the policy had the concurrence of learned SG.

841. This letter also refers to clauses 43.1 and 43.2 of the licence agreement. The same read as under:

"**43. Frequency Authorization**

43.1 A separate specific authorization and licence (hereinafter called WPC licence) shall be required from the WPC wing of the Department of Telecommunications, Ministry of Communications permitting utilization of appropriate frequencies / band for the establishment and possession and operation of Wireless element of the Telecom Service under the Licence Agreement of Unified Access Service under specified terms and conditions including payment for said authorization & WPC licence. Such grant of authorization & WPC licence will be governed by normal rules, procedures and guidelines and will be subject to completion of necessary formalities therein.

43.2 For this purpose, a separate application shall be made to the "Wireless Advisor to the

Government of India, WPC Wing, Department of Telecommunications, Ministry of Communications, Sanchar Bhawan, New Delhi-110 001" in a prescribed application form available from WPC Wing."

842. The question is: Under what circumstances, this letter was written? Whether there were any discussions with the learned Solicitor General of India before this letter was written? Whether Sh. A. Raja unilaterally changed the policy of first-come first-served through this letter? Whether the change in policy was discussed in DoT? Did Sh. A. Raja misrepresent the facts to the then Hon'ble Prime Minister through this letter?

843. Let me take note of the evidence on this point.

844. It may be noted that in the letter dated 26.12.2007, it is recorded that the first-come first-served policy as narrated therein has the concurrence of learned Solicitor General of India. PW 102 Sh. G. E. Vahanwati, the then Attorney General of India, was Solicitor General of India at the relevant time. In his examination-in-chief dated 27.02.2013, pages 4 to 7, he deposed about his consultation by Sh. A. Raja and the then External Affairs Minister, as under:

> ".....I have been shown a letter dated 13.04.2011 written by me to Director, CBI. The letter bears my signature at point A and is now Ex PW 102/B (D-812) (objected to by Sh. Sushil Kumar, learned Sr. Advocate, on the ground that this is hit by Section 162 CrPC).
>
> Annexed to this letter, there is a type-written note, pages 3 to 5 of the file, which bears the caption "note by the Solicitor General for the Hon'ble Minister for External Affairs, Mr. Pranab

Mukherjee". This note was prepared by me. The note is now Ex PW 102/C. The meeting as described in the letter had taken place somewhere in the first week of December 2007.

Ques: Sir what were the circumstances in which this meeting was held?

Ans: I was informed that it had become necessary to brief Sh. Pranab Mukherjee, the then Hon'ble Minister for External Affairs, about the issues which had arisen in the Hon'ble TDSAT proceedings and therefore, this note was prepared and the meeting was held.

The note Ex PW 102/C deals with various issues. The first and the major issue in the COAI proceedings was with regard to allocation of additional spectrum. The COAI was contending that the existing licence holders were entitled to more spectrum on the basis of the policy dated 29.03.2006. According to the department, the norms which were laid down on 29.03.2006 were outdated. TRAI had recommended in August 2007 that these norms required to be changed. TEC was also looking into it. As I have mentioned earlier, a committee was constituted to look into this issue, which also finds mention in the note. This note also deals with cross-over technology, manner in which spectrum would be allocated and the issue of new telecom licences.

In the last part of the note, I indicated that pending applications would be disposed of and licences would be issued on first-come first-served basis.

Ques: Sir what happened to this note Ex PW 102/C, which was given to the then Hon'ble Minister for External Affairs?

Ans: When we met then Hon'ble Minister for External Affairs, he asked couple of questions and went through the note carefully. There was no further discussion. The meeting lasted to about ten to fifteen minutes. Apart from us, Sh. A. Raja was

also present in the meeting.

I have been shown letter dated 26.12.2007 written by Sh. A. Raja, the then Minister for Communications and Information Technology (MOC&IT), to the Hon'ble Prime Minister, already Ex PW 7/C (D-361), with its annexures, running into three pages. On going through the letter, I say that I was not aware of this letter as it is a letter written by the then Minister directly to the Hon'ble Prime Minister. On 26.12.2007, I was not even in Delhi.

Ques: Kindly take a look on para No. 3.2 in the anenxure appended to the aforesaid letter dated 26.12.2007. Would you please tell this Court as to whether this para was concurred by you? (objected to by Sh. Ramesh Gupta, learned Sr. Advocate, on the ground that the witness is neither author of this letter nor this letter was addressed to him and he has also pleaded ignorance to the letter and, as such, the contents of the letter cannot be put to him).

Court Order: Since in para 3.2 of the annexure, the then Minister has shown concurrence of the events by the witness, that is, the then Solicitor General of India, the letter is being rightly put to the witness. Objection stands overruled.

Ans: I wish to clarify that the issues mentioned in the annexure to this letter were not discussed with the then Hon'ble Minister for External Affairs, during the meeting as referred to by me above. I also wish to add that what is being referred to in this annexure as being concurred by me had not been concurred by me."

Here, Sh. G. E. Vahanwati deposed about his consultation with the then External Affairs Minister. He denied that he concurred with the first-come first-served policy as conveyed by Sh. A. Raja to Hon'ble Prime Minister.

845. PW 102 Sh. G. E. Vahanwati in his cross-examination dated 27.02.2013, pages 11 and 12, deposed as

under:

> ".....As far as I recollect, discussions took place only once in December 2007 with the then Hon'ble Minister for External Affairs. It is correct that I took note Ex PW 102/C with me when I went for a meeting with him. I took this note with me because I was told by Sh. A. Raja, the then MOC&IT, that I had to brief the then Hon'ble Minister for External Affairs on this issue, as he was the chairman of Group of Ministers looking into the issue relating to spectrum. I am aware that on 25.03.2011, the then Hon'ble Minister for External Affairs had written to PAC regarding his discussion with me and the then MOC&IT.
>
> **Ques**: Did your discussion with the then Hon'ble Minister for External Affairs cover subscriber based criteria for allocation of additional spectrum, issue of dual technology and issue of new licences?
>
> **Ans**: As I said the note which I handed over to the then Hon'ble Minister for External Affairs covered four issues, including the three referred to in the question, and he did go through the note very carefully and asked me some questions including if there was any stay from Hon'ble TDSAT. However, there was no discussions on the issues stated in my note. Only the Hon'ble Minister for External Affairs read the note and put some questions.
>
> **Volunteered**: When I went to meet the then Hon'ble Minister for External Affairs, Sh. A. Raja went inside first and I kept waiting outside and only after sometime I was called in.
>
> **Ques**: I put it to you that the aforesaid three issues were discussed in the meeting between the then Hon'ble Minister for External Affairs, Sh. A. Raja and yourself?
>
> **Ans**: It is not correct. There were no detailed discussions."

Here, Sh. G. E. Vahanwati prevaricated. First, he

denied discussion about these issues including issue of new licences, but later added that there were no detailed discussion. A discussion is a discussion detailed or otherwise.

846. The evidence indicates that a triangular meeting took place between the then External Affairs Minister, Sh. A. Raja and Sh. G. E. Vahanwati in which some discussion took place relating to DoT issues. Sh. G. E. Vahanwati also submitted note, Ex PW 102/C, to the then External Affairs Minister, in which he, inter alia, submitted that pending applications would be disposed on first-come first-served basis. However, he denied the consultation about the issue mentioned in letter dated 26.12.2007, Ex PW 7/C, that is, the policy of first-come first-served as contained in the letter for issue of new licences and allocation of spectrum.

847. DW 1 Sh. A. Raja in his examination-in-chief dated 01.07.2014, pages 14 to 16, explained the circumstances under which meeting with the then External Affairs Minister took place and the circumstances under which this letter, Ex PW 7/C, was written, and deposed as under:

> ".....During the course of my discussion with the Hon'ble Prime Minister, I apprised him that adequate spectrum was going to be available to accommodate these applicants, who had applied up to 25.09.2007, as mentioned in my earlier letter, which was not known to the Hon'ble Prime Minister. Then the Hon'ble Prime Minister directed me to have discussion with Sh. Pranab Mukherjee, the then Minister for External Affairs, who was heading the empowered group of ministers on vacation of spectrum. The Hon'ble Prime Minister called Sh. Pranab Mukherjee on telephone in my presence with

a request to hear me and to advice me in taking the decision. Accordingly, I met the then Hon'ble Minister for External Affairs, both in the Parliament office as well as in his North Block office. In the first meeting, I explained the policies and the availability of spectrum and the intention of the DoT to issue more licences to bring competition in the field, to reduce tariff and to boost tele density. Till then, he was also completely in dark about the availability of spectrum. I explained him that non-disclosure of available spectrum itself was surreptitious act in connivance with the officers of the DoT which prevented the real competition with fruitful results to the general public. I further explained that the COAI, which had vested interest over this issue filed frivolous litigation before the Hon'ble TDSAT and it was effectively defended by the DoT through the then learned SG Sh. G. E. Vahanwati. The Minister for External Affairs advised me to call the learned SG with a brief note from his side in the next meeting and accordingly, matter would be decided. Accordingly, a meeting was held by the then Minister for External Affairs in December 2007, which was attended by me and the then learned SG....."

Thus, Sh. A. Raja deposed that he had first discussed the issue with the then Hon'ble Prime Minister. He then discussed the matter with the then External Affairs Minister, who advised him to call the SG.

DW 1 in his further examination-in-chief dated 02.07.2014, pages 1 to 5, deposed on this point as under:

".....After the direction of the then Hon'ble Minister for External Affairs to get a brief note from the Solicitor General in this regard, since he was defending the DoT before Hon'ble TDSAT and various Courts at that time, I met the Solicitor General and apprised him of the conversation

between myself and the then Minister for External Affairs. He (SG) accepted that he was going to prepare a brief note on the various issues agitated before the Hon'ble TDSAT and raised in the media including the points raised in the PM's letter. Thereafter, I got the appointment from the Minister for External Affairs for the triangular meeting between Minister for External Affairs, SG and myself and I also intimated to the SG the date and venue of the meeting and requested him to attend the meeting with a brief note, which he had agreed to prepare. Accordingly, on the date and time of the meeting, probably in the first week of December 2007, SG came to my camp office and both of us together went to the North Block office of the Minister for External Affairs. Accordingly, in the office of the Minister, an extensive discussion took place between Minister for External Affairs, SG and myself, issue-wise, as mentioned in the brief, namely, subscriber based criteria for allotment of spectrum, dual technology, new UASL applications for issuance of new licences and allocation of spectrum. At the end of the meeting, Minister for External Affairs shared with me that he was going to give a separate note to the Hon'ble Prime Minister in this regard and further directed me to apprise the Hon'ble Prime Minister separately.

Ques: Did you ever meet the Hon'ble Prime Minister in this regard after this meeting?

Ans: Soon after the meeting, I met the Hon'ble Prime Minister and apprised him of the happenings and outcome of the aforesaid meeting and I promised and undertook to give a detailed note in this regard. Accordingly, I sent a detailed letter containing issue based description to the Hon'ble Prime Minister on 26.12.2007. This letter alongwith its annexure is already Ex PW 7/C, in file D-361. The issues covered included subscriber linked spectrum allocation criterion for UAS licences, use of dual technology by UAS licencees, issue of new

licences etc. The letter as well as annexure was prepared under my dictation.

Ques: After you met the Hon'ble Prime Minister, was there any change in the situation in the DoT regarding aforesaid matters?

Ans: My point of view was accepted by the Hon'ble Prime Minister and he directed me to go ahead on the line indicated by me in my letters.

Again I met the Hon'ble Prime Minister in the first week of January 2008 on the eve of the issuance of LOIs and Hon'ble Prime Minister had consistently endorsed the views of the department, as highlighted in my letters, and he acknowledged that the matter was discussed at length independently in the PMO.

Ques: Are you aware of the policy of first-come first-served, if so, what do you mean by it? Has the policy been defined anywhere in the Government record?

Ans: It appears on the files that the licences and spectrum have been issued under the first-come first-served policy, though the policy has not been defined anywhere in the DoT. It was a procedure conveniently followed by the officers without any definition. The natural understanding by first-come first-served will be that applications for both UAS licences under Telegraph Act and the applications to the WPC under the Wireless Telegraph Act must be dealt with in chronological order. This procedure was not at all altered during my tenure. Only the situational context had changed in 2007, since there were huge number of applications and a decision was democratically taken in the DoT after due discussions with the officers. Simultaneous issuance of LOIs has to be resorted to, to avoid any delay in the process which will benefit the public at large. One more change in the context is having issued LOI, there is no provision in the LOI or any other rule in the department regarding the extension of time to comply with it, including the payment. However, such requests were entertained by my

predecessors without any legal sanction as discretionary power, which power I did not wish to exercise. Another important element in the context was the change that earlier the sequential procedure took place regarding the limited applications within the members of COAI. As I said earlier, now the department wanted to inject healthy competition as per the policy, the officers in the DoT unanimously felt that the earlier procedure could not be followed and they felt that it may not be transparent if the Minister is permitted to exercise discretionary powers by many extensions regarding compliance of LOIs. All these points were discussed on the files of the DoT several times and all these points were transported into my letters, that is, dated 26.12.2007, to the Hon'ble Prime Minister. As such, there is no deviation from the policy, only the context and circumstances were different. I was guided by the officers that this was the correct way of implementation without any bias or grievance and was granting equal opportunity to all the applicants. During my tenure as MOC&IT, no complaint was received by me from any operator/ applicant that they were aggrieved by this procedure. Even otherwise, there were occasions in the DoT when simultaneous issuance of LOIs took place and this procedure was followed.

Court Ques: What do you mean by simultaneous issuance of LOIs? Kindly explain it.

Ans: The term "simultaneous issuance of LOIs" is used by the department to mean the LOIs will be issued the same day in chronological order to satisfy first-come first-served policy to different applicants and to differentiate it from the sequential process followed earlier. It is not that all 122 LOIs were to be issued at one point of time, though issued in chronological order.

Ques: In the situation, explained by you above, if an LOI holder came forward with compliances, what DoT could or should have done?

Ans: It has no option but to accept the compliance, since there is no provision either in the LOI or any other rules in the department to prevent/ hold the compliance.
Ques: Did the department consider as to what impact the aforesaid procedure would be having on the seniority of the applicants for signing of UAS licences?
Ans: As per my memory, licences were signed in two days and, as such, there could be no impact on the seniority of the licencees."

Thus, Sh. A. Raja deposed that he met the Hon'ble Prime Minister after meeting with the then External Affairs Minister and the SG and also in the first week of January 2008.

DW 1 Sh. A. Raja in his cross-examination dated 21.07.2014, pages 2 to 7, deposed as to how the policy relating to priority was changed from date of application to date of compliance as under:

"**Ques**: I put it to you that the condition of granting licence first to an applicant who complies with the LOI first was created by you for the first time in your letter dated 26.12.2007, Ex PW 7/C?
Ans: Compliance is always relevant to issue licence. Without compliance licence cannot be issued as per the LOI conditions ever. It is narrated in the letter to the Hon'ble Prime Minister that this issue never arose in the past as at one point of time only one application was processed and LOI was granted and enough time was given to him (LOI holder) for compliance of conditions of LOI. So, the procedure of compliance and the issuance of licence is one and same, only the context and circumstances which were adopted in simultaneous issuance changed, as per decision of DoT, and no time extension to the LOI holder was granted for compliance with the conditions of LOI. Since there is no provision either

in LOI conditions or any other document to stop the compliance, it becomes spontaneous and inherent in the process on issuance of LOI. This was considered as a fair and equitable play of events in the department, which were reflected in the files also.

Court Ques: What is your idea of simultaneous issuance? Whether it is synchronous or contemporaneous?

Ans: It is contemporaneous in chronological order, as decided by the department.

Ques: I put it to you that this new condition of licence to LOI holder who comply first is also reflected in note dated 07.01.2008, already Ex PW 60/L-23. Had it not been a new condition, it would not have found mention in this note?

Ans: It is incorrect.

Court Ques: The policy for issue of UAS licence was approved by the Union Cabinet on 31.10.2003 and Guidelines were issued on 11.11.2003. The matter was referred to TRAI for its recommendation on 13.04.2007. During this period, how many LOIs were issued?

Ans: I cannot recall now as to how many LOIs were issued during the aforesaid period. However, I had come across 51 licences were issued during this period and mostly these licences were issued within the member of the COAI.

Court Ques: How many LOI holders of this period sought extension of time and why?

Ans: I am not able to recollect as to how many LOI holders got extension of time for compliance and the reasons thereof. However, it was brought to my knowledge when the discussion took place in the department in the month of October when the statement of case was prepared to the Law Ministry and it was also clearly mentioned in the statement of case that earlier enough time for compliance was given by way of extensions by the then Ministers, which was not contemplated in any policy document.

Court Ques: Was this extension of time adversely affecting the chances of next applicant in queue?
Ans: The consequences and the adverse impact by granting extension of time to the LOI holders were well in thought of the department during discussions. These discussions were reflected in the file notings also. More specifically in the policy file D-7, at pages 25/N and 26/N, it has been clearly spelt out. Para 13 of 25/N narrates the earlier procedure and at 26/N, DDG (AS) clearly observed that this procedure was adopted when few applicants were there and if it is followed further it will lead to a conflict of interest among the LOI holders. That is, if an LOI holder complies on a particular day, but an LOI holder who is earlier in queue does not comply and seeks time, then the LOI holder, who complied first, shall stand deprived of his rights. It is the idea of the department.

It is wrong to suggest that I am wrongly interpreting these notes.

Ques: Why have you mentioned the concurrence of learned SG to this condition only in your aforesaid letter to the Hon'ble Prime Minister and not to the remaining two, that is, application for UASL and application to WPC?
Ans: The covering letter addressed to the Hon'ble Prime Minister, where this note is appended clearly says "Since the cases filed by the Cellular Operators Association of India on these issues before the TDSAT and Delhi High Court are being represented by Solicitor General of India, he was also called for the discussions to explain the legal position". The issues are (1) subscriber based criteria for additional spectrum to existing operators; (2) issue of dual technology; and (3) issue of new licences. On these issues the learned SG had already given his brief note to the Minister of External Affairs also. So, it is not correct that I am mentioning SG's opinion only on one point. Since the department had already taken the decision to issue the LOIs in simultaneous

manner, it was specifically discussed with the SG about the decision taken by the DoT to have his opinion. He concurred with the DoT on this issue which was also available in his note. So, it was highlighted specifically.

It is wrong to suggest that the learned SG never concurred with the idea of issuance of UAS licence to an LOI holder who complied with the conditions first. **Volunteered**: The entire file notings in this regard were put up to the learned SG where he observed on the file itself that he went through the notes.

Ques: I put it to you that you yourself have mentioned that this issue of receipt of such large number of applications never arose in the past. For this reason, I put to you that this idea of licence to an LOI holder who complies first, was never an existing policy of DoT?

Ans: The policy of first-come first-served is always relevant in compliance to issue licence. However, in the note itself, it has been clearly expressed that "Since the Government has adopted a policy of **no cap** on number of UAS licence, a large number of LOIs are proposed to be issued simultaneously. In these circumstances, an applicant who fulfills the conditions of LOIs first will be granted licence first, although several applicants will be issued LOIs simultaneously".

Ques: I put it to you that this new stipulation of licence to an LOI holder, who complies with the LOI first, was added by you in order to help Swan Telecom (P) Limited and Unitech group of companies?

Ans: It is incorrect for the reason that policy was applicable to all applicants uniformly."

Thus, Sh. A. Raja deposed that DoT thought of changing the priority from date of application to date of compliance because the number of pending applications was

large and people were seeking extensions for compliance to LOI. He also deposed that this change in the policy had the concurrence of learned SG.

848. Now, there are two versions relating to the concurrence of learned SG to the policy of first-come first-served as conveyed by Sh. A. Raja to the then Hon'ble Prime Minister. Now the question is: Which version is correct? Whether the version of Sh. G. E. Vahanwati, sponsored by the prosecution is correct or the version of Sh. A. Raja?

849. It is also useful to take note of the testimony of Investigating officer PW 153 Sh. Vivek Priyadarshi. He, in his cross-examination dated 13.11.2013, pages 6 and 7, deposed about meeting between the then External Affairs Minister, Sh. A. Raja and Solicitor General as under:

> "**Ques**: Did you investigate as to how many meetings took place between the then External Affairs Minister and Sh. A. Raja during the aforesaid period?
> **Ans**: In the letter dated 26.12.2007, already Ex PW 7/C, Sh. A. Raja had mentioned about discussion with Hon'ble Prime Minister regarding several discussions with the then External Affairs Minister, who was heading GoM on vacation of spectrum. It also referred to discussions with Solicitor General of India in this regard. Accordingly, the then learned SG Sh. G. E. Vahanvati was examined during investigation and it was found that no meeting happened between MOC&IT and the then External Affairs Minister and the learned SG about the issue being investigated upon.
> No other witness was examined in this regard. However, a letter was received from the learned AG in this regard, which is already on record....."

PW 153 Sh. Vivek Priyadarshi in his further cross-examination, pages 9 and 10, deposed about the meeting as under:

> ".....I was not present on 10.03.2011, when the statement of Sh. G. E. Vahanvati was recorded. Document Ex PW 102/B (D-812), letter written by Sh. G. E. Vahanvati to CBI, was seen by me on 13.04.2011.
> **Ques**: On reading this letter, did you come to know that there was a meeting between the then Hon'ble External Affairs Minister, A. Raja and the then learned SG, later on learned AG, in the first week of December 2007?
> **Ans**: That is correct and I became acquainted with such meeting when I read over the statement recorded by late Sh. S. K. Palsania of learned AG on 10.03.2011 in the evening.
> Sh. S. K. Palsania discussed the statement with me in the evening. Sh. G. E. Vahanvati was not called for further examination after the receipt of the aforesaid letter Ex PW 102/B....."

Thus, the investigating officer first denied the above meeting, but finally admitted the same.

850. PW 82 Sh. P. K. Sharma, officer from PMO, in his cross-examination dated 26.11.2012, pages 5 and 6, deposed as to how letter dated 26.12.2007, Ex PW 7/C, written by Sh. A. Raja, was processed in the PMO and the deposition reads as under:

> ".....I have been shown PMO file (file serial No. 2) bearing No. 180/31/C/26/05-ES-I Vol. IV. The same is official file of PMO and is now collectively Ex PW 82/DC. In this file, on page 1/N, there is a note dated 31.12.2007 recorded by Sh. Pulok Chatterjee,

who was perhaps Secretary or Additional Secretary to Hon'ble Prime Minister at that time. The note is now Ex PW 82/DC-1. Signature of Sh. Pulok Chatterjee appears at point A, which I identify. The letter mentioned in this note as 1/C is a copy of the letter dated 26.12.2007 written by Sh. A. Raja to Hon'ble Prime Minister, already Ex PW 7/C. In the same file, there is a note dated 26.12.2007 recorded by the then External Affairs Minister Sh. Pranab Mukherjee and the note is now Ex PW 82/DC-2. In the same file, there is also an unsigned note, running into three pages, shown to be recorded by learned SG, which is an annexure to the note Ex PW 82/DC-2. On Ex PW 82/DC-2, there is an endorsement dated 28.12.2007 at point A recorded by Sh. B. V. R. Subramaniam, who was one of the private secretaries to the Hon'ble Prime Minister at that time. I cannot say as to who recorded two notes at 3/C, running into four pages. At point B on Ex PW 82/DC-2, the endorsement is by Sh. T. K. A. Nair. I cannot say as to by whom the endorsement was made at point A on note 3/C, pages 39 and 40, though JS (V) stands for Joint Secretary Vini Mahajan. At point B is the diary number dated 25.10.2007. I also cannot say about the chart attached with this note, pages 43 to 46.....”

Thus, the letter dated 26.12.2007 sent by Sh. A. Raja to the then Hon'ble Prime Minister was processed in the PMO.

851. The case of the prosecution is that the policy of first-come first-served was changed by Sh. A. Raja unilaterally through the aforesaid letter dated 26.12.2007 and there was no discussion at all with the learned Solicitor General as claimed in the letter. However, the above evidence shows that the matter was discussed with the then External Affairs Minister and the

learned SG also.

852. Let me examine the issue in the light of the material on record.

853. The letter dated 26.12.2007, Ex PW 7/C, was processed in the PMO on 29.12.2007 and it was recorded by the Private Secretary **"Urgent. PM wished this letter to be examined urgently."** On the same day, it was again recorded on the letter **"Please link with a note from EAM to PM on this. Examine and put up urgently."** The letter dated 26.12.2007, note of the then External Affairs Minister also dated 26.12.2007 accompanied by a copy of note of Solicitor General of India and an unsigned Note on telecom issues were all examined together by the Private Secretary Sh. Pulok Chatterjee on 31.12.2007 vide note, Ex PW 82/DC-1 and the file was marked to the Principal Secretary Sh. T. K. A. Nair. Thereafter, only on 03.01.2008, Hon'ble Prime Minister sent an acknowledgment, Ex PW 82/D, to Sh. A. Raja about receipt of letter dated 26.12.2007.

854. On further discussing the matter with Principal Secretary, Sh. Pulok Chatterjee again recorded note dated 06.01.2008, Ex PW 82/DC-3. This note further records that he discussed the matter with the new Secretary, DoT, that is, Sh. Siddhartha Behura. The note was marked to Principal Secretary and on 07.01.2008, Principal Secretary marked the note to the Hon'ble Prime Minister. Para 16 (f) of this note states that licencing and spectrum allocation policy must be fair and transparent to ensure free competition, but among a limited

number of serious players. This means that only serious players were to be considered for licencing in the telecom sector. It means only those players who had the financial capacity.

855. The note of External Affairs Minister, Ex PW 82/DC-2, in para (viii) also states as under:

> "While under the existing policy the Government may keep on issuing new licences, the criteria for grant of licences may be strengthened and put up in public domain at the earliest."

This note recommended strengthening the criteria for grant of new licences. How could this be done? How a criteria can be strengthened? This could obviously be done only by introducing change/ amendment in the existing criteria of first-come first-served. Change can only be by way of addition, deletion or substitution of an existing policy. What was correct in an environment of limited applications may turn out to be wrong when the applications were large in number. Obviously, this can be done only by initiative, experimentation and willingness to take risk.

856. The unsigned note on telecom at 3/C in the file, which was received in the PMO on 25.10.2007, also speaks that "The MCIT was of the opinion that all applications for new licences should be issued Letter of Intent and thereafter all those who deposit the licence fee should be issued licences." These lines also hint at change in the criteria as early as on 25.10.2007, as licences were to be issued to only those who would deposit the licence fee. Thus, the intended change was in the know of PMO also and it was as early as 25.10.2007,

though the reference to Law Ministry was sent on 26.10.2007. Again, it is clear that MCIT desired to issue LOIs to all eligible applicants and licence to only those who would deposit the fee.

857. On 26.10.2007, the very next day, DoT wrote letter, Ex PW 60/C, seeking opinion of learned SG with which draft, Ex PW 36/B-4 was also sent, in which Alternative II spoke of change in the criteria on the ground that only serious players will deposit the entry fee and the seniority for licence/ spectrum be based on date/ time of fulfilment of all LOI conditions. As already noted above, the contention of the prosecution that this Alternative II was introduced in draft, Ex PW 36/B-3, which was placed on the file at the instance of Sh. A. Raja in conspiracy with the accused persons, has already been rejected. Accordingly, it is clear that the DoT was contemplating change in the criteria by shifting the priority from date of application to date of payment from much before.

858. Not only this, as already noted above, after the file returned from the Ministry of Law and Justice, the DoT officers kept introducing the concept of priority from date of payment in the redrafted LOIs by stating that the date of payment of entry fee would be priority date for signing of licence agreement. The objection of the prosecution is limited to the exception contained in the next sentence of para 3, which states that if the date of payment of entry fee in more than one case is same, the licence would be first signed with the applicant whose application was received earlier. The prosecution is not challenging the introduction of concept of date of payment

itself. They are only challenging an exceptional situation in which two companies complied with the LOIs on the same day, then how their priority should be determined. The case of the prosecution is that in such a situation priority should be determined by date of application. Things are obvious and need no elaboration. There is no need to mull and dwell too much on this. When the criteria is priority from date of payment, then the priority would be determined from the date of payment under all circumstances and date of application loses all its significance. If two companies make payment on the same day, then it is obvious that who made the payment earlier in time would get the priority. The whole idea is that with date of payment, becoming the determining criteria, the date of application has no meaning.

859. It may also be mentioned that Shipping Stop Dot Com (India) Private Limited had written a letter dated 18.10.2007, Ex PW 36/DK-11 (D-6), to PW 36 Sh. D. S. Mathur, Secretary & Chairman, Telecom Commission, in which the company had clearly written that it understands that the priority for allotment of spectrum will be on the basis of date of application for spectrum after licence agreement has been signed by the company. This company clearly understood that in future priority would not be from date of application for UASL. This letter was seen by all the officers. Thus, the company had an inkling of impending change in the policy as early as on 18.10.2007. Priority from date of application for UAS licence is nowhere mentioned. On the other hand, Spice

wrote a letter dated 28.11.2007, page 52 (D-36) to PW 36 Sh. D. S. Mathur, Secretary (T) & Chairman, Telecom Commission urging him to consider their seniority for allocation of spectrum from date of their application to DoT for UAS licence, that is, from 31.08.2006. Thus, there was a serious view in the DoT for change in the first-come first-served policy. However, the files where these letters were processed are not on record and also as to what view department took on the grievance of two companies. If there was no contemplated change in policy, Sh. D. S. Mathur ought to have replied to the companies that the existing policy of priority from date of application would be maintained for disposal of their applications.

860. Not only this, the deposition of PW 41 Sh. Anand Dalal, Sr. Vice President, TTSL, is also relevant, who in his cross-examination dated 14.05.2012, pages 4 and 5, deposed as under:

> ".....I cannot say if the officials of TTML and TTSL were visiting the DoT regularly between December 2007 and January 2008. Spectrum is allocated by the WPC wing of DoT. After getting the licence, the licencee is required to make an application to the WPC wing for allocation of spectrum. Thereafter, the WPC allocates or earmarks the spectrum to the applicant. Thereafter, when the applicant provides the technical parameters, Wireless Operating Licence is issued by WPC wing. As far as I recollect, there were media reports on 7th to 9th January 2008 that DoT may issue LOIs to the applicants in that week. I am not aware if these reports were appearing in the media in December 2007 also. I do not recollect if it was also coming in the media that payment of entry fee would determine seniority for grant of spectrum.

I do not recollect if I was asked by the IO as to how our company came to know that the payment of entry fee would determine the seniority for signing UAS Licence. I also do not recollect if I was also asked as to how our company came to know that payment of entry fee would determine the seniority. I also do not recollect if I told the IO that we came to know about it as the matter was being reported in the media, confronted with portion A to A of statement Ex PW 41/DO, wherein it is so recorded. The media reports appearing at that time were referred to by Sh. Ashok Sud in his letter dated 11.10.2007, already Ex PW 41/DM-8....."

Portion A to A of Ex PW 41/DO reads as under:

"Here on being asked as to how our company came to know that the deposit of Entry Fee would determine the seniority for signing of UASL and date of deposit of requisite fee would determine the seniority for allocation of spectrum under dual technology I state that these things were continuously coming in the media and newspapers."

861. The witness is pleading ignorance and is giving statement contrary to his earlier statement about change in priority from date of application to date of payment.

862. Thus, the record shows that the matter about processing of pending applications for UAS licences was deliberated in the department several times. The record produced before the Court shows the deliberations in DoT during the time of sending letter to the Ministry of Law and Justice for seeking opinion of the learned Solicitor General and also at the time of recording of notes dated 02.11.2007 and 07.11.2007, through the route of redrafted LOI. The deposition

of Sh. A. Raja as well as proceedings in the PMO file, Ex PW 82/DC, and the note, Ex PW 82/DC-2, of the then External Affairs Minister and the note of the SG also show that the matter was deliberated at all levels several times. The letter, Ex PW 7/C, was deliberated in detail in PMO also. Thus, the consultation with the SG is also clear from the material on record. Accordingly, I do not find any merit in the submission of the prosecution that through this letter Sh. A. Raja changed the first-come first-served policy unilaterally by falsely citing consultation with learned SG and also misrepresented the facts about this to the Hon'ble Prime Minister. There is no merit in the submission of prosecution that change in the policy as conveyed to the then Hon'ble Prime Minister vide letter dated 26.12.2007 was not deliberated in the DoT. However, question still remains, if the facts were misrepresented to the Hon'ble Prime Minister, who was responsible for this?

Subsequent Events: Placing of Letter in the DoT File, Issue of Press Release and Manipulation of Priority

863. The consultation with the SG and other officials in the department relating to change of priority is also fortified by the subsequent events. As per PMO file, Ex PW 82/DC, the file was marked to the Hon'ble Prime Minister on 07.01.2008, but there is no noting of that day by the Hon'ble Prime Minister or anyone else on his behalf. In the absence of anything contrary, it may be assumed that PMO had taken no exception to the contents of letter dated 26.12.2007 of Sh. A. Raja. Rather, there

is evidence that Sh. Pulok Chatterjee had discussed the issues with Secretary (T) on 06.01.2008.

864. Consequently, on the same day, that is, 07.01.2008, a copy of the said letter was placed in the department's file of DoT and Sh. Nitin Jain recorded a note, Ex PW 42/DB, for implementation of order dated 02.11.2007 relating to issue of LOIs. Thus, there appears to be coordination and synchrony in the working of PMO and DoT. Note of Sh. Nitin Jain reads as under:

> "Notes on pre pages may kindly be seen.
> 2. As per the decision of Hon'ble MOC&IT on 20/N, the compliances were sought from UASL applicants on 10-12-2007 to be submitted upto 13-12-07 by the applicant companies who applied for UASL upto 25-9-07. The individual cases are being examined in separate files. However following is submitted for kind perusal and consideration.
> 3. The Union Cabinet in a meeting held on 31-10-2003, approved the recommendations of the Group of Minister (GOM) on telecom matters. The following recommendations of GOM were, inter-alia, approved by the Cabinet. The relevant extracts of the para 2.4.6 of the said Cabinet Note is reproduced below:
> "*.....The scope of NTP-99 may be enhanced to provide for licensing of Unified Access Service for basic and cellular license services and Unified Licensing comprising all telecom services. Department of Telecommunications may be authorized to issue necessary addendum to NTP-99 to this effect. [Para 2.4.6 (i)]*
> *.....The recommendations of TRAI with regard to implementation of the Unified Access Licensing Regime for basic and cellular services may be accepted.*
> *DoT may be authorized to finalise the details*

of implementation with the approval of Minister of Communications & IT in this regard including the calculation of the entry fee depending upon the date of payment based on the principles given by TRAI in its recommendations. [Para 2.4.6 (ii)]

……..If new services are introduced as a result of technological advancements, which require additional spectrum over and above the spectrum already allotted/ contracted, allocation of such spectrum will be considered on payment of additional fee or charges; these will be determined as per guidelines to be evolved in consultation with TRAI. [Para 2.4.6 (vi)]"

4. In terms of above approvals, NTP-99 was amended. The amendment of NTP-99, inter-alia, provided that there shall also be the following categories of licences for telecommunication services:

"Licence for Unified Access (Basic and Cellular) Services permitting Licensee to provide Basic and/ or Cellular Services using any technology in a defined service area".

5. In terms of the above said cabinet decision, Union Cabinet authorized DoT to finalise the details of implementation with the approval of Hon'ble MOC&IT keeping in view the recommendations of TRAI.

6. Thereafter, in view of the above Cabinet decision, Guidelines for Unified Access Services Licence (for migration from CMTS and FSP to UASL) were announced on 11-11-2003 with the approval of the Hon'ble MOC&IT.

7. Based on the guidelines for Unified Access (Basic and Cellular) Services announced on 11.11.2003, existing basic and cellular mobile telephone service licenses were permitted to be migrated to UAS licenses. With the issue of these Guidelines, all applications for new Access Services Licence shall be in the category of Unified Access Services Licence.

8. While processing these UASL migration cases, the following eligibility criteria were implied for deciding the eligibility of migration which was equivalent to 4th CMTS licensees:

(i) The applicant must be an Indian Company registered before the date of submission of bid under Indian Companies Act 1956.

(ii) The total foreign equity in the applicant company must not exceed 49% at any time during the entire licence period.

(iii) The management control of the company shall lie in the Indian hands for the complete duration of license.

(iv) The minimum net-worth of the applicant company and its promoters (networth of only such promoters having not less than 10% share in the equity capital of the applicant company shall be added) and paid up equity capital of the applicant company should be at least as below:

Paid up Equity capital of the applicant Company	Service Areas (one or more in each category) for which bid can be submitted.
3 Crores 5 Crores 10 Crores	C B and C A, B and C

Note: An applicant company, which meets the minimum requirement of paid up equity for a service area of one category, may apply for any number of service areas of that or lower category.

Net-worth	Total Minimum Net-worth required

Rs. 30 Crores for each Category C Service Area Rs. 50 Crores for each Category B Service Area Rs. 100 Crores for each Category A Service Area	100 X+50 Y+30 Z where X, Y & Z is respectively the Number of A, B & C Service Areas bided for

(v) A promoter company cannot have stakes in the more than one applicant Company for the same service area.

(vi) The existing licensees cannot apply for the same service area.

(vii) The applicant company and/or its promoters should have experience in telecom sector.

9. According to the above guidelines dated 11.11.2003, the pending application(s) for basic service license, which was being granted on first-come-first-served basis, were also processed for grant of new UAS licenses and the above-mentioned eligibility criteria was followed for examination of the applications. However, it was not specifically mentioned in the UASL guidelines dated 11.11.2003. New applications of grant of UASL were also considered accordingly and after approval of competent authority and with the concurrence of Finance wing, the new UAS license agreements were signed with the 28 applicants upto September 2004.

A decision was also taken by the Hon'ble MOC&IT on 24.11.03 in F. No. 20-231/2003-BS-III (LOIs for UASL) at 4/N **(extract note placed at..24/c)** that

".....As regards the point raised about grant of new licences on* first-come-first served *basis, the announced guidelines have made it open for new licences to be issued on continuous basis at any time. However, the spectrum is to be allotted subject to availability. This in effect would

imply that an applicant who comes first will be granted the spectrum first so it will result in grant of licence on first-come-first served basis."

".....The requirement of eligibility conditions for grant of UASL viz., net worth, paid-up equity capital, experience, foreign equity cap has been taken same as for the 4th Cellular Operator."

10. Subsequently on 13.12.2005, Hon'ble MOC&IT approved the Guidelines for Unified Access Services licence issued on 14-12-2005 (**copy placed at 20/c**). These guidelines were worked and announced to incorporate security condition for increased FDI limit from 49% to 74% (vide press note 5 of 2005 issued by DIPP) and to enhance scope of service of UASL by including Internet Services, Internet Telephony, Triple play (voice, video & data) etc. The guidelines, inter-alia, stipulates that:

(i) Licences shall be issued without any restriction on the number of entrants for provision of Unified Access Services in a Service Area. **(para 11).**

(ii) .....The access service includes but not limited to wireline and/ or wireless service including full mobility, limited mobility ..... and fixed wireless access. (**para 12(a)(i)**)

(iii) The ***application shall be decided, so far as practicable, within 30 days*** of the submission of the application and the applicant company shall be informed accordingly. In case the applicant is found to be eligible for grant of licence for UNIFIED ACCESS Service an Letter of Intent (LOI) will be issued. ..... (**para 23**)

(iv) In case the applicant is found to be not eligible for the grant of licence for Unified Access Services the applicant shall be informed accordingly. Thereafter the applicant is permitted to file a fresh application if so desired. (**para 24**)

(v) For wireless operations in SUBSCRIBER access network, the frequencies shall be assigned by WPC

wing of the Department of Telecom from the frequency bands earmarked in the applicable National Frequency Allocation Plan and in coordination with various users. Initially a cumulative maximum of upto 4.4 MHz + 4.4 MHz shall be allocated in the case of TDMA based systems @ 200 KHz per carrier or 30 KHz per carrier or a maximum of 2.5 MHz + 2.5 MHz shall be allocated in the case of CDMA based systems @ 1.25 MHz per carrier, on case by case basis **subject to availability**.

(vi) The para 9 & 10 of these guidelines deals with the eligibility conditions in terms of paid up equity and networth. For the networth requirement, it has been clearly stated in para 10 of the guidelines that the net-worth will be calculated as per the prescribed formula based on the number of applications in each category of service area. However, for paid up equity capital requirement, the guideline stipulates that "The applicant company shall have a minimum paid up equity capital of the amount indicated in Annex-I for the respective Service Area on the date of the application...." It is implied that the provision, which was followed for grant of 4th cellular licenses and continued during the migration from CMTS/ Basic to UASL for requirement of paid up equity shall be followed for grant of new UASL also.

11. It is pertinent to mention that LF Wing while examining the present cases, has indicated the requirement of paid up equity capital which is a sum total of individual requirement for each service area i.e. Rs. 138 crores for all 22 service areas whereas eligibility requirement (**i.e. an applicant company, which meets the minimum requirement of paid up equity for a service area of one category, may apply for any number of service areas of that or lower category**) which was stipulated for grant of initial UAS license is considered, the maximum paid up equity capital requirement would be Rs. 10 crores. With the decision of Hon'ble MOC&IT quoted

in para 9 above, it may be seen that the interpretation of LF Cell about adding the equity of all service areas applied for/ existing, is not correct. It is worth mentioning that while migrating to UASL regime, the existing CMSPs and BSOs were allowed with the same paid up equity which could have been lower than the basis taken by finance wing now.

12. Therefore, in view of above, it needs to be decided whether we should follow the earlier stipulation of paid up equity under 4th CMS licensees or consider the requirement mentioned by LF wing in the present cases. The eligibility of applicants would depend upon the above decision and the cases would be processed accordingly.

13. While dealing with applications for grant of UAS licenses till March 2007, the following methodology was adopted. On receipt of an application for grant of UAS license, the same was examined according to a check list, which was based on eligibility criteria mentioned above. If some discrepancies were found or some information/ document were required for consideration of the case, the applicant company was asked to furnish the information/ document and/ or comply with the requirements of application on more than one occasion till they complied with the eligibility conditions. In some cases, sufficient time were even allowed to the applicant company for obtaining statutory approvals viz. FIPB approval etc.

The processing of the subsequent applications in same service area was kept on hold till the requirement is met by the applicant company, who was first in the queue. In many cases, the applicant company met the eligibility criteria after the date of application, such cases were also considered for grant of UAS license. Thus (except the applications of M/s BSNL for Mumbai and Delhi and the application of M/s Aditya Birla Telecom Ltd. for Mumbai service area, which were not eligible on account of substantial equity clause) none of the

applications for grant of UASL license has been rejected till date on grounds of incomplete application or non-completion of requirements of application.

The sequence of granting LOI/ UAS license has been maintained till now according to date of respective application for a particular service area. (para 7 of extract note 20/N of F. No. 20-231/2004-BS.III (Vol. 4) may kindly be seen which is placed at **21/C**)

It is once again mentioned that as per the existing methodology, the eligibility of the applicant company has been considered till the last correspondence received from the licensee company before issue of LOI for signing of the license agreement. In some cases, the applicant company has also been permitted additional time to fulfill the requirement of LOI on their request beyond stipulated period mentioned in the LOI.

As per para 23 of UASL guidelines *dated 14.12.2005, the application shall be decided, as far as practicable, within 30 days of the submission of the application and the applicant company shall be informed accordingly*.

14. Subsequently, all the pending UASL applications were put on hold after a reference was made to TRAI on 13.4.2007 on limiting the licences in a service area and on certain terms & conditions of UASL.

15. On 2.11.2007, it has been decided by Hon'ble MOC&IT that LOIs may be issued to the applicants received upto 25.9.2007 **(7/N)**. Subsequently on 4.12.2007, Hon'ble MOC&IT desired that this decision should be implemented **(20/N)**. It was also decided that “for the purpose of LOI proforma as issued in the past may be used for LOIs in these cases also. However, separate letter seeking duly signed copies of all the documents submitted **at the time of applying for UASL** as per existing guidelines may be obtained”.

As per the above decision, it seems that the eligibility of the applicant as on date of applications is to be examined, it is also mentioned that a cut off date i.e. 1st October 2007 was put for receiving new application for UASL.

However, as mentioned in para 12 above, in past the eligibility of applicant has been considered even after the date of application also. This is being brought to the notice for kind consideration whether in the present case for processing of applications received upto 25-9-2007, the eligibility on the date of application shall be taken into account or it may be subsequent date also."

865. This note takes note of all the issues which arose in implementing the UAS policy since its adoption in 2003. However, the length and language of the note shows that it is not easy for anyone to understand as to what for this note was recorded and what the issue was in the note. The spatial extant of the note is tiring. Apart from that, its content is hard to understand. There is also no doubt that it is a lengthy note recorded in layered language. A question is: Whether a Secretary or a Minister has time to read such a lengthy note? Are they required to be bogged down in files all the time? Consequently, question is: Whether they can be prosecuted on the basis of such lengthy and vague notes recorded in a highly layered language?

866. Thereon, PW 60 Sh. A. K. Srivastava, DDG (AS) recorded further note, Ex PW 60/L-23, of even date, also taking note of letter dated 26.12.2007, which reads as under:

"(i) As mentioned in para 8 & 11 above, the stipulation at 'X' & 'Y' above may be followed as was

followed during the migration of CMTS/ Basic licence to UASl and subsequently new UASL were also granted based on these stipulations. Accordingly, we may consider an applicant as eligible who have paid up equity of 10 crore or more for all service areas.

(ii) The procedure being followed hereto for grant of LOIs to UASL applicants is elaborated in para 13 above. However, there used to be small number of pending applications and the procedure being followed by DOT as explained therein was not in conflict with the interest of others.

(iii) Para 13 above may kindly be perused in the present unprecedented situation wherein 575 UASL applications have been received subsequent to the recommendation of TRAI of no capping on UASL in a service area. Hon'ble MOC&IT has already taken a decision to grant LOIs to eligible applicants who submitted their applications upto 25-9-07. In the present scenario, there are large number of applicants whose eligibility is to be established and cases are to be processed. Probably this has already been considered by Hon'ble MOC&IT while taking a decision that eligibility on the date of application is to be considered for examining the cases. Therefore, we may check eligibility on the date of application for grant of LOIs and subsequent eligibility may not be considered.

(iv) LOIs shall be issued in the existing format vide copy of draft LOI placed below at **22/c**. The LOIs shall be simultaneously issued in respect to all UASL applications received upto 25/9/2007 subject to fulfillment of eligibility as on the date of application.

(v) Minor deviations such as missing signatures or stamp etc. on certain pages, other minor compliances etc. will be got completed, if approved, before issue of LOIs.

(vi) The policy of DoT as decided by Hon'ble MOC&IT and communicated to Hon'ble PM vide letter dated 26-12-2007 **(23/c)** shall be treated as

policy directive for licensing matters.

"Issue of Licence : The First-cum-First Service policy is also applicable for grant of licence on compliance of LOI conditions. Therefore, any applicant who complies with the conditions of LOI first will be granted UAS licence first. This issue never arose in the past as at one point of time only one application was processed and LOI was granted and enough time was given to him for compliance of conditions of LOI. However, since the Government has adopted a policy of "**No Cap**" on number of UAS Licence, a large number of LOI's are proposed to be issued simultaneously. In these circumstances, an applicant who fulfills the conditions of LOI first will be granted licence first, although several applicants will be issued LOI simultaneously. **The same has been concurred by the Solicitor General of India during the discussions.**"

"Grant of Wireless Licence : The First-cum-First Served policy is also applicable for grant of Wireless Licence to the UAS Licencee. Wireless Licence is an independent licence to UASL licence for allotment of Radio Frequency and authorizing launching of GSM/CDMA based mobile services. There is misconception that UAS licence authorizes a person to launch mobile services automatically. UAS licence is a licence for providing both wire and wireless services. Therefore, any UAS licence holder wishes to offer mobile service has to obtain a separate Wireless Licence from DOT. It is clearly indicated in Clauses 43.1 and 43.2 of the UAS Licence agreement of the DOT."

(vii) The issue of LOIs shall be subject to outcome of court cases in various courts. To this effect following clause may be added in the draft LOI.

"*It may be noted that the above will be subject to final decision of the Government as also subject to the outcome of relevant petition No. 286/2007 pending in TDSAT & Civil Writ Petition No. W.P. (C) 9654/2007 pending in High Court of Delhi*".

867. In this note, Sh. A. K. Srivastava clearly recorded that earlier number of applications used to be very small and as such the procedure followed at that time by DoT was not in conflict with the interest of others. However, by the time of the note the situation had become unprecedented, as the number of applications received was very large. Thereafter, he quoted in the note, parts of the letter, Ex PW 7/C, written by Sh. A. Raja to the Hon'ble Prime Minister. Now the question is: How the procedure followed earlier was not in conflict with the interest of others? In the earlier procedure, since the number of applications was very small, whether one made the payment in the prescribed time or by the extended time, would get the spectrum in due course. This was the time when the number of applications was very small and there were either a few applicants or a single applicant at one time. Accordingly, delayed payment of entry fee would not make any difference, as sooner or later it would get the licence because there was no other entity waiting in the queue. This was due to the fact that the seniority would be counted from the date of application. Thus, this procedure was not injurious to any other entity. However, when the number of applications became large, non-payers/ non-serious applicants would get an advantage over the payers/ serious applicants citing early mover advantage. In a sense, there was a "problem of plenty". This problem had to be resolved in some logical manner. Early mover advantage was alright when number of applications was very small. However,

when the number of applications became large, this advantage would no longer be available, if the payment was not made, as this would be in conflict with the interest of serious players, who were ready with the payment, but moved a little late. People would obtain LOI but would not comply with it. This led to procrastinating pathologies in the system. In this regard, it is useful to take note of deposition of PW 153 Sh. Vivek Priyadarshi, who in his cross-examination dated 18.11.2013, pages 15 and 16, deposed as to how in the earlier procedure an LOI holder would block the way of others as under:

> ".....It is correct that in some cases, the applicant company has also been permitted additional time to fulfill the requirements of LOI on their request beyond stipulated period mentioned in the LOI, as recorded in this note. These extensions were given under the policy of first-come first-served, as observed by DoT, wherein the processing of subsequent applications in the same service area was kept on hold till the requirement was met by the applicant company who was first in the queue. It is wrong to suggest that there was no authority with DoT to give such extensions. It is wrong to suggest that I did not deliberately investigate this issue....."

868. Thus, a non-serious player, who had no financial resources, would block the way of a serious player by claiming early mover advantage. This was the main disadvantage of determining seniority by date of application, and as such, it was injurious to the interest of serious players, who had the financial resources to execute the telecom project. A policy or procedure cannot be set in stone so that it takes no account of current requirements. A policy should not be so inflexible that it cannot

be changed when the need arises. Moreover, whenever an officer wanted to delay an application, he would wrap it up in the mantle of first-come first-served, that is, unless earlier application was disposed of, the next will have to wait despite no fault of his own. Paragraph 13 of note dated 07.01.2008, Ex PW 42/DB, recorded by Sh. Nitin Jain also says this that subsequent applications were kept on hold till the earlier company met the requirement. Hence, the above note sought to take this point of view into consideration and shows due deliberation in the department. Thus, priority from compliance with the LOI was a facilitating innovation.

869. On the same day, that is, on 07.01.2008, file reached Sh. Siddhartha Behura, who recorded note, Ex PW 60/L-25, as under:

> "Notes from p. 22/N regarding disposal of pending applications for UAS licenses may be seen. The points raised by ADD (AS) as revised by finance wing may be accepted. M (T) may also see."

He marked the file to Sh. A. Raja. However, before the file could reach Sh. A. Raja, he again recorded a note, Ex PW 60/L-26, on the same day, which reads as under:

> "If approved, a Press Release may be issued, draft of which is placed at flag X."

870. The file reached Sh. A. Raja and he recorded a note, Ex PW 60/L-28, on the same day as under:

> "Approved: pl. obtain Solicitor General's opinion since he is appearing before the TDSAT and High Court, Delhi. Press Release appd as amended."

871. On this, Sh. Siddhartha Behura recorded a fresh note on the same day as under:

"May like to see, as directed by MOCIT."

He marked the file to SG.

872. PW 102 Sh. G. E. Vahanwati, the then learned Solicitor General, recorded the following note, Ex PW 60/L-31:

> "I have seen the notes. The issue regarding new LOI's are not before any court. What is proposed is fair and reasonable. The press release makes for transparency. This seems to be in order."

873. On recording this note, he marked the file to Secretary (T). On this, Sh. Siddhartha Behura recorded note dated 10.01.2008, Ex PW 60/L-32, which reads as under:

> "The amended Press Note has been released. The amendment involves deletion of the last paragraph, i.e., "However, if more than one applicant complies with LOI condition on the same date, the inter-se seniority would be decided by the date of application".
>
> In so amending, Hon'ble MOC&IT has wanted "'X' is not necessary as it is a new stipulation".

874. The press release referred to in the note of Sh. Siddhartha Behura is Ex PW 60/L-27 (25/C), relevant part of which reads as under:

> "..... ..... DOT has been implementing a policy of First-cum-First Served for grant of UAS licences under which initially an application which is received first will be processed first and thereafter if found eligible will be

granted LOI and then who so ever complies with the conditions of LOI first will be granted UAS licence.

However, if more than one applicant complies with LOI condition on the same date, the inter-se seniority would be decided by the date of application."

875. It may be noted that last four lines of the above press release were deleted by Sh. A. Raja on the ground that they contained new stipulation by referring to them as 'X'.

876. Let me take note of the evidence on these points.

877. PW 60 Sh. A. K. Srivastava deposed in detail as to how the aforesaid letter was placed on the files of the DoT and follow-up actions were taken including issue of press release. In his examination-in-chief dated 21.08.2012, pages 9 to 12, he deposed as under:

".....I have been shown DoT file D-7, already Ex PW 36/B, pertaining to UAS Licensing policy. This file was opened and maintained in the DoT office in the official course of business. I have been shown pages 22/N to 26/N, wherein there is a note of Sh. Nitin Jain, Director (AS-I), dated 07.01.2008. The note is already Ex PW 42/DB. After recording this note, he marked the file to DDG (AS), that is, myself. I also recorded a note, available at pages 26/N and 27/N. My signature appears at point C, page 27/N, and the note is now Ex PW 60/L-23. In his note, Sh. Nitin Jain took note of important decisions/ events regarding grant of UAS licences, inter alia, the decision of Union Cabinet dated 31.10.2003, amendment in NTP-1999 dated 11.11.2003, issuance of UASL Guidelines dated 11.11.2003, conditions of fourth cellular licences before migration to UASL regime, processing of pending basic service licence applications, decision dated 24.11.2003 of MOC&IT

regarding first-come first-served policy, the guidelines for unified access service licence issued on 14.12.2005 etc. In my note dated 07.01.2008, I noted the earlier decision taken by the MOC&IT vide his note dated 04.12.2007 Ex PW 36/B-13, regarding consideration of eligibility of applicant on the date of application. However, the date of decision is not mentioned in my note. After recording my note, I marked the file to Member (T) Sh. K. Sridhara, who in turn, marked the file to Member (F), who in turn, marked the file to Advisor (F), who might have handed over the file to Sh. B. B. Singh, DDG (LF), by hand as there is no marking to him, but the note of Sh. B. B. Singh dated 07.01.2008 is available at pages 27/N and 28/N. I recognize his signature at point A, page 28/N, and the note is already Ex PW 42/DC. In his note, Sh. B. B. Singh recorded that paid-up equity for pan-India licence should be Rs. 138 crores and not Rs. 10 crore as recorded by me in my note. Advisor (F) and Member (F) agreed with the note of Sh. B. B. Singh and the file reached Secretary (T), who also approved the view of Sh. B. B. Singh and marked the file to Member (T), who, after seeing the file, marked it to MOC&IT.

In para vi of my note dated 07.01.2008, Ex PW 60/L-23, I noted that the directive of the MOC&IT as contained in his communication dated 26.12.2007 to the Hon'ble PM shall be treated as policy directive for licensing matters.

Ques: How did you come to know about the aforesaid communication sent by the MOC&IT to the Hon'ble PM?

Ans: On 07.01.2008, in the forenoon I was called by Sh. R. K. Chandolia, PS to MOC&IT, for a meeting in the chamber of MOC&IT. The meeting was attended by Sh. Sidharath Behura, the then Secretary (T), Sh. K. Sridhara, the then Member (T), Sh. R. K. Chandolia, PS to MOC&IT, and myself. The meeting was chaired by Sh. A. Raja, MOC&IT. In this

meeting, I was handed over a draft letter dated 26.12.2007 addressed to Hon'ble PM and I was asked to adopt the communication to be treated as policy directive for licensing matters. The copy of the aforesaid letter was handed over to me by Sh. R. K. Chandolia in the presence of Sh. A. Raja and I was told that the letter had been formally sent to Hon'ble PM and I would get a photocopy of signed letter subsequently.

The said draft letter as handed over to me is available at pages 148 to 152 (23/C) in DoT file D-7. The said draft letter is now Ex PW 60/L-24. Subsequently, a photocopy of the signed letter was also received by me under a note sheet of Sh. R. K. Chandolia. In the draft letter handed over to me in the meeting by Sh. R. K. Chandolia, Ex PW 60/L-24, there is an endorsement in favour of Sh. Pranab Mukherjee, the then Hon'ble Minister of External Affairs. I have been shown original copy of the letter dated 26.12.2007, already Ex PW 7/C, D-361, and in that there is no such endorsement. This letter bears the signature of the then MOC&IT Sh. A. Raja at point A and I identify the same.

I have been shown page 28/N of this file, wherein there is a note of Sh. Sidharath Behura, the then Secretary (T) dated 07.01.2008. I identify his handwriting and signature at point B and the same is now Ex PW 60/L-25, and through this note he agreed with the view of Sh. B. B. Singh as stated by me above....."

878. Sh. A. K. Srivastava has thus given a detailed account as to how the letter dated 26.12.2007, Ex PW 7/C, was placed on DoT files and was to be followed as a policy directive, but he did not record in the note as to how he was handed over the letter, Ex PW 7/C, dated 26.12.2007. He has deposed contrary to official record prepared by he himself. He ought to

have mentioned about the meeting in the chamber of MOC&IT and handing over of the letter to him in the note itself.

879. PW 60 in his further examination-in-chief dated 22.08.2012, pages 1 to 4, deposed about opinion of learned SG and issue of amended press release as under:

> ".....Today I have been shown DoT file D-7, already Ex PW 36/B, pertaining to UAS Licensing policy, maintained in the AS cell of DoT in the official course of business. After recording his note, already Ex PW 60/L-25, page 28/N, the then Secretary (T) Sh. Sidharath Behura marked the file to Member (T) Sh. K. Sridhara and MOC&IT. Signature of Sh. K. Sridhara is at point C, which I identify, in acknowledgment of having seen the file. Thereafter, the file appears to have been recalled by Secretary (T) as he recorded another note post script (PS). I identify his handwriting and signature at point D. The note is now Ex PW 60/L-26 and this note pertains to a press release, a draft of which was available in the file and it was to be released if it was approved. The draft press release is available at page 126 of this file. This draft press release was prepared by the then Secretary (T) Sh. Sidharath Behura and placed it on the file. The said draft press release is now Ex PW 60/L-27. After recording this note, Sh. Sidharath Behura marked the file to the then MOC&IT Sh. A. Raja. Sh. A. Raja recorded a note approving the press release as amended and also asked for the opinion of learned Solicitor General to be obtained as he was appearing before the Hon'ble TDSAT and Delhi High Court. I identify his handwriting and signature at point E dated 07.01.2008 and his note is now Ex PW 60/L-28.
>
> In the draft press release there is a cutting/ scoring out of last paragraph at point X and an observation was recorded in his hand, which is already encircled Q-9. This was done by Sh. A. Raja in his handwriting, which I identify. The said

observation is now Ex PW 60/L-29. After recording this note, Sh. A. Raja marked the file to Secretary (T).

I have been shown page 29/N, wherein there is a note dated 07.01.2008 of Sh. Sidharath Behura, the then Secretary (T), in his handwriting alongwith his signature at point A, which I identify. By this note, he marked the file to learned SG, as per the direction of MOC&IT. The said note is now Ex PW 60/L-30. On the same page, there is a note dated 07.01.2008 recorded by the then learned Solicitor General of India, Sh. G. E. Vahanwati, in his handwriting alongwith his signature at point B, which I identify. The note is now Ex PW 60/L-31. I identify his handwriting and signature as he has given opinion in one or two more files of our department and also used to settle affidavits for our department. I had seen these files as they pertained to AS cell in which his handwriting and signature appeared. In this note, the learned SG approved the action of DoT as placed before him saying the same to be transparent, fair and reasonable and marked the file to Secretary (T).

I have been shown a note dated 10.01.2008 recorded by the then Secretary (T) Sh. Sidharath Behura. I identify his handwriting and signature at point C and the note is now Ex PW 60/L-32. By this note, Sh. Sidharath Behura took on record the fact of press release having been issued as amended and also minuted the contents of amendment. The press release which was issued is available at page 157 and is now Ex PW 60/L-33. The same bears my signature with date at point A.

Ques: The note of Sh. Sidharath Behura, already Ex PW 60/L-32, was recorded after the press release was issued. When were you asked to issue the press release?

Ans: On 10.01.2008 in the early office hours, Sh. Sidharath Behura, the then Secretary (T), called me in his chamber and handed over to me a copy of

amended press release and asked me to issue the press release immediately and he wanted a copy of duly released press release. I found in the press release, as prepared by Sh. Sidharath Behura and approved by the Minister, that an alteration in first-come first-served policy had occurred. In the press release it was mentioned that DoT has been implementing the policy of first-come first-served for grant of UAS licences under which initially an application which is received first will be processed first and thereafter if found eligible will be granted LOI and then whosoever complies with the conditions of LOIs first will be granted UAS licence. I came back to my room with the copy of press release handed over by Sh. Sidharath Behura and issued the press release to press information bureau for uploading on PIB website and to DDG (C&A), DoT, for uploading of DoT website. Thereafter, I went back to the room of Sh. Sidharath Behura and handed over the duly issued copy of the press release, who minuted it on the file and handed over the file to me through member (T) who was also present in his room and signed the file. The first-come first-served policy earlier used to continue from the date of filing of application to grant of licence. In this situation of amended press release, this first-come first-served has been broken into two steps, that is, first step up to grant of LOI and second step compliance of LOI before signing of licence.

Court Ques: As per the amended version of first-come first-served policy, who would get the licence first?

Ans: After issuance of LOI, whosoever, that is, LOI holder, complies with conditions of LOIs first, will be granted licence first as per the amended version."

880. Sh. A. K. Srivastava has given a detailed account as to how opinion of learned SG was obtained and as to how the amended press release, Ex PW 60/L-33, was issued. It may be

noted that he has deposed that in the note, Ex PW 60/L-31, the learned SG had approved the action of DoT describing the same to be transparent, fair and reasonable. It may also be noted that the case of the prosecution is that the learned SG had not approved the action of DoT, but had only approved the press release, Ex PW 60/L-27. It may also be noted that Sh. A. K. Srivastava deposed that he came to know that an alteration had occurred in the first-come first-served policy only when he saw the press release, Ex PW 60/L-33, as the priority was changed from date of application to date of payment. The fact of the matter is that the note, Ex PW 60/L-23 dated 07.01.2008, in which this policy was changed, as per letter, Ex PW 7/C, was recorded by Sh. A. K. Srivastava himself. He must have come to know about change in policy when he recorded the above note. If the new stipulation was added by the press release, he must have objected to it in writing, being head of Licencing Branch/ AS Branch. Not only this, Member (T) also agreed to the press release and signed the note, when it came to him in downward journey. Furthermore, it is in his note which records that the change of priority had concurrence of learned SG. It is apparent that Sh. A. K. Srivastava has deposed false and contrary to record also.

881. However, PW 102 Sh. G. E. Vahanwati in his examination-in-chief dated 27.02.2013, pages 7 and 8, deposed about his concurrence about the press release only as under:

> ".....I have been shown DoT file D-7, already Ex PW 36/B, and my attention has been invited to pages 28/N and 29/N of the note section, wherein there is

a note recorded by me dated 07.01.2008 at page 29/N, which bears my signature at point B, which I identify and which note is already Ex PW 60/L-31. To the best of my recollection, I received a call from Sh. Sidharath Behura, who asked me whether there was any stay granted by any Court with regard to the issue of new licences. I told him that there was no stay. He asked me could I confirm this. He came to my camp office at my house with the file. I confirmed to him that there was no stay. He then showed me a draft of a press release and in relation to this draft, I said that what was proposed was fair and made for transparency. I recorded this in my note Ex PW 60/L-31. Before recording this note, I had glanced through the previous pages of the file. I had seen the noting at the bottom of page 28/N, already Ex PW 60/L-28. I do not recollect having seen the last sentence, that is, "press release appd. as amended", portion X to X.

I have also been shown draft press release, already Ex PW 60/L-27, (25/C at page 156). When I saw this draft, the last para of this, mark X, had not been scored off and the noting "X is not necessary as it is new stipulation" was not there. The noting is already Ex PW 60/L-29. The press release referred to in my note Ex PW 60/L-31 was the draft press release in unaltered form, which was shown to me. After looking at the file, I returned the file to Sh. Sidharath Behura on the same day....."

882. Here, Sh. G. E. Vahanwati deposed that he had recorded note, Ex PW 60/L-31, with regard to the press release, Ex PW 60/L-27, only by observing that what was proposed was fair and reasonable. However, he admits that he had glanced through previous pages of file also. At page 27/N (D-7) relating to issue of LOI, in note, Ex PW 60/L-23, it has been, inter alia, recorded that:

> ".....In these circumstances, an applicant who fulfills the conditions of LOI first will be granted licence first, although several applicants will be issued LOI simultaneously. **The same has been concurred by the Solicitor General of India during the discussions**....."

883. Sh. G. E. Vahanwati deposed that before recording the note, Ex PW 60/L-31, he had glanced through the previous page. His note for ready reference reads as under:

> "I have seen the notes. The issue regarding new LOI's are not before any court. What is proposed is fair and reasonable. The press release makes for transparency. This seems to be in order."

884. Note dated 07.01.2008, Ex PW 60/L-23, part of which has been extracted above for ready reference, speaks about change in policy to the effect that in these circumstances an applicant who fulfils the conditions of LOI first, will be granted licence first and that this has been concurred by the Solicitor General of India during discussion. The concurrence of the Solicitor General has been recorded in bold letters. Both notes, referred to above, speak of LOIs. The issue of LOIs has been noted in the second sentence of his note by the learned Solicitor General. In the third sentence, he records that "What is proposed is fair and reasonable". On the face of it, it is clear that the learned Solicitor General was approving the process of issue of LOIs as fair and reasonable. The issue of press release is mentioned in the fourth sentence, that is, after the issue of LOI had been approved. The sentence relating to press release says that the press release makes for transparency and this

seems to be in order. It is clear that the learned Solicitor General dealt with two issues in his note. His note can be read in two parts. First part relates to issue of LOIs and the second part relates to press release.

885. In these circumstances, it cannot be believed that Sh. G. E. Vahanwati had approved only the draft press release, Ex PW 60/L-27. Moreover, as already noted above, Sh. A. K. Srivastava has also deposed that learned Solicitor General had approved the action of DoT indicating that not only the press release, but every action of DoT was approved, issue of LOIs included. It is clear that Sh. G. E. Vahanwati deposed contrary to record. It is also clear that Sh. G. E. Vahanwati recalls facts according to his convenience as he could not recollect if he had seen the words "Press release appd. as amended", but he could recall that there was no deletion from the press release when he saw it. It is not a case of misremembering of facts or their inaccurate recall, but a case of deliberately denying and disowning the official record.

886. PW 102 Sh. G. E. Vahanwati in his cross-examination dated 27.02.2013, pages 13 to 16, deposed as to what notes were seen by him while approving the press release as under:

> ".....I have been shown DoT file D-7, already Ex PW 36/B, and it is correct that this file was shown to me by Sh. Sidharath Behura. I have seen note dated 07.01.2008 recorded by Sh. Nitin Jain, already Ex PW 42/DB, and I do not recall having read this note on 07.01.2008. I also do not recollect if I had read the note of Sh. A. K. Srivastava dated 07.01.2008,

already Ex PW 60/L-23, on 07.01.2008. I looked only on the note of Sh. Sidharath Behura dated 07.01.2008, already Ex PW 60/L-26, and note of Sh. A. Raja of even date, already Ex PW 60/L-28. Again said, on being pointed out, there are two notes recorded by Sh. Sidharath Behura on that day. I say that I read only the second note Ex PW 60/L-26. I did not read prior note of that day recorded by Sh. Sidharath Behura and marked as Ex PW 60/L-25, immediately above note Ex PW 60/L-26.

Ques: When you looked at the file, did you read the word "PS" recorded at point Y and do you know that it means "post script"?

Ans: I do know that "PS" here means "post script" and I did see the word when I saw the aforesaid note.

Volunteered: I was concerned only with the draft press release. I do not agree that post script does not have any sense if it is not read with the immediately preceding note Ex PW 60/L-25.

In the note Ex PW 60/L-26, the words "if approved" appear and they refer to the draft press release. The subject recorded in note Ex PW 60/L-26 pertains to the approval by the Minister and not by SG and I was not concerned with that. **Volunteered**: As far as I am concerned, the relevant note is dated 07.01.2008, Ex PW 60/L-30, as recorded by Sh. Sidharath Behura, page 29/N, which states that "may like to see, as directed by MOC&IT" and after recording this, Sh. Sidharath Behura marked the file to SG.

When the file came to me and I saw the pre page, but confined myself only to note Ex PW 60/L-26 and also to the note of the Minister Ex PW 60/L-28, as I was concerned only with the draft press release. It is wrong to suggest that the Minister did not ask my opinion on the press release. It is correct that the Minister had already approved the press release, nevertheless he asked for my opinion.

It is wrong to suggest that my opinion was not

sought on the press release. It is wrong to suggest that my opinion was sought through this file on the proposed course of action to be taken by the DoT.
Ques: Would you please point out any material at page 28/N of this file where it is stated that your opinion is being sought by the Minister only on the press release?
Ans: To me it is clear that my opinion was being sought in relation to the press release, draft of which was placed before the Minister and approved by him and the words "pl. obtain" come immediately after the word "approved".

It is wrong to suggest that I am wrong on this point.
Ques: Please take a look at your note dated 07.01.2008, already Ex PW 60/L-31, wherein you have written the words "I have seen the notes.....". By the word "notes" you meant only two notes referred to by you above or all the notes on pages 22/N to 28/N?
Ans: By the word "notes", I mean only two notes referred to by me above.

It is wrong to suggest that I am concealing the facts by confining myself only these two notes. It is further wrong to suggest that word "notes" refers to entire notes starting from page 22/N. The fact recorded by me in my note Ex PW 60/L-31, page 29/N, to the effect that "the issue regarding new LOI's are not before any Court" is an issue of fact.
Volunteered: I recorded this in relation to a query of Sh. Sidharath Behura asking me if there was any stay regarding issuance of new licences.

It is correct that this issue is not recorded in this file, but he asked me about this when he met me and that is why, he came to meet me....."

887. Sh. G. E. Vahanwati admitted that he had seen the previous notes. At the same time, he also admitted that he had only seen the note, Ex PW 42/DB, recorded by Sh. Nitin Jain on

07.01.2008. However, he could not recollect if he had seen the note, Ex PW 60/L-23, recorded by Sh. A. K. Srivastava below the note of Sh. Nitin Jain, wherein concurrence of the SG was shown in bold letters. Though he used the word "notes" in his note, Ex PW 60/L-31, yet he tried to confine it to the immediately preceding two notes of Sh. Siddhartha Behura and Sh. A. Raja, which does not appear to be correct. He tried to explain his writing regarding the issue of new LOIs by stating that Sh. Siddhartha Behura had orally asked him if there was any stay from any Court and only then he recorded this sentence about LOIs. However, this oral explanation is contrary to official record and cannot be accepted. I may respectfully add that Sh. G. E. Vahanwati was an intelligent man, well qualified in law, and that is why he was the Attorney General for India. He must have understood the difference between "note" and "notes".

888. I may also note that in file D-8 also he had recorded note dated 14.12.2007, Ex PW 36/D-5, which reads as under:

> "I have seen the note prepared by Nitin Jain, Director. It correctly records what transpired before the Hon'ble TDSAT. I confirm that the action points prepared by DDG (AS) are in order."

This note, when contrasted with the note, Ex PW 60/L-31, makes it clear that Sh. G. E. Vahanwati knew how to read the official files and make a difference between "Notes" and "Note". Why? Because when he recorded his note, Ex PW 36/D-5, there were four more notes, that is, note Ex PW 36/D-2 of Sh. A. K. Srivastava, note Ex PW 36/D-3 of Sh. K. Sridhara,

approval of Sh. D. S. Mathur Ex PW 36/D-4 and again note Ex PW 60/J-66 of Sh. K. Sridhara below the note of Sh. Nitin Jain, yet he confined himself to the note of Sh. Nitin Jain only and referred it specifically in his note. In these circumstances, Sh. G. E. Vahanwati cannot escape responsibility by claiming that the word "notes" in his note, Ex PW 60/L-31, means only two notes and not the entire notes. Furthermore, a press release is just a reflection of decisions taken in the files. A press release is not issued in vacuum, but must be the result of some deliberations and decisions in the official file. Press release must be in consonance with the official file.

889. PW 102 Sh. G. E. Vahanwati in his further cross-examination dated 28.02.2013, pages 1 to 4, deposed about his opinion as Solicitor General on the petitions of some companies, who claimed seniority from date of application, instead of date of payment, as under:

> "**Ques**: Kindly take a look on note dated 29.02.2008 at page 40/N in DoT file D-7, Ex PW 36/B. Did you record this note?
> **Ans**: Yes, I did record this note and my signature appears at point A, which I identify.
>
> The note is now Ex PW 102/DB, which is a photocopy. I have also been shown an original copy of that, which is available at page 40/N, and on this also I identify my signature at point A. The same is now Ex PW 102/DB-1.
>
> It is correct that this file was marked to me pursuant to the note appearing on pages 38/N and 39/N. This note dated 29.02.2008 has been recorded by Sh. Nitin Jain and he marked the note to Sh. A. K. Srivastava and Sh. A. K. Srivastava, in turn, marked the file to me. This note is now Ex PW

102/DC. This note refers to the orders of Hon'ble TDSAT dated 28.02.2008 and order of the Hon'ble Delhi High Court dated 13.02.2008. The note quotes the order of Hon'ble TDSAT in which the date of Hon'ble Delhi High Court is also mentioned. The order of the Hon'ble TDSAT was also referred to by me in my opinion/ note Ex PW 102/DB. I have been shown order of the Hon'ble TDSAT dated 28.02.2008, already Ex PW 21/DT-1, and this order was passed in MA No. 25/2008 in petition No. 20 of 2008. I have been shown two other orders, both dated 28.02.2008, passed by the Hon'ble TDSAT, one of which is already Ex PW 21/DT-2, and the other one is now Ex PW 102/DD, and on seeing these two orders I say that both of these orders are identical to the order Ex PW 21/DT-1.

Ques: I put it to you that in all these three matters, the petitioners therein were challenging the press release dated 10.01.2008 and were contending that their seniority should be calculated from the date of application?

Ans: It is incorrect. I am aware of petition No. 12 of 2008 because I had appeared in this matter earlier. I had appeared on 30.01.2008 and 31.01.2008 in this matter. In petition No. 12 of 2008 petitioners were not challenging the press release dated 10.01.2008, but were, in fact, challenging a decision dated 10.01.2008 in which on the basis of inadequate net worth their applications for sixteen circles had been rejected. As far as other two matters are concerned, I did not appear in these matters and Sh. Vikas Singh, learned ASG, had appeared, so I do not know what happened in these matters.

I have been shown order dated 28.02.2008 passed by Hon'ble TDSAT in matter titled Spice Communications Limited Vs. Union of India, already Ex PW 21/DT-2. I am unable to say anything about the contentions of the petitioners as recorded in this order, as I did not appear before the Hon'ble TDSAT on the date this order was passed, that is, on

28.02.2008.

Ques: Please take a look on your opinion/ note Ex PW 102/DB-1 wherein you have referred to the orders passed by the Hon'ble TDSAT. I put it to you that you had perused all the three orders of Hon'ble TDSAT, as referred to above, and only thereafter referred them in this note/ opinion?

Ans: I had perused the three orders, but concentrated only on the operative part of the orders.

Ques: Kindly take a look on order dated 28.02.2008, already Ex PW 21/DT-2, passed by the Hon'ble TDSAT. I put it to you that the contention recorded at points A to A is "the senior counsel for the petitioner confines his prayer that it should be made clear that the seniority of the applicant shall be on the basis of date of application and not on first-come first-served basis by payment"?

Ans: It is so recorded, but not correct in the light of the prayer in petition No. 12 of 2008."

890. If the note, Ex PW 102/DC, is read with opinion of Sh. G. E. Vahanwati, Ex PW 2/DB-1, it is clear that Sh. G. E. Vahanwati knew all the facts about change in policy from date of application to date of payment, but tried to wriggle out of the same in the witness box. Bare perusal of his testimony reveals that he was quite evasive in his deposition and tried to resort to legalese and technicalities to avoid answering questions in a truthful manner. It is clear from the notes that priority from date of payment was being challenged. If his entire evidence is read carefully in the light of material on record, it is evident that it is almost entirely contrary to official record and so does not inspire confidence at all. His deposition is highly hesitant, lacks assertiveness and devoid of any persuasive heft. In the

end, it is difficult to rely upon the same. It deserves to be discarded in its entirety.

891. Let me take note of the deposition of Sh. A. Raja with regard to the amendment in the press release.

892. DW 1 Sh. A. Raja in his examination-in-chief dated 02.07.2014, pages 8 to 11, deposed about amendment in the press release and reasons for the same as under:

> "**Ques**: Kindly take a look on your note dated 07.01.2008, already Ex PW 60/L-28 (D-7). Would you please explain under what circumstances this note came to be recorded?
> **Ans**: This file was received by me from the office of Secretary on 07.01.2008, when I was in my camp office. I went through the notes starting from pages 22/N to 28/N, where my approval was sought on the policy of issuance of licences, where an extract of letter to the PM was also highlighted and full text of the letter was placed in the file. I went through the file and I approved the file as "Approved. Please obtain the Solicitor General's opinion since he was appearing before Hon'ble TDSAT and Delhi High Court" and called my private secretary to send it to the office of the Secretary after perusal. Accordingly, private secretary came to my camp office and I was intimated about his arrival at my camp office and he perused the file, as per my above direction, and invited my attention to the entire file and he disclosed that there were deviations between the actual policy decision and the draft press release appended to this file. Again I went through the file and I found that last two sentences of the draft press note, already Ex PW 60/L-27, were not as per the file, that is, "However, if more than one applicant complies with LOI conditions on the same date, the inter se seniority would be decided by the date of application". These two sentences were neither available in the brief note, which was given by the

SG to the Minister for External Affairs in the triangular meeting took place in December 2007, nor in the letter written to the Hon'ble Prime Minister by me nor any other file of the department elsewhere at any point of time and therefore, I struck down these two sentences and assigned the reasons on the face of the press note itself that "'X' is not necessary as it is a new stipulation", already Ex PW 60/L-29, and I made corresponding observations in the file noting by inserting a line "press release approved as amended", already Ex PW 60/L-28, since the press note could not be a stand alone document as a policy note and after all it has to reflect the file notings exactly without any deviation. Moreover, if these two sentences were retained, it would not be a first-come first-served policy either way and it would amount to breach of trust by me towards the Hon'ble Prime Minister, since he was intimated earlier. Then I directed the private secretary to send the file to the Secretary (T) with a direction to get the opinion of SG, for which I facilitated the appointment through my staff in my camp office.

Court Ques: If the last two sentences to the effect that "However, if more than one applicant complies with LOI conditions on the same date, the inter se seniority would be decided by the date of application" were retained, what difference it would have made?

Ans: The difference or the consequence will be neither it will be a first-come first-served policy in chronological order in sequential manner, which was supposed to happen earlier before 2007, within the limited applications nor it would have been as per the policy communicated to the Hon'ble Prime Minister as per the decision taken in the DoT, that is, simultaneous issuance of LOIs in chronological order. If this policy was followed the seniority of an applicant, who had not complied with LOI was required to be maintained. Again said, I did not mean to say this and I wish to state by citing an

example. The earlier procedure in first-come first-served policy means if the four applications were pending, namely, A, B, C and D, the A has to be disposed of first, thereafter, take B and dispose it of. Then you take C and then D. The policy which was contemplated in 2007 in the new context which was explained in the file that A, B, C and D will be issued LOIs simultaneously in chronological order with fair opportunity and knowledge then compliance will be taken into consideration as seniority. These two sentences meant that A, B, C and D were issued LOIs simultaneously, then A and D or C complies on the same day, then the seniority will be on the basis of date of compliance, which is neither on the basis of date of application nor on the basis of date of compliance, that is, amongst A, B, C and D, if A and B were having seniority of 2006 and C and D were applications of 2007, where A and C comply with the LOIs on the same date, say 10.01.2008, and B and D complied say on 11.01.2008, then A will get the seniority and C will get the seniority and B will lose its seniority and therefore, this is neither first-come first-served policy in sequential order nor in simultaneous order and totally irrelevant to the department."

893. The gist of deposition of Sh. A. Raja is that the amendment in the press release was made before the file was sent to the SG and it was necessary, as the deleted portion was not in accordance with the policy communicated to Hon'ble Prime Minister vide letter dated 26.12.2007, Ex PW 7/C, whereby the date of payment was to determine seniority. He has deposed that if the deleted portion of the press release was retained, the seniority of an applicant who had not complied with the LOI was required to be maintained from date of application. He has deposed that the press release reflects

decisions taken in the files. As already noted, once seniority was to be determined from the time of compliance of LOI, the date of application lost all relevance. Hence, the explanation given by Sh. A. Raja is according to the material on record and is reasonable one. His deposition substantially matches with the official record.

894. Furthermore, DW 1 Sh. A. Raja in his cross-examination dated 16.07.2014, pages 3 to 13, denied the suggestion that the press release was amended unauthorizedly and also explained as to how the priority was changed from date of application to date of payment as under:

About the Press Release

"**Ques**: I put it to you that the file D-7 was sent to learned SG only for vetting the draft press note Ex PW 60/L-27, and not for any other purpose like seeking opinion on other issues?
Ans: It is incorrect. The learned SG put his observations on the policy notes after the perusal of file and not on the draft press release. Had it been so, the SG would have appended his signatures on the draft press release with his observations.
Ques: I put it to you that when the proposals contained in pages 22/N to 28/N were approved by you by appending your signature on 07.01.2008 at point E, you did not seek opinion of learned SG on these points and the purpose for sending the file was only to obtain his opinion on the draft press release?
Ans: I asked Secretary (T) to get the opinion of learned SG, in spite of my approval, for the reasons that a parallel proceedings were pending in various judicial fora, where he was defending the department and he was party to the meeting held in the chamber of Minister for External Affairs, where he gave detailed note on various issues including

issuance of new LOIs. The question of sending the press note to the law officer after the approval did not arise as I said in my examination-in-chief that after all the press release is nothing but a reflections of policy approved by the department. Therefore, the suggestion is incorrect.

It is wrong to suggest that I am deposing falsely on this point.

Ques: Kindly take a look on press release Ex PW 60/L-27. The last paragraph of it has been scored off by you, and as per your statement in examination-in-chief it was scored off by you before sending the file to learned SG. I put it to you that this paragraph could not have been scored off by you before sending the file to the learned SG as this scored off portion forms integral part of preceding paragraph of draft press release itself?

Ans: It is incorrect. This scored off portion could never be an integral part of draft press release as it was not reflected or discussed in the file or in the note which was given by the learned SG to the then Minister for External Affairs.

Ques: I put it to you that the scored off portion clarifies/ explains the condition of its immediately preceding paragraph and that is why it is an integral part of the preceding paragraph?

Ans: It is incorrect as immediately preceding paragraph does not need any further explanation as per the policy defined in the files.

It is wrong to suggest that I am deposing falsely on this point.

Ques: I put it to you that the scoring off of the last paragraph in the aforesaid press release was done by you after Secretary (T) brought the file from SG to you?

Ans: It is incorrect. As I said in my examination-in-chief, my attention was drawn by my private secretary R. K. Chandolia on this scored off portion that these scored off sentences were not available in the policy notes. I went through the press release

and the policy file and I scored off the two sentences as this portion is inconsistent with the policy note and the note which was given by the learned SG and the letter written by me to the Hon'ble Prime Minister, after extensive discussions, and directed him to the send the file to Secretary (T) to get the opinion of SG.

Ques: I put it to you that had the scoring off in the press release been done by you before sending the file to the learned SG, the sentence "Press release appd. as amended" in Ex PW 60/L-28 would have been recorded by you below your signature at point E instead of inserting the same in between the note and your signature?

Ans: If an approval is given by the Minister and thereafter, Minister needs discussion on a particular point, he can call officers to discuss anything and it will be recorded that the discussion took place after the signature. Here, I approved the file few hours back before the arrival of my private secretary to my camp office, from Electronics Niketan, where he used to sit, and he pointed out that there is inconsistency between the policy approved and the press note. Accordingly, as per my memory, I got his pen and inserted the aforesaid line as it did not require any further discussions either with the Secretary or with any other official since the inconsistency could be easily seen on the face of the record itself. As such, the suggestion is wrong.

Ques: Is there any bar on recording a fresh note in such a situation either by a rule, procedure or as a matter of propriety?

Ans: There is no rule or procedure at all to deal as to how a Minister should record a note for disposing a file. The question of propriety must always be seen to ensure that there should not be any inconsistent file notings with regard to policy or established procedure contemplated in the file. I maintained the propriety to keep the record straight.

Ques: In the sentence "Press release appd. as

amended", why did you abbreviated the word approved, whereas it is written in full in your note Ex PW 60/L-28?

Ans: The word is understandable in the department, so I used the abbreviated form.

Ques: I put it to you that the aforesaid word was abbreviated by you as enough space was not available below the note to accommodate the aforesaid insertion, if the full form of the word was used, which you did after the file was received from learned SG?

Ans: It is incorrect. The insertion was done by me to keep the record straight as I explained in my earlier answer and therefore, the question of space did not arise.

The insertion was not required to be initialed again as my signature was already there below the note and the insertion became part and parcel of the note Ex PW 60/L-28. It is wrong to suggest that I did not initial the insertion again so that it may look like as if the insertion was already there when the file was sent to the SG. I had handed over the file D-7 to Secretary (T) Sidharath Behura on 07.01.2008 for obtaining the opinion of the SG and thereafter, I do not know as to where the file was till 10.01.2008. It is wrong to suggest that I am aware that this file was with Sidharath Behura from 07.01.2008 till 10.01.2008, as I had no occasion to know the whereabouts of the file. It is wrong to suggest that since the file was with Sidharath Behura, that enabled me to interpolate the aforesaid insertion in my note Ex PW 60/L-28, after receipt of file from SG.

Ques: Kindly take a look on note dated 07.01.2008, Ex PW 60/L-30, and note dated 10.01.2008, Ex PW 60/L-32, both recorded by Sh. Sidharath Behura. The first note does not say anything about modification, but the second one talks about modification, which note has been recorded after the note of learned SG dated 07.01.2008, Ex PW

60/L-31. I put it to you that had the aforesaid insertion been there when the file was sent to learned SG, the first note of Sidharath Behura itself would have spoken about that?
Ans: I cannot say anything on these notes as I did not have occasions to see the file after 07.01.2008.

It is correct that the insertion in note Ex PW 60/L-28 is overlapping my signature as it was done after the note of approval itself was recorded.

About Change of Priority

Ques: Would you please show any document or noting in the record which says that the date or time of compliance of LOI would decide the seniority for issuing of a UAS licence, as the existing policy of DoT?
Ans: The LOI conditions stipulate that within a specific time frame, LOI holder has to comply with required conditions. If it is complied with, then licence will have to be signed. The conditions contained in the LOI format itself say that it has to be complied within a specific time frame and once conditions are satisfied, the department has to sign a licence. Accordingly, seniority would be fixed as per the order of compliance, as an inherent and natural consequence and, as such, there is or cannot be any document, unless the compliance is stopped by any other explicit provisions.
Ques: I put it to you that it had been the policy of the DoT to give at least seven days time to the LOI holders to comply with the same and in this process the seniority would be maintained from the date of application?
Ans: The time for compliance is always contemplated in the format of letter of intent itself. Seniority of LOI holder does not arise when if one LOI is issued at one time. However, the mere date of application will not confer any right on the applicant without compliance. If more than one LOI is issued

at the same time, then the compliance is always relevant for determining seniority for signing licence. As such, the procedure will vary when the issuance of LOI take place in simultaneous manner or sequential manner, since there is no provision to stop the compliance either in the UASL Guidelines or any other policy document.

Ques: I put it to you that no subsequent LOI can be issued if the period of compliance of an earlier LOI holder is still running and this has been the policy of DoT to maintain the seniority of applicants from the date of application?

Ans: It is incorrect. There is no such specific stipulation in the letter of intent or any other policy document including UASL Guidelines dated 14.12.2005.

Ques: Kindly take a look on note dated 07.01.2008, Ex PW 42/DB, in file D-7. I put it to you that as per this note, processing of a subsequent file cannot be done till the compliance of an earlier issued LOI is complete?

Ans: I reiterate that there is no policy document. However, this is the procedure adopted earlier in the DoT. In the next page, that is, 26/N, wherein it has been discussed by the DDG (AS) specifically "The procedure being followed hereto for grant of LOIs to UAS applicants is elaborated in para 13 above. However, there used to be small number of pending applications and the procedure being followed by DoT as explained therein was not in conflict with the interest of the others". There were further discussions in the DoT, as noted in pages 4/C to 6/C of the same file, that the present scenario is different, that is, large number of applications and the simultaneous issuance of LOIs has to be resorted, so this procedure cannot be followed.

Ques: I put it to you that your explanation in reply to the aforesaid question is incorrect that the aforesaid procedure could not be followed in scenario of receipt of large number of applications

as the department was still exploring the policy of first-come first-served as alternative I in the draft sent to Ministry of Law and Justice?

Ans: It is incorrect. The alternative I as explained by me during my cross-examination yesterday that it cannot be a first-come first-served policy since time relaxation cannot be given as stated in the note.

Court Ques: You have repeatedly spoken about relaxation of time, which practice was being followed in the department as per you before your joining the department. Please explain the impact of relaxation of time on the whole process?

Ans: If one application is taken for processing and the time is extended for compliance of LOI by the Minister, though he is not entitled to do so, then the relaxation of time will not have an impact in signing the licence. However, if more than one LOI were issued simultaneously, then the relaxation of time will impact/ alter the first-come first-served policy in the sense that compliance to the LOI will take precedence and the LOI holder who complied first would take precedence irrespective of his date of application.

Ques: If two LOI holders comply with their respective LOI at the same time, on the same date, how their seniority shall be determined?

Ans: It is impossible for two LOI holders to comply with their respective LOI at the same time, though they may comply on the same date. If they comply with on the same date, their seniority would be in chronological order, that is, who complies with first in time would be senior to the later one.

One cannot get spectrum allocated, without applying to the WPC. For allocation of spectrum, seniority is as per the date of application to WPC. A non-licence holder cannot get spectrum. One should have a licence first for applying to WPC. A licence cannot be issued without first issuing an LOI, which is issued to an applicant only. LOI is issued in chronological order as per the date of application.

Ques: I put it to you that it is the date of application for UAS licence which finally determines seniority for allocation of spectrum?
Ans: It is incorrect. The process for issuance of licence and the process for allotment of spectrum are two separate and distinct process, contemplated in separate statute, namely, Indian Telegraph Act and Indian Wireless Telegraphy Act. This position is clearly mentioned in the TRAI recommendations 2007 also.

It is wrong to suggest that I am evasive in my reply.

Ques: I put it to you that when you assumed the charge of MOC&IT, the practice and policy of DoT for determining the inter se seniority between applicants for UAS licence, who complied with LOI conditions within the stipulated period, was determined on the basis of their date of application?
Ans: It is incorrect. Even in the past, when more than one LOI were issued simultaneously, then the date of compliance will determine the seniority and not on the basis of date of application.
Ques: Could you point out any such instance from the record for the same service area?
Ans: I am not able to recollect exactly when such instances happened in the file, but it is highlighted in the CVC report."

895. Thus, Sh. A. Raja has explained that the deleted portion of the press release, Ex PW 60/L-27, was not tallying with the decision taken in the department and communicated to the Hon'ble Prime Minister. He also deposed that the deletion took place before the file was sent to the learned Solicitor General. He also explained as to how the earlier procedure of first-come first-served was in conflict with the interest of others, as people were not complying with the LOI and were seeking

extension blocking the way of others. His deposition in the cross-examination matches with the material on record almost on all aspects. His answers in the cross-examination are cogent, clear and categorical.

896. PW 60 Sh. A. K. Srivastava, as noted above, has explained the circumstances in which the letter dated 26.12.2007 was placed on the file. Para (ii) of the note dated 07.01.2008, Ex PW 60/L-23, already extracted above, contains the reason for change in the policy and the reason stated is that earlier there used to be small number of applications and the procedure being followed by the DoT was not in conflict with the interest of others, as there were few applicants. Thus, due to large number of applications, the earlier procedure was no longer the best option, as people would collect LOI but would not comply with the same. However, in 2007, the situation was unprecedented as 575 applications were pending disposal. This para fortifies the fact that change in the policy was contemplated by the department itself, which was only conveyed by Sh. A. Raja to the Hon'ble Prime Minister. The act of placing of the letter on the record in DoT is not by itself reflective of any conspiracy, as change in policy, that is, priority from date of payment was necessitated by the large number of applications, as the earlier procedure of sequential processing was deemed to be not desirable in a situation where 575 applications were pending and this was a valid reason for change of procedure. There are many documents, as already referred to above, in which change in policy was suggested by

the officials, though surreptitiously, that is, through the route of draft LOI etc. These reasons are also found in the evidence of DW 1 Sh. A. Raja, as already noted above.

897. These reasons are also found in the deposition of PW 11 Sh. Nripendra Misra and PW 77 Sh. K. Sridhara as well as in the files of DoT. Let me take note of the evidence of Sh. Nripendra Misra and Sh. K. Sridhara.

898. PW 11 Sh. Nripendra Misra in his cross-examination dated 22.03.2012, page 7, deposed about extension of time sought by LOI holders as under:

> ".....I cannot recall that the applicants with LOI took inordinately long time for compliance of the LOI conditions. Normally, in such cases, it is my understanding, the applicant would seek extension of time for compliance. The decision to extend time for compliance is on case to case basis. I do not recall if Tata Teleservices were issued LOI for Madhya Pradesh circle on 24.11.2003 and they complied with LOI conditions only on 30.04.2004. I do not recall if Bharti Airtel Limited was issued LOI on 24.01.2004 and complied with the LOI condition only on 13.09.2004 for Assam circle. I also do not recall if for Bihar, J&K, Orissa and UP (East), Bharti Airtel were issued LOIs on 24.11.2003 but complied with LOI conditions on 10.02.2004....."

Once extension is sought for compliance of LOI, the early mover, though non-serious, would block the way of serious player. Though Sh. Nripendra Misra could not recall that companies used to seek extension for compliance to LOI, but it is a fact supported by record.

899. PW 77 Sh. K. Sridhara in his cross-examination

dated 10.12.2012, pages 15 and 16, deposed about extension of time for compliance of LOIs as under:

> ".....It is correct that as per note Ex PW 42/DB in the same file, some of the applicants were given extended time to comply with LOI conditions or other requirements, even after issuance of LOIs till March 2007. It is correct that at that time, the number of applications were limited and this procedure could have been followed without any difficulty. In this procedure, the issue of seniority never arose. It is correct that in October-November 2007 the number of applications was very large and compliance with this procedure of sequential processing and extension of time could have led to some delay. It is correct that in order to reduce the delay, simultaneous issuance of LOIs has been proposed in para 7 in draft Ex PW 36/B-1. It is correct that for the same reason it was also proposed in the draft that no relaxation would be given in time limit for compliance with the terms of LOI. If the applications were taken one by one, it takes about a month in the processing of one application and total delay would have been of the order of eight to nine months. It was mentioned by the Minister that there was a possibility of trading in LOIs if there was delay in the processing of applications due to processing of applications one after another....."

900. These two witnesses have explained as to how the then existing procedure was not desirable for the reasons that people were seeking extension of time for compliance with the LOIs. PW 77 also explained that the number of applications was also very large in the year 2007 and sequential processing would have taken a lot of time.

Illustrative Cases

901. Let me take note of some cases from the DoT files, where extension of time was granted to the disadvantage of others. In this regard, it is beneficial to take note of examination-in-chief of Sh. Nitin Jain dated 21.03.2013, page 10, which reads as under:

> "**Court Ques**: How long an LOI would remain in effect after it has been granted?
> **Ans**: Time of Compliance of LOI is fifteen days and if the applicant does not comply with the LOI, the LOI would be cancelled. However, in some cases, extension of time was granted at the request of the concerned applicant. As long as LOI granted is not complied with or cancelled, the other applicant would stand in queue for issuance of licence, as many LOIs could be issued one after the another and may remain pending for consideration of grant of licence."

This piece of evidence shows that an early mover, who is non-serious, had an advantage in this procedure of sequential processing. This also shows how a serious player was being disadvantaged.

Case of Reliance Infocomm

902. As per 10/N (D-592), Reliance Infocomm Limited applied for UASL for J&K service area on 29.12.2003 and the LOI was approved to be issued at 11/N on 06.01.2004 and the LOI was issued on 12.01.2004. As per note dated 10.08.2004 at 24/N, the company was given three extensions. Not only this, it also asked for fourth extension also, but the department refused the fourth one and it was asked to apply again. The

company applied again on 24.06.2004 and the LOI was approved to be issued on 26.08.2004. Thus, this company was issued LOI on 12.01.2004, but kept seeking extensions till 24.06.2004, and despite all extensions, it did not comply with the LOI.

Case of Bharti Cellular Limited

903. Similarly, Bharti Cellular Limited applied for UAS licence for Assam service area and the same was processed vide note, Ex PW 11/DM-18, at 14/N (D-592) and the LOI was approved to be issued on 23.04.2004. However, the company did not comply with the LOI. Instead it requested for withdrawal of LOI and fresh application was filed by its sister concern Bharti Televenture Limited. Fresh LOI was approved to be issued on 22.06.2004 and issued on 24.06.2004.

Case of Dishnet DSL Limited

904. As per note dated 26.04.2004, Ex PW 36/DS-10 (D-589), Dishnet DSL Limited was granted LOIs for eight service areas on 06.04.2004 including Madhya Pradesh service area. However, Dishnet DSL Limited could not comply with the LOI conditions for seven service areas within fifteen days. It submitted compliance at 05:00 PM on the last working day, as such licence agreement could not be executed in time. It sought time for signing licence agreements for seven service areas, which was granted. However, it could not comply with the LOI for Madhya Pradesh service area and sought extension of time for compliance with the LOI and the issue remained pending for

more than two years and was finally approved by Sh. Dayanidhi Maran on 22.11.2006 at page 42/N.

Case of Essar Spacetel Private Limited

905. M/s Essar Spacetel Private Limited had applied for UAS licence for Assam, Bihar, Orissa, HP, J&K, NE and Madhya Pradesh service areas vide application dated 14.12.2004 and the same was processed in file D-590 vide note dated 05.01.2005, Ex PW 36/DS-15. The LOIs were approved to be issued to Essar Spacetel Private Limited on 17.10.2006 vide note at 48/N, but LOI for Madhya Pradesh was not granted citing principle of first-come first-served, as request of Dishnet DSL Limited for extension of LOI was still pending. The LOI for Madhya Pradesh service area to Essar Spacetel Private Limited was approved to be issued on 28.02.2007 at 60/N and was finally issued on 05.03.2007. However, the licence agreement could not be signed within the prescribed period and the LOI expired. On this, note dated 17.09.2007 at 83/N to 85/N was recorded seeking extension of time for compliance of LOI and approval of signing of licence agreement and the same was approved by Sh. A. Raja on 18.12.2007. In this note, paragraphs (v) and (vi) read as under:

> "(v) In the meanwhile, in a meeting held under the Chairmanship of Member (T), it was decided with the approval of Secretary (T), vide Minutes dated 09.07.07 **{263(I)/c}**, that, in general, the LoI extension should not be resorted to. However, if at all, LoI extension is required in any exceptional case, the extension of LoI, contrary to the present practice, shall be sought upto a period of **three**

months form the date of approval of extension of LoI by Hon'ble MOC&IT.

(vi) Now already more than 6 months have elapsed since the issue of LoI, therefore in view of para (vi) above, approval of Hon'ble MOC&IT for extension of LoI for **9 months** from 20.03.2007 i.e. the expiry of 15 days from the date of issue of the LOI OR date of signing of licence agreement, whichever is earlier. However, the effective date of licence agreement shall be 20.03.2007 i.e. 15 days from the date of issue of the LOI as was conveyed to the company in all the correspondences held with them after issue of LOI."

This note also strengthens the fact that the extension of LOIs was causing huge problem and priority from date of payment was being considered by the department. The letter dated 26.12.2007, Ex PW 7/C, is contemporaneous to this note dated 18.12.2007. Thus, extensions were being sought for complying with LOI. Priority from date of payment would obviate the need for extension of time for complying with LOI. Hence, the change in priority from date of application to date of payment.

906. When the letter dated 26.12.2007 was placed on the file and the issue of LOI was approved as per priority from date of payment, a press release, Ex PW 60/L-27, was drafted by Sh. Siddhartha Behura. It contained a stipulation that whosoever complies with the conditions of LOI first will be granted UAS licence first.

It also contained an additional stipulation to the effect that "However, if more than one applicant comply with

LOI conditions on the same date, the inter-se seniority would be decided by the date of application." When the file reached Sh. A. Raja, he deleted this additional stipulation in press release, Ex PW 60/L-27, stating that "it is not necessary as it is a new stipulation." The case of the prosecution is that this stipulation was aimed at ensuring fairness and was deleted by Sh. A. Raja after learned Solicitor General had concurred with the procedure vide his note, Ex PW 60/L-31, dated 07.01.2008 and this was done to benefit STPL and Unitech group of companies. PW 102 Sh. G. E. Vahanwati, the then Solicitor General, has also deposed that this deletion was not there when he had recorded his note. However, the deposition of Sh. G. E. Vahanwati is contrary to record. He had himself recorded that he had seen the 'notes' and not the 'note'. However, in his cross-examination dated 27.02.2013, page 14, he deposed that he did not see the prior notes of that day and had looked only at the last note of Sh. Siddhartha Behura, Ex PW 60/L-26, which is a small note and reads, "If approved, a press release may be issued, draft of which is placed at flag 'X'". This cannot be accepted as he had himself recorded that he had seen the notes, but in witness box he changed his version.

907. Not only this, Sh. A. Raja had recorded note, "Approved. Please obtain Solicitor General opinions since he is appearing before the TDSAT and the High Court, Delhi. Press release approved as amended." Now the first question is: What did the Minister approve? The next question is: On which point the Minister desired that the opinion of learned Solicitor

General be obtained? The case of the prosecution is that his opinion was sought only on the press release. This cannot be accepted. Why? Through this note, Sh. A. Raja had approved the proposal for issue of LOIs as contained in the note, Ex PW 42/DB, recorded by PW 110 Sh. Nitin Jain followed by the note, Ex PW 60/L-23, recorded by PW 60 Sh. A. K. Srivastava. Thus, Sh. A. Raja had approved the issue of LOIs in the manner recorded in the note of Sh. A. K. Srivastava. It is also clear that he had also approved the issue of press release. Thus, Sh. A. Raja had approved the issue of LOIs as well as issue of press release. It is thus apparent form the reading of note of Sh. A. Raja that he had sought the opinion of learned SG on the entire contents of these notes, including the issue of LOIs according to first-come first-served policy as mentioned therein. There is no doubt that the opinion of learned SG was sought on the procedure of issue of LOIs as well as on the contents of the press release. Not only this, after the altered first-come first-served policy was mentioned, it was recorded in bold letters **"The same has been concurred by the learned Solicitor General of India during the discussions."** Even if it is presumed that Sh. G. E. Vahanwati saw the last note, Ex PW 60/L-26, of Sh. Siddhartha Behura, both leaves of the notes would have opened when he saw it and the sentence in bold letters must have attracted his attention. The concurrence of learned SG is mentioned so prominently that it could not have escaped his attention. It is more so when he was appearing on behalf of DoT before Hon'ble TDSAT as well as Delhi High Court. Not

only this, that additional stipulation which was deleted by Sh. A. Raja does not find mention either in the letter to the Prime Minister or in the note, Ex PW 60/L-23. Hence, it was rightly deleted and Sh. G. E. Vahanwati concurred to the amended press release.

908. Accordingly, I find myself in agreement with the defence argument that this additional stipulation was redundant on the introduction of priority from date/ time of payment. Once the criteria was changed from date of application to date/ time of payment, the date of application, as noted earlier, carries no relevance and ought to have been deleted. The only question is: As to when was it deleted? The testimony of PW 102 Sh. G. E. Vahanwati is not only contrary to record but is also hesitant and inconsistent, as in his cross-examination, he deposed that he did not read the prior notes of that day, but in his examination-in-chief itself at page 8, he deposed that before recording his note he had glanced through the previous pages of the file. If he had glanced through the previous pages, the material in bold must have attracted his attention, as it was right on the previous page. His deposition suffers from the vice of exaggerated or malleable memory.

909. Furthermore, in note dated 29.02.2008, Ex PW 102/DC, recorded by Sh. Nitin Jain, it is mentioned that three cases were being heard by the Hon'ble TDSAT and the contention of the petitioners was that seniority of the applicants shall be on the basis of date of application and not on first-come first-served basis by payment. In view of this contention,

through the aforesaid note, the DoT had sought the opinion of learned SG and he had given his opinion right on the same day, that is, on 29.02.2008 vide Ex PW 102/DB-1. He must have read the previous note as to what was being contested by the petitioners, that is, the priority by the date of payment, but he tried to get out of the questioning by resorting to legal trickery. He made every effort to disown his knowledge of change of priority from date of application to date of payment. Accordingly, I have no hesitation in rejecting the testimony of Sh. G. E. Vahanwati in toto and holding that redefining of priority had his concurrence.

910. Other witness on this point is PW 60 Sh. A. K. Srivastava. He has deposed that stipulation was deleted by Sh. A. Raja but is silent as to when was it deleted. He is very guarded in his deposition. His deposition on the point lacks assertiveness and persuasive heft. In this situation, the only witness left is Sh. A. Raja, who has examined himself as DW 1. He deposed in his examination-in-chief dated 02.07.2014 that the deleted stipulation was neither there in the letter to the Prime Minister nor in any other files of the department, and as such he struck off the two sentences containing the stipulation and also made corresponding change in the approval note, Ex PW 60/L-28. It is a fact that this stipulation was neither part of the letter written to the Hon'ble Prime Minister nor part of the official record. It may be mentioned that this stipulation was para 3 in draft LOI, Ex PW 42/A. However, the same has been struck off and it is not clear as to by whom. Furthermore, this

draft LOI was ultimately not approved and the LOI already in existence was to be used. Accordingly, the explanation given by Sh. A. Raja is reasonable one as the same conforms to the official record.

Deleted Portion: Whether Destructive of Conspiracy Theory?

911. It is in the deposition of Sh. A. K. Srivastava that the press release, Ex PW 60/L-27, was drafted by Sh. Siddhartha Behura. The case of the prosecution is that the deleted portion in the press release was aimed at ensuring fairness and by deleting it Sh. A. Raja diddled DoT officers into believing that the deletion had the concurrence of learned SG. If it is so, then Sh. Siddhartha Behura cannot be a conspirator with Sh. A. Raja, as he was trying to ensure fairness by appropriately drafting the press release. When questioned about it at the bar, the learned Prosecutor had no answer to this except saying that accused were attempting to look fair.

912. Furthermore, it hardly matters as to when the deletion took place, as the concurrence of learned SG to the changed policy was already recorded in the note, Ex PW 60/L-23, recorded by Sh. A. K. Srivastava. When concurrence of learned SG was already there in the official record, where is the question of DoT officers being misled by the deletion in the press release, as almost all of them had already seen it in the file in note, Ex PW 60/L-23. It may be noted that after this note, the file was seen and signed by Member (T), Member (F), Advisor (F) and DDG (LF), apart from Sh. G. E. Vahanwati and

two accused, that is, Sh. A. Raja and Sh. Siddhartha Behura. The defence is correct in arguing that the deleted portion was not reflective of the decisions in the file and letter to Hon'ble Prime Minister written by Sh. A. Raja on 26.12.2007. Once the policy was changed to the effect that priority would be determined from date of payment, the date of application lost all significance.

Conclusion

913. Accordingly, I do not find any merit in the submission of the prosecution that amendment in the press release led to redefining the concept of first-come first-served on the basis of priority from submission of compliance to LOIs against the established practice of priority from the date of receipt of application. The procedure was changed not by the press release but after discussions in the department and as suggested by the officers of the DoT and ultimately conveyed to the Hon'ble Prime Minister vide letter dated 26.12.2007. It was rightly conveyed to the Hon'ble Prime Minister and the DoT that the policy had the concurrence of learned SG. Thus, placing of this letter on the record of DoT was an official act and not conspiratorial one.

914. In the end, I do not find any merit in the submission of the prosecution that the criteria was changed surreptitiously and unilaterally by Sh. A. Raja to benefit the accused companies. The criteria was changed with due deliberation in DoT and with concurrence of learned SG.

Distribution of LOIs through Four Counters on 10.01.2008: Role of Sh. A. Raja, Sh. R. K. Chandolia and Sh. Siddhartha Behura

915. It is the case of the prosecution that LOIs were required to be distributed as per existing policy, that is, on first-come first-served basis. It is the case of the prosecution that in pursuance to the conspiracy to benefit STPL and Unitech group of companies, Sh. R. K. Chandolia designed a curious method of distribution of LOIs through four counters to the various applicants and also asked the DoT officers to implement it. It is further case of the prosecution that this method of distribution included establishing four counters to distribute LOIs subverting the procedure of first-come first-served, both in letter and spirit. It is the case of the prosecution that in pursuance to this ill conceived design of distribution of LOIs, four counters were required to be established in Committee Room, 2nd Floor, Sanchar Bhawan, New Delhi. It is further case of the prosecution that when the officers of DoT resisted this devious plan, which was contrary to the first-come first-served principle, Sh. Siddhartha Behura directed the DoT officers to implement it and even approved the same in the file. It is further case of the prosecution that this ill conceived scheme of distribution of LOIs was not in line with the first-come first-served principle and this design of distribution of LOIs resulted in disorderly manner of priority of applicants for signing licence agreements. It is the case of the prosecution that this fraudulent method of distribution of LOIs resulted in reshuffling of the priority of the

applicants from date of application to time of compliance. It is also the case of the prosecution that by this method compliance by different companies had difference of minutes and even seconds and this completely changed the priority to the benefit of STPL, which got first priority in Delhi where spectrum for one licensee only was available and Unitech Wireless group of companies also got priority in circles where sufficient spectrum was not available to accommodate the last applicant.

916. It is the case of the prosecution that this whole scheme of distribution of LOIs through four counters was designed by accused public servants to benefit STPL and Unitech group of companies in the matter of allocation of scarce and precious spectrum. It is the case of the prosecution that Sh. R. K. Chandolia played key role in designing and implementing this ill conceived scheme of establishing four counters for distribution of LOIs with the connivance of Sh. Siddhartha Behura. It is the case of the prosecution that valid objections of DoT officers that this scheme of distribution of LOIs was contrary to the existing policy of first-come first-served, were disregarded by the conspiring public servants including Sh. A. Raja.

917. On the other hand, defence has argued that this four counter theory was the brainchild of Sh. A. K. Srivastava, who has been examined as a prosecution witness. It is the case of the defence that Sh. A. Raja had no role at all in distribution of the LOIs and he was not even aware of the manner in which LOIs were to be distributed and as to when distributed. It is the

case of the defence that there is absolutely no material on record indicating even knowledge of Sh. A. Raja, what to talk of his connivance and collusion in distribution of LOIs by this method of four counters through Sh. R. K. Chandolia.

918. It is also the case of the defence that Sh. Siddhartha Behura, Secretary (T), who had joined the DoT only on 01.01.2008, also had no role in the distribution of LOIs. It is the case of the defence that the procedure for distribution of LOIs was brought to his notice only for information. It is the case of the defence that he had absolutely no role either in designing the scheme of four counters or in directing the DoT officers to implement this scheme of four counters or in actual distribution of LOIs through four counters. It is the case of the defence that his name is being dragged into the matter for no reason at all and there is no material at all indicating his involvement in the distribution of LOIs.

919. It is also the case of the defence that Sh. R. K. Chandolia also had no role at all, in any manner, in designing of the scheme of four counters, establishing four counters or in actual distribution of LOIs. It is the case of the defence that everything was designed and implemented by Sh. A. K. Srivastava, DDG (AS) and the officers under him. However, later on when the issue generated controversy and resulted into registration of a criminal case, these officers in order to save their skin, cast the blame on Sh. R. K. Chandolia by way of making oral statements contrary to official record.

920. It is the case of the defence that all three public

servants are innocent of the scheme of distribution of LOIs as this was left to the discretion of Sh. A. K. Srivastava, DDG (AS) and he implemented it as per his own discretion, for which he and he alone is responsible.

921. Both parties have invited my attention to the voluminous oral evidence led on record as well as to the documents to emphasize their respective point of view.

922. The issue of LOIs/ response was approved by Sh. A. Raja in case of thirteen companies on 09.01.2008 and for HFCL on 10.01.2008. In all these files, there is no mention as to how and when LOIs are to be issued or distributed to the companies. In DoT file D-5 also, there is no such indication. The last relevant entry in this file is that of 07.11.2007. In file D-7, the last note is of 10.01.2008, Ex PW 60/L-32, recorded by Sh. Siddhartha Behura regarding amendment in the press release by Sh. A. Raja. On recording this note, Sh. Siddhartha Behura marked the file to Member (T) and DDG (AS) and the file ultimately reached ADG (AS-I). The result is that in all these files, there is no mention as to how and when LOIs were to be distributed.

923. There is absolutely no written record indicating when it was decided as to when and how LOIs were to be distributed. However, the only and only written note as to how LOIs/ responses were to be issued/ distributed is dated 10.01.2008, Ex PW 52/A, recorded by PW 88 Sh. R. K. Gupta, ADG (AS-I). The note reads as under:

"**Subject: Issuing of LOIs/ response of DOT to**

companies/ group of companies.
Approval of Hon'ble MOC&IT at 28/N and Press Release at 26/c refers.

1. As per the approval of Hon'ble MOC&IT at 28/N, "LOI shall be simultaneously issued in respect of all UASL applications received upto 25.09.2007 subject to fulfillment of eligibility as on date of application".

2. As per Press Release dated 10.01.2008 (26/c), "DOT has been implementing a policy of First-cum-First Served for grant of UAS licences under which initially an application which is received first will be processed first and thereafter if found eligible will be granted LOI and then who so ever complied with the conditions of LOI first will be granted UAS licene."

3. 232 UASL applications received upto 25.09.2007 from 22 different companies (out of which 8 are from Unitech Group and 2 are from Swan Group) have been processed in their respective files which have been received after appropriate decision by the competent authority. 16 eligible applicant companies have to be issued 121 LOIs in total whereas 6 applicant companies have to be issued response of DoT. This is as per the decision in the respective files for processing of applications for UASL.

4. As per the date of applications, the order of companies for issue of LOIs are as follows:

(i) M/s By Cell, (ii) M/s Tata Teleservices, (iii) M/s Idea Cellular, (iv) M/s Spice Communications, (v) M/s Swan Group, (vi) M/s HFCL, (vii) M/s S. Tel, (viii) M/s Parsvnath, (ix) M/s Datacom Solutions, (x) M/s Loop Telecom, (xi) M/s Allianz, (xii) M/s Unitech Group, (xiii) M/s Shyam Telelink, (xiv) M/s Selene.

5. The matter was discussed with DDG (AS), following four counters are proposed to issue the LOIs/ response of DOT to various applicant companies/ group of companies simultaneously, in first-come-first serve order as in para 4 above:

S. N.	Counter No. 1	Counter No. 2	Counter No. 3	Counter No. 4
1.	M/s By Cell	M/s Tata Teleservices	M/s Idea Cellular	M/s Spice Communications
2.	M/s Swan Group	M/s HFCL	M/s S. Tel	M/s Parsvnath
3.	M/s Datacom Solutions	M/s Loop Telecom	M/s Allianz	M/s Unitech Group
4.	M/s Shyam Teleink	M/s Selene		

6. Response to M/s Tata shall also be issued to the company for In-principle approval for usage of dual technology.

7. It may also be mentioned that as per the Press Release issued today at 28/c – <u>All above companies have been requested to assemble at 3:30 PM on 10.1.2008 at Committee Room, 2nd Floor, Sanchar Bhawan, New Delhi. The companies which fail to report before 4:30 PM on 10.01.2008, the responses of DOT will be dispatched by post</u>.

8. All the officers of AS Branch may also be present during the issuance of LOIs/ responses as above.

Submitted for approval please."

<u>924.</u> It may be noted that this note was submitted through Sh. Nitin Jain to Sh. A. K. Srivastava for approval and he approved it. After approving the note, Sh. A. K. Srivastava marked the note upward to Member (T) and Secretary (T) for kind information. Both of these officers saw the file and appended their signature. This is the only written official record. This note shows that Sh. R. K. Gupta in consultation with Sh. A. K. Srivastava designed the scheme of distribution of LOIs through four counters.

<u>925.</u> Let me take note of the deposition on this point.

<u>926.</u> PW 88 Sh. R. K. Gupta, ADG (AS-I), in his

examination-in-chief dated 06.12.2012, pages 1 and 2, deposed as to how four counters were set up as under:

> ".....In this file, I have been shown a note dated 10.01.2008, already Ex PW 52/A, page 30/N, recorded by me and my signature appears at point A, which I identify. This note was put up by me as LOIs were to be issued at that time on first-come first-served basis, as DDG (AS) and Director Sh. Nitin Jain told me that all the LOIs were to be issued on that day simultaneously. The reason for recording this note was that this was different from the earlier practice we used to follow. If the LOIs were to be distributed in this manner, we were required to seek approval in writing. After recording this note, I marked it to Director (AS-I) and ultimately this note was approved by the then secretary (T) Sh. Sidharath Behura by appending his signature at point E, which I identify, page 30/N. LOIs were distributed on that day.
>
> Before distribution of LOIs by fixing up four counters, LOIs were prepared and signed. At the time of distribution of LOIs, I was also present in the committee room....."

927. However, PW 88 in his cross-examination dated 06.12.2012, page 14, deposed as under:

> "It is correct that after recording my note dated 10.01.2008, already Ex PW 52/A, I had submitted the same to Director (AS-I) for approval. Thereon, Director (AS-I) marked this note to DDG (AS) Sh. A. K. Srivastava. Sh. A. K. Srivastava marked the note to Member (T) after recording "for kind info pl." I cannot say if my note was approved by DDG (AS) or by Secretary (T). During the downward movement of the file, it came to me on the same date and I appended my signature at point K."

928. Thus, in the examination-in-chief, PW 88 Sh. R. K.

Gupta deposed that approval for four counters was given by Sh. Siddhartha Behura. However, in the cross-examination, he admitted that the file was marked to him only for information. The note is silent as to on whose asking was it recorded. Sh. R. K. Gupta, author of the note, remained silent as to on whose asking he recorded the design of four counters in the aforesaid note. The prosecution remained highly guarded during his examination.

929. PW 60 Sh. A. K. Srivastava in his examination-in-chief dated 23.08.2012, pages 1 to 8, deposed in detail as to how the idea of four counters for distribution of LOIs originated and how the same was implemented as under:

> "I attended my office in Sanchar Bhawan on 10.01.2008. On that day, after taking the factum of press release being issued on record in file D-7, already Ex PW 36/B, on page 157, Sh. Sidharath Behura handed over the file to me and I returned to my room. When I came back to my room I found that individual files for grant of UAS licence were also being brought in my room for further necessary action. I called my staff and all the directors to go through the files and was deliberating with them about modalities for issuance of LOIs as per approvals.
>
> **Ques**: If the Hon'ble MOC&IT or the Secretary (T) desired to have a meeting with you, what procedure was being followed?
>
> **Ans**: Normally, I used to receive the intimation for the meeting with concerned officers through their private secretaries. However, sometimes Secretary (T) used to directly ring me up on my internal PAX number. If the Minister desired to have a meeting, then the intimation about the meeting would always come through the private secretary and the direction

would always be through telephone, whatever may be the kind of telephone.

On 10.01.2008 while I was deliberating in my room with other officers about modalities for issuance of LOIs and before we could take a view, Mr. R. K. Chandolia, PS to MOC&IT, came to my room. He conveyed that LOIs must be issued today itself, that is, 10.01.2008, as has been desired by MOC&IT. He also suggested the modalities for issuance of LOIs by opening four counters and explained the scheme on a piece of paper, which we did not agree with. On disagreement being shown by us, he asked me to come to the room of Secretary (T) Sh. Sidharath Behura to decide the modalities for issuance of LOIs. Accordingly, I went to the chamber of Secretary (T) Sh. Sidharath Behura and I found that Sh. R. K. Chandolia was already present there and sitting in front of Sh. Sidharath Behura, Secretary (T).

Ques: What transpired in that meeting?

Ans: Secretary (T) Sh. Sidharath Behura told me that the LOIs must be issued today itself as has been desired by MOC&IT Sh. A. Raja and the scheme of four counters, as suggested to you earlier by Sh. R. K. Chandolia, was a correct proposition. I explained our difficulties and limitations in issuance of such large number of LOIs in one day. He asked me that it had to be done and I should telephonically inform all the UASL applicant companies, who applied up to 25.09.2007, and dual technology applicants to collect the LOIs at 3:30 PM from Sanchar Bhawan on that day itself. He also asked me to issue another press release immediately informing all the applicant companies, who applied up to 25.09.2007, and the dual technology applicants to collect the LOIs/ responses from Sanchar Bhawan between 3:30 PM and 4:30 PM. He also told me if any company failed to collect the LOIs/ responses within this time, the same shall be dispatched by post.

Thereafter, the meeting ended and I returned

to my room and instructed my staff to telephonically inform all the applicant companies about the aforesaid developments to collect the LOIs/ responses.

Sh. R. K. Chandolia had come to my chamber on that day at about 10:30 AM and left after giving the aforesaid instructions. Before that R. K. Chandolia had never come to my office and he always used to call me in his room. This was his first visit in my room. At that time, apart from myself, our directors, particularly, Sh. Nitin Jain, Director (AS-I), and other directors were present in my room and were participating in the deliberations. They had also objected to the scheme put forth by Sh. R. K. Chandolia for the distribution of LOIs, as that could not happen in one day.

I have been shown DoT file D-7, already Ex PW 36/B, wherein at page 30/N, there is a note dated 10.01.2008 recorded by Sh. R. K. Gupta, ADG (AS-I), pertaining to modalities for distribution of LOIs by opening four counters. This note was put up to me after second press release informing all the applicant companies to collect their LOIs/ responses was issued by me as instructed by Sh. Sidharath Behura, Secretary (T). The said note is signed by Sh. R. K. Gupta at point A, which I identify, and the note is already Ex PW 52/A. After recording this note, he marked it to Director (AS-I) Sh. Nitin Jain, who in turn, marked it to DDG (AS), that is, myself, and after recording the words "for kind information pl.", I marked it to Member (T) and Secretary (T) and both of them signed the file indicating that they had seen the file and the scheme being approved by the Secretary (T). Signature of Sh. Nitin Jain is at point B, my endorsement alongwith signature appears at point C, of Member (T) appears at point D and that of Sh. Sidharath Behura, Secretary (T), at point E. I identify all the signatures at points A to E, all dated 10.01.2008, page 30/N. File was received back in the AS cell on 10.01.2008 vide my endorsement at

point F. The press release issued on 10.01.2008, as per the instructions of Sh. Sidharath Behura intimating the UASL applicants to collect LOIs/ responses on that day itself, is available at page 159 and is now Ex PW 60/L-38. It bears my signature at A, which I identify.

Ques: How the arrangement of four counters in the committee room of Sanchar Bhawan was made on 10.01.2008 for the distribution of LOIs/ responses and by whom?

Ans: The approval of four counters in the file was shown to all the directors of AS cell, namely, Sh. Nitin Jain, Director (AS-I), Sh. A. S. Verma, Director (VAS-II), Sh. Sukhbir Singh, Director (AS-III), and Sh. N. M. Manickam, Director (AS-IV). They were requested to provide staff for manning the counters and distribution of LOIs. The LOIs were prepared and printed by a team of SO (AS-I) Sh. Madan Chaurasia and Sh. R. K. Gupta. However, the same were signed by Sh. R. K. Gupta, ADG (AS-I). They had arranged the LOIs/ responses in correct seriatum in four folders meant for four counters. In the committee room, there was an oval table.

Ques: How did you decide as to in what sequence and from which counter an applicant company would collect its LOI/ response?

Ans: The scheme of counters and sequence of distribution of LOIs/ responses to applicant companies was as per approval of the then Secretary (T) Sh. Sidharath Behura, as asked by him in the meeting on that day and approved as per Ex PW 52/A.

Ques: Whether first-come first-served policy was followed in the arrangement as approved in Ex PW 52/A and followed by you in the distribution of LOIs/ responses?

Ans: No. The scheme of distribution of LOIs/ responses by opening four counters, as approved by Sh. Sidharath Behura, did not conform to first-come first-served issuance of these documents, as the

distribution was neither on simultaneous basis nor on first-come first-served basis. For simultaneous issuance, fourteen counters were required to be opened, whereas for distribution on first-come first-served basis, only one counter was sufficient to issue the LOIs/ responses, sequentially based on date of receipt of applications in DoT.

The applicant companies were informed through telephone between 11:30 AM to 12:30 PM to collect their LOIs/ responses. All these were asked to come at 3:30 PM in Sanchar Bhawan. The authorized representatives of applicant companies were required to reach Sanchar Bhawan alongwith his authorization letter.

All the officials/ staff, who were directed to assist in the distribution of LOIs/ responses, reached committee room of Sanchar Bhawan by 3:15 PM. They were briefed by their respective directors, who were briefed by me. The authorized representatives of the companies were first asked to show their authorization letter at the entry of committee room itself and were permitted to enter thereupon only after putting their signature on an attendance sheet. I have been shown the attendance sheet on which the authorized representatives marked their attendance on that day, available at page 165, already Ex PW 31/A, of DoT file D-7, already Ex PW 36/B. In the committee room, there was sitting arrangement for the authorized representatives of the applicant companies and they were requested to take seats. I was the senior most officer present in the committee room. I was supervising the entire proceedings. The authorized representatives were already aware about the distribution of LOIs/ responses. I briefed them about the arrangement of four counters being made and also told that their names would be respectively called from the respective counters and then they would be required to receive the LOI/ response. I told them that their names would be called from respective counters for

handing over the LOIs/ responses, which they should receive.

It took about half an hour in the distribution of LOIs/ responses. No untoward incident took place in the process of distribution of LOIs/ responses. However, one authorized representative of Bycell company had a slight argument as to why was he not being issued LOI instead of response. However, Sh. A. S. Verma, Director (VAS-II), who was supervising that counter, pacified him. Mr. Shahid Balwa had collected the LOIs on behalf of Swan Telecom (P) Limited. I can identify him if he is shown to me. I identify him, who is present in the Court. No briefing was given by us as to what the company representatives would do after collecting the LOIs/ responses from the committee room. After distributing the LOIs/ responses, receipt was obtained from the respective authorized representative of applicant company on respective office copy.

After the proceedings of distribution of LOIs/ responses were over, officials of AS-I cell came to my room and other officials left for their respective rooms. The authorized representative of Parsvnath Developers (P) Limited did not turn up for collecting LOIs/ responses. Perhaps the representative of Selene Infrastructure also did not turn up. Their responses were sent by registered post.

When the process of distribution of LOIs was over and staff of AS-I cell had come to my room, ADG (AS-I) Sh. R. K. Gupta recorded a note taking on record the factum of distribution of LOIs/ responses as stated by me above. The note is dated 10.01.2008 and is in the handwriting of Sh. R. K. Gupta and his signature appears at point A, which I identify. The note is now Ex PW 60/L-39, page 31/N, DoT file D-7. This note was put up to me through Director (AS-I) and I had also seen the same vide my signature at point B and the file was returned to AS-I cell……."

930. The main feature of the deposition of Sh. A. K. Srivastava is that it is almost entirely based on oral description of events without the backing of any official record. Rather, his above deposition is contrary to official record, that is, note, Ex PW 52/A, recorded by Sh. R. K. Gupta and approved by him. However, he admitted that the file was marked to Sh. Siddhartha Behura only for information of distribution of LOIs through four counters. He admitted that through this system of distribution, entire policy of first-come first-served was subverted, but he did not record any objection. Rather, he deposed that the distribution was neither simultaneous nor by first-come first-served policy. In the simultaneous process, all applicants should have been lined up shoulder to shoulder. In first-come first-served method, they were required to be lined up successively one after the other. Whose duty was it to ensure this? It was the duty of Sh. A. K. Srivastava. However, by making oral deposition, he is passing the buck to others.

The other main feature of his deposition is that no briefing was given by DoT officials as to what the company representatives would do after collecting the LOIs. This is indicative of the fact that LOI holders were not asked by DoT officials to rush for compliance of LOIs and they complied on their own, as priority was to be determined from date or time of payment as against the date of application.

931. However, PW 60 Sh. A. K. Srivastava in his cross-examination dated 12.09.2012, page 11, deposed as under:

> "I got the individual files for issuance of LOIs in my office on 10.01.2008 after approval by MOC&IT. After getting these files in my office, I called four directors of AS cell and other staff over there. It is correct that then in my office I discussed the modalities with the officers for distribution of LOIs, as per approvals. It was not known to me on 09.01.2008 that LOIs had to be distributed on 10.01.2008. I did not meet Sh. Kirthy Kumar, DDG (C&A), on 09.01.2008 in this regard. It is wrong to suggest that I met Sh. Kirthy Kumar, the then DDG (C&A), on 09.01.2008. It is wrong to suggest that in that meeting it was decided to set up four counters in the reception area to receive compliance of LOIs which were to be distributed on 10.01.2008....."

This cross-examination indicates that Sh. A. K. Srivastava was thinking of distribution of LOIs on 10.01.2008 in his own wisdom as an official duty, but later on tried to shift the blame to others, by making oral statement, that he was asked to distribute the LOIs on 10.01.2008 itself by Sh. Siddhartha Behura and Sh. R. K. Chandolia. If he did not know on 09.01.2008 that LOIs would be distributed on 10.01.2008, why all the files were brought to his office in the morning of 10.01.2008 itself. His deposition is opposed to common sense and natural course of events.

932. However, PW 49 Sh. S. E. Rizwi, Under Secretary, DoT, in his examination-in-chief dated 07.06.2012, pages 1 and 2, deposed as under:

> ".....On 09.01.2008 I was asked by my senior Sh. Sudhir Kumar Saxena to purchase a digital wall clock. He also gave me a hint that it was to be mounted at a wall in the reception area. I instructed my junior Sh. Lalit Kumar, UDC, to purchase a

digital wall clock from the market and he accordingly purchased one on the same day from the nearby Shankar market.

On 10.01.2008, I was called by Sh. Sudhir Kumar Saxena and he instructed me that four counters had to be set up at the reception area for receiving of some documents for licences to be issued.

.....

.....

The digital wall clock was hung at the wall of the reception area at about 2 PM. We were told that LOIs alongwith PBGs and bank drafts were to be filed and we were to check it. We were instructed to record the time on the documents received by looking at the digital wall clock. The documents were to be brought by the representatives of the companies from the second floor of the DoT, Sanchar Bhawan....."

PW 49 Sh. S. E. Rizwi in his cross-examination, page 6, deposed as under:

".....It is correct that on 10.01.2008 I was called by Sh. Kirthy Kumar and Sh. Sudhir Kumar Saxena at about 10:30 AM and was asked to set up four counters at the reception area. I was also told that these four counters were to be set up for receipt of LOIs accompanied by bank guarantees and bank drafts. I was also told that the compliance of LOIs would be deposited in the afternoon. Sh. A. S. Verma had not come to check the arrangements....."

PW 49 Sh. S. E. Rizwi in his further cross-examination, pages 7 and 8, deposed as under:

".....The recording of time of receipt of LOI was crucial and this fact came to my notice on 09.01.2008 itself and that is why the digital wall clock was purchased. The fact of purchase of digital

clock was in the knowledge of Sh. Sudhir Kumar Saxena and my dealing hand Sh. Lalit Kumar, who had actually purchased it. A file was generated regarding the purchase of digital wall clock and approval for that was obtained.....”

The gist of the deposition of PW 49 Sh. S. E. Rizwi is that he knew on 09.01.2008 that LOIs would be distributed on 10.01.2008. Thus, the deposition of Sh. A. K. Srivastava is contrary to the deposition of Sh. S. E. Rizwi.

933. PW 59 Sh. Sudhir Kumar Saxena, the then Director, DoT, who was supervising the reception area, in his cross-examination dated 30.07.2012, page 3, deposed as under:

“.....This digital wall clock was hung to put the time on the documents of LOI. Digital wall clock was not there as a matter of routine. I came to know about the time to be put on the documents on 10.01.2008 itself as Sh. Kirthy Kumar had explained the whole thing.....”

Thus, PW 59 Sh. Sudhir Kumar Saxena also supported the version of PW 49 Sh. S. E. Rizwi, which is reasonable one. This version corresponds to the events that unfolded in DoT on 10.01.2008.

934. PW 60 Sh. A. K. Srivastava in his cross-examination dated 17.09.2012, pages 5 to 7, deposed about distribution of LOIs as under:

“.....I was assisted in my job by four directors and other subordinate officers. Each director was allotted certain specific work in the division. Nitin Jain was allocated the job of dealing with policy matters and that is the reason that all notes for processing of applications were initiated by him. Other directors

were also involved in the processing of applications as the number of applications was large and time was short. Again said, processing was to be expedited. It is correct that 22 files for 232 licences were processed in a time bound manner, but they were not processed only on two days, that is, on 8th and 9th January 2008. However, it is correct that mostly the proposal for grant of LOIs were recorded on either of these two dates and draft LOIs were also placed in the files at the same time, though some fields were left open in the LOI which were to be filled up later on before issuing them finally.

Ques: I put it to you that unprecedented number of files were put up by the AS division on those two days since you were already aware that LOIs were to be issued on 10.01.2008?

Ans: The files were not quite large as four directors were dealing with the same. We were not knowing that LOIs were to be issued on 10.01.2008.

It is wrong to suggest that I informed my staff/ directors on 09.01.2008 itself that LOIs would be issued on 10.01.2008 and also told them that for that purpose, four counters would be set up.

It is wrong to suggest that immediately on reaching my office on 10.01.2008, I called all four directors to my office for briefing them about the modalities of issuance of LOIs. It is wrong to suggest that R. K. Chandolia did not come to my room on that day. It is wrong to suggest that he did not convey to me that LOIs were to be issued on 10.01.2008. It is wrong to suggest that he did not suggest any modalities for issuance of LOIs by opening four counters. It is wrong to suggest that he did not explain this scheme on a piece of paper. It is wrong to suggest that he did not ask me to come to the room of Secretary (T). It is wrong to suggest that no discussion took place in the room of Secretary (T). I have not placed that piece of paper, as stated by me in the Court, on any departmental file as the same was taken away by Sh. R. K. Chandolia

himself.

For issuing LOIs simultaneously, fourteen counters were required to be set up, if issued company wise. It is correct that if circle wise LOIs were to be issued simultaneously, then 22 counters were required. It is wrong to suggest that my deposition on this point is contrary to the note dated 10.01.2008, Ex PW 52/A, initiated by Sh. R. K. Gupta, in file D-7, Ex PW 36/B.

It is correct that I was supervising the arrangement for issuance of LOIs on 10.01.2008. It is wrong to suggest that I, on my own, fixed the date of 10.01.2008 for issuance of LOIs....."

This oral denial of Sh. A. K. Srivastava is of no avail, when seen in the light of fact that all files were brought to his office in the morning of 10.01.2008 and all four directors were also present in his room. What for the files were brought and the officers were present in his chamber? The answer is obvious that LOIs were to be distributed.

935. PW 110 Sh. Nitin Jain, Director (AS-I), in his examination-in-chief dated 21.03.2013, pages 5 to 10, deposed about distribution of LOIs through four counters as under:

".....I have also been shown note dated 10.01.2008, recorded by Sh. R.K. Gupta, the then ADG(AS-I) already Ex PW-52/A. This note also bears my signatures at point B, which I identify. This note records as to how the LOIs would be distributed.

Ques: Why was this note prepared?

Ans: If an LOI is proposed to be issued in accordance with first-come first-served basis, that is, one after the another, then there is no requirement for such a note. This note was prepared because we were asked to distribute LOIs in the manner described in the note through four counters.

Ques: Could you please tell this Court as to whose

idea it was to distribute LOIs through four counters?
Ans: We were told by our DDG (AS) Sh. A. K. Srivastava that LOIs are to be distributed through four counters and there was a paper in which we were asked to distribute the LOIs in this manner.

This happened on 10.01.2008. When we were working in the chamber of Sh. A. K. Srivastava, then he told us about this. He told us that Sh. R. K. Chandolia had come to his room and he had discussed the issue as to how the LOIs would be distributed and the same he shared with us (objected to by Sh. S. P. Minocha, learned Advocate, on the ground that this is a hearsay evidence and the same is countered by the learned Spl. PP).
Court Order: Objection Overruled as no indirect fact has been taken on record.
Ques: Could you please tell this Court as to what happened in Sanchar Bhawan on 10.01.2008 in relation to distribution of LOIs?
Ans: On that day, I got a call from DDG (AS) asking me to come to his chamber. Accordingly, I reached his chamber, other directors including Sh. Madan Chaurasia and ADG Sh. R. K. Gupta were sitting there. In the meantime, approved files for grant of LOIs were received in his office, alongwith policy files. We were going through the files, as some of the files were approved and some were not. In the mean time, Sh. R. K. Chandolia came to the chamber of DDG (AS) and met him and after a short while he left. After that DDG (AS) Sh. A. K. Srivastava discussed with us that LOIs were to be distributed through four counters, as told by Sh. R. K. Chandolia. This was not the practice and we were not comfortable with this. The other reason was that we were asked to issue large number of LOIs on the same day. Thereafter, DDG (AS) Sh. A. K. Srivastava told us that he would discuss this and left his chamber. After sometime, he came back to his chamber and told us that he had discussed the matter with the then Secretary (T) Sh. Sidharath

Behura and Sh. R. K. Chandolia and told us that the aforesaid scheme was OK and if need be, approval could be taken on the file. The note Ex PW 52/A was prepared in this background. This happened at about 10 AM.

A press release was issued that LOIs would be distributed at 3:30 PM on 10.01.2008. This press release was issued at about 12 noon. Accordingly, LOIs were distributed between 3:30 PM to 4:30 PM. I was also personally present during the distribution of LOIs.

Ques: How the operation of the four counters was, in fact, conducted?

Ans: The recipients were asked to assemble in the committee room at second floor of Sanchar Bhawan. When I reached the committee room, all recipients were available. A register was kept there to take their attendance. Four officials were asked to sit at four places and in front of each official a list of recipient companies was displayed. After everything settled down, DDG (AS) Sh. A. K. Srivastava asked for distribution of LOIs, as he was also present there. Accordingly, LOIs were distributed. The list before each counter was displayed as per the approved scheme as contained in para 5 of note Ex PW 52/A.

No time was recorded at the time LOIs were distributed. In the evening we started getting compliance of LOIs, through CR section of DoT and there we found that time of receipt of compliance was mentioned.

Ques: Whether the seniority of applicants was maintained as per the date of receipt of the applications or as per time of compliance of LOIs?

Ans: After DoT had received compliance of LOIs from all the applicants, a chart was put up on 15.02.2008 by SO (AS-I) indicating various details of compliances. For further answering the question, I may be allowed to go through the file.

Court Observation: Allowed.

After we received all the compliances, a note

was prepared by Sh. Madan Chaurasia on 15.02.2008, pages 32/N to 36/N, already Ex PW 60/L-40. In para 1, press release as issued on 10.01.2008 is reproduced and the last sentence of first para reads "in these circumstances, an applicant who fulfills the conditions first will be granted licence first, although several applicants will be issued LOI simultaneously".

As per this, an applicant, who complied with the LOI first became first in seniority. The gist of the note is contained in para 5. In this para, a reference has been made to 31/C, already Ex PW 60/L-42, which gives details of compliances time-wise.

Ques: Could you please explain the first-come first-served policy which was in vogue till that time?

Ans: On 07.01.2008 I had prepared a note Ex PW 42/DB, pages 22/N to 26/N. This note bears my signature at point A and in this note in para 13, I have mentioned as to what was the first-come first-served policy in vogue at that time and it is to the effect that "an applicant who submits his application earlier to another applicant, will receive LOI first, after it is approved" and licence would be granted based on his priority as per date of receipt of application."

Court Ques: How long an LOI would remain in effect after it has been granted?

Ans: Time of Compliance of LOI is fifteen days and if the applicant does not comply with the LOI, the LOI would be cancelled. However, in some cases, extension of time was granted at the request of the concerned applicant. As long as LOI granted is not complied with or cancelled, the other applicant would stand in queue for issuance of licence, as many LOIs could be issued one after the another and may remain pending for consideration of grant of licence."

Thus, Sh. Nitin Jain deposed that Sh. A. K. Srivastava told them that it was direction of Sh. R. K. Chandolia

and Sh. Siddhartha Behura to issue LOIs on 10.01.2008 through four counters.

936. PW 110 Sh. Nitin Jain in his cross-examination dated 22.03.2013, page 7, deposed as under:

> ".....In the stated meeting between DDG (AS), Secretary (T) and Sh. R. K. Chandolia on 10.01.2008, I was not present. I did not even see Sh. A. K. Srivastava entering the chamber of Secretary (T). It is correct that my knowledge about this meeting is based on whatever was told to me by Sh. A. K. Srivastava, otherwise I have no personal knowledge. It is wrong to suggest that R. K. Chandolia did not come to the chamber of Sh. A. K. Srivastava on 10.01.2008. It is wrong to suggest that I am deposing falsely on this point under pressure of CBI. It is wrong to suggest that the directors were not uncomfortable with the distribution of LOIs through four counters....."

PW 110 Sh. Nitin Jain in his further cross-examination, page 9, deposed as under:

> ".....The paper in which the scheme of distribution was contained was shown to us by DDG (AS), but I have no knowledge as to where is it. It has not been shown to me today in the Court. It is wrong to suggest that there was no such paper and I am deposing falsely on this point."

Thus, Sh. Nitin Jain was acting as per the direction conveyed by Sh. A. K. Srivastava.

937. PW 77 Sh. K. Sridhara in his examination-in-chief dated 10.12.2012, pages 3 and 4, deposed about four counters as under:

> ".....In the same file, I have been shown note dated 10.01.2008, recorded by Sh. R. K. Gupta, ADG (AS-

I), already Ex PW 52/A, and this was regarding setting up of counters for distribution of LOIs. This note did not reach me on the same date but was put up before me on a later date, probably on 16.01.2008, as is reflected by the correction/ overwriting recorded by me as initial date recorded by me was 16.01.2008, which was later on overwritten or corrected by me as 10.01.2008. I did this on the request of DDG (AS) and I obliged him. My signature appears at point D, page 30/N with the aforesaid corrected/ overwritten date. I was present in the DoT in the morning on 10.01.2008. By lunch time, I had left my office in Sanchar Bhawan. When this file was in upward movement, it was not shown to me....."

938. PW 77 Sh. K. Sridhara in his cross-examination dated 11.12.2012, pages 1 and 2, deposed as under:

"It is correct that the proposal contained in the note dated 10.01.2008, already Ex PW.52/A was approved by the then DDG (AS) Sh. A.K. Srivastava. After approval, he marked the note to Member (T) for information. I do not know as to who recorded the words "M (T) out" at point L, on page 30/N. Though the designation written below these words is Dir/AS-I. At point F, is signature of Mr. A.K. Srivastava. In the downward movement of the file, Sh. A.K. Srivastava marked the file to ADG (AS-I). During the downward journey of the file, the note was also seen by Director, AS-I Sh. Nitin Jain, whose signature appear at point M. The signature of Sh. R.K. Gupta, ADG (AS-I) appears at point K with endorsement " note at 31/N". On the next page, Sh. R.K. Gupta also recorded a note Ex PW 60/L-39, dated 10.01.2008. This file was personally brought to me either by Sh. A.K. Srivastava or by Sh. Nitin Jain. However, I signed it at point D on the request of Sh. A.K. Srivastava when he requested me either in person or on phone, at page 30/N. I did not mark

the file to Secretary (T) after appending my signature at point D. The words "Sec. (T)", at point J are not in my handwriting. It is wrong to suggest that these words are in my handwriting.

…….

…….

It is correct that the four counters were set up for distribution of LOI's on 10.01.2008 in view of the fact that only four directors were available in the AS cell and the applications were large in number……."

Thus, Sh. K. Sridhara substantially deposed contrary to the version of Sh. A. K. Srivastava.

939. PW 81 Sh. Madan Chaurasia in his examination-in-chief dated 22.11.2012, pages 6 to 9, deposed as under:

"……..I attended my office on 10.01.2008. On that day, I reached my office at about 10/ 10.15 AM. There was a queue on the gate and some ten to twelve persons were standing in that queue. I was surprised on seeing that queue. After sometime of my reaching the office, I received a telephonic call from the office of DDG (AS) or ADG (AS). On receiving the call, I went to the room of DDG (AS) Sh. A. K. Srivastava. When I reached his room, our four directors were already present there. Sh. R. K. Gupta, ADG, was also present there. Sh. A. K. Srivastava was also in his room. In that room, I was told that files for UAS Licences were coming and LOIs would be issued today. I was given the support work basically preparation of LOIs. Draft LOIs had already been prepared in the file. Sh. R. K. Gupta and Sh. A. S. Verma, Director, started the work immediately. In some files, rejection letters were also there. We started preparing the LOIs/ rejection letters.

On that day, a press release was issued intimating the fact of distribution of LOIs on that day as well as time of distribution. Before that also, a

press release was also issued or perhaps was in the process of being issued. Preparation of files took about one to two hours. Again said, about three hours. LOIs were prepared and simultaneously rejection letters were also prepared. A file was sent asking for the manner in which LOIs were to be distributed and that file was sent from the office of Sh. R. K. Gupta, ADG. The responsibility of intimating telephonically the representatives of various applicant companies was given to me. Accordingly, I telephoned the representatives of all companies by telephone from the room of DDG Sh. A. K. Srivastava. I intimated them that LOIs would be issued on that day at Sanchar Bhawan, second floor at 3:30 PM.

When I was sitting in the room of Sh. A. K. Srivastava, one more person had come to the room, who was not known to me at that time. I had not seen that person earlier. I was working at the computer in the room of Sh. A. K. Srivastava and when that person left I asked my ADG Sh. R. K. Gupta as to who was that person. He told me that he was private secretary to the Minister. Normally, he must have spoken to DDG as I was focusing on the computer. I cannot specifically say so.

When the file approving the procedure for distribution of LOIs came back, there was an approval in tabular form. This tabular form of distribution of LOIs is mentioned in the note of Sh. R. K. Gupta, dated 10.01.2008, already Ex PW 52/A, in file D-7, already Ex PW 36/B. Thereafter, Sh. R. K. Gupta, Sh. A. S. Verma and myself placed the LOIs and rejection letters in the folders. By that time it was already 2:30 to 3 PM. We reached the committee room at about 3:15 PM. DDG Sh. A. K. Srivastava was leading the team, but folder was in my hand. It was already decided that there would be four counters. The four counters were manned by four of us, that is, Sh. Khatri, Sh. Dhar, Sh. Panwar and myself. I manned the fourth counter, if counted

from the entry gate No. 1. The company representatives had already reached there. I do not remember the name of companies to whom I distributed LOIs/ rejection letters, but I do remember the name of Unitech group of companies. The entire process took about 40 to 45 minutes. The process of distribution started about 3:30 to 3:45 PM. The LOIs/ rejection letters of the companies, whose representatives did not turn up, were sent by us by post on the same day.

I had also participated in the distribution of LOIs/ licences issued by the DoT in December 2006, as I was posted by that time in the department. At that time, the priority was fixed as per date of application."

940. Sh. Madan Chaurasia in his examination-in-chief itself deposed contrary to the deposition of Sh. A. K. Srivastava and also contrary to the prosecution case. He deposed that he was called to the office of the DDG (AS) early in the morning, where four directors were already present. This shows preparation for distribution of LOI. He did not say that Sh. R. K. Chandolia gave any instruction to Sh. A. K. Srivastava.

941. PW 75 Sh. Sukhbir Singh, Director (AS-IV), in his examination-in-chief dated 02.11.2012, pages 4 and 5, deposed as under:

".....I attended my office on 10.01.2008 and reached my office at normal time. On that day, apart from my regular official work, the distribution of LOIs took place in the office in the afternoon. As was the case with other directors, I was also asked to remain present at the spot where LOIs were to be distributed.

I had participated in the scrutiny of applications received for UAS Licences and in the

process, had made some check list. The applications of Allianz, Shipping Stop Dot Com and Datacom were assigned to me for scrutiny.

The instructions regarding joining distribution of LOIs were given to me by Sh. Nitin Jain, Director (AS-I), by phone at about 2 PM.

Ques: Did you have any meeting with DDG (AS) Sh. A. K. Srivastava on 10.01.2008? (objected to by Sh. S. P. Minocha, learned Advocate, on the ground that it is a leading question).

Ans: Yes, I had a meeting with him on that day.

As soon as I reached my office in the morning on that day, as per practice, I went to see my immediate senior Sh. A. K. Srivastava. When I reached there, I found that three other directors, named by me above, were also present. Sh. A. K. Srivastava was present in this chair. Some files were lying on a table besides the sofa in the room of Sh. A. K. Srivastava. I sat around the sofa. I could make out that the files pertained to distribution of LOIs. Sh. Nitin Jain and Sh. A. K. Srivastava were discussing something on the main table discussing as to how distribution of LOIs would be done. In the meantime, the PS to the then MOC&IT Sh. R. K. Chandolia made a small appearance in the room of Sh. A. K. Srivastava. He was also discussing the same issue of distribution of LOIs. At that time, I left the room."

However, PW 75 Sh. Sukhbir Singh in his cross-examination dated 02.11.2012, page 6, deposed as under:

".....All files, after scrutiny and putting the required notes, were signed by all the four directors....."

PW 75 Sh. Sukhbir Singh in his further cross-examination, page 7, deposed as under:

".....On 10.01.2008, I went to the room of Sh. A. K. Srivastava in the morning and left it after ten to

fifteen minutes. I reached my office on that day at around 9:40 AM. I reached his room after 10 AM, though I do not remember the exact time. I came out of his office by around 10:45 AM. I sat myself at the sofa at far end of the room. Remaining two directors were also sitting on the sofa, but Sh. Nitin Jain was sitting in front of Sh. A. K. Srivastava. When the applications were being processed, I came to know that LOIs were to be issued. Moreover, it was clear from the files lying on the table in the room of Sh. A. K. Srivastava....."

Thus, this witness also did not support the version of Sh. A. K. Srivastava.

942. PW 62 Sh. A. S. Verma, Director, in his examination-in-chief dated 19.09.2012, page 5, deposed as under:

".....On 10.01.2008, a meeting was called by Sh. A. K. Srivastava in which officers including myself were present. We were told that all the files pertaining to grant of LOIs had been approved by the MOC&IT and we had to issue the LOIs. The scheme regarding distribution of LOIs was not discussed in my presence.

Ques: During the aforesaid meeting, did any other person also come over there in the meeting?

Ans: Mr. R. K. Chandolia had come.

Ques: Could you please tell this Court as to what discussion took place between R. K. Chandolia and Sh. A. K. Srivastava?

Ans: I am not aware as to what discussion took place between the two for the reason that I was busy in preparation of LOIs and by that time I was also signaled by Sh. A. K. Srivastava to leave the room.

The strategy and planning of distribution of LOIs was discussed by Sh. A. K. Srivastava in the afternoon of that day. There was a file in which approval was there regarding setting up of four counters for distribution of LOIs. I have been shown

DoT file D-7, Ex PW 36/B, in which the scheme for distribution of LOIs, page 30/N, Ex PW 52/A, was there and this file was shown to me at that time also. Accordingly, LOIs were distributed on that day and I was also there for supervision alongwith DDG (AS) Sh. A. K. Srivastava and other directors."

PW 62 Sh. A. S. Verma in his cross-examination dated 19.09.2012, pages 8 and 9, deposed as under:

".....Whenever a file is sent to the competent authority, the same is returned to the concerned officer after approval or otherwise to the dealing officer. It is correct that files for grant of LOIs were initiated by one of the directors, as the case may be, and were also initialed by three other directors. These files returned to DDG (AS), after approval of the competent authority, on 10.01.2008.

I reach my office usually at 9:30 AM. No entry or attendance is required to be marked of the officers of my rank. It is correct that in the morning of 10.01.2008, Sh. A. K. Srivastava had called us, that is, all the four directors, to his room, that is, we were called between 9:30 AM to 10 AM. Sh. A. K. Srivastava had told us that LOIs were to be prepared separately and our assistance is required for that. It is wrong to suggest that Sh. A. K. Srivastava told us on reaching his room that LOIs were to be distributed on that day itself. Confronted with portion A to A in statement Ex PW 62/DD, where it is so recorded. **Volunteered**: On that day I had gone to his room twice and this refers to our conversation in the second meeting.

It is wrong to suggest that I am deposing falsely on this point. It is wrong to suggest that I am shifting my stand in the Court. It is wrong to suggest that in the first meeting itself, it was explained to us by DDG (AS) Sh. A. K. Srivastava that four counters would be set up for distribution of LOIs. Confronted with portion B to B of Ex PW 62/DD where it is so

recorded. **Volunteered**: But it pertains to the second meeting....."

PW 62 Sh. A. S. Verma in his further cross-examination, page 10, deposed as under:

".....In administrative matters, Sh. A. K. Srivastava was the competent authority to take the decision. The fact of setting up of four counters for distribution of LOIs was told to me by Sh. A. K. Srivastava. He had deputed one director each for supervising one counter. There were four directors and four counters. Sh. A. K. Srivastava was supervising the entire process of distribution of LOIs....."

This witness also did not support the version of Sh. A. K. Srivastava.

943. PW 123 Sh. N. M. Manickam, Director (AS-IV), in his examination-in-chief dated 14.05.2013, pages 1 and 2, deposed as under:

".....On 10.01.2008 I attended my office in Sanchar Bhawan, New Delhi. On that day, at about 10.30 AM, Sh. A.K. Srivastava called me to his chamber. When I reached his chamber, all other three directors were already present there. He told us that files for the issuance of LOIs had been received from the offices of Secretary (T) and Member (T). He told us that there were orders to issue LOIs on that day itself. All of us pointed out it would be very difficult to issue the LOIs on that day. He told us that instructions are to issue the LOIs on that day itself. When our discussions were going on, Mr. R. K. Chandolia, PS to the Minister, Sh. A. Raja, came to his chamber. He told the DDG that LOIs were to be issued on that day itself. Again discussions went on to the effect that it would be very difficult to issue LOIs on that day itself. Mr. R. K. Chandolia went out

of the chamber of Sh. A.K. Srivastava. He (Mr. R. K. Chandolia) again came to the chamber of Sh. A.K. Srivastava with a plan. The plan indicated that four counters were to be set up for distribution of LOIs, which were to be distributed simultaneously from the four counters.

In the afternoon about 3 PM, in the committee room, second floor, all the four directors along with team members were present and they started the process for distribution of LOIs. Sh. A.K. Srivastava was also present there. All the company representatives were also present there and LOIs were issued to the authorized representatives. After getting the LOIs, immediately they went to the ground floor.

My ADG, Sh. B.L. Panwar, was manning counter no.3 and I was standing behind him. I am not aware, if Mr. A. Raja was present in his office on that day or not. I do not know, if Mr. R. K. Chandolia discussed the matter with any one after his exit from the chamber of Sh. A.K. Srivastava and before his re-entry in his chamber....."

However, PW 123 Sh. N. M. Manickam in his cross-examination, pages 3 and 4, deposed as under:

".....It was the duty of AS-I to issue LOIs, whose director was Sh. Nitin Jain. I do not know, if the applications for issuance of LOIs were processed in the AS Cell on 8th and 9th January 2008, but it may be so as the LOIs were distributed on 10.01.2008. Sh. A.K. Srivastava asked all the four directors to process the files for distribution of LOIs on priority basis. It is correct that all the four directors processed the files for distribution of LOIs but I do not recall the exact date and the processing included preparation of LOIs/rejection letters/ response, as the case may be.

It is correct that in January 2008, 121 or 122 LOIs were decided to be issued by the DoT to the

new applicants. It is correct that as large number of LOIs were to be issued simultaneously on the same day, Sh. A.K. Srivastava asked all the four directors to assist him in the process.

…….

……

Mr. R. K. Chandolia came back to the chamber of Sh. A.K. Srivastava after about half-an-hour of his exit, though, I do not remember the exact time. It is wrong to suggest that Mr. R. K. Chandolia neither entered nor re-entered the chamber of Sh. A.K. Srivastava. It is wrong to suggest that I am deposing falsely on this point."

Thus, this witness has introduced a new twist of Sh. R. K. Chandolia visiting the office of DDG (AS) twice.

944. DW 1 Sh. A. Raja in his cross-examination dated 22.07.2014, page 7, denied any role in setting up of four counters and deposed as under:

"**Ques**: Why were the LOIs issued from four counters and not from one?
Ans: My approval was to issue LOIs in chronological order under the first-come first-served basis. How it was issued and in what manner it was issued, was job of the officers. No file was put up to me in this regard. Therefore, I cannot say anything on this. However, after issuance of LOIs file was submitted to me intimating me that the LOIs were issued following first-come first-served procedure in simultaneous manner.
Ques: I put it to you that it was your planning to issue LOIs from four counters and this was got executed by you through Secretary (T) Sidharath Behura and your private secretary R. K. Chandolia?
Ans: It is incorrect."

DW 1 Sh. A. Raja in his further cross-examination

dated 23.07.2014, page 7, also denied his role and deposed as under:

> ".....No direction was given by me to R. K. Chandolia on 10.01.2008 regarding distribution of LOIs or manner in which the counters would be installed. No direction ever was given by me to R. K. Chandolia to convey policy directions or any other direction to any officer of DoT including A. K. Srivastava. No officer ever complained to me against R. K. Chandolia for his giving oral directions to him on my behalf or pressurizing him in any manner."

945. About distribution of LOIs, DW 22 Sh. R. K. Chandolia in his examination-in-chief dated 04.08.2014, page 14, denied his role in four counters and deposed as under:

> "**Ques**: Where were you on 10.01.2008?
> **Ans**: I was in my office in Electronics Niketan on 10.01.2008 throughout the day.
>
> I did not visit Sanchar Bhawan on this date. The office of Sh. A. K. Srivastava was at Sanchar Bhawan, but I do not know where he used to sit in Sanchar Bhawan as I never visited his office. I had no meeting with Sh. A. K. Srivastava or Secretary (T) Sh. Sidharath Behura, or both of them together on this date. I had no role or knowledge of issuance of LOIs on 10.01.2008 and setting up of four counters for that purpose....."

DW 22 Sh. R. K. Chandolia in his cross-examination dated 05.08.2014, pages 2 and 3, denied his role and deposed as under:

> ".....The allegation of conspiracy with regard to issuance of LOIs on 10.01.2008 on my instructions is false since as per the records all the files for issuance of LOIs were approved by the Minister and sent back to concerned officers on 09.01.2008 and also general

administration had purchased a digital wall clock on 09.01.2008 itself to be placed in the reception area where compliance of LOIs were to be received. These aspects were deliberately hidden by the CBI to falsely implicate me in this case.

The allegation that I had any role in setting up of four counters for issuance of LOIs is false since as per the record the four counters were set up based on the four directors available in the AS Division. Moreover, if I had any conspiracy with Swan Telecom I would have suggested setting up of five counters, thus making representative of Swan telecom to sit on the first row to receive LOI alongwith other four companies, that is, By Cell, Tata Teleservices, Idea and Spice. On the other hand, if I had any conspiracy with Unitech, I would have suggested a plan of setting up fourteen counters so that representative of Unitech would also sit in the front row to receive LOIs with other companies....."

DW 22 Sh. R. K. Chandolia in his further cross-examination dated 05.08.2014, pages 11 and 12, denied visiting chamber of Sh. A. K. Srivastava and deposed as under:

".....It is wrong to suggest that on 10.01.2008, I had gone to the chamber of Sh. A. K. Srivastava, where four directors, including Sh. Nitin Jain, were present. It is wrong to suggest that in that chamber I told them that LOIs would be distributed on that day itself. It is further wrong to suggest that I showed them a scheme of distribution of LOIs by setting up four counters. It is wrong to suggest that the officials expressed their inability to do it as asked by me on that day itself. It is wrong to suggest that on this, I asked A. K. Srivastava to come to the chamber of Secretary (T). It is wrong to suggest that when A. K. Srivastava reached chamber of Secretary (T), I was also present. It is wrong to suggest that in my presence Secretary (T) Sh. Sidharath Behura told A. K. Srivastava that LOIs would be distributed on that

day itself and also as per the scheme suggested by me. It is further wrong to suggest that Secretary (T) also told A. K. Srivastava in my presence to issue a press release regarding LOIs being distributed between 3:30 PM to 4:30 PM on that day itself. It is wrong to suggest that this was my first ever visit to the chamber of Sh. A. K. Srivastava. **Volunteered**: I never ever visited the chamber of Sh. A. K. Srivastava.

It is wrong to suggest that the scheme of four counters was prepared at the instance of Sh. A. Raja. **Volunteered**: If I had any role in setting up of four counters, I would have ensured that Swan Telecom (P) Limited gets LOI before TTSL and Spice as they were also contenders for spectrum in Delhi service area. However, I came to know about these companies only when the files were submitted for approval of the Minister.....”

946. What is the conclusion from the above deposition of various witnesses? As per PW 60 Sh. A. K. Srivastava, all the four directors, namely, PW 62 Sh. A. S. Verma, PW 75 Sh. Sukhbir Singh, PW 110 Sh. Nitin Jain and PW 123 Sh. N. M. Manickam were present in his room when Sh. R. K. Chandolia came to his room and conveyed that LOIs must be distributed on that day itself, as desired by MOC&IT. As per him, Sh. R. K. Chandolia also suggested the modalities for issuance of LOIs by opening four counters and explained the scheme on a paper with which they did not agree and expressed their disagreement. This means that Sh. A. K. Srivastava and the four directors did not agree with the distribution of all LOIs on 10.01.2008 as well as distribution of LOIs by establishing four counters as desired by Sh. R. K. Chandolia.

947. However, Sh. A. S. Verma, the first director, who was cross-examined in the Court on 15.09.2012 as PW 62, deposed that he is not aware as to what discussion took place between Sh. A. K. Srivastava and Sh. R. K. Chandolia, as he was busy in preparation of LOIs. Not only this, he deposed that by that time it was also signaled to him by Sh. A. K. Srivastava to leave the room. Furthermore, he deposed in his examination-in-chief itself that the scheme of distribution of LOIs was not discussed in his presence. There is no material in his deposition to show that he showed any disagreement with the distribution of LOIs on 10.01.2008 or about the setting up of four counters. Not only this, in his cross-examination, he deposed that the fact of setting up of four counters for distribution of LOIs was told to him by Sh. A. K. Srivastava and he had deputed one director each for supervising four counters. The deposition of this witness is completely contrary to prosecution case, both in his examination-in-chief as well as cross-examination, but this was not challenged by the prosecution either by way of re-examination or further cross-examination.

948. The next director examined in the Court is Sh. Sukhbir Singh, who has been examined as PW 75. He has also not uttered even a single word in his deposition that Sh. R. K. Chandolia told Sh. A. K. Srivastava that LOIs were to be distributed on that day and also from four counters. Not only this, he deposed that Sh. R. K. Chandolia made a small appearance in the room of Sh. A. K. Srivastava and he was also discussing the issue of distribution of LOIs, but at that time he

left the room. This witness has not said even a word about the disagreement being shown by him either for distribution of LOIs on 10.01.2008 or distribution by setting up of four counters. This witness has also not been re-examined or cross-examined by the prosecution.

949. The next director examined in the Court is PW 110 Sh. Nitin Jain. He has deposed in his examination-in-chief itself that the idea to distribute LOIs through four counters was conveyed to them by Sh. A. K. Srivastava. He also deposed that Sh. A. K. Srivastava told him that Sh. R. K. Chandolia had come to his room and had discussed the issue as to how the LOIs would be distributed. PW 110 also deposed in his examination-in-chief itself that when he was in the office of Sh. A. K. Srivastava, Sh. R. K. Chandolia came there and left after a short while. This witness has also not stated anywhere that Sh. R. K. Chandolia asked them to distribute the LOIs on the same day and that too through four counters. Rather, the witness deposed that after Sh. R. K. Chandolia left, Sh. A. K. Srivastava discussed with them that LOIs were to be distributed through four counters on the same day and they were uncomfortable with this. The witness has nowhere deposed that Sh. R. K. Chandolia asked them to distribute the LOIs on that day and through four counters.

950. Thus, the three directors have completely gone contrary to the deposition of Sh. A. K. Srivastava, who was senior most officer of AS Cell and was responsible for distribution of LOIs.

951. The last director examined is PW 123 Sh. N. M. Manickam. This witness has gone completely contrary to the version of PW 60 Sh. A. K. Srivastava and three other directors referred to above. As per PW 123, Sh. A. K. Srivastava had told the four directors that LOIs were to be distributed on 10.01.2008 itself as there were orders from above and they pointed out that it would be difficult to issue LOIs on that day itself. As per this witness, when they were discussing the distribution of LOIs, Sh. R. K. Chandolia came to the chamber of Sh. A. K. Srivastava and told him (the DDG) that LOIs were to be distributed on that day itself and left the chamber of Sh. A. K. Srivastava.

952. Not only this, he has introduced a new fact of Sh. R. K. Chandolia coming twice in the chamber of Sh. A. K. Srivastava. When he came first, he told Sh. A. K. Srivastava to distribute the LOIs on that day itself and thereafter left. As per this witness, he again came to the chamber of Sh. A. K. Srivastava and came with a plan and that plan indicated that four counters were to be set up for the distribution of LOIs, which were to be distributed simultaneously. This is contrary to the deposition of Sh. A. K. Srivastava, who deposed that Sh. R. K. Chandolia came to his chamber and conveyed in one go that LOIs must be issued on that day itself and that too by opening four counters. Therefore, there is clear contradiction between the four directors and Sh. A. K. Srivastava about the role of Sh. R. K. Chandolia.

953. Not only this, 22 files of fourteen companies were

processed from 8th to 10th January 2008 for 232 LOIs/ responses. The case of the prosecution is that Sh. R. K. Chandolia came to the room of Sh. A. K. Srivastava with a piece of paper in which the scheme of distribution of LOIs by way of four counters was indicated. The four counters to be set up, as depicted in note dated 10.01.2008, Ex PW 52/A, contains all the details of fourteen companies and that too for fixing priority as per date of their application. The question is: Where from Sh. R. K. Chandolia got all these details and came up with such a complicated plan for distribution of LOIs. The scheme required almost all the files and lot of deliberation before it could be arrived at. It cannot be believed, in the absence of contrary evidence, that Sh. R. K. Chandolia was in possession of all the files and that the scheme was designed by him alone.

954. PW 81 Sh. Madan Chaurasia, the then Section Officer, was also present in the room of Sh. A. K. Srivastava. He deposed only that Sh. R. K. Chandolia had come to the room of Sh. A. K. Srivastava. He did not depose that Sh. R. K. Chandolia told anything to Sh. A. K. Srivastava. He deposed that at that time he was working and focusing on the computer. Even in his cross-examination, he deposed that when Sh. R. K. Chandolia came to the room of Sh. A. K. Srivastava, he remained busy with his work. If Sh. R. K. Chandolia had come to the room of Sh. A. K. Srivastava and told him that LOIs were to be distributed on 10.01.2008 itself and that too through four counters and a plan was presented by him, then everybody present must have heard it. However, this witness is totally ignorant of all this on the

pretext that he was busy with his work. There is no material on record indicating that the room of Sh. A. K. Srivastava was so large that a third person could not hear what was being discussed by two persons, that is, Sh. A. K. Srivastava and Sh. R. K. Chandolia.

955. Thus, the six witnesses who were present in the room of DDG (AS), that is, Sh. A. K. Srivastava; DDG (AS) himself, four directors, namely, Sh. Nitin Jain; Sh. A. S. Verma; Sh. Sukhbir Singh and Sh. N. M. Manickam, and Section Officer Sh. Madan Chaurasia have given contradictory version about the arrival of Sh. R. K. Chandolia in the room of Sh. A. K. Srivastava and the directions given by him. Above all, their deposition is contrary to official record contained in note, Ex PW 52/A. This is further compounded by the fact that not a single officer put his objections on record, if he felt so strongly that something wrong was being done.

956. The note dated 10.01.2008, Ex PW 52/A, recorded by Sh. R. K. Gupta does not mention anywhere that the note is being recorded as per the approval of Secretary (T). Official record has sanctity and is to be believed to be correct unless there are cogent reasons to disbelieve the same. Perusal of the note, as extracted above, reveals nothing that it was recorded on the asking of any third person or the Secretary (T). Not only this, the witness, that is, Sh. R. K. Gupta who recorded this note and Sh. A. K. Srivastava have given a version, which is contrary to the official record. PW 88 Sh. R. K. Gupta deposed that the note was approved by Secretary (T), whereas PW 60 Sh. A. K.

Srivastava deposed that the note was signed by Secretary (T) indicating that he had seen the file and also approved it. The fact of the matter is that the note was approved by Sh. A. K. Srivastava and was marked upward only for kind information. When questioned, Sh. A. K. Srivastava very cleverly tried to shift the blame to the senior officers. The fact of the matter is that the note containing the scheme of four counters was recorded by Sh. R. K. Gupta, agreed to by Sh. Nitin Jain and approved by Sh. A. K. Srivastava. Not only this, PW 77 Sh. K. Sridhara in his cross-examination, as noted above, clearly deposed that he signed the note on the request of Sh. A. K. Srivastava and he did not mark the file to Secretary (T) after appending his signature.

957. Thus, the version given by the prosecution witnesses is contrary to the official record. Not only this, Member (T), an officer of the level of Special Secretary to the Government of India, gave a new twist to the whole thing by deposing that he signed the note on 16.01.2008 instead of 10.01.2008. He also deposed that the words "Sec (T)" recorded below the note, indicating marking of the file to Secretary (T), is not in his handwriting. This indicates that Sh. A. K. Srivastava himself recorded these words on his own and by hoodwinking Secretary (T), obtained his signature under the guise of file being marked to him by the Special Secretary for information alone. PW 77 Sh. K. Sridhara also deposed in his cross-examination that by signing the file on 16.01.2008, he obliged Sh. A. K. Srivastava. This evidence indicates that everything was the doing of Sh. A. K. Srivastava and to escape responsibility, he introduced the role

of Sh. R. K. Chandolia by way of oral statements, contrary to official record.

958. Two accused, namely, Sh. A. Raja and Sh. R. K. Chandolia also entered the witness box as DW 1 and DW 22. They completely denied their role in the setting up of four counters. Sh. A. Raja categorically deposed that the distribution of LOIs was the job of the officers and he had not issued any direction to anyone including Sh. R. K. Chandolia. Sh. R. K. Chandolia also denied any role in this scheme of four counters. Thus, as far as oral statements are concerned, it is a case of oath against oath. The deposition of prosecution witnesses is contrary to record, whereas the deposition of DW 1 Sh. A. Raja and DW 22 Sh. R. K. Chandolia are as per record. It may be noted that defence witnesses are also entitled to equal weight. In an authority reported as **Dudhnath Pandey Vs. State of U.P., 1981 CrLJ 618**, it was held by the Hon'ble Supreme Court that:

> "Defence witnesses are entitled to equal treatment with those of the prosecution. And courts ought to overcome their traditional, instinctive disbelief in defence witnesses. Quite often they tell lies, but so do the prosecution witnesses."

Similar views are expressed in another authority reported as **Munshi Prasad and others Vs. State of Bihar, AIR 2001 SC 3031**.

959. PW 49 Sh. S. E. Rizwi deposed that on 10.01.2008, a wall clock was purchased and it was to be mounted in the reception area, and as per PW 48 Sh. Subhash Chand Sharma, the file pertaining to it was seized by the CBI and the said file is

Ex PW 153/DD. What was the purpose of purchasing a wall clock in advance and installing it in the reception area? The obvious purpose was to record the time of compliance of LOIs as decided by the DoT. Not only this, PW 60 Sh. A. K. Srivastava deposed in his examination-in-chief that on 10.01.2008 when he went to his room, he found that individual files for grant of UAS licences were being brought to his room for further necessary action. He is an officer of Joint Secretary level. Obviously, the files would not have been brought to his office without due permission. The factum of files being brought to his office indicates that he as well as other officers/ staff knew as to what was to be done on that day. Furthermore, PW 81 Sh. Madan Chaurasia deposed that when he went to his office on 10.01.2008, he found that there was a queue of 10-12 persons on the gate and he was surprised on finding the queue. All these factors indicate that it was decided in advance that LOIs were to be distributed on 10.01.2008 itself. However, in order to save himself, PW 60 Sh. A. K. Srivastava introduced the role of Sh. R. K. Chandolia by deposing orally that he directed that LOIs were to be distributed on that day itself through four counters.

960. With prosecution witnesses contradicting themselves on material points and also deposing against official record, which on the face of it appears to be correct and is deemed to be correct, there is no option left except to reject the prosecution version.

961. In view of the above discussion, I have absolutely no

hesitation in rejecting the prosecution version that the four counters was set up as per the direction of Sh. R. K. Chandolia for distribution of LOIs on 10.01.2008 in order to benefit the accused companies.

Running to the Counter and Chaos thereat

962. It is the case of the prosecution that distribution of LOIs simultaneously at the same time through the four counters created a disorderly situation, as representatives of the companies were required to rush to the reception area for compliance of LOIs. It is the case of the prosecution that on account of this, there was a lot of chaos and this created a situation in which physical fitness of the person collecting the LOIs became the deciding factor for priority in submission of compliance of LOIs. It is the case of the prosecution that this process made a mockery of first-come first-served policy.

On the other hand, case of the defence is that submission of compliance was a voluntary process and nobody was asked to rush to the counter by anyone from the DoT. It is the case of the defence that submission of compliance was an orderly affair and nobody complained against this. It is the case of the defence that this allegation of the prosecution is wholly unfounded and without any evidence. It is the case of the defence that everybody knew that compliance with LOI/ payment would decide priority for allocation of spectrum and as such people were eager to comply with the LOIs at the earliest possible time, as against earlier position, where people would

collect LOI, but would not comply and instead seek extension, blocking the way of serious players.

963. Let me take note of the evidence on record.

964. PW 60 Sh. A. K. Srivastava in his examination-in-chief dated 23.08.2012, pages 7 and 8, deposed as under:

> ".....No briefing was given by us as to what the company representatives would do after collecting the LOIs/ responses from the committee room. After distributing the LOIs/ responses, receipt was obtained from the respective authorized representative of applicant company on respective office copy....."

Version of Company Representatives

965. PW 34 Sh. Arun Kumar Dalmia, Advisor, Allianz Infratech Private Limited, in his cross-examination dated 30.03.2012, page 4, deposed as under:

> ".....The LOIs/ rejection letters were being given respectfully and without any discrimination. There was staircase as well as lift in the building. People were coming downstairs either by lift or by staircase as per their convenience. Whether old or young or women, all were coming comfortably without any pushing around. Age or physique did not make any difference. From the reception area of the DoT, people were going inside very smoothly....."

966. PW 35 Sh. T. Narasimhan in his cross-examination dated 02.04.2012, page 7, deposed as under:

> ".....For going from second floor to ground floor reception, one had the choice of going by lift or stairs. There was neither any difficulty nor any hindrance for going to downstairs. I was the last to go to the ground floor. There was no running or

racing to the ground floor when I came downstairs. I think representatives of Tatas, IDEA and Spice were already there when I came to ground floor from the second floor. Age, physical health or gender did not make any difference in collection of LOIs and going to ground floor for compliance. When I reached the reception area, I saw security personnel there who were ensuring smooth deposit of compliance of LOIs....."

967. PW 37 Sh. Mohit Gupta, Executive of Unitech Limited, in his examination-in-chief dated 25.04.2012, page 3, deposed as under:

".....On getting the LOIs, I telephoned Sh. Nitin Bansal and conveyed to him all the LOIs number. This was done by me as the documents were to be prepared as I was told that on getting the LOIs I was to convey their numbers to Nitin Bansal immediately as compliance was to be made immediately. Sh. Nitin Bansal asked me to come downstairs and meet him at the gate. I waited for sometime at the gate before the arrival of Sh. Nitin Bansal and on coming over there he handed over me files containing bank drafts, bank guarantees and other documents which were to be submitted. At the reception there was a line for depositing the documents and I also took a position in the queue and when my turn came, I deposited the documents. The DoT officials signed the documents deposited by me and also recorded the time of deposit. On depositing documents, I came out of DoT office and reported the matter to Sh. Nitin Bansal."

968. PW 37 in his cross-examination, page 4, deposed as under:

"The distribution of LOIs had started simultaneously on all the four counters. The counter wise sequence of the companies, to whom the LOIs were to be

issued, was explained to all of us and there was no confusion in this regard. The distribution of LOIs was transparent and non-discriminatory. The process of distribution was quite swift, but I took my time. The entry to reception room was smooth and no one was stopped unnecessarily. The process of deposit of LOIs compliances was also smooth and transparent."

969. PW 38 Sh. Rupender Sikka, Consultant to S. Tel, who had gone to DoT to collect LOIs on 10.01.2008, in his examination-in-chief dated 25.04.2012, page 4, deposed as under:

> ".....On collecting the LOIs, we rushed to the reception and we were waiting for our demand drafts for the preparation of which two people had gone. By 4 PM, demand draft reached over there. Thereafter, bank guarantees were received. At the counter, we deposited the bank guarantees and bank drafts, where one person was putting the date and time. I could not identify any person present over there as there was lot of confusion over there because of rush of people."

This witness deposed that there was confusion due to rush of people, but is not specific as to what the confusion was. It is a general statement.

However, in his cross-examination, page 7, he deposed as under:

> ".....A single queue was being maintained outside the reception area. I deposited my demand draft on my turn in the queue. I was facing some difficulties as the guards were pulling my hand. They also pulled the hand of a person ahead of me in the queue. I recognize Sh. Mahender Nahta who was standing ahead of me in the queue in the reception

area. He is chairman of HFCL. I could not see if he was also depositing the papers but he was ahead of me. I cannot tell if he was carrying authority letter or not. I cannot say if he was trying to enter reception area without authority letter....."

This witness deposed about some confusion and difficulty in submission of compliance.

970. PW 39 Sh. Surender Lunia, Managing Director, Infotel Business Solutions Limited (HFCL), in his cross-examination dated 26.04.2012, page 9, deposed as under:

".....To enter the reception area, there was a single queue and I entered the reception in an orderly manner. No security personnel created any difficulty in that....."

To this witness, everything appeared smooth.

971. PW 40 Sh. Rahul Vatts, Assistant Vice President, Idea Cellular Limited, in his examination-in-chief dated 27.04.2012, pages 7 and 8, deposed as under:

".....When the name of my company was called out, I had gone and collected nine LOIs in favour of my company. As far as I remember, I had noted the time of receipt of LOI acknowledging the receipt of LOIs. After that, I rushed downstairs to the CR section. There was utter chaos and confusion over there. Some people, unknown to me, were trying to block the entry. After much protest I was able to enter inside the CR section. Since we were ready with all the documents and payments, the same were delivered to me by our company officials at Sanchar Bhawan. Since we had already taken licences in 2006, we were aware of the compliances to be made.

On 09.01.2008 also, there were various

newspaper reports to the effect that LOIs might be issued, so we had revised the requirements and were ready with everything. In the CR section, there were more than one counters, who were accepting the compliances. Before me, there were other people in the queue who were trying to fill up their compliances. When my turn came, I went over there and deposited my compliances for all nine circles on that day itself at about 4:30 PM. There were lot of people present there who were unknown to me, but I recognized only TTSL representative Sh. Anand Dalal....."

In his cross-examination, page 13, he deposed as under:

".....I do not recall if the official had also briefed that on receipt of LOIs, the compliance can be deposited at the reception immediately thereafter. However, I was aware about this. When I was given the LOI, I was asked to acknowledge the same....."

In his further cross-examination, page 15, he deposed as under:

".....It is incorrect to suggest that I told the IO that I did not see anybody blocking the entry of reception in order to hinder the process of deposit of compliances, confronted with portion A to A of statement dated 11.03.2011, now Ex PW 40/DA, where it is so recorded....."

Portion A to A of Ex PW 40/DA reads as under:

"I did not see anybody blocking the entry of reception in order to hinder the process of deposit of LOI compliances."

This witness also deposed about difficulty in submission of compliance. However, he also contradicted

himself on a material point, thus rendering his credibility doubtful.

972. PW 41 Sh. Anand Dalal, Sr. Vice President, TTSL, in his examination-in-chief dated 01.05.2012, pages 6 to 8, deposed as under:

> ".....DoT officials had told us that LOIs and in-principle approval would be issued to us from various counters. There were four counters in the committee room. DoT official had told me that I would be issued LOI and in-principle approval from counter No. 2. Only one counter was assigned to both TTSL and TTML. Sh. Rakesh Mehrotra was also present in the committee room. I collected three LOIs and in-principle approval for seventeen/ eighteen circles for TTSL. For TTML, Sh. Rakesh Mehrotra collected the in-principle approval. On collecting the LOIs and in-principle approval, I rushed to the CR Section at the ground floor. There were some people in front of me at the CR section gate. There were many people present over there, which were constituting a crowd. There some DoT officials were standing, who saw copy of my LOIs and in-principle approval and I was allowed to enter inside. Before entering the CR section, I had collected a file from my subordinate, which contained the application forms and the requisite fee which was to be deposited. On entering the CR section, I filled up the LOI numbers on the application form and the same was deposited by me at one of the three counters at the CR section. During this process, Sh. Rakesh Mehrotra also came inside the CR section. There we deposited entry fee for three circles, for which LOIs were collected and also the payment towards in-principle approval for both TTSL and TTML. We also submitted at the same counter our applications for allocation of spectrum, addressed to Wireless Advisor, towards three new circles as well as the GSM technology for

balance circles under the existing licence. By 5 to 5:10 PM, we got PBGs and FBGs for three new circles, that is, J&K, Assam and North-East, and the same were submitted to the DoT in the same CR section at about 5:20 PM. There were three counters at the CR section. One counter was checking the applications. Second counter was acknowledging the application by putting date and time, and third counter was putting the stamp of acknowledgment. The payment was made towards entry fee by DDs/ pay orders for three new circles and in-principle approval for applied circles....."

In his cross-examination dated 02.05.2012, pages 2 and 3, he deposed as under:

".....I do not remember if in the briefing it was also told that compliance with the LOIs can be made then and there by depositing compliances at the CR section at the ground floor. I came to know about the compliances to be deposited in the CR section through the other representatives present over there and through the media reports....."

This witness did not remember if anyone told him that compliance could be made then and there.

In his further cross-examination dated 14.05.2012, page 5, he deposed as under:

".....It is correct that TTSL was at position No. 1 at counter No. 2. After depositing our compliances regarding dual technology, we filled up the WPC applications and deposited the same at the CR section. After depositing the dual technology compliances, I had come out of the queue. **Volunteered**: There were two three persons only at the counter constituting the queue....."

973. PW 54 Sh. Ajay Sharma, Vice President, Datacom, in

his examination-in-chief dated 06.07.2012, page 3, deposed as under:

> ".....After collecting the LOIs on 10.01.2008, I deposited the compliances on the same day. The compliances were deposited at the reception counter of the DoT office. The documents deposited with the compliances included, as per my recollection, bank drafts and bank guarantees.
>
> Our company had perhaps applied for licences in 22 telecom circles and I got 22 LOIs. However, I deposited the compliances only for 21 circles. We were granted licences for 21 circles. I was authorized signatory for the company for signing licence agreement also."

In his cross-examination, page 5, he deposed as under:

> ".....There was a single queue to enter the reception area. I submitted my LOIs compliances without any problem. No person either from DoT or outside had created any hindrance in the entry to the reception room or in the deposit of compliances....."

In his further cross-examination, page 10, he deposed as under:

> ".....It is correct that I was the second person to submit compliances with respect to the LOIs. I am not aware if representative of some other companies received LOIs before me. It is correct that Datacom Solutions (P) Limited submitted compliances at serial No. 1 for all circles excepting Delhi and Mumbai. **Volunteered**: I reached second at the counter as there was some people collected at the lift and I took the stairs to reach the counter at the reception area....."

974. PW 56 Dr. Rakesh Mehrotra, Chief Regulatory

Officer, TTSL, in his cross-examination dated 10.07.2012, pages 9 and 10, deposed as under:

> ".....I collected the LOIs for TTML, as far as I remember. Sh. Anand Dalal collected the LOIs for TTSL. In the committee room, the representatives of companies were given LOIs in an orderly manner. I did not observe any discrimination being made for or against a company. Every representative got the LOIs at his turn and the distribution of LOIs started simultaneously. Every representative of the company was attended to properly by the DoT officers and nobody raised any objection. The process of distribution of LOIs was very smooth.
>
> In the reception hall also, the process of deposit of compliances was also very smooth. There is no discrimination against anyone. It is correct that whosoever had valid documents was granted entrance in the reception hall, to the best of my knowledge....."

975. PW 67 Ms. Preeti Malhotra, Company Secretary of Spice Communications Limited, in her examination-in-chief dated 08.10.2012, pages 4 and 5, deposed as under:

> ".....On collecting the LOIs, I was asked to complete certain formalities including appending my signature somewhere, which I do not exactly recall now. I do not remember as to what we were told to do after collecting the LOIs. After collecting the LOIs, I came downstairs and handed over the same to Sh. Umang Das and Sh. Akhilesh Saxena. They started doing certain formalities like attaching bank guarantees, demand drafts etc. By that time, our Chief Financial Officer had also reached almost at the same time with the bank guarantees. After completing the formalities, all of us left Sanchar Bhawan at the same time."

In her cross-examination dated 08.10.2012, pages 7

and 8, she deposed as under:

> ".....I have been shown letter dated 10.01.2008, already Ex PW 33/DD, pertaining to Delhi service area regarding payment of entry fee. There is overwriting in this letter also regarding the amount of entry fee. **Volunteered**: This overwriting was due to lot of confusion and hurried compliance of LOIs.
>
> The writing at portion D to D in this letter is not mine. I cannot say whose writing is this. This writing has been counter signed by me at point E. When these corrections were being made in this letter, Mr. Umang Das, Mr. Saxena, Mr. Khurana, Mr. Piyush Pandey, Sh. G. P. Singh etc. were present. However, Mr. G. P. Singh left after handing over the bank guarantees. I cannot say if we were late in submitting our compliance due to confusion....."

976. PW 80 Sh. A. S. Narayanan, Manager, Loop Mobile India Limited, in his examination-in-chief dated 21.11.2012, page 2, deposed as under:

> ".....My company had received LOIs on 10.01.2008 and I myself had gone to collect the same from the DoT, New Delhi. I had submitted the compliance on the same day, though the bank drafts and bank guarantees were deposited on the next day, that is, 11.01.2008. Later on, licences were also granted to the company....."

977. The survey of the evidence as noted above in detail does not show that any DoT officer asked any company representative to deposit the compliance on 10.01.2008 itself. Since the criteria was changed from the date of application to date of compliance, company representatives on their own complied with the LOIs on 10.01.2008 itself. No witness deposed that there was any rush or chaos at the counter at the

time of deposit of compliance. There is nothing in examination-in-chief of any witness in this regard except that of PW 38 Sh. Rupender Sikka and PW 40 Sh. Rahul Vatts. However, PW 38 Sh. Rupender Sikka has changed his version in the cross-examination stating that a single queue was maintained and he deposited the demand draft when his turn came, indicating that the process itself was smooth one, though there was crowd. However, PW 40 Sh. Rahul Vatts had not stated so in his statement under Section 161 CrPC, as referred to above, and has contradicted himself on a material point rendering his testimony unreliable. As such, no company representative, who was examined in the witness box, deposed that there was chaos at the counter or that they were unfairly treated. Rather, the evidence is contrary that the process was smooth. Though, the witnesses deposed that the entire process was smooth, but the prosecution could not muster courage to challenge them by re-examination or cross-examination.

Version of DoT Officers

978. Now, let me take note of the evidence of the DoT officials who were manning the four counters.

979. PW 45 Sh. Surender Singh Negi, PW 46 Sh. Shiv Kumar Sharma, PW 48 Sh. Subhash Chand Sharma and PW 58 Sh. Adi Ram were manning the four counters set up for receiving the compliances in the reception area of CR Section of DoT on 10.01.2008. Their work was being supervised by PW 49 Sh. S. E. Rizwi, Under Secretary and PW 59 Sh. Sudhir Kumar

Saxena, Director (Telecom). None of these six witnesses have deposed anything in their examination-in-chief that there was any desperate race to the counter for submission of compliance or any chaos over there. All the six witnesses asserted in their cross-examination that process of receipt of LOIs compliance went smoothly.

980. PW 46 Sh. Shiv Kumar Sharma in his examination-in-chief dated 05.06.2012, pages 2 and 3, deposed as under:

> ".....First of all a candidate had come to deposit his papers who was young. He was carrying a big bundle of papers with him. He placed one set of papers in front of me and another set of papers in front of Sh. S. S. Negi. He did not deposit the entire papers, which he was carrying, and told us that the remaining papers were not complete and he would deposit the remaining papers when the same were complete. I checked the papers placed before me. I saw the bank guarantee and the bank draft in the papers and their numbers. Thereafter, I affixed the stamp on the papers and recorded the time....."

981. PW 49 Sh. S. E. Rizwi in his examination-in-chief dated 07.06.2012, page 4, deposed as under:

> ".....The first LOI was received at about 4:10 PM. The first representative to reach the counter was of Swan Telecom who came around 4:10 PM and thereon the work started. This work continued till about 6:15 PM.
>
> **Volunteered**: The receipt of the documents was to be entertained till 5:30 PM, but a representative of Swan entered at about 5:20 PM with a bundle of LOIs and he started filling up the same and, as such, the work spilled over till 6:15 PM....."

982. The two witnesses deposed that the first representative reached the counter at 04:10 PM. Both are referring to Sh. Shahid Balwa, as he was the first to deposit compliance for Mumbai service area, Ex PW 45/A, at 04:10 PM. The two witnesses nowhere deposed that he was racing towards the counter or came running over there.

983. In the deposition of six witnesses, there is absolutely no material indicating any chaos at the counter.

984. In the end, the record indicates that the compliances to LOIs were deposited in quick succession on 10.01.2008 by many companies, but nobody directed them to comply on that day itself. Nor was there any chaos or confusion at the counter. Accordingly, I do not find any merit in the submission of the prosecution that representatives of the companies were required to rush to the counter by the conspiring DoT officials and this desperate race led to confusion and chaos at the counter, which was to the benefit of STPL and Unitech group of companies.

Prior Knowledge of Accused Companies

985. It is the case of the prosecution that the manipulated policy of first-come first-served was known to persons concerned with STPL and Unitech Limited from before because they were in conspiracy with Sh. A. Raja and R. K. Chandolia, who were also joined by Sh. Siddhartha Behura in January 2008. It is submitted that this information was specifically known in advance to accused Shahid Balwa, Vinod Goenka and Sanjay Chandra that DoT would allocate spectrum based on the

priority fixed from the date of signing of licence agreement and agreement would be signed first with an entity which complied with the LOI first. It is submitted that though later on this information also appeared in the media, but it was known only to the accused persons in a definitive manner as a result of conspiracy. It is submitted that STPL got their FBG and PBG prepared in November 2007 itself and Unitech group of companies got their Demand Drafts prepared in October 2007 itself. It is the case of the prosecution that these facts are indicative of a definite knowledge indicating prior concert with the accused persons. To show prior knowledge of STPL, my attention has been invited to the deposition of PW 63 Sh. Alok Kumar; the then Chief Manager, Fort Branch, PNB, Mumbai, PW 64 Ms. Mythili Ramakrishnan; the then Manager, Fort Branch, PNB, Mumbai and PW 65 Sh. Sanath Kumar Aggarwal; the then AGM, Fort Branch, PNB, Mumbai, from where STPL had obtained loan and got prepared PBGs and FBGs in November 2007 itself. To show advance knowledge of Unitech group of companies, my attention has been invited to the deposition of PW 103 Sh. Kaushal Nagpal, DGM (Finance & Accounts) of Unitech Limited, who deposed that the bank drafts were got prepared by Unitech group of companies in October 2007 itself.

986. On the other hand, the defence argued that after the receipt of TRAI Recommendations and acceptance thereof by the DoT, the knowledge of LOIs and licences being issued in near future was in the open and there was nothing secret about it. It is further argued that many companies knew it in advance

that licences would be issued shortly and priority for allocation of spectrum may be determined from the date of signing of licence agreement. My attention has been invited to the testimony of PW 33 Sh. Akhlesh Kumar Saxena; Vice President (Corporate), Spice Communications, PW 34 Sh. Arun Kumar Dalmia; Advisor of Allianz, PW 40 Sh. Rahul Vatts; Assistant Vice President, Idea Cellular Limited and PW 41 Sh. Anand Dalal; Sr. Vice President (Corporate Regulatory Affairs), TTSL. The case of the defence is that there was no secrecy at all and all the happenings in the DoT were known to everyone.

987. Let me take note of the evidence on record.

988. PW 41 Sh. Anand Dalal in his cross-examination dated 02.05.2012, page 1, deposed as under:

> ".....I used to visit AS cell, LF cell, DS (Data Service) cell, apart from WPC wing. In the DoT, I used to meet officials either of the rank of director or DDG in all the four cells. I do not remember as to who was the DDG of LF cell in 2008. However, Mr. A. K. Srivastava was DDG of AS cell in 2008. It is correct that it was in public domain that LOIs were likely to be issued by DoT at anytime in the first week of January 2008. Again said, I saw the press release either on 7th or 8th January 2008, wherein it was mentioned that LOIs may be issued this week....."

He further deposed, page 13, as under:

> "I have been shown letter dated 11.10.2007 written by TTSL to DoT conveying its understanding that LOIs may be issued soon to the eligible applicants and its apprehension being at a disadvantage vis-a-vis new applicants regarding no dues certificate and this letter was written on the basis of the press

reports. The said letter is now Ex PW 41/DM-8. We did not have any inside information as this information was in public domain....."

It may be noted that TRAI Recommendations were approved by Sh. A. Raja on 17.10.2007, but the company knew about issue of LOIs much before this. The company wrote a letter on 11.10.2007 itself, much before anything had happened in DoT about TRAI Recommendations.

989. This witness has referred to a letter dated 11.10.2007, Ex PW 41/DM-8, page 262. The relevant part of the letter reads as under:

"Our applications for issue of UASL licences in the above mentioned circles have been pending with Department of Telecommunications since 21st June 2006.

We understand that DoT will soon release the LoIs to the eligible applicants, in which process we expect to get LoIs against our applications.

We would like to draw your attention to an anomaly between the treatment of applicants that **don't hold any telecom licences,** and those **that hold other telecom licenses**.

The UASL Guidelines dated 14th December, 2005 do not contain any requirement to submit No Dues Certificate before signing the licence agreement. However, if DoT includes an additional requirement of a No Dues Certificate (NDC), existing licencees like our company would be required to get it from DoT before the licence is signed. The No Dues Certificate is provided to your department by the licensing finance cell and the finance cell of WPC. This can be a time consuming process **on which the**

applicants (who have existing licences) would have no control.

Sir, there have been recent press reports indicating that DoT may allocate spectrum based on a priority determined by the date of signing of the licence agreement. You will appreciate that if these news reports are true, it will place applicants like us at a serious disadvantage with new applicants who do not have to comply with the onerous requirement of obtaining NDC and who will, therefore, be able to sign the licence immediately and claim eligibility to get spectrum ahead of longstanding applicants like us.

In the light of the above, we request you not to include any conditions like NDC in the letter of intent and thus avoid unfair advantage being claimed by other applicants as aforesaid."

990. This letter shows that as early as 11.10.2007, TTSL knew about issue of LOIs as well as expected change in priority for allocation of spectrum. The company knew about change of priority from date of application to date of payment as early as 11.10.2007. Who were its sources in DoT?

991. PW 80 Sh. A. S. Narayanan, Dy. General Manager, Loop Mobile India Limited (Formerly Shipping Stop Dot Com India Private Limited), in his cross-examination dated 21.11.2012, page 3, deposed as under:

"I do not have any idea whether letter dated 18.10.2007, already Ex PW 36/DK-11, was written by Sh. D. B. Sehgal or not, but it bears his signature at point B. It is written in this letter also and it was known to everyone that soon DoT was going to issue LOIs in October 2007. However, this was in the

media and no letter was received from DoT in this regard. I had no idea that payment would be deposited at the first instance."

The witness has referred to letter dated 18.10.2007, Ex PW 36/DK-11 (D-6), the relevant part of which reads as under:

".....Shipping Stop Dot Com India Pvt. Ltd is a subsidiary company of BPL Mobile Communications Ltd. We have applied for UAS licences for 21 circles, (All circles other than Mumbai Metro Service Area) on 6th September, 2007. We understand that DoT is contemplating to issue LOIs for all the pending UAS licence applications shortly. We also understand that the priority for allotment of spectrum will on the basis of the date of application for spectrum after the licence agreement has been signed by the company....."

The deposition of this witness also shows his prior knowledge about issue of LOI shortly and also change of procedure for allocation of spectrum. This company also knew about change of priority as early as 18.10.2007. It may be noted that reference to Law Ministry was sent on 26.10.2007. Their prior knowledge about everything happening in DoT is surprising.

992. PW 67 Ms. Preeti Malhotra, Executive Director, Spice, deposed in her cross-examination dated 08.10.2012, pages 10 and 11, as under:

".....In the letter of dated 31.12.2007 we had expressed that we were ready with all the formalities.
Ques: Why did you keep the payments ready?
Ans: We were anxious and wanted to tell the DoT

that we are ready with the formalities.
Ques: Did you know based on media reports that whosoever makes the payment first would get priority for issuance of UAS licence?
Ans: Based on media reports before 10.01.2008, we realized that terms of issuance of LOIs may be changed."

Not only this, in file D-36, Ex PW 60/J-17, there is a letter dated 28.11.2007, page 52, written by Spice to Chairman, Telecom Commission, asking it to decide its applications filed in August 2006. At page 2, it is written that:

"We would also like to draw your attention that seniority for spectrum allocation after issuance of licence should be linked to date of application (that is, 31.08.2006 in our case)."

The letter shows that the company had the prior knowledge about the change of procedure for allocation of spectrum and requested the Chairman, Telecom Commission, who was PW 36 Sh. D. S. Mathur, at that time, to fix their seniority from 31.08.2006, the date of application for UAS licence to DoT.

As per PW 67 Ms. Preeti Malhotra, Spice Communications had filed a petition before TDSAT that its seniority from date of its application may be protected.

993. Furthermore, PW 33 Sh. Akhlesh Kumar Saxena, Vice President (Corporate), Spice Communications, deposed in his cross-examination dated 30.03.2012, page 5, as under:

".....There was no secrecy regarding the fact that LOIs were likely to be issued as the fact was being reported in the media everyday....."

994. PW 34 Sh. Arun Kumar Dalmia, Advisor of Allianz, in his examination-in-chief dated 30.03.2012, page 1, deposed as under:

> ".....On 10.01.2008, I went to the office of DoT, New Delhi. On 7th or 8th January 2008, I had gone to the office of DoT to follow up the applications of the company for UAS Licences. During the entire months of December 2007 and January 2008, I kept visiting DoT office at New Delhi. As I kept visiting the DoT office, it came to my knowledge on 7th or 8th January 2008 that LOIs would be issued on 10.01.2008. On that day, I was carrying my authority letter with me which I had brought with me from Mumbai. I do not remember if I had come from Mumbai on 2nd or 4th January 2008....."

In his cross-examination dated 30.03.2012, pages 2 and 3, he deposed as under:

> "I used to meet some officers of DoT in connection with applications of our company from whom I came to know about the issuance of LOIs on 10.01.2008, either on 7th or 8th January 2008. I used to mainly meet Sh. A. K. Srivastava. I had inquired from Mr. Aseervatham Achari as to what should I do as our company had applied for UAS Licences and he told me to meet Sh. A. K. Srivastava. A stamp was issued by Department of Posts in the honour of my grandfather, who was a great freedom fighter, and in connection with that I used to meet Mr. Aseervatham Achari. Sh. Aseervatham Achari telephoned Sh. A. K. Srivastava and I accordingly met Sh. A. K. Srivastava. Sh. Aseervatham Achari had requested Mr. A. K. Srivastava to render necessary help to me in regard to our applications. I was in touch with the DoT officials before the date of issuance of LOIs, that is, 10.01.2008....."

995. PW 40 Sh. Rahul Vatts, Assistant Vice President, Idea Cellular Limited, in his cross-examination dated 27.04.2012, pages 19 and 20, deposed as under:

> ".....I have been shown DoT file D-40, already Ex PW 16/H, wherein at page 266, there is a letter dated 11.01.2008 written by Sh. Sanjeev Aga to Secretary, DoT, and Chairman, telelcom commission, mentioning that one of our official was present in the DoT office on 08.01.2008 also with compliances ready. The letter is now Ex PW 40/DE.
> .....
> .....
> I have been shown D-38, already Ex PW 36/DL-39, wherein at page 270, there is a copy of letter dated 20.12.2007 written by Sh. Rajat Mukarji to the DoT cautioning the DoT to process their applications before any other applications. The said letter is now Ex PW 40/DF. This letter is an annexure to letter dated 27.12.2007 written by Sh. Rajat Mukarji to DoT. This letter is now Ex PW 40/DF-1. Applications of TTSL and TTML for dual technology were filed after our applications. We were ready with our performance bank guarantee and other documents by 20.12.2007 and our letter of 27.12.2007 records this. Our pay orders for payment of entry fee were dated 08.01.2008....."

This witness referred to a letter dated 27.12.2007, Ex PW 40/DF-1, written by Idea Cellular Limited to Sh. D. S. Mathur, the relevant part of which reads as under:

> "We write further to our letter of December 20, 2007 (Annexure-1), where we asked the DoT to issue our long overdue 9 Letters of Intent forthwith. The UASL guidelines required the DoT to have done so 18 months ago. We have blocked financial resources since, but have been prevented from effecting payment solely because the DoT has not issued the

Letters of Intent as per specified timelines.

> Please note that any manipulation of initial spectrum allocation priority, achieved through the device of manipulation of dates of payment demands, would constitute an assault on government policy."

The evidence of this witness also shows that they had prior knowledge of change in the procedure for allocation of spectrum.

996. It may be noted that Spice and Idea had written letters, referred to above, to PW 36 Sh. D. S. Mathur, Secretary (T) about impending change in the procedure for allocation of spectrum, but he did not respond nor did he deny the impending change. Thus, everything happening in the DoT was an open secret known to everyone. In such a situation, how can one blame any specific individual for providing prior information to the accused companies.

997. Investigating officer PW 153 Sh. Vivek Priyadarshi in his cross-examination dated 21.11.2013, pages 17 to 19, deposed as under:

> ".....Letter dated 18.10.2007, already Ex PW 36/DK-11 (D-6), was in my notice during investigation to the effect that Shipping Stop Dot Com (India) (P) Limited had sought a no dues certificate from the DoT since new licences were going to be issued. Letter dated 11.10.2007, Ex PW 41/DM-8 (D-44), written by TTSL was also in my knowledge during investigation regarding its pending applications for UAS licences for the circles mentioned therein stating that it understood that DoT would soon issue LOIs.

Ques: I put it to you that these two letters are indicative of the fact that the knowledge regarding LOIs being issued to the new applicants was already in public domain?
Ans: It is correct that the knowledge that LOIs may be issued was in public domain since a press release dated 25.09.2007 was issued by DoT regarding receipt and processing of applications for new UAS licences. These letters also indicate such knowledge. The letters also indicate an apprehension amongst the applicants that in whatever manner the issue was being dealt with in DoT as learnt through their own sources could have been detrimental to them as they understood that the priority for allotment of spectrum would be on the basis of date of application for spectrum after the licence agreement was signed with the company. Accordingly, they apprehended that in such situation the real estate companies amongst new applicants could get benefit as signing of new licences for existing licencee companies could be delayed by DoT on ground of amendment of licences for want of no dues. I found during investigation that these companies did not have knowledge of exact design which the conspirators had in mind as the dates of priority were decided by them to be changed on the basis of compliance of LOI conditions and not in the order of dates of signing licences. Accordingly, only two companies had this prior exact information and were ready even with the entry fee, drafts/ instruments since October 2007 on demand. Accordingly, this suggestion is incorrect to that extent.
Ques: I put it to you that you have deposed falsely that press release was regarding receipt and processing of applications, though it was only in respect of receipt?
Ans: It is incorrect to say so because this press note was for acceptance of new applications by DoT which meant receipt, processing and decision also. Further, subsequent to it various Court matters were

also in public domain wherein such matters were deliberated and information about such deliberations appeared in media reports also.

The sources of the companies were not mentioned in the letters, these only mentioned that they understood so. I did not investigate these sources. It is correct that some other companies had also prepared bank drafts anterior to 10.01.2008.

I had seen letter dated 17.12.2007 written by VSNL to DoT and available in file D-44 at page 452, and is now Ex PW 153/DE-1. It is correct that as per this letter, the understanding of this company was also that DoT may put in a requirement for no dues certificate for allocation of new licences and dual technology spectrum to TTSL. However, this view was based on the background of such information available with existing licencee companies that those may be at a disadvantageous position, as stated by me above, if requirement of no dues certificate will be there. It is wrong to suggest that I have volunteered information in the course of my deposition today just to create confusion and to digress from the main issue....."

998. Furthermore, PW 147 Dy. SP Rajesh Chahal in his cross-examination dated 13.09.2013, pages 3 and 4, deposed as under:

".....I have been shown file Ex PW 60/DB (DoT File No. 1). This file was not seen by me during investigation. In this file my attention has been drawn to a newspaper report dated 09.01.2008 and I had not seen this newspaper report during investigation as I have not seen this file at all and, as such, I cannot say anything about it. It is wrong to suggest that it was in public knowledge on 09.01.2008 itself that LOIs would be distributed on 10.01.2008 and to whom. It is wrong to suggest that I was aware of this fact on account of this newspaper report. **Volunteered**: As per the facts revealed

during investigation, some of the applicant companies were aware on 09.01.2008 regarding the fact of issuance of LOIs very soon, but two companies Swan Telecom (P) Limited and Unitech Wireless (Tamil Nadu) (P) Limited were having this knowledge well in advance in October-November 2007 itself....."

999. It is clear that investigating officers are not sure as to how two companies were in know of changed procedure.

1000. It may also be noted that DW 13 Sh. Nandan Singh Rawat, Publisher, Business Standard Newspaper from New Delhi, placed on record, a copy of the newspaper dated 26.09.2007, in which there is a news item, Ex DW 13 (A-7)/X under the heading **"DoT's licence norms may be tougher"**. A paragraph in the news item reads as under:

".....It is also considering offering spectrum on a "first-come, first-served basis" to the company that pays its licence fee the earliest....."

This report proves that DoT was considering change of priority from date of application to date of payment as early as 25.09.2007. Thus, change of priority was in the knowledge of everyone.

1001. Similarly, DW 14 Sh. Anil Kumar of Indian Express, also placed on record a certified photocopy of the news item, Ex DW 14 (A-4)/X, dated December 19, 2007, under the heading **"DoT to break the link between spectrum and licences"**. The relevant part of the same reads as under:

"The Department of Telecommunications (DoT) is likely to delink spectrum from licences for operating telecom services. This means that a priority in queue

for unified access service licence does not ensure the same priority in the queue for spectrum, said a DoT official.
Once a company gets a letter of intent (LoI), it will be given fifteen days to submit licence fee. On submitting the fee, the company will be allotted the licence and then it will be able to apply for the spectrum. There will be a separate queue for spectrum and it will again be on a first-come-first-serve basis....."

1002. The analysis of evidence shows that change of procedure was contemplated by DoT from much before and almost everyone knew about it.

1003. It may also be noted that none of the witnesses examined by the prosecution nor does any document placed on record by it, proves that STPL and Unitech group of companies or persons connected therewith had any specific prior information about the date of issue of LOIs or the manipulation of priority for spectrum allocation. Investigating officer PW 153 Sh. Vivek Priyadarshi and assisting investigating officer PW 147 Sh. Rajesh Chahal, who investigated this aspect of the case, did not depose anything about this in their examination-in-chief. The deposition of witnesses extracted above shows that general information was available in the corridors of DoT about the impending date of issue of LOIs and the change in procedure for allocation of spectrum.

1004. From the act of preparation of bank drafts by Unitech group of companies in October 2007 and the PBGs and FBGs by STPL in November 2007, it is being argued by the prosecution that they had definite prior knowledge about the

issue of LOIs as well as change of procedure in allocation of spectrum. However, there is no material on record to draw such an inference. There is no definite evidence on record on this point. At best, it is suspicion. This standalone fact cannot prove prior knowledge and conspiracy.

1005. Furthermore, the most crucial question is: If these companies were having advance knowledge, who conveyed the information to them? The question is: Whether the information was leaked by accused due to conspiracy? The case of the prosecution is that the source of their information were the conspiring public servants, that is, Sh. A. Raja and R. K. Chandolia before 31.12.2007 and thereafter Sh. Siddhartha Behura also joined them in this act of conveying advance information. However, there is no material on record to arrive at such a conclusion.

1006. It may be noted that officials of various companies used to frequently visit DoT and meet its officials all the time. A glaring example of this is that vide note dated 10.12.2007, Ex PW 60/H-5 (D-7), it was proposed to seek clarifications from the companies as mentioned in the list, Ex PW 60/H-6. The draft letter proposed to be sent is, Ex PW 60/H-7. The letter was to be sent to all the companies. The letter was sent on 10.12.2007. However, officials of all the companies collected the letters personally on the same day or next day. For example, the letter of TTSL was collected by Sh. Nandan Singh; Assistant Manger, the letter of Idea Cellular Limited was collected by Sh. Sanjay Bhatnagar, the letter of Spice was collected by Sh.

Akhlesh Saxena; Vice President (Corporate), the letter of STPL was collected by Sh. Pradeep Loyal; Vice President (Projects), the letter of HFCL was collected by Sh. R. K. Mehta; Head (Regulatory Division), the letter of S. Tel was collected by Sh. Rupendra Sikka; Advisor, the letter of Parsvanath was collected by Sh. Rahul Kwatra; Chief Company Secretary, the letter of Datacom was collected by Sh. Ajay Sharma; Chief Technical and Security Officer, the letter of Loop Telecom was collected by Sh. A. S. Narayanan, DGM, the letter of Allianz was collected by Sh. Manprit Singh Chadha; CFO, the letter of Unitech was collected by Sh. Nitin Bansal; AGM, the letter of Shyam Telelink was collected by Sh. Subhash Sharma; DGM and the letter of Selene was collected by Sh. Manmohan Singh, Assistant Legal Manager.

1007. It is clear from the perusal of the record that these letters were collected either on 10.12.2007 or on the next day, that is, 11.12.2007. It is also clear from the perusal of the record that every company replied to the letter either on 12.12.2007 or on 13.12.2007. What does this prove? The collection of letters by senior officers of the companies in person on the same day shows that officials of the companies used to be present almost always in the DoT and also had all the information about the happenings in the DoT. In file D-7, it was decided to seek clarifications from the companies, whose application was to be processed and the letters were ordered to be issued and were issued on 10.12.2007. From where the companies came to know that such a letter was being sent to

each company? How did all the companies were able to depute their senior officers to collect the letter on the same day or the very next day? The conclusion is apparent that everything happening in the DoT was conveyed by concerned officials to each company in advance. Everything was leaking in DoT. There was no secrecy or sanctity. Who is responsible for it? There is no evidence. In such a situation, no blame can be cast on any of the accused alone.

1008. This conclusion is further fortified by the fact that in-principle approval for dual technology was ordered to be issued to the three companies vide note, Ex PW 36/DK-10 (D-5), dated 18.10.2007. These in-principle approvals were collected for Reliance Communications Limited by one Sh. Bharat Mathur and for Shyam Telelink by one Sh. Anil Pratap Singh on the same day. Similarly, for HFCL, it was collected by Sh. Mahender Nata on 19.10.2007, that is, on next day. What does it indicate? It indicates that everything happening in the DoT was known to everyone without any formal communication. How could the three companies come to know that in-principle approval for dual technology had been approved to be issued without any formal communication?

In such a scenario where every official information was being leaked, it cannot be argued that a specific information was conveyed to a specific company by a specific individual, unless there is a definite evidence on this point. It is all in the realm of speculation.

1009. Not only this, perusal of the massive record placed

on the record of the Court also shows that the officials of telecom companies used to visit DoT frequently and also used to meet various officials, creating an atmosphere of laxity and unwarranted openness where nothing was secret.

1010. The conclusion from the perusal of the evidence referred to above is that there is no merit in the submission of the prosecution that advance information about the issue of LOIs and change of procedure for allocation of spectrum was conveyed to STPL and Unitech group of companies by the accused public servants.

Conclusion:

1011. In the end, there is no merit in the submission of the prosecution that the first-come first-served policy was manipulated by the accused to the benefit of two accused companies and that Hon'ble Prime Minister was misled on this point. There is also no merit in the submission that the change of policy was manipulated by the accused and the accused beneficiary companies had prior knowledge of it. The entire prosecution case on this point is without merit.

III. Issue relating to Dual Technology Approval and Spectrum Allocation: Role of A. Raja, Shahid Balwa, Vinod Goenka and Sanjay Chandra

Background of Dual Technology, TRAI Recommendations & Approval thereof

1012. In the beginning, when mobile telephony was introduced in 1994, CMTS licences were technology specific, that is, they could use GSM technology only. However, in 1999,

the telecom licence was renamed as Cellular Mobile Service Providers (CMSP) licence and was also made technology neutral.

1013. In 2003, Unified Access Service (UAS) Licence was introduced, which can offer both wireless and/ or wireline services and it was also technology neutral, that is, a licensee could offer services using either of the two technologies, GSM or CDMA.

1014. On account of policy of technology neutrality, telecom operators started seeking combination of technologies, that is, a GSM operator sought CDMA and vice versa. However, the view of the DoT was that technology neutrality referred to a situation in which a licensee would choose either of the two technologies in the beginning of the licence and once the technology had been chosen, it had to stick to that. This was for the reason that a particular band of spectrum was allocated to it in the beginning and as per clause 43.5 (ii) of Licence Agreement, a licensee could provide services as per already contracted and allocated spectrum. The licensee was at liberty to choose any technology, but once this option was exercised, he was bound to continue to offer services using the same technology. This conflicting viewpoint created an uncertain situation.

Reference to TRAI

1015. In order to seek clarity on the point, Recommendations of TRAI were sought vide reference dated

13.04.2007, Ex PW 11/A (D-5, page 37), and the relevant part of the reference reads as under:

> "iv. Permit service providers to offer access services using combination of technologies (CDMA, GSM and/or any other) under the same license."

TRAI Recommendations dated 28.08.2007

1016. TRAI, vide its Recommendations dated 28.08.2007, Ex PW 2/DD, recommended that a combination of two technologies may be permitted and the relevant paragraphs read as under:

> "6.21 A licensee using one technology may be permitted on request, usage of alternative technology and thus allocation of dual spectrum. However, such a licensee must pay the same amount of fee which has been paid by existing licensees using the alternative technology or which would be paid by a new licensee going to use that technology.
>
> 6.22 Levy of a specified amount of fee which should be, at least, equal to the entry fee for UAS licence. Further, for purposes of assessment of market power in the context of competition analysis in the market, the combined market share arising out of service provision through both the technologies will be taken into account and obligations if any to be imposed on such dominant operators as and when necessary in future will be done with reference to combined market power of such licensees.
>
> 6.23 Regarding inter se priority for spectrum allocation, when the existing licensee becomes eligible for allocation of additional spectrum specific to the new technology, such a licensee has to be treated like any other existing licensee in the queue

and the inter se priority of allocation should be based on the criteria that may be determined by the Department of Telecommunications for the existing licensee."

Processing of TRAI Recommendations in DoT and approval by Sh. A. Raja

1017. These Recommendations were processed and examined in the DoT from 4/N to 18/N in file D-5. The Recommendations were examined by a committee constituted vide note dated 20.09.2007, Ex PW 36/A-6, and headed by Member (T). The committee gave its report Ex PW 36/A-8 and recommended the acceptance of TRAI Recommendations on the point of dual technology also. Thereafter, vide note dated 10.10.2007, Ex PW 60/B-1, the matter was placed before the Telecom Commission, which approved the same on 10.10.2007 itself. On the approval of Telecom Commission, note dated 11.10.2007, Ex PW 36/A-14, was recorded for obtaining administrative approval of the Minister. This note was agreed to by Secretary (T) PW 36 Sh. D. S. Mathur on 11.10.2007 (18/N), and he marked the file to Sh. A. Raja.

1018. When the matter reached Sh. A. Raja, while approving the Recommendations, he recorded the following note dated 17.10.2007, Ex PW 36/A-15:

"Action on TRAI recommendations as proposed above are accepted subject to following changes:

Para 6.4 - TRAI recommendation is accepted. TEC should submit its report on efficient utilisation of spectrum by 31.10.2007. Till then, all those existing operators who become eligible as per TRAI

criteria, may be released additional spectrum subject to maximum of 10 MHz per Circle.

Para 6.16 - It will be considered along with TEC Report.

Para 6.20 - we may consider it as and when such new technology becomes available.

Para 6.24 – Separate streams may be maintained for different technologies for calculation of licence fee and spectrum charges.

In view of above approvals, pending requests of existing UASL operators for use of dual / alternate wireless access technology should be considered and they should be asked to pay the required fees. Allocation of spectrum in alternate technology should be considered from the date of such requests to WPC subject to payment of required fees."

Thus, priority for allocation of dual technology spectrum was from date of application to WPC.

1019. Combination of dual technology was recommended by TRAI and the same was approved by Telecom Commission also. Sh. A. Raja also approved the same.

In addition to that he also ordered that pending requests of existing UASL operators for use of dual/ alternate wireless access technology should be considered and they should be asked to pay the required fees and priority for allocation of spectrum in alternate technology should be considered from the date of such requests to WPC subject to payment of required fees. It may be noted that applications of three companies seeking dual technology were pending with the DoT at that time.

1020. The order of Sh. A. Raja was seen by Secretary (T)

Sh. D. S. Mathur, Member (T) Sh. K. Sridhara, DDG (AS) Sh. A. K. Srivastava and Director (AS-I) Sh. Nitin Jain, as they appended their signatures below the order of the Minister in the downward journey of the file.

1021. In pursuance to the aforesaid order, Sh. Nitin Jain recorded note dated 18.10.2007, Ex PW 36/A-16, for conveying the approval of dual technology to the three companies whose applications were pending on that day, that is, Reliance Communications Limited, for nineteen service areas; Shyam Telelinks for Rajasthan service area; and HFCL for Punjab service area, and placed the draft letters for in-principle approval on the file.

1022. When this note reached Secretary (T) PW 36 Sh. D. S. Mathur, he recorded note dated 18.10.2007, which reads as under:

> "This matter was discussed. It may be processed as per the procedure being proposed separately."

Thereafter, he marked the file to Sh. A. Raja. Sh. A. Raja recorded note dated 18.10.2007, Ex PW 60/C-6, which reads as under:

> "It is unfortunate that the secretary has not properly recorded what was discussed with me. It was decided in that discussion that till TEC recommendations on spectrum are received, no spectrum may be issued to any one. For allocation of spectrum for dual technology, the date of payment of required fee should determine the seniority. Necessary orders may be issued."

Thus, the priority for allocation of dual technology spectrum was changed to date of payment of prescribed fee.

1023. It is interesting to take a look on the cross-examination of DW 1 Sh. A. Raja dated 21.07.2014, pages 12 and 13, on the point as to why order dated 18.10.2007 was passed, which reads as under:

> ".....**Ques**: Kindly take a look on note sheet at point B on page 20/N, which reads "This matter was discussed. It may be processed as per procedure being proposed separately". Why did you not wait for any such proposal and went ahead to decide Ex PW 60/C-6 without awaiting any such proposal?
> **Ans**: Secretary (T) came to me for a discussion with regard to whether date of application to the WPC for these three applicants can be considered for grant of spectrum, though there was no permission granted for alternate technology as on the date of application filed in 2006, as per my order on 17.10.2007. He also pointed out whether additional spectrum for existing operators on the basis of the subscriber based criteria can be done. Contrary to these discussions, Secretary observed in his note that it may be processed as per the procedure being proposed separately, in spite of the approval sought from me for in-principle approval for dual technology. This proposal was mooted by Director (AS-I) and endorsed by DDG (AS) and vetted by LA (T). Therefore, there was no need to put up a separate proposal, which was also not discussed by Secretary (T). Since the discussions were not duly noted by the Secretary, I corrected the position, as per the discussions on 18.10.2007, through the aforesaid order. For these reasons, there is no question of waiting for a separate proposal as wrongly noted by Secretary (T). However, the file was sent to the Secretary and he endorsed the observations made by me....."

1024. In his further cross-examination dated 22.07.2014, page 1, he deposed as under:

> ".....It is wrong to suggest that my answer to the last preceding question yesterday is false. It is further wrong to suggest that no such discussions, as referred to in my reply, took place. It is wrong to suggest that note Ex PW 36/A-16 does not contemplate any procedure. **Volunteered**: However, the Secretary was at liberty to initiate any such proposal....."

1025. Thus, Sh. A. Raja explained the circumstances which led him to pass order dated 18.10.2007. Whether his explanation is reasonable one? It is reasonable one as priority for spectrum allocation for dual technology could not go back to 2006, when dual technology was not even permitted?

Issue of In-principle Approval for Dual Technology and Press Release

1026. Thereafter, in-principle approvals for dual technology were issued to the three companies and a press release Ex PW 36/DK-12, page 214 (D-5, Vol. I), was also issued on 19.10.2007. The relevant part of the press release is extracted as under:

> ".....In order to further enhance the penetration of access services for rapid expansion of tele-density, it has also been decided that the existing private UAS Licensees may be permitted to expand their existing networks by using alternate wireless technology i.e. the present UAS Licensee who is using GSM technology for wireless access may be permitted to

use CDMA technology and vice-versa. The spectrum for the alternate technology, CDMA or GSM (as the case may be) shall be allocated in the applicable frequency band subject to availability after payment of prescribed fee. Allocation of spectrum for the alternate technology may be done to private UAS Licensees on payment of prescribed fee, which will be an amount equal to the amount prescribed as entry fee for getting a new UAS licence in the same service area. The existing UAS Licensees, who have already applied for allocation of spectrum for the alternate technology shall also be considered for allocation of spectrum in alternate technology from the date of payment of prescribed fee. BSNL and MTNL being incumbent operators shall be permitted usage of alternative technology and allocated spectrum for the alternate technology without paying the prescribed fee. For the purpose of payment of licence fee and spectrum charges, the stream wise revenue of different technologies shall be considered....."

Filing of Applications by TTSL and TTML and Action of DoT Officials

1027. Following the issue of press release permitting dual technology, TTML and TTSL also filed their applications dated 19.10.2007 for dual technology on 22.10.2007. In this regard, PW 41 Sh. Anand Dalal, Sr. Vice President of TTSL, in his examination-in-chief, dated 01.05.2012, pages 4 and 5, deposed as under:

"....Before 2006, TTSL and TTML were providing services using CDMA technology. Both these companies had also applied for permission to use GSM technology. On 19.10.2007 a press release was issued by DoT regarding issue of dual technology permission and in response to that we

applied for the same on the same day. I had gone through the press release. I have been shown DoT file D-5 vol. I, already Ex PW 36/A-3, and a copy of the said press release is available in this file at pages 212 to 214, already Ex PW 36/DK-12. I have been shown letter dated 19.10.2007 written by Sh. Ashok Sud, authorized signatory for TTML, to the DoT. The subject matter was in- principle approval for use of GSM technology under existing UAS Licences for two circles, namely, Mumbai and Maharashtra. The said letter is already Ex PW 36/DK-13. The signature of Sh. Ashok Sud appears at point A, which I identify. A similar letter was also written by Sh. Ashok Sud for TTSL company seeking in-principle approval to use GSM technology under existing UAS Licences for eighteen circles. The letter is also dated 19.10.2007 and is already Ex PW 36/DK-14, page 220. Signature of Sh. Ashok Sud appears at point A, which I identify.

LOIs for three circles, that is, Assam, North-East and J&K, were issued to us on 10.01.2008. In-principle approval for use of GSM technology, for the circles applied for, was issued on 10.01.2008. For collecting the LOIs on 10.01.2008, Sh. Rakesh Mehrotra and myself went to DoT office....."

Thus, TTSL/ TTML applied for dual technology on 22.10.2007.

1028. In the meanwhile, the dual technology policy as recommended by TRAI and approved by DoT was challenged by COAI before Hon'ble TDSAT. On this, note dated 23.10.2007, Ex PW 36/A-18 (D-5), was recorded by Sh. R. K. Gupta, ADG (AS-I), taking both developments on record, that is, filing of applications of TTSL/ TTML and challenge before TDSAT which reads as under:

"Approvals of Hon'ble MOC&IT at page 19, 21 &

22/N refers.

2. Accordingly, subsequent to decision on TRAI's recommendations on "Review of license terms & conditions and capping of number of access providers" the reply to TRAI has been attempted. As per the approvals at 19/N, 21/N, 22/N (48/c), the **DFA** is placed at **81/c** for kind consideration and approval please.

3. Vide letter dated 19.10.2007, M/s Tata Teleservices (Maharashtra) Limited has requested for in-principle approval **to use GSM technology** under UAS licences for Mumbai and Maharashtra service areas (55/c).

4. Vide letter dated 19.10.2007, M/s Tata Teleservices Limited has requested for in-principle approval to **use GSM technology** under UAS licences for West Bengal, Andhra Pradesh, Bihar, Gujarat, Haryana, Himachal Pradesh, Karaataka, Kerala, (Madhya Pradesh, Orissa, Punjab, Rajasthan, Tamilnadu (excluding Chennai), Chennai, Uttar Pradesh (West), Uttar Pradesh (East), Delhi and Kolkata service areas (56/c).

5. As per the information received from WPC Wing (File linked below) about the pending requests from existing GSM operator for use of wireless access technology, vide letter dated 24.05.2007, M/s Reliance Telecom Limited has requested for allocation of spectrum **to use CDMA technology** under UAS licences for Assam and North East service areas (Copy at 57/c).

6. The guidelines for Unified Access (Basic & cellular) Services licence issued vide no.808-26/2003-vas dated 11th nov., 2003 (placed below at 58/c) envisages that

"(i) The existing operators shall have an

option to continue under the present licensing regime (with present terms & conditions) or migrate to new Unified Access Services Licence (UASL) in the existing service areas, with the existing allocated/ contracted spectrum."

7. The **Note** under clause 1.4 of UAS Licence may also be seen which is reproduced as below (copy of the relevant clause is placed at 59/c):

"**Note**: Clause 1.4 (ii) shall not be applicable to Basic and Cellular Licensees existing as on 11.11.2003, and in case one of them migrates to UASL it shall not be necessary to surrender the other License. Further, Basic and Cellular Licensees existing as on 11.11.2003, shall not be eligible for a new UASL in the same service area either directly or through it's associates. Further, any legal entity having substantial equity in existing Basic / Cellular licensees shall not be eligible for new UASL."

8. Accordingly the 7 CMTS licences of M/s Reliance Telecom Limited including Assam and North East, Bihar, West Bengal, MP, Orissa and HP Service areas have been migrated to UAS Licence on 18-10-2007.

9. The cases of incumbent operators M/s MTNL and BSNL shall be examined separately.

10. The approval of Hon'ble MOC&IT in the last para at 19/N dated 17.10.2007, read with the approval at 21/N dated 18.10.2007 and press release dated 19.10.2007 (48/c), brings out that pending requests of existing UASL operators for use of dual/alternate wireless access technology should be considered and they should be asked to pay the required fees (fee equal to the entry fee to be paid by new UAS licensee in respective service areas) and for allocation of spectrum for dual technology, the date of payment of required fee shall determine the

seniority.

11. The pending request of M/s. Reliance Communications Limited for West Bengal, Andhra Pradesh, Bihar, Gujarat, Haryana, Himachal Pradesh, Jammu & Kashmir, Karnataka, Kerala, Madhya Pradesh, Maharastra, Orissa, Punjab, Rajasthan, Tamilnadu (including Chennai), Uttar Pradesh (West), Uttar Pradesh (East), Delhi, Mumbai and Kolkata Service Areas; request of M/s. Shyam Telelink Limited for Rajasthan Service Area; and request of M/s. HFCL Infotel Ltd. for Punjab Service Area have already been considered 20-22/N and In-Principle-Approvals have been issued (39-41/c). M/s. Reliance Communications Limited has made the required payment on 19-10-2007. Accordingly the approval shall be issued separately for usage of dual technology spectrum (CDMA & GSM) for the licence (s) of M/s. Reliance Communications Limited for the above service areas. WPC wing of DoT is also being intimated separately.

12. The other pending request for use of Dual spectrum as detailed in para 3 to 5 above are submitted for kind information. Necessary action will be taken in terms of policy after it is finalized.

13. In the mean time, COAI & ors have filed a petition No. 286 of 2007 before TDSAT, inter-alia, against the policy decision of the government. TRAI is also a respondent in this petition. Therefore it is required that TRAI be informed about the details of the decision of the Government on each of their recommendations.

14. Submitted for kind consideration and approval of **DFA at 81/c** please."

1029. A bare perusal of note, particularly para 12, reveals

that the fresh applications for dual technology including that of TTSL and TTML were taken on record and put up to superior officers only for information. It is clearly recorded that these will be disposed of only when policy in this regard was finalized.

1030. When this note reached Sh. D. S. Mathur, he recorded note dated 24.10.2007, Ex PW 36/A-19, which reads as under:

> "Some more applications have been made for permission to use GSM technology in areas where the applicant is using CDMA technology. These applications should be considered alongwith the applications for new licences numbering 575 & are pending since more than six months in chronological order as these are received.
>
> In case applications made now for permission to use GSM technology in areas for which the applicant is licensed to use CDMA technology are allowed, these applications would get an unjustifiable advantage in allocation of GSM spectrum."

Perusal of this note reveals that Secretary (T) suggested a way as to how these fresh applications for dual technology were to be dealt with and disposed of. He suggested that these applications be disposed of in chronological manner alongwith other applications to avoid them getting any unjustifiable advantage. This note is to be read with note dated 24.10.2007, Ex PW 36/B-2, in file D-7.

1031. Sh. D. S. Mathur marked the file to Minister Sh. A. Raja. Sh. A. Raja recorded a note dated 30.10.2007, Ex PW 36/A-20, which reads as under:

"The decision on seniority of existing UASL license vis-a-vis to new applications will be taken after the opinion of the law minister is received."

It may be noted that this note was recorded on 30.10.2007. Reference to Law Ministry was sent on 26.10.2007. That reference had not returned by 30.10.2007. One of the points in the reference was the question as to how to deal with fresh applications for dual technology, including that of TTSL and TTML. The reference from the Law Ministry returned on 01.11.2007. As such, the note of Sh. A. Raja was in conformity with the reference sent to the Law Ministry. When the reference had not returned by that date, it was natural and just for the Minister to record that these applications would be decided after the opinion of Law Ministry was received.

Processing of applications of TTSL and TTML

1032. Following the approval of grant of dual technology by the DoT, as already noted above, TTSL filed application dated 19.10.2007, Ex PW 57/DL-1, page 207/c (D-47), for permission for in-principle approval to use dual technology in eighteen service areas and TTML had filed a separate application of the same date, Ex PW 60/J-68, page 208/c (D-47), for permission for in-principle approval to use dual technology in two service areas, that is, Mumbai and Maharashtra. These applications were taken on record vide note dated 23.10.2007, Ex PW 36/A-18, of Sh. R. K. Gupta, as already noted above.

In the meanwhile, as already noted above, the order

of the DoT to permit use of dual technology was challenged by COAI before TDSAT vide petition No. 286/2007, Ex PW 60/E (D-97), dated 22.10.2007. However, TDSAT did not grant any stay.

1033. Thereafter, the issue of allocation of spectrum and processing of fresh applications for dual technology was dealt with in file D-8. Since there was no stay from TDSAT or Hon'ble Delhi High Court on the policy of dual technology, processing of applications of TTSL and TTML was approved by Sh. A. Raja on 03.01.2008 vide order Ex PW 36/D-10, page 6/N (D-8).

1034. Accordingly, applications of TTSL and TTML were processed on 04.01.2008, vide note, Ex PW 60/J-67, page 1/N (D-47) (176/c), recorded by Sh. Madan Chaurasia, following approval by the Minister as referred to above. The note of Sh. Madan Chaurasia Ex PW 60/J-67, was agreed to by ADG (AS-I), Director (AS-I), DDG (AS), Member (T), Secretary (T) and was approved by Sh. A. Raja on 09.01.2008. The note reads as under:

> "**Subject: In-Principle-Approval to use GSM technology under the existing Unified Access Services (UAS) Licences to M/s Tata Teleservices Limited and M/s Tata Teleservices (Maharashtra) Limited.**
>
> PUC-I at 1/c is letter dated 19.10.2007 wherein M/s Tata Teleservices Limited has requested for in-principle approval to use GSM technology under UAS licences for West Bengal, Andhra Pradesh, Bihar, Gujarat, Haryana, Himachal Pradesh, Karnataka, Kerala, Madhya Pradesh, Orissa, Punjab, Rajasthan, Tamilnadu (excluding Chennai), Chennai,

Uttar Pradesh (West), Uttar Pradesh (East), Delhi and Kolkata service areas.

2. PUC-II at 2/c is letter dated 19.10.2007 wherein M/s Tata Teleservices (Maharashtra) Limited has requested for in-principle approval to use GSM technology under UAS licences for Mumbai and Maharashtra service areas.

3. In the matter, following are submitted.

(i) On 17th October, 2007 Government took decision on TRAI's recommendations dated 28.10.2007 wherein use of dual technology under the same existing CMTS/UAS licence is permitted.
(ii) On 18th October, 2007 Government has issued in-principle-approvals for use of dual technology to M/s. Reliance Communications Limited, M/s. Shyam Telelink Limited and M/s. HFCL Infotel Limited (3/c).
(iii) On 19th October, 2007 Government has issued a Press release, interalia, stating that permitting the use of dual/alternative technology under the existing UAS/CMTS licence after paying the prescribed fee.
(iv) COAI has challenged the policy of Government announced through Press release dated 19.10.2007 vide Petition No.286/2007 before TDSAT.
(v) In the order dated 12.12.2007, TDSAT refused to grant stay in the matter.
(vi) On 03.01.2008, in the hearing of writ petition No. W.P. (C) 9654/2007 (CM. Appl. 18210-18211/2007) in the matter of COAI and UOI, Hon'ble High Court of Delhi, has not granted any stay and has observed that the action of Government on allowing of dual technology under a single UAS licence shall be subjected to outcome of the courts orders.
(vii) Approval of competent authority has also been taken in a separate file no. 20-161/2007-AS-I to process the pending applications of M/s. TATAs for

issue of in-principle-approvals.

4. Accordingly, DFA-I & II, as detailed below are placed for kind consideration and approval please:

(i) DFA-I (4/c) for M/s Tata Teleservices Limited for in-principle approval **to use GSM technology** under UAS licences for West Bengal, Andhra Pradesh, Bihar, Gujarat, Haryana, Himachal Pradesh, Karnataka, Kerala, Madhya Pradesh, Orissa, Punjab, Rajasthan, Tamilnadu (excluding Chennai), Chennai, Uttar Pradesh (West), Uttar Pradesh (East), Delhi and Kolkata service areas.

(ii) DFA-II (5/c) for M/s Tata Teleservices (Maharashtra) Limited for in-principle approval **to use GSM technology** under UAS licences for Mumbai and Maharashtra Service Areas."

1035. It may be noted that F. No. 20-161/2007-AS-I (Pt.) is file D-8.

The note was signed by PW 60 Sh. A. K. Srivastava on 07.01.2008 and by PW 77 Sh. K. Sridhara, Member (T), and Secretary (T) on 08.01.2008.

The note reached Sh. A. Raja on 09.01.2008 and he approved the same on that day itself. In view of this, in-principle approvals, Ex PW 60/N-27, page 192/c and Ex PW 41/DJ, page 195/c (D-47), were issued to TTSL and TTML on 10.01.2008.

1036. On receipt of in-principle approval for dual technology, TTSL and TTML filed twenty applications, Ex PW 41/M-1 to M-20 (D-83), for allocation of GSM spectrum on 10.01.2008 itself. The prescribed fee was also deposited on the

same day. In this regard, it is useful to take note of deposition of PW 41 Sh. Anand Dalal, who in his examination-in-chief dated 01.05.2012, pages 7 and 8, deposed regarding filing of applications on 10.01.2008 as under:

> ".....On entering the CR section, I filled up the LOI numbers on the application form and the same was deposited by me at one of the three counters at the CR section. During this process, Sh. Rakesh Mehrotra also came inside the CR section. There we deposited entry fee for three circles, for which LOIs were collected and also the payment towards in-principle approval for both TTSL and TTML. We also submitted at the same counter our applications for allocation of spectrum, addressed to Wireless Advisor, towards three new circles as well as the GSM technology for balance circles under the existing licence. By 5 to 5:10 PM, we got PBGs and FBGs for three new circles, that is, J&K, Assam and North-East, and the same were submitted to the DoT in the same CR section at about 5:20 PM. There were three counters at the CR section. One counter was checking the applications. Second counter was acknowledging the application by putting date and time, and third counter was putting the stamp of acknowledgment. The payment was made towards entry fee by DDs/ pay orders for three new circles and in-principle approval for applied circles....."

1037. Thereafter, note dated 14.01.2008, Ex PW 60/N-28 (D-47), was recorded by Sh. Raj Kataria for amendment of licences of TTSL and TTML. It may be noted that amendment of licence is required for enabling a UAS licensee to avail dual technology spectrum as otherwise as per clause 43.5 (ii), it is contractually bound to operate in the already contracted/

allocated technology.

1038. The aforesaid file reached Sh. A. Raja on 23.01.2008 and the same was approved by him on 27.02.2008, which amendment was conveyed to the TTSL and TTML on 04.03.2008 and application, Ex PW 41/O, for allocation of GSM spectrum was again filed by the two companies on 05.03.2008.

Submissions of the Parties

1039. It is the case of the prosecution that vide letter dated 26.10.2007, Ex PW 60/C (D-7), DoT had sought opinion of learned SG as to the manner in which pending applications for new UAS licences and dual technology spectrum were to be decided. It is the case of the prosecution that TTSL and TTML had filed their applications on 22.10.2007 and A. Raja, instead of disposing them in terms of orders dated 17.10.2007, Ex PW 36/A-15, and dated 18.10.2007, Ex PW 60/C-6, dishonestly clubbed these applications with the letter sent to the Ministry of Law & Justice for opinion of learned SG. It is their case that the issue of dual technology had already been decided by Sh. A. Raja and these applications for dual technology were to be treated at par with the existing licensees and not with applicants for new licences. It was emphasized at the bar in great detail that these applications of TTSL and TTML were dishonestly clubbed with the new applicants and opinion of learned SG was sought for no reason at all on these applications. It was repeatedly emphasized that this was done by Sh. A. Raja as he was in conspiracy with the accused

companies, that is, STPL and Unitech group of companies, and wanted to allocate them spectrum, though these were not eligible at all, more so, ahead of TTSL/ TTML. It is also their case that the criteria for deciding inter-se priority for allocation of spectrum was spelt out by the department in an affidavit filed before Hon'ble TDSAT on 13.11.2007, Ex PW 60/F-1 (D-90). The criteria was also spelt out in note dated 14.12.2007, Ex PW 36/D-1, recorded by Sh. Nitin Jain and also note of the same date, Ex PW 36/D-2, recorded by Sh. A. K. Srivastava, in file D-8, Ex PW 36/D. It is the case of the prosecution that this criteria was dishonestly not followed by Sh. A. Raja.

1040. It is also the case of the prosecution that accused A. Raja did not grant in-principle approval to TTSL and TTML till 10.01.2008 and clubbed the grant of in-principle approval with the grant of LOIs to applicants for new licences. It is also the case of the prosecution that TTSL and TTML were granted in-principle approval only on 10.01.2008. TTSL and TTML deposited the required fee on 10.01.2008 itself and submitted applications for allocation of dual technology spectrum in 20 service areas on the same day, that is, 10.01.2008, with the WPC wing of the DoT. However, these applications were made non-traceable.

1041. It is also the case of the prosecution that as per in-principle approvals, Ex PW 60/N-27 and Ex PW 41/DJ, date of payment of required fee was to determine the date of priority for allocation of spectrum. However, this was not adhered to by the accused persons.

It is next submitted that on 14.01.2008, Sh. Raj Kataria, Under Secretary, put up a note, Ex PW 60/N-28 (D-47), for amendment of UAS licences of TTSL and TTML for use of dual technology. It is their case that though the file reached Sh. A. Raja on 23.01.2008, but was deliberately delayed by him and the amendment was approved by him only on 27.02.2008, which was also deliberately conveyed belatedly to the companies only on 04.03.2008. It has repeatedly been emphasized at the bar that this was deliberately done to ensure that applications of STPL and Unitech were received earlier for allocation of spectrum.

1042. It is the case of the prosecution that on receipt of amendment to licence, TTSL and TTML applied for allocation of spectrum on 05.03.2008 and in the application it was clearly referred to that the companies had also filed applications for allocation of spectrum on 10.01.2008 and the date of priority should be 10.01.2008 as the payment of requisite fee was also made on this date. It has repeatedly been argued that the date of priority for allocation of spectrum for these two companies was kept 05.03.2008 and on account of this, TTSL was deprived of valuable spectrum in several service areas, more specifically in Delhi service area. It has been argued that subsequently this became a precedent and the two accused companies, that is, STPL and Unitech group of companies, were able to obtain spectrum in many service areas, though they did not deserve the same. It has repeatedly been argued that when spectrum for Delhi service area was being allocated, the criteria was not clear

and two officers, namely, PW 57 Sh. R. J. S. Kushvaha, Joint Wireless Advisor, and PW 87 Sh. D. Jha, Deputy Wireless Advisor, asked for clarity on this point, but the same was not clarified. It is submitted that the two officers submitted that the criteria for allocation of dual technology spectrum was date of payment and when the two officers persisted with this, they were summarily transferred.

1043. It has also been argued that Sh. A. Raja and Sh. Sidharath Behura, in conspiracy with Sh. Shahid Balwa and Sh. Vinod Goenka, also asked DoT officers to put up a note recommending intra-service roaming arrangement between two service providers by amending the UASL terms and conditions. It is submitted that this was done to benefit STPL, which did not have the necessary infrastructure nor had any intention to roll out the services. It is submitted that company failed to meet roll-out obligations. My attention has been invited to DoT file D-78, Ex PW 75/A, wherein there is a note dated 04.06.2008, Ex PW 75/A-1, recorded by Sh. PW 75 Sh. Sukhbir Singh on intra-service roaming. It has been argued that this was done to illegally benefit STPL.

1044. In the end, the argument of the prosecution is that TTSL and TTML should have got priority for allocation of dual technology spectrum from 10.01.2008, the date on which requisite payment was made and not from 05.03.2008, the date on which fresh application for allocation of spectrum was filed consequent to amendment of licence. It is also their case that though the company, that is, STPL, had no infrastructure or roll-

out capacity, but Sh. A. Raja tried to help it by making BSNL to enter into intra-service roaming arrangement with it.

The relevant evidence and the mass of documents have been read out at the bar for several days together.

1045. On the other hand, the defence has argued that date of priority for allocation of dual technology spectrum or initial spectrum was the date on which application for allocation of spectrum, complete in all respects, was filed before the WPC and not the date of payment. It has repeatedly been argued that there was no conspiracy at all. It is also the case of the defence that TTSL and TTML were not eligible for dual technology spectrum as they were existing licensees and had even failed to meet roll-out obligations regarding their existing licences and had also not cleared their past dues.

My attention has been invited to the evidence led on record and to the documents for several days together.

Let me examine the issues raised at the bar.

Clubbing of Applications of TTSL/ TTML with the Reference to MoLJ

1046. It is the case of the prosecution that instead of disposing the applications of TTSL and TTML received in DoT on 22.10.2007 for allocation of dual technology spectrum, Sh. A. Raja deliberately clubbed the same with the reference to MoLJ.

1047. It may be noted that PW 110 Sh. Nitin Jain, Director (AS-I), had recorded note dated 24.10.2007, Ex PW 36/B-2 (D-7), for seeking opinion of learned Solicitor General on grant of

new UAS licences and approval for use of dual technology spectrum by UAS licensees. The applications of TTSL and TTML, Ex PW 36/DK-14 and DK-13, pages 56 and 55 of file D-5, were received in DoT on 22.10.2007.

The relevant part of note Ex PW 36/B-2 recorded by Sh. Nitin Jain reads as under:

> "..... .....
> 3. It is mentioned that 575 applications for UASL licenses have been received till the cut-off date from 46 applicant companies in respect of 22 service areas in the country. Government is yet to decide on processing for grant of licenses to the applicants based on availability of spectrum and other issues. In terms of the approved policy, M/s Reliance Communications Limited had been asked to pay the applicable fee for use of Dual Technology spectrum (i.e. for GSM in addition to CDMA technology) **(3/c)**. M/s Reliance Communications Limited is Unified Access Service provider in 20 service areas and their applications were already pending with the Government for consideration of Dual Technology spectrum. M/s Reliance Communications Limited has paid the requisite fee amounting to Rs. 1651.5701 crores. Similar In-Principle approval has also been given to M/s HFCL and M/s Shyam Telelink Limited for Punjab and Rajasthan service areas respectively and they have been given 15 days time w.e.f 19.10.2007 to pay the requisite fee. Subsequently on 22.10.2007 M/s TATA who are UASL operators in 20 service areas have also applied for Dual Technology spectrum (i.e. for GSM in addition to CDMA technology). A decision is required to be taken in this case also.
>
> 4. DoT is also to decide on methodology of processing the pending UAS applications keeping all

aspects in view. We may request Learned Solicitor General to provide his opinion on methodology proposed by DoT with regard to grant of new UAS licences and usage of dual technology spectrum, based on availability of spectrum in each service area.

5. A brief to Learned Solicitor General seeking his opinion as above is placed below **(4/c)** for kind consideration and approval before sending it to Learned Solicitor General……..”

The note refers to a draft at 4/c. The same is Ex PW 36/B-1. The relevant part of this draft reads as under:

“.....
.....
4. The approved policy by the Government dated 17/18.10.2007 also included approval of usage of Dual Technology spectrum to be allocated under the same UAS license i.e. CDMA operators can be permitted usage of GSM spectrum and vice versa subject to payment of requisite fee and date of priority (for allocation of spectrum) shall be the date of payment of required fee (which is equal to the entry fee which has been paid by existing licensees under using one technology (GSM or CDMA) or which would be paid by a new UAS licensee in each service area. In terms of the approved policy, M/s Reliance Communications Limited was asked on 18.10.2007 to pay the applicable fee within 15 days for use of Dual Technology spectrum (i.e. for GSM in addition to CDMA technology). M/s Reliance Communications Limited is Unified Access Service provider in 20 service areas and their applications were already pending with the Government for consideration of Dual Technology spectrum. M/s Reliance Communications Limited has paid the requisite fee amounting to Rs. 1651.5701 crores on 19.10.2007. Similar In-Principle approvals were

issued on 18.10.2007 to M/s. HFCL and M/s. shyam Telelink Limited for Punjab and Rajasthan service areas respectively and they have been given 15 days time w.e.f 18.10.2007 to pay the requisite fee.

Subsequently on 22.10.2007 M/s. TATA who are UASL operators in 20 service areas have also applied for Dual Technology spectrum (i.e. for GSM in addition to CDMA technology). A decision is required to be taken in this case.

.....

.....

6. The availability of spectrum for new applicants will be indicated by WPC Wing keeping enough spectrum reserved for existing operators for expansion of their networks for next one year based on justification, allocation of spectrum to existing licensees who are awaiting spectrum allocation for initial roll out and dual technology spectrum for existing operators whose applications are already received and pending (priority to be accorded based on date of payment of required fee).

.....

.....

8.

.....

.....

(i) M/s. TATA are existing operator using CDMA technology in 20 service areas and their request for alternate technology spectrum in GSM was received by DOT on 22.10.2007. The date of priority for spectrum allocation may be date of payment of required fee for each service area, as in case of M/s. Shyam, Telelink Ltd., HFCL and Reliance Communications Ltd. M/s. TATA will be able to roll out the GSM network very fast because they have existing towers and other backbone infrastructure etc. is readily available. The subscribers will greatly benefit with increased competition.

Similarly it is proposed to give approvals may for usage of alternate technology to other UASL

operators also presently using any one of the wireless access technology (GSM or CDMA) on payment of required fee. However, in order to ensure that only serious players are to be considered, such requests for dual technology spectrum may be considered only from those applicants who have already met the existing roll out criteria in their existing UAS Licenses.

…….

……."

1048. However, PW 36 Sh. D. S. Mathur, Secretary (T), scored over a portion of the draft and replaced the below lines:

"as in case of M/s. Shyam, Telelink Ltd., HFCL and Reliance Communications Ltd. M/s. TATA will be able to roll out the GSM network very fast because they have existing towers and other backbone infrastructure etc. is readily available. The subscribers will greatly benefit with increased competition"

With the following lines by writing in his hand:

"Their request for permission shall be taken up alongwith the applications as per alternative I."

1049. It may be noted that above correction in the draft Ex PW 36/B-1 was also incorporated by Sh. D. S. Mathur in his note dated 24.10.2007, Ex PW 36/A-19, recorded at 24/N in file D-5. Thus, the two files, that is, D-5 and D-7 correspond with each other.

The alternative I in this draft, Ex PW 36/B-1, reads as under:

"**Alternative I:**

DOT proposes to process the applications on first-come-first served basis in chronological order of

receipt of applications in each service area as per existing procedure. LOI may be issued simultaneously to applicants (the numbers will vary based on availability of spectrum to be ascertained from WPC Wing) who fulfill the eligibility conditions of the existing UASL guidelines and are senior most in the queue. The required clarifications/ compliances on the applications already submitted may be taken before the applications are considered for approval of LOI. The time limit for compliance should be 7 days as per the existing provision of LOI and 15 days for submission of PBG. FBG, entry fee etc. as per existing procedure. The compliance to eligibility conditions as on date of issue of LOI may be accepted. No relaxation of this time limit will be given and the LOI shall stand terminated after the stipulated time period. (However, the applicant may have the right to apply for new UASL License again as and when the window for submission of application of new UAS License is opened again). Subsequent applicants may be considered for issue of LOI if the spectrum is available."

A bare perusal of the aforesaid note, Ex PW 36/B-2, and the draft Ex PW 36/B-1, reveals that applications of TTSL and TTML are mentioned therein. The note Ex PW 36/B-2 for seeking opinion of learned SG was recorded by PW 110 Sh. Nitin Jain. Let me take note of the evidence of Sh. Nitin Jain on this point.

1050. PW 110 Sh. Nitin Jain in his examination-in-chief dated 21.03.2013, pages 1 and 2, deposed as under:

".....I have been shown DoT file D-7, already Ex PW 36/B, wherein I have been shown note dated 24.10.2007, already Ex PW 36/B-2, wherein my signature appears at point C at the end of the note. I had prepared this note. This note was recorded as

large number of applications were received for UAS licences, which were quite unprecedented and, as such, the DoT thought of obtaining opinion of learned SG. I had also prepared a draft for sending to learned SG and that draft is at page 4/C in the file and is already Ex PW 36/B-1, pages 30 to 26. This is the same draft prepared by me. In this draft, opinion was sought on the two alternatives which are as under: (1) it was proposed to process the applications in first-come first-served basis in chronological order of receipt of application as per the existing procedure; and (2) certain number of LOIs, say about two times the number of applicant, as proposed in alternative (1) above may be issued in each service area in phase I....."

PW 110 in his cross-examination dated 22.03.2013, page 4, deposed as under:

".....**Ques**: I put it to you that in October-November 2007, the number of pending applications was quite large and earlier procedure of sequential processing and extended time for compliance would have led to inordinate delay?
Ans: This was an unprecedented situation on account of receipt of large number of applications and on account of this there would have been delay. That is the reason that draft Ex PW 36/B-1 was prepared, of which para 7 is a part wherein this fact finds mention....."

PW 110 Sh. Nitin Jain in his further cross-examination dated 16.07.2013, page 2, deposed as under:

".....It is correct that note 4/C dated 24.10.2007, already Ex PW 36/B-1, was proposed and the MOC&IT Sh. A. Raja approved note 5/C on the next day, already Ex PW 36/B-3....."

PW 110 Sh. Nitin Jain in his further cross-

examination dated 16.07.2013, pages 3 and 4, deposed as under:

> ".....The press release dated 24.09.2007, as mentioned in Ex PW 36/B-2, was uploaded on the website of PIB on that date itself. This was meant to bring the press release to the public notice. Note 4/C, already Ex PW 36/B-1, was prepared by me for consideration of learned SG. In this note, I proposed two alternatives.
> **Ques**: I put it to you that on the basis of alternative II mentioned in your note Ex PW 36/B-1, you proposed processing of certain number of applications in phase I and if calculated in the light of processing of that number of applications, the date comes to 25.09.2007?
> **Ans**: It is incorrect....."

Thus, Sh. Nitin Jain is categorical that the note dated 24.10.2007, Ex PW 36/B-2, for seeking opinion of learned SG was recorded by him on his own initiative.

1051. PW 60 Sh. A. K. Srivastava, DDG (AS), in his examination-in-chief dated 01.08.2012, pages 5 and 6, deposed as under:

> ".....I have been shown DoT file D-7, already Ex PW 36/B, pertaining to UAS Licensing policy. This file was opened in the AS section in the official course of business. I have been shown pages 1/N and 2/N, which contain a note of Sh. Nitin Jain, Director (AS-I), dated 24.10.2007. It bears signature of Sh. Nitin Jain at point C, which I identify. This note deals with the subject of seeking opinion of learned Solicitor General on grant of new unified access service (UAS) licences and approval for use of dual technology spectrum by UAS licencees. The note is already Ex PW 36/B-2. This note was put up to me by Sh. Nitin Jain. I read the note and

understood it and thereafter, marked it to Member (T) Sh. K. Sridhara, he in turn marked the file to the then Secretary (T) Sh. D. S. Mathur. My signature appears at point D and that of Sh. K. Sridhara at point E. As per para 5 of this note, a brief to the learned SG seeking his opinion as per note was placed in the file for consideration and approval. The note referred to in para 5 is available at pages 26 to 30 and is already Ex PW 36/B-1. It was prepared in my section. I had also seen it. There are certain corrections in the note. The corrections at pages 26 and 27 are in the handwriting of Sh. D. S. Mathur. A spelling correction was done by Sh. K. Sridhara at page 28 at point A. Whenever, a file is sent to the office of the Minister from the office of Secretary, the same is sent to him directly and not through AS section. The draft Ex PW 36/B-1 was sent to the then Minister through the then Secretary Sh. D. S. Mathur....."

Thus, Sh. A. K. Srivastava also deposed that the note was initiated by Sh. Nitin Jain and he agreed with it.

1052. PW 36 Sh. D. S. Mathur in his examination-in-chief dated 09.04.2012, page 13, deposed as under:

"I have been shown file of DoT, D-7, regarding UAS Licensing Policy. This file is of the DoT and is now collectively Ex PW 36/B. I have been shown note 1/N and 2/N initiated by Sh. Nitin Jain, Director (AS-I), dated 24.10.2007 regarding seeking of the opinion of Ld. Solicitor General of India on grant of new unified access service licences and approval for use of dual technology spectrum by such licencees. For sending the matter to the learned Solicitor General, a brief was also prepared and it was submitted through Sh. A. K. Srivastava, DDG (AS) and Sh. K. Sridhara, Member (T). The brief alongwith note sheet finally reached me. The brief is available at pages 26 to 30 (4/C). The brief is dated

24.10.2007 and is now Ex PW 36/B-1. The brief was put up by me alongwith the file to the then Minister on 24.10.2007 and my signature in this regard is at point A on 2/N. The note sheet is Ex PW 36/B-2. The brief which was meant for learned Solicitor General has certain corrections, but I have no idea as to who made the same. I have also been shown a brief at pages 31 to 35 (5/C) of the same file. The corrections made in brief Ex PW 36/B-1 have not been incorporated in this note 5/C. This note is now Ex PW 36/B-3. I am saying this after comparing the two drafts....."

PW 36 in his further examination-in-chief dated 10.04.2012, pages 1 and 2, deposed as under:

"....At this stage, the witness submits that yesterday he made a mistake while making his statement regarding draft Ex PW 36/B-1. He wishes to volunteer something on this point and he is permitted to do so.

In this draft the corrections were made by me in my hand.

I have been shown draft already Ex PW 36/B-3. In this draft also, there are corrections in paragraphs 12 and 13. I do not know as to who made these corrections in pencil. My attention has been drawn to three drafts, proposed to be sent to the learned SG, already Ex PW 36/B-1, B-3 and B-4. There is no change in alternative 1 as mentioned in para 11 of Ex PW 36/B-1 and B-3. However, there is a change in alternative 1 as mentioned in Ex PW 36/B-4. I have been shown draft Ex PW 36/B-1, which was put up to me and this draft ends in para 9, points X to X. My attention has been drawn to draft already Ex PW 36/B-3 and in this draft, after paragraph 9, additional paragraphs have been added as numbered paragraphs 10 to 14. As such, there are some additions in this draft in between, though alternative 1 is common in both the drafts....."

PW 36 in his cross-examination dated 16.04.2012, page 9, deposed as under:

> ".....I have been shown a draft for seeking legal opinion on 4/C, already Ex PW 36/B-1. Paragraph 7 of this note talks about receipt of large number of applications and delay resulting from sequential processing of these applications. This draft mentions only two alternatives. This draft was corrected and approved by me....."

Sh. D. S. Mathur also deposed that the note dated 24.10.2007 for seeking opinion of learned SG was initiated by Sh. Nitin Jain. There is no evidence that it was result of any discussion in the department.

1053. Now: What is the case of the prosecution? Its case is that the applications of TTSL and TTML were clubbed with the Reference to learned Solicitor General by Sh. A. Raja in conspiracy with other accused persons in order to delay their disposal. As already noted, the applications of TTSL and TTML were received on 22.10.2007. The note, Ex PW 36/B-2, for seeking opinion of learned Solicitor General, was recorded on 24.10.2007 by PW 110 Sh. Nitin Jain. In this note, draft Ex PW 36/B-1 is also referred to. In the note as well as draft, the applications of TTSL and TTML are mentioned. In the entire evidence of PW 110 Sh. Nitin Jain, there is no evidence at all that this note was recorded by him on the asking of Sh. A. Raja or anyone else acting at his behest. The relevant part of his evidence has been extracted above. The evidence of PW 60 Sh. A. K. Srivastava and PW 36 Sh. D. S. Mathur also does not

contain anything indicating any conspiracy in putting the applications of TTSL and TTML in the Reference to learned SG. PW 77 Sh. K. Sridhara, Member (T), was also examined as witness. He did not depose anything about any conspiracy about the Reference itself being sent to the MoLJ for obtaining the opinion of learned SG. As such, there is no basis to say that these applications were clubbed with the Reference at the behest of Sh. A. Raja.

1054. Needless to add but to make things clear, I may mention that it is the case of the prosecution that draft Ex PW 36/B-3 at 5/c was inserted at the instance of Sh. A. Raja to manipulate the first-come first-served policy. It is not at all the case of the prosecution that the very origin of the idea of seeking opinion of learned SG was the result of conspiracy. There is absolutely no material on record to indicate that the very idea of sending the Reference to Law Ministry was of Sh. A. Raja. The note itself does not reveal as to under what circumstances or as to on whose instance he (Nitin Jain) recorded the note dated 24.10.2007, Ex PW 36/B-2, for sending the Reference to Law Ministry. Naturally, it would be attributed to the initiative of Sh. Nitin Jain, who was Director responsible for functioning of AS Cell supervised by Sh. A. K. Srivastava.

1055. There is a note dated 30.10.2007, Ex PW 36/A-20 (D-5), recorded by Sh. A. Raja to the effect that the decision on the seniority of existing UAS licencees vis-a-vis new applicants for dual technology would be taken after the opinion of Law Ministry was received. On the basis of this note, it is being

argued by the prosecution that this note resulted into clubbing of applications of TTSL and TTML with the reference to learned SG. However, the first note, Ex PW 36/B-2 (D-7), was recorded on 24.10.2007 itself by Sh. Nitin Jain and that too as per his own wisdom. Thus, the note of Sh. A. Raja is in conformity to the note of Sh. Nitin Jain, as by that date Reference had not returned from the Law Ministry. As such, Sh. A. Raja cannot be blamed for clubbing the applications of TTSL/ TTML with the reference to learned SG.

1056. Needless to add that note dated 23.10.2007, Ex PW 36/A-18 (D-5), recorded by Sh. R. K. Gupta and referred to above in detail, in which the receipt of applications of TTSL and TTML for dual technology was referred to, was, in fact, recorded for sending a reply to TRAI intimating it about the decision by DoT on its Recommendations dated 28.08.2007. As recorded in paragraph 12 of the note itself, the applications of TTSL and TTML were referred to only for kind information and necessary action was to be taken in terms of policy after it was finalized. There is no material on record indicating that these applications were put to Sh. A. Raja for grant of in-principle approval to use dual technology. In fact, these application were taken on record on 23.10.2007 by the note of Sh. R. K. Gupta and this note reached Sh. A. Raja only on 30.10.2007. What was the policy under finalization? There is no document on record indicating that any policy was under consideration. However, from perusal of file D-7, it is clear that the DoT was considering sending a reference to learned SG from before and

the relevant note for which was recorded only on 24.10.2007 as Ex PW 36/B-2 (D-7). The policy being under consideration becomes clear when note dated 23.10.2007, Ex PW 36/A-18 (D-5), recorded by Sh. R. K. Gupta, and note dated 24.10.2007, Ex PW 36/B-2 (D-7), recorded by Sh. Nitin Jain are read together. Policy under consideration was the policy that would be decided after obtaining opinion of learned SG. There is absolutely no evidence indicating that Sh. A. Raja interfered anywhere in the processing of files D-5 or D-7 to the extent of sending reference to learned SG, in which reference applications of TTSL and TTML were also referred to.

1057. It is also interesting to take a look on the cross-examination of DW 1 Sh. A. Raja dated 22.07.2014, pages 1 to 4, which reads as under:

> ".....**Ques**: I put it to you that you wrongly clubbed the issue of seniority of TTSL/ TTML for dual technology with new applicants as these two companies were exiting operators?
> **Ans**: It is incorrect. The stand of the DoT after the discussions soon after the approval of the Telecom Commission was that Tata applications were not within the consideration zone of orders dated 17.10.2007 and 18.10.2007. This stand is consistently maintained in the statement of case prepared by the department in 4/C, 5/C and 6/C and also subsequent file notings till the issuance of LOI to the Tata. Moreover, the question of determining inter se seniority, that is, after the orders of 17.10.2007 and 18.10.2007, between the existing operators and the new applicants was not at all put up to me for any orders. In the absence of any such order/ policy, which was not referred to me, WPC proceeded in accordance with the existing

and extant policy.

It is wrong to suggest that I am deposing falsely on this point in view of document Ex PW 36/A-18 (D-5 vol. I). **Volunteered**: This exhibit came into existence on 23.10.2007. Thereafter, the file was seen by the Secretary, where he observed that some more applications have been made for permission to use GSM technology in the areas where the applicant is using CDMA technology. These applications should be considered alongwith the applications for new licences numbering 575, pending since more than six months in chronological order, as they received. These applications made now for permission to use GSM technology in areas for which the applicant is licensed to use CDMA technology are allowed, these applicants would get an unjustifiable advantage in allocation of GSM spectrum. This note was made by Secretary on 24.10.2007. On the same day, in the file D-7, Secretary (T) submitted the file to me, where 4/C is attached and the 5/C was shown to me and I approved it. Both these documents, 4/C and 5/C, in the fourth paragraph, it has been categorically observed "subsequently on 22.10.2007, M/s Tata who are UASL operators in 20 service areas have also applied for dual technology spectrum (that is, for GSM in addition to CDMA technology). A decision is required to be taken in this regard." So, on 24.10.2007, the Secretary and other officers were firm in their opinion that Tata could not be accommodated under the purview of my orders on 17.10.2007 and 18.10.2007. That is why I observed on the file D-5, at page 25/N, "The decision on seniority of existing UAS licence vis-a-vis new applications will be taken after the opinion of the Law Ministry". Admittedly, which did not happen. Therefore, no policy decision was referred to me thereafter at any point of time.

Ques: I put it to you that your aforesaid reply is incorrect in the light of Ex PW 36/B-1, para 8 (i) as

DoT was clear to issue in-principle approval and spectrum to Tata?

Ans: This paragraph is nothing but the continuation of para 4. Para 8(i) is dealing about the date of payment which is going to happen after the LOIs issued to Tatas in future. That is why it was clearly mentioned in para 4 "A decision is required to be taken in this case". The same is confirmed in 5/C at para 10, where it says "The request for permission to Tata shall be taken up alongwith new applicants as per in para 11 below". The in-principle approval to Tata was given in light of above facts.

It is wrong to suggest that my above answer is wrong as 5/C was my own creation.

Ques: I put it to you that you deliberately delayed in-principle approval to Tatas in order to benefit STPL and Unitech group of companies?

Ans: It is incorrect. The applications of Tata were processed as per the extant policy and therefore, no question of benefiting STPL and Unitech group of companies arises....."

1058. The version of events given by Sh. A. Raja in above cross-examination is in accordance with the official record. If developments in two files, that is, D-5 and D-7, are read together, it is clear that it is the Secretary who was opposing applications of TTSL and TTML. It is also the DoT officials who clubbed the applications of two companies with the reference to learned SG.

Accordingly, I do not find any merit in the submission that Sh. A. Raja, in conspiracy with other accused persons, clubbed the applications of TTSL and TTML with the Reference to learned SG.

Whether Order dated 17.10.2007/ 18.10.2007 applies to TTSL/

TTML?

1059. A connected question was also raised by the prosecution as to whether the order dated 17.10.2007, Ex PW 36/A-15, and order dated 18.10.2007, Ex PW 60/C-6, as extracted above, were applicable to TTSL and TTML applications also. It is the case of the prosecution that these orders were applicable to these applicants also, that is, of TTSL and TTML and their priority ought to have been fixed from the date of payment, that is, 10.01.2008.

1060. However, the defence argued that these orders were applicable only to three pending applicants, that is, Reliance, Shyam Telelinks and HFCL, as the order dated 17.10.2007 clearly mentions that pending requests for existing UASL operators for use of dual/ alternate wireless technology should be considered and they should be asked to pay the required fees. The emphasis of the defence is on the words "pending requests".

1061. Let me take a look on the evidence on this point.

1062. PW 60 Sh. A. K. Srivastava in his examination-in-chief dated 01.08.2012, page 4, deposed about approval of dual technology policy and in-principle approval to three pending applicants, as under:

> ".....I have been shown note sheet page 19/N of this file, wherein the decision taken by the then Minister Sh. A. Raja has been recorded in reference to the aforesaid note Ex PW 36/A-14. I identify the signature of Sh. A. Raja at point A. The decision of the Minister is already Ex PW 36/A-15. The Minister had approved the note Ex PW 36/A-14 with certain

modifications, that is, paras 6.4, 6.16, 6.20 and 6.24 were modified. Whenever a file is put up before the Minister for his decision on policy matters, he may himself approve the proposal or may, in his discretion, refer the same to EGoM or Union Cabinet, this is my understanding of the procedure. In this case, the Minister had himself taken the decision on 17.10.2007....."

1063. In his further examination-in-chief dated 01.08.2012, pages 14 to 17, PW 60 Sh. A. K. Srivastava deposed as to how the applications of these companies were processed, as under:

".....I have been shown DoT file D-72 bearing No. L-14047/10/2006-NTG, already Ex PW 36/DK-7, of WPC wing, pertaining to case for GSM 1800 MHz allocation. Therein, I have been shown an application dated 07.09.2006 of Reliance Communications for allocation of spectrum for GSM operations-Mumbai telecom circle, which is already Ex PW 57/DN-3, page 73. I have also been shown application dated 07.08.2006 of Shyam Telelinks Limited for allocation of GSM spectrum for Rajasthan circle in addition to CDMA, which is already Ex PW 35/DG, page 69. I have also been shown application dated 11.07.2006 of M/s HFCL Infotel Limited with request for allocation of GSM spectrum in Punjab circle, which is already Ex PW 39/DB, page 68.

I have been shown DoT file D-5 vol. I, Ex PW 36/A-3, wherein there is a note dated 18.10.2007 at page 20/N of Sh. Nitin Jain. The note is already Ex PW 36/A-16. The signature of Sh. Nitin Jain is at point C, which I identify. This note was put up by Sh. Nitin Jain for approval of use of dual technology for the pending applications of the aforesaid three companies, namely, Reliance Communications for twenty service areas, Shyam Telelinks for Rajasthan

service area and HFCL Infotel for Punjab service area. This note was put by Sh. Nitin Jain to me. The endorsement encircled in red and marked Ex PW 60/C-4 is in my hand. This indicates that applications are available in the link file, details of which are recorded in this endorsement. After recording this endorsement, I marked the file to Legal Advisor, DoT. In the note of Sh. Nitin Jain, DFA-I to III for granting in-principle approval for use of dual technology to the said three companies is also mentioned. The DFA for in-principle approval to Reliance Communications is available at pages 177 and 178. The same is Ex PW 60/C-5. In this draft, some corrections have been made by me and some by Legal Advisor Sh. Santokh Singh in pencil. The corrections made by me are at points A to A, B to B and C to C and the corrections made by Sh. Santokh Singh are at points D to D, E to E and F to F. Legal Advisor Sh. Santokh Singh vide his note dated 18.10.2007 modified the DFA-I with an opinion that other DFAs may also be suitably modified. The note of Sh. Santokh Singh is already Ex PW 36/DK-15. He, thereafter, marked the file to Member (T), whose signature is at point D. My signature appears at point E. Member (T) Sh. K. Sridhara marked the file to Secretary (T) Sh. D. S. Mathur, who recorded his note at point B and marked the file to MOC&IT.

I have been shown note sheet page 21/N, which is in the handwriting of Sh. A. Raja, the then MOC&IT, and is now Ex PW 60/C-6. His signature is at point A with date 18.10.2007. In-principle approval for dual technology to the aforesaid three companies was granted by this note Ex PW 60/C-6. These three applications were processed as per the policy approved by Sh. A. Raja on 17.10.2007 vide Ex PW 36/A-15, page 19/N. Thereafter, he marked the file to Secretary (T), who in turn marked the file to Member (T), who marked the file to DDG (AS), that is, myself. I recorded a note, already Ex PW 36/DP-16, to the effect that "A", that is, legally vetted

in-principle draft may kindly be considered for approval. The decision of Hon'ble MOC&IT in regard to allocation of dual technology spectrum portion mark B in Ex PW 60/C-6 communicated to WPC wing. I marked my note to Member (T), whose signature is at point D, and marked the file to Secretary (T) Sh. D. S. Mathur for administrative approval of in-principle approval draft. He approved it by appending his signature at point C and file was again marked to Member (T), who in turn marked the file to me. I recorded a note for issuance of letters to the companies on 18.10.2007 itself and the same were issued on the same day by the ADG (AS-I) Sh. R. K. Gupta and the notes in this regard are already Ex PW 36/DK-10. The office copies of communication of in-principle approval as communicated to the three companies are available at pages 188 to 199 and are now Ex PW 60/C-7, C-8 and C-9, that is, of HFCL Infotel, Shyam Telelinks and Reliance Communications. All these three communications were issued under the signature of Sh. R. K. Gupta and I identify his signature at point A on each communication. These three applications were kept pending from 2006 till 18.10.2007 as there was no clarity on the amount of requisite fee for grant of in-principle approval for dual technology. These applications were moved as per the Cabinet decision of 2003 to grant in-principle approval as the licence was technology neutral. Technology neutrality means the licencee can use either of the two wireless technologies, that is, GSM or CDMA, to provide mobile services....."

The witness deposed that these three applications were moved as per Cabinet decision of 2003. He deposed that the order, Ex PW 60/C-6 was relating to the three companies.

1064. PW 77 Sh. K. Sridhara in his examination-in-chief dated 09.11.2012, pages 4 to 6, deposed about need for dual

technology and approval by Sh. A. Raja as under:

> ".....One of the recommendations of TRAI was to permit use of dual technology. This recommendation was also accepted by the then MOC&IT. There are two types of technologies in the field of mobile telephony, that is, CDMA and GSM.
> **Ques**: What necessitated the approval of dual technology by the DoT?
> **Ans**: Prior to the recommendation of TRAI in August 2007, service providers were permitted to use either GSM or CDMA technology and accordingly, frequency allocation was done. The subscribers of one technology, in those days, could not use services given by other technology. This put a limitation specially for the people offering service in CDMA to have fair competition. Hence, it was referred to TRAI. TRAI recommended that dual technology may be permitted, that is, an operator can provide services in both CDMA and GSM technologies.
> **Ques**: What was the decision of the Minister regarding the date of consideration of such request by the WPC wing for allocation of spectrum to a service provider seeking dual technology?
> **Ans**: Minister decided that allocation of spectrum in alternate technology (dual technology) should be considered from the date of such request to WPC subject to payment of required fee, as decided vide order dated 17.10.2007, already Ex PW 36/A-15.
> **Ques**: How many applications were pending as on 17.10.2007 seeking approval for dual technology?
> **Ans**: I recall that about three applications were pending for permitting them to start services in the alternate technology.
>
> I have been shown a note dated 18.10.2007, already Ex PW 36/A-16, put up by Sh. Nitin Jain, Director (AS-I), page 20/N of this file, and this note was put up with regard to the applications of three service providers seeking permission for dual technology. This note was marked to DDG (AS) Sh. A. K. Srivastava and after being legally vetted by Sh.

Santokh Singh, LA, it came to me. My signature appears at point D and I marked the file to Secretary (T), whose note is at point B and he marked the file to the then MOC&IT Sh. A. Raja. The Minister took a decision on this vide his note dated 18.10.2007, already Ex PW 60/C-6 and his signature appears at point A, page 21/N. He approved the proposal for in-principle approval of dual technology to the three applicants.

Ques: What was the priority fixed by the Minister for allocation of spectrum to these three applicants?

Ans: The priority fixed by the Minister was to allocate the spectrum, based on the date of payment of required fee.

Ques: Whether the principle of fixing priority got changed from order Ex PW 36/A-15 dated 17.10.2007 to order dated 18.10.2007, already Ex PW 60/C-6, for allocation of spectrum to dual technology applicants?

Ans: That is correct. The order of 17.10.2007 says that the priority should be date of application in WPC wing, subject to the payment. The order of 18.10.2007 gives the priority from the date of payment.

Ques: Whether the order dated 17.10.2007 was a general order and the order dated 18.10.2007 was limited to three applicants?

Ans: Both orders were in reference to the three applicants for dual technology because the Minister clearly mentioned in the order dated 17.10.2007 that pending request of existing UASL operators for use of dual technology and date of priority was with respect to the issue of three pending UASL applications....."

Sh. K. Sridhara deposed that the order of Sh. A. Raja was with reference to three companies whose applications were pending.

1065. PW 77 in his examination-in-chief dated 10.12.2012,

pages 4 to 6, further deposed as under:

> ".....Till 31.03.2007, the procedure followed for allocation of spectrum was allocating spectrum for the applicants who had applied first with the WPC wing. The persons who needed spectrum were the mobile service providers/ existing service providers, landline service providers who needed CDMA, broadcasters, satellite, Defence and many companies who wanted point to point communication etc.
> **Ques**: What was the policy of the WPC wing for allocation of spectrum to existing operators vis-a-vis new licencees till 31.03.2007?
> **Ans**: The policy followed was to allocate spectrum to whosoever had applied first with the WPC wing. The new applicants were given licences only when spectrum was available after meeting the requirements of the existing operators.
>
> TRAI in its recommendations dated 28.08.2007 had recommended the concept of dual technology applicants, that is, the existing licencees who were operating in GSM/ CDMA technology, would be permitted to operate in the alternate technology namely CDMA/ GSM.
> **Ques**: What was the recommendation of TRAI regarding allocation of spectrum to a dual technology applicant?
> **Ans**: The recommendation of TRAI was that the existing licencees will be eligible for new technology and they should be treated like any other existing licencees in the queue and the inter se priority of allocation may be determined by DoT.
> **Ques**: What decision was taken on this by the then Minister regarding aforesaid recommendation?
> **Ans**: The Minister decided that "allocation of spectrum in alternate technology should be considered from the date of such request to WPC subject to the payment of required fees", as is reflected in Ex PW 36/A-15 dated 17.10.2007, page 9/N, in file Ex PW 36/A-3, D-5.
>
> This was the existing practice also as the

applicant first had to pay the entry fee and then apply to WPC for allocation of spectrum.

Ques: By 17.10.2007 you had three type of applicants, that is, existing operators, new licencees and dual technology applicants. Did the DoT take any decision to determine inter se seniority between the three categories for allocation of spectrum?

Ans: I do not remember if any decision was taken or not on this point.

The start up spectrum is given to the new licencees and the dual technology applicants in alternate technology. No decision was taken by the department to determine inter se seniority between these two type of applicants also....."

1066. PW 77 Sh. K. Sridhara in his cross-examination dated 10.12.2012, page 11, deposed as under:

".....It is true that after my appointment as Member (T) in July 2006, I was initially heading WPC wing and after sometime, AS division was also attached to me and I was advising the Minister on various issues pertaining to two divisions. I do recall that some licences were issued by DoT in December 2006, but I do not remember their number and cannot say if they were fifteen or twenty. I cannot say if these licences were allotted spectrum in January 2008 as I do not co- relate the issuance of licences and allocation of spectrum as both files come independently....."

PW 77 Sh. K. Sridhara in his cross-examination dated 10.12.2012, page 15, deposed as under:

".....It is correct that WPC continued to follow the existing procedure of determining the seniority of the applicants by the date of receipt of applications in the WPC for allocation of spectrum....."

1067. In the examination-in-chief itself Sh. K. Sridhara

clearly deposed that the orders dated 17.10.2007, Ex PW 36/A-15, and 18.10.2007, Ex PW 60/C-6, were in reference to three pending applicants only. A very categorical question was put to the witness and he replied that the orders were limited to three applicants alone. Even otherwise a bare perusal of the orders makes it clear that the two orders were applicable to only three pending applicants. The perusal of order also shows that this was applicable to three pending applicants also.

This conclusion is further fortified by the fact that for issuing a press release, note dated 18.10.2007, Ex PW 60/C-10, was recorded, which reads as under:

> "Based on policy guidelines approved by Hon'ble MOC&IT, particularly in reference to TRAI's recommendations on "Review of Licence terms and conditions and capping of member of access providers" (vide approvals on page 19/N & 21/N), a press-release has attempted.
>
> This may kindly be seen and approved before releasing to PIB for circulation to Press."

This note shows that policy guidelines were approved by Sh. A. Raja and a press release was issued.

1068. In view of this note, press release Ex PW 36/DK-12, page 214 (D-5), running into three pages, was issued. It is interesting to take note of the evidence of PW 60 Sh. A. K. Srivastava in his examination-in-chief 06.08.2012, pages 1 and 2, wherein he deposed as under:

> ".....I have been shown DoT file, D-5, Volume 1, already Ex PW.36/A-3, wherein at page 212 to 214, is a press release dated 19.10.2007, already Ex PW36/DK-12. It was issued under my signatures at

point A which I identify. A copy of the press release was also sent to Press Information Bureau as well as to DDG(C & A), DoT for uploading on respective websites. This press release was issued after the recommendations of TRAI were approved by the Minister, MOC & IT, A. Raja and it was suggested by Mr. R. K. Chandolia, P. S. to the Minister to issue a press release to bring the information in the public domain....."

1069. A perusal of the note as well as evidence shows that it was based on policy guidelines approved by the Hon'ble MOC&IT. It contains a gist of the note Ex PW 36/A-14, as approved by the Minister vide orders Ex PW 36/A-15 and Ex PW 60/C-6. It is not just a replica of orders Ex PW 36/A-15 and 60/C-6. Press release is detailed one. The press release, Ex PW 36/DK-12, bifurcates the general policy from the order applicable to three pending applicants. It is interesting to take a look at the relevant part of the press release, which reads as under:

".....In order to further enhance the penetration of access services for rapid expansion of tele-density, it has also been decided that the existing private UAS Licensees may be permitted to expand their existing networks by using alternate wireless technology i.e. the present UAS Licensee who is using GSM technology for wireless access may be permitted to use CDMA technology and vice-versa. The spectrum for the alternate technology, CDMA or GSM (as the case may be) shall be allocated in the applicable frequency band subject to availability after payment of prescribed fee. Allocation of spectrum for the alternate technology may be done to private UAS Licensees on payment of prescribed fee, which will be an amount equal to the amount prescribed as

entry fee for getting a new UAS licence in the same service area. The existing UAS Licensees, who have already applied for allocation of spectrum for the alternate technology shall also be considered for allocation of spectrum in alternate technology from the date of payment of prescribed fee. BSNL and MTNL being incumbent operators shall be permitted usage of alternative technology and allocated spectrum for the alternate technology without paying the prescribed fee. For the purpose of payment of licence fee and spectrum charges, the stream wise revenue of different technologies shall be considered……..”

1070. A bare perusal of the press release reveals that the decision on dual technology as contained in the above press release is in two parts, that is, general order and specific order as applicable to pending applicants.

1071. The press release makes it categorically clear that the date of payment criteria was applicable to the existing applicants only. It is further interesting to take a look on the cross-examination of DW 1 Sh. A. Raja dated 21.07.2014, pages 8 to 10, which reads as under:

“…….**Ques**: I put it to you that instead of granting permission to these three applicants, that is, Reliance Communications, HFCL and Shyam Telelink for GSM/ alternate technology, you ought to have rejected the applications?
Ans: I cannot say anything on this as the cognizance and the process over these applications were already taken by my predecessors and the reference was sent to the TRAI.
Ques: I put it to you that applications dated 19.10.2007 for dual technology of TTSL/ TTML were received in DoT on 22.10.2007 and only these applications were valid and should have been acted

upon?

Ans: It is incorrect. On 19.10.2007 itself, the decisions taken on the applications of Reliance and others for dual technology were published in press note issued by the department, by which time, applications of these two companies were not even filed.

Ques: I put it to you that for allocating spectrum to dual technology applicants, you had recorded that "For allocation of spectrum for dual technology, the date of payment of required fee should determine the seniority". Thus, you had decided the policy for allocation of spectrum of dual technology. However, you did not follow this for allocation of spectrum to TTSL/ TTML?

Ans: The observation in my note that the date of payment of required fee should determine the seniority relates to the applicants of Reliance and others, which were pending since 2006. During the discussions with Secretary (T), it was brought to my knowledge that seniority to these companies on the basis of applications filed in 2006 could not be given retrospectively, which prompted me to give this note on 18.10.2007. So my orders on 17.10.2007 and 18.10.2007 are supplementary to each other and they were confined only to these three applicants. Therefore, the applications of Tata dated 19.10.2007, which were received in DoT on 22.10.2007, could not be in the purview of these two orders.

There is no question of discrimination against TTSL/ TTML as on the date of these two orders, no applications of these companies were pending.

Ques: I put it to you that the order dated 18.10.2007 should also have been applied to the applications of TTSL/ TTML received in DoT on 22.10.2007 because it was a general policy decided by you?

Ans: It is incorrect. In my order dated 17.10.2007, it is clearly mentioned that pending requests of

existing UAS operators for use of dual/ alternative wireless access technology should be considered and they should be asked to pay required fees. Therefore, these orders were only confined to Reliance and others and not to subsequent applicants, which included Tatas also, who filed applications on 22.10.2007.

Ques: I put it to you that your aforesaid decision of 18.10.2007 was a general policy for dual technology applicable to existing applicants as well as future applicants and this is corroborated by the fact that this is mentioned in the statement of case sent by you to the Ministry of Law and Justice also, Ex PW 36/B-4, para 10?

Ans: It is incorrect. The mere perusal of para 4 of the exhibit itself clearly indicates that my order dated 17.10.2007 and 18.10.2007 were confined to Reliance, HFCL Infotel Limited and Shyam Telelink Limited and the approval was also already accorded by the time matter was sent to Ministry of Law and Justice. So the department was very clear from the day one when the application of Tata was received on 22.10.2007, that they had to be dealt with separately and not by the aforesaid two orders. This is further clear in para 13 that alternatives were given as to how the Tata applications should be disposed of received after 18.10.2007.

It is wrong to suggest that I am deposing falsely on this point....."

1072. The above deposition of Sh. A. Raja is reasoned one and also corresponds to the material available on the record. The order dated 18.10.2007 was necessitated for the reason that if the seniority of pending applicants for dual technology was determined from date of application as per order dated 17.10.2007, their seniority would have related back to 2006. Hence, date of payment was made the criteria for determining

their seniority for allocation of dual technology spectrum to the three companies, whose applications were then pending. It was not a general policy as claimed by prosecution.

1073. In view of the above discussion, it is clear that orders dated 17.10.2007 and 18.10.2007, Ex PW 36/A-15 and 60/C-6, were applicable to existing applicants only, that is, Reliance, Shyam Telelinks and HFCL. There is no merit in the submission of prosecution that these orders applied to TTSL/ TTML also.

Clubbing of TTSL and TTML with the New Applicants

1074. It is also argued by the prosecution that applicants for dual technology were required to be treated as existing licensees and were not to be clubbed with new applicants. It is the case of the prosecution that Sh. A. Raja, in conspiracy with the accused companies, clubbed TTSL and TTML with the new applicants. However, defence argued that it was Sh. D. S. Mathur who had done it.

Perusal of the draft Ex PW 36/B-1 (D-7) as well as note dated 24.10.2007, Ex PW 36/A-19 (D-5), of Sh. D. S. Mathur, as already extracted above, reveals that it was Sh. D. S. Mathur, who was opposing permission to TTSL and TTML and was suggesting that if they are treated as existing licensees, they would get unfair and unjustifiable advantage in allocation of spectrum. It may be noted that TTSL and TTML filed the applications on 22.10.2007 and the draft Ex PW 36/B-1 was prepared on 24.10.2007 and Sh. D. S. Mathur had been

opposing the treatment of TTSL and TTML as existing licensees as is clear from his insertion in draft Ex PW 36/B-1 to the effect that "Their request for permission should be taken up alongwith applicants as per alternative I". The intention of Sh. D. S. Mathur is that their applications should be dealt with on first-come first-served basis and their priority should be from the date of applications, that is, from 22.10.2007. This implies that before these applications were taken up, all 575 applications received up to 01.10.2007 should have been disposed of. The insertions in the draft Ex PW 36/B-1 and his note dated 24.10.2007, Ex PW 36/A-15, make things absolutely clear.

1075. Let me take note of the evidence of PW 36 Sh. D. S. Mathur on this point.

PW 36 Sh. D. S. Mathur in his cross-examination dated 16.04.2012, pages 5 and 6, deposed as under:

> ".....The recommendations of Telecom Commission were approved by the then Minister on 17.10.2007 subject to certain changes vide note sheet already Ex PW 36/A-15. The note already Ex PW 36/A-15, in last paragraph, talks about dual technology to the pending requests. It is correct that the draft letters of in principle approval for dual technology were prepared and put up on 18.10.2007. As per note sheet 22/N, the letters for approval of dual technology were issued on the same date. The said note sheet is Ex PW 36/DK-10 (D-5 vol. I)....."

He further deposed regarding dual technology on the same date, pages 6 to 9, as under:

> ".....I have been shown file D-5, already Ex PW 36/A-3, wherein on pages 212 to 214, there is a press release dated 19.10.2007 issued by DoT

regarding acceptance of TRAI recommendations. The press release is Ex PW 36/DK-12. I have been shown pages 219 and 220 of the same file, wherein there are two letters written by TTML and TTSL addressed to the Secretary, DoT, for in principle approval for dual technology, dated 19.10.2007 and received in DoT on 22.10.2007. The two letters are now Ex PW 36/DK-13 and DK-14, but I am not sure if these two letters were put up to me or not, but the letters show that these were received in the office addressed to the Secretary, DoT.

As per note sheet Ex PW 36/A-18, 23/N, dated 23.10.2007, it is recorded in para 13 of this note that a petition was filed before the Hon'ble TDSAT against the policy decision of the Government. As per this note sheet, the Government was cognizant of this petition.

Paragraph 11 of note sheet Ex PW 36/A-18 refers to in principle approval granted to RCL, HFCL Infotel Limited and Shyam Telelink Limited and request of TTSL and TTML. My note is already Ex PW 36/A-19, wherein I recorded that these applications be also considered with the 575 applications in chronological order. My view was not that the applications of TTSL and TTML be also considered with these 575 applications in chronological order. In my note, I had not recorded about Tata applications, I recorded generally about the applications. When I recorded the note, the applications of TTML and TTSL had already been received and other applications had also been received. Para 5 of the note also refers to application of RTL regarding use of CDMA technology, which was already using GSM technology in some circles. It is true that my note speaks only about GSM technology. It is correct that TTML and TTSL were asking for GSM technology and my note is also for GSM technology. This note is about applicants using CDMA technology who wanted GSM technology also. It is correct that TTSL and TTML were asking

for GSM technology. This note does not mention these two companies alone. **Volunteered**: The intention of the note was to set up a balance between new applicants and applicants for dual technology.

On that day, that is, on 23.10.2007, no other application apart from the applications of TTML and TTSL were pending for GSM technology. It is wrong to suggest that my note pertains to only these two applicants. It is correct that these two applications were received after the receipt of new applications were stopped on 01.10.2007. It is incorrect that my view was that these two applications be considered only after the other applications have been considered. It is correct that I desired the applications to be considered in chronological order as they were received. **Volunteered**: Anybody who applies for dual technology licence has an advantage in grant of spectrum because he gets spectrum as an existing licencee.

It is wrong to suggest that I recorded my note to the effect that applications of TTML and TTSL be considered only after the disposal of 575 applications. My note says that these two applications of TTML and TTSL be considered at the end of the line. **Volunteered**: If TTML and TTSL were considered at the end, they would have got the spectrum before the new applicants and therefore, a policy was needed and my note refers to the policy.

It is wrong to suggest that my statement is false on this point and the note contains the correct factual position....."

A bare perusal of the deposition of Sh. D. S. Mathur reveals that he is trying to wriggle out of his note Ex PW 36/A-19. Perusal of his evidence reveals that it was he who was insisting that applications of TTSL/ TTML be considered with the new applicants.

1076. PW 36 Sh. D. S. Mathur in his cross-examination dated 17.04.2012, page 1, deposed as under:

> ".....I have been shown file D-6, already Ex PW 36/E, page 4/N. As per note sheet Ex PW 36/E-7, Mr. A. K. Srivastava had put up a note to me on 08.11.2007 that a news item published on that day in "The Economic Times" was factually incorrect. He also proposed that correct facts should be conveyed to the editor of the newspaper. I have been shown a letter dated 08.11.2007, which was sent to the editor on the same day with my approval under the signature of Sh. A. K. Srivastava. The letter is now Ex PW 36/DL. My approval is at point A on Ex PW 36/E-7. It is correct that the said letter sets out the policy of the DoT regarding entry fee, first-come first-served procedure for grant of LOI and issuance of dual technology spectrum....."

In the letter Ex PW 36/DL, which was approved by Sh. D. S. Mathur, priority from date of payment to the existing applicants for dual technology was justified as they were existing licensees.

1077. PW 36 in his cross-examination dated 17.04.2012, pages 10 to 12, deposed as under:

> "I have been shown file D-8, Ex PW 36/D, wherein in the note Ex PW 36/D-2 dated 14.12.2007, Sh. A. K. Srivastava had proposed certain action points. I have been shown file D-5 vol. I, Ex PW 36/A-3, wherein as per my note Ex PW 36/A-19, dated 24.10.2007, I had recorded that these applications (that is, applications which wanted GSM technology approval apart from CDMA technology already enjoyed by them), be processed alongwith new UASL applications to prevent them from getting any unjustifiable advantage in allocation of GSM spectrum.

Ques: Despite your note Ex PW 36/A-19 dated 24.10.2007, Sh. A. K. Srivastava was insisting that the applications of TTML and TTSL for dual technology be processed earlier.

Ans: That is correct. Again said, I had recorded the note on 24.10.2007 regarding processing of the dual technology applications and grant of GSM spectrum and I had put up the file to the then Minister and my proposal was not considered and it was said that decision will be taken on this after the opinion of Law Ministry is received.

I have been shown file D-8 already Ex PW 36/D, wherein as per note Ex PW 36/D-6, Sh. Madan Chaurasia, SO (AS-I), had put up a note regarding the writ petition filed before the Delhi High Court and about receipt of an e-mail for stopping the allocation of spectrum by DoT. Thereafter, Sh. A. K. Srivastava, DDG (AS), recorded a note to the effect that there was no stay, DoT to go ahead with the proposed action and his note in this regard is Ex PW 36/DM-3. On the same day vide my note Ex PW 36/D-7, I asked for the opinion of the legal advisor. As per the opinion of the legal advisor dated 27.12.2007 Ex PW 36/D-8, he advised that DoT may proceed to take appropriate action as per spectrum allocation policy. On the same day, vide my endorsement on Ex PW 36/D-9, I forwarded the file to the Minister for taking a view in the matter. I am not aware if the writ petition was dismissed by the Hon'ble High Court of Delhi on 22.08.2008. It is wrong to suggest that in view of my impending retirement, I refrained from taking a view in the matter and simply forwarded the matter to the Minister. I did not take any view as the view was to be taken by the Minister. As an Advisor to the Minister, my advice to the Minister was very clear that as per the advice of the legal advisor the allocation of the spectrum can continue and this being a policy matter, the decision had to be taken by the Minister. I never hesitated in recording my

views whenever required. It is correct that even if a decision had been taken by the Minister, I never hesitated in recording my views if I felt it necessary....."

Here also, Sh. D. S. Mathur deposed that he had recorded the note dated 24.10.2007, Ex PW 36/A-19, to the effect that the applications for dual technology be processed with new UASL applications to prevent them from getting any unjustifiable advantage in allocation of spectrum.

1078. PW 36 in his cross-examination dated 19.04.2012, page 1, deposed as under:

".....It is correct that from the very beginning I was of the view that no applicant should get any undue advantage. It was for this reason that I recorded my note Ex PW 36/A-19 in file D-5 vol. 1, already Ex PW 36/A-3....."

Perusal of the material on record as well as the evidence, extracted above, reveals that the applications of TTSL/ TTML were not clubbed with the new applicants by Sh. A. Raja, but it was so done at the insistence of Sh. D. S. Mathur. Accordingly, I do not find any merit in the submission that it was Sh. A. Raja who clubbed applications of TTSL and TTML with new applicants in conspiracy with accused companies.

Delay in Grant of In-principle Approval till 10.01.2008

1079. It is next argued by prosecution that Sh. A. Raja deliberately delayed the grant of in-principle approval to TTSL and TTML and granted it only on 10.01.2008, that is, on the date on which LOIs were issued to new applicants. In this

regard my attention was invited to note dated 04.01.2008, Ex PW 60/J-67, page 176 (D-47), recorded by PW 81 Sh. Madan Chaurasia, as already extracted above. It is the case of the prosecution that this was deliberately done to deprive TTSL and TTML of their priority for spectrum allocation.

1080. On the other hand, defence argued that in-principle approval was granted to the two companies in the ordinary course of business. It is the case of the defence that Sh. A. Raja approved it as soon as the file was placed before him and there was no delay in this regard, what to talk of any deliberate delay.

1081. Let me take note of the evidence on this point.

1082. PW 60 Sh. A. K. Srivastava in his examination-in-chief dated 14.08.2012, pages 5 and 6, deposed about processing of applications of TTSL/ TTML as under:

> ".....I have been shown pages 1/N and 2/N of file No. 20-100/2007 AS-I (part J), (176/C), wherein there is a note of Sh. Madan Chaurasia, SO (AS-I), dated 04.01.2008. Signature of Sh. Madan Chaurasia appears at point A and the note is now Ex PW 60/J-67. File was put up to me through proper channel on 07.01.2008 and my signature to this effect is at point B, page 2/N (177/C). I marked the file to Member (T), who in turn marked the file to the then Secretary (T) Sh. Sidharath Behura, who in turn marked the file to the then MOC&IT Sh. A. Raja. Sh. A. Raja approved the proposal for issuance of in-principle approval for dual technology approval in favour of TTSL and TTML on 09.01.2008. Signature of Member (T) appears at point C, of Secretary (T) at point D and of Sh. A. Raja at point E. In the file Ex PW 48/B, there are two applications of TTSL and TTML, both dated 19.10.2007 seeking in-principle approval to use GSM technology under

existing UAS Licence. These are the two applications, which were processed in the AS section vide note Ex PW 60/J-67. The application of TTSL is already Ex PW 57/DL-1 and that of TTML is now Ex PW 60/J-68. My signature appears at point A on both the applications, pages 207/C and 208/C....."

1083. The aforesaid note Ex PW 60/J-67 was recorded by Sh. Madan Chaurasia, Section Officer (AS-I), on 04.01.2008. In this note, he gave complete detail of all the events that transpired between the filing of applications by TTSL and TTML and also recording of the note. It is recorded in the note that the press release for dual technology was issued on 19.10.2007 and the same was challenged by the COAI before Hon'ble TDSAT almost immediately, as is clear from note dated 23.10.2007, Ex PW 36/A-18, para 13. When no stay was granted either by Hon'ble TDSAT or Hon'ble Delhi High Court, approval of Sh. A. Raja was obtained for processing of applications on 03.01.2008 vide note Ex PW 36/D-10 (D-8). On the very next day itself, this note, Ex PW 60/J-67, was recorded by Sh. Madan Chaurasia.

1084. Sh. Madan Chaurasia was examined as PW 81, but no question was put to him by the prosecution about delay in putting up this file or the applications of TTSL and TTML for grant of in-principle approval. The aforesaid note Ex PW 60/J-67 was also agreed to by PW 88 Sh. R. K. Gupta, ADG (AS-I); PW 110 Sh. Nitin Jain, Director (AS-I); and PW 77 Sh. K. Sridhara, Member (T). No question was put to these witnesses

also by the prosecution on the point of any deliberate delay in granting in-principle approval. Sh. A. K. Srivastava deposed about this note in his examination-in-chief, which has been extracted above, but he did not attribute any delay, if any, to any of the accused. Rather he spoke of no delay in grant of in-principle approval by deliberately clubbing these applications with the new applicants.

1085. Sh. A. Raja in his cross-examination dated 22.07.2014, pages 3 and 4, denied any deliberate delay and deposed as under:

> ".....**Ques**: I put it to you that you deliberately delayed in-principle approval to Tatas in order to benefit STPL and Unitech group of companies?
> **Ans**: It is incorrect. The applications of Tata were processed as per the extant policy and therefore, no question of benefiting STPL and Unitech group of companies arises....."

1086. DW 1 Sh. A. Raja in his further cross-examination dated 23.07.2014, page 7, deposed as under:

> ".....Had I accepted the note Ex PW 36/A-19 of the then Secretary (T) Sh. D. S. Mathur, TTSL and TTML would not have got in-principle approval for dual technology....."

1087. Thus, there is absolutely no evidence on the record regarding deliberate delay in processing of applications of TTSL/ TTML for grant of in-principle approval. In the end, I do not find any merit in the submission of the prosecution that the grant of in-principle approval to TTSL and TTML for permission to use dual technology was deliberately delayed by accused

public servants in conspiracy with other accused and companies.

Priority of TTSL and TTML for Allocation of Spectrum

1088. The most important question in the instant case is the question as to what should have been the priority of TTSL and TTML for allocation of GSM spectrum/ dual technology spectrum, more particularly, in Delhi service area? Whether their priority should have been from the date of payment, that is, 10.01.2008, or from the date of their application to WPC for allocation of spectrum dated 05.03.2008, filed following amendment of their licence on 04.03.2008?

1089. It is the case of the prosecution that the details about the criteria for deciding inter-se priority for allocation was spelt out by DoT in an affidavit filed before Hon'ble TDSAT on 13.11.2007 and the actions points were spelt out in note dated 14.12.2007 and as per these action points, request of TTSL/ TTML for dual technology had priority over the processing of pending applications. These action points were duly conveyed to the WPC, who is custodian of frequency. It is the case of the prosecution that the priority of TTSL/ TTML should have been according to these action points. It is the case of the prosecution that the case of TTSL and TTML for allocation of spectrum should have been taken before the case of new applicants and their priority should have been fixed from the date of payment, that is, 10.01.2008. It is pointed out that when in-principle approval was issued to TTSL and TTML, para

2 of the letter conveying the in-principle approval clearly mentioned that the date of receipt of payment of required fee shall determine the date of priority for allocation of spectrum. It is the case of the prosecution that TTSL and TTML deposited the required fee on 10.01.2008 itself and also submitted the applications for allocation of spectrum, but to no use as the applications were not traceable. It is the case of the prosecution that date of priority of TTSL and TTML should have been the date of payment of 10.01.2008 and their applications for allotment of dual spectrum should have been taken before the new applicants to whom LOIs were issued on 10.01.2008.

1090. It is further case of the prosecution that amendment in licence was deliberately delayed by Sh. A. Raja to deprive TTSL and TTML of their priority in the matter of allocation of spectrum. It is their case that though the file for amendment of licence reached Sh. A. Raja on 23.01.2008, he approved the same on 27.02.2008 and this was deliberately done to facilitate STPL and Unitech group of companies to file their applications for allocation of spectrum and by that time STPL and Unitech group of companies had, in fact, already applied for allocation of spectrum. My attention has been invited to note Ex PW 36/D-2 (D-8) as well as note Ex PW 60/N-28 (D-47) and to the deposition of witnesses to emphasize that TTSL and TTML were wrongly deprived of their priority in the matter of spectrum allocation.

1091. On the other hand, defence argued that the date of application to WPC has always been the date of priority as far as

allocation of spectrum is concerned. It is the case of the defence that no licensee was ever allocated spectrum by any other method of fixing priority. It is the case of the defence that priority for allocation of spectrum has always been the date of application to WPC complete in all respects. My attention has been invited to allocation of dual technology spectrum to Reliance, Shyam Telelinks and HFCL and it is argued that even these companies were granted spectrum only when their applications, complete in all respects, accompanied by a copy of amendment to licence, were received in the WPC. Their seniority was counted from this date.

It is further their case that even otherwise TTSL and TTML were not entitled to any spectrum, as being existing licensees they were guilty of not meeting out roll-out obligations of their existing licences. It is also the case of the defence that they also had not cleared their past dues for the existing licences. It is the case of the defence that these are the basic requirements for allocation of spectrum, including dual technology spectrum.

1092. In rebuttal, the prosecution refuted this submitting that these two conditions were applicable only to allocation of initial spectrum and not to dual technology spectrum.

1093. Both parties have invited my attention to the evidence of various witnesses and a mass of vertiginously voluminous documents to support their case.

1094. It may be noted that the dual technology policy was challenged by COAI before Hon'ble TDSAT on 22.10.2007 itself.

1095. Before taking note of the evidence on record, let me take note of the relevant orders and documents on record.

Order on Dual Technology: Whether Communicated to WPC?

1096. I may add that Sh. A. Raja had fixed the priority of dual technology applicants for allocation of spectrum from the date of request to WPC subject to payment of required fees, as per his order dated 17.10.2007, Ex PW 36/A-15 (D-5). This order was seen and signed by Sh. D. S. Mathur also without any objection. On this, Sh. Nitin Jain recorded note dated 18.10.2007, Ex PW 36/A-16, for conveying the in-principle approval to the three companies as well as to WPC and the note reads as under:

> "Approvals of Hon'ble MOC&IT at page 19/N refers. As per the approval in the last paragraph on 19/N, the pending requests of existing UASL operators for use of dual / alternate wireless access technology should be considered and they should be asked to pay the required fee.
>
> 2. Accordingly as per the information received from WPC Wing (File linked below about the pending requests from existing CDMA operators for use of wireless access technology also, draft letters have been prepared to
> (i) DFA-I (36/c) for M/s Reliance Communications Limited for West Bengal, Andhra Pradesh, Bihar, Gujarat, Haryana, Himachal Pradesh, Jammu & Kashmir, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Orissa, Punjab, Rajasthan, Tamilnadu (including Chennai), Uttar Pradesh (West), Uttar Pradesh (East), Delhi, Mumbai and Kolkata Service Areas
> (ii) DFA-II (37/c) for M/s Shyam Telelink Limited

for Rajasthan Service Area and
(iii) DFA-III (38/c) for M/s HFCL Infotel Ltd. for Punjab Service Area.

3. Separately WPC Wing will be intimated about the decision of Hon'ble MOC&IT. The draft letters (DFA-I to DFA-III at 36/c to 38/c) for In-Principle Approval of use of alternate wireless technology is submitted for kind perusal and approval please."

1097. Thereafter, file reached Sh. A. K. Srivastava and he recorded note dated 18.10.2007, Ex PW 36/DK-15, which reads as under:

"DFA-I has been slightly modified in pencil. Other DFAs may also be suitably modified. DFAs appear to be formally in order to the decision taken by the Hon'ble MOC&IT at p-19/N."

Again, when the file reached PW 36 Sh. D. S. Mathur, Secertary (T), he recorded note dated 18.10.2007, which reads as under:

"This matter was discussed. It may be processed as per the procedure being proposed separately."

He marked the file to Sh. A. Raja, who again recorded note dated 18.10.2007, Ex PW 60/C-6, which reads as under:

"It is unfortunate that the secretary has not properly recorded what was discussed with me. It was decided in that discussion that till TEC recommendations on spectrum are received, no spectrum may be issued to any one. For allocation of spectrum for dual technology, the date of payment of required fee should determine the seniority."

Sh. A. Raja marked the file to Secretary (T), who appended his signature without recording any objection in the downward journey and thereafter, Member (T) also appended his signature. When file reached Sh. A. K. Srivastava, he recorded the following note dated 18.10.2007, Ex PW 36/DR-16.

> "'A' on pre page may kindly be considered for approval. The decision of Hon'ble MOC&IT will be communicated to WPC Wing."

Thus, priority for allocation of dual technology spectrum to three pending applicants was date of payment and it was to be communicated to WPC.

1098. The aforesaid notings show that the order of priority was to be communicated to the WPC Wing. Whether this order was communicated to WPC or not? Whether WPC complied with the order, if the order was communicated to it? It is interesting to take note of the evidence of Wireless Advisor PW 91 Sh. R. P. Aggarwal and Joint Wireless Advisor PW 57 Sh. R. J. S. Kushvaha.

1099. PW 91 Sh. R. P. Aggarwal in his examination-in-chief dated 12.12.2012, pages 6 and 7, deposed about the orders dated 17.10.2007 and 18.10.2007, passed by Sh. A. Raja in file D-5 as under:

> ".....I have been shown orders dated 17.10.2007 and 18.10.2007 respectively, already Ex PW 36/A-15 and 60/C-6, passed by the then MOC&IT in file Ex PW 36/A-3, D-5, available at pages 19/N and 21/N. These two orders were not seen physically by me but their contents were brought to my notice....."

Thus, the officer heading the WPC and responsible for its working had not seen the order.

1100. However, PW 57 Sh. R. J. S. Kushvaha in his examination-in-chief dated 16.07.2012, page 7, deposed as under:

> ".....DoT came out with a policy regarding dual technology spectrum through a press release on 19.10.2007. I had seen this press release. Under dual technology spectrum policy, M/s Reliance Communications was the first company to get dual technology spectrum, that is, GSM spectrum, in different service areas....."

Sh. R. J. S. Kushvaha had only seen the press release.

1101. PW 57 Sh. R. J. S. Kushvaha further deposed in his examination-in-chief dated 18.07.2012, page 10, as under:

> ".....DoT had formulated a policy on dual technology and announced it through a press release dated 19.10.2007. I had seen that press release. I have been shown DoT file D-5 vol. I, already Ex PW 36/A-3, wherein at pages 212 to 214, there is a press release issued by DoT. It is the same press release which was issued on dual technology on 19.10.2007. The same is already Ex PW 36/DK-12. This press release has been signed by Sh. A. K. Srivastava, the then DDG (AS) at point A. I identify his signature. My understanding of the policy announced through the press release Ex PW 36/DK-12 was that the date of payment of the fee shall determine the inter se seniority for the spectrum allotment only amongst the dual technology operators. The issue of this press release was not raised by anyone in the meeting held on 22.08.2008 in the chamber of the then Secretary

(T) Sh. Sidharath Behura. I did not raise the issue of this press release, but I had raised the issue of determining the inter se seniority of dual technology holders vis-a-vis new UAS Licence holders……."

In his further examination-in-chief dated 18.07.2012, pages 14 and 15, PW 57 deposed as under:

"……I have been shown DoT file D-5 vol. I, already Ex PW 36/A-3, pertaining to review of licensing policy. I have been shown pages 19/N to 21/N, already Ex PW 36/A-15, A-16 and DR-16 respectively in this file. These note sheets were seen by me for the first time in the CBI office during investigation. I was called to the CBI office during the investigation of the instant case. Policy formulation pertaining to telecom licences is part of the AS group. However, as far as policy formulation for allocation of spectrum is done by the WPC wing. If a policy is formulated by AS group which also impacts the work of WPC wing, either the file or a separate communication would be received in the WPC wing and vice versa……."

The witness nowhere deposed in his examination-in-chief that a copy of the order of the Minister was received in the WPC Wing for determining seniority of dual technology applicants for allocation of spectrum from the date of payment of prescribed fee.

1102. However, PW 57 Sh. R. J. S. Kushvaha, Joint Wireless Advisor, admitted in his cross-examination dated 24.07.2012, page 1, that the order was received in WPC, and deposed as under:

"…….Ex PW 11/E in DoT file D-5 vol. II, already Ex PW 36/A-21, contains the decision of the Government, that is, Telecom Commission, on the

recommendations of TRAI. This decision was conveyed to the Wireless Advisor also vide letter Ex PW 11/D……."

Thus, both witnesses are not sure about receipt of order in WPC.

1103. PW 87 Sh. D. Jha has given a completely contradictory version. In his examination-in-chief dated 04.12.2012, pages 5 and 6, he deposed as under:

"……..Between 2004 to 2007, the practice was that whose application is received first in WPC wing would be allocated spectrum first. This applies to existing licence holders also, who seek additional spectrum, as per the subscriber based criteria. However, in October 2007, it was decided that whosoever would make the payment first would get the spectrum first, but the order in this regard was not available even to the officers working in WPC wing. Up to August 2008, as long as I remained posted in WPC wing, I dealt with seven or eight such cases of GSM spectrum allocation, where adequate spectrum was available for all the licencees in the service area……."

1104. According to PW 87, the order directing seniority to be determined from the date of payment of required fee was not available in the WPC Wing. Hence, officers of WPC were not sure about the order being received in WPC.

1105. As per the aforesaid decision dated 18.10.2007 of Sh. A. Raja, as contained in Ex PW 11/E, and also conveyed to the WPC Wing, the date of payment of required fee shall determine the seniority of dual technology applicants. Now the real question is: How the seniority was being determined by the

WPC Wing? Whether it was being determined from the date of payment or on the basis of first-come first-served as all three witnesses have given contradictory version about receipt of order in the WPC Wing?

Implementation of Order on Dual Technology by WPC: Determination of Priority

1106. With note dated 07.11.2007, Ex PW 36/B-10 (D-7), a copy of draft LOI, Ex PW 42/A, was also placed at 16/c for approval and legal vetting. This note was approved by Sh. A. Raja. In the course of vetting of LOI, when the file reached LF/ Finance Branch, PW 42 Sh. Shah Nawaz Alam, Director (LF-III), recorded note dated 23.11.2007, Ex PW 36/DQ-22, regarding changes to be made in the LOI and para 5 of the same deals with the priority for allocation of spectrum and the same reads as under:

> "5. In para 5 of the Draft LOI it has been clarified that the payment of entry fee shall not confer right on the licensee for the allocation of radio spectrum which shall be allotted as per existing policy/guidelines as amended from time to time subject to availability. In this regard it is pointed out that the present occasion is unique in the sense that a large number of applications are being processed simultaneously and it would be appropriate for all concerned to know the likelihood of allotment of spectrum to them. NTP 1999 already stipulates that 'availability of adequate frequency spectrum is essential' (9/N) particularly in these days when it is the wireless services that are the order of the day and these services cannot be provided without spectrum. Hence, it would be appropriate that the prospective licensees know the approximate time

within which they will get spectrum. In any case for spectrum allocation also, the date of priority should also be the same as the date of his application provided he is found eligible on the date of application and he deposits the Entry Fee and complies to the LOI within the stipulated time."

1107. In this note, PW 42 suggested that priority for allocation of spectrum should be the date of application to DoT for UAS Licence, subject to the condition that applicant was eligible on the date of application to DoT and had also deposited the entry fee and had also complied with the LOI conditions within the stipulated time. This note suggests the date of application to the DoT for issue of licence as date of priority for allocation of spectrum. This note went upward through PW 97 Sh. B. B. Singh, DDG (LF); PW 86 Ms. Manju Madhavan, Member (F); and PW 36 Sh. D. S. Mathur, Secretary (T).

1108. When this note reached Sh. A. Raja, he recorded the following note dated 04.12.2007, Ex PW 36/B-13:

"I have perused the notes of L/F Division on page 15/N and Member (F) on 18/N.

It appears from the noting in para (5), on page 16 and the concerned officers have neither up-to-date knowledge of UASL guidelines nor have bothered to carefully go through file (page 4 to 12). The suggestion on the date of priority for allotment of spectrum is clearly defined in the WPC guidelines. Since these suggestions are not factually correct and as such they should be ignored.

These type of continuous confusions observed on the file whoever be the officer concerned do not show any legitimacy and integrity but only their vested interests.

The matter of entry fee has been deliberated in the Dept. several times in the light of various guidelines issued by the department and recommendation of TRAI. And accordingly decision was taken that entry fee need not be revised. On the above lines Sec (T) has also replied to the Fiance Sec's letter dtd 22.11.2007. Member (F) should have checked the facts with Sec (T), before putting up the note on the file.

Accordingly, the approvals on pg 7/N regarding issue of LOIs should be implemented. For this purpose the LOI proforma as issued in the past may be used for LOIs in these cases also.

However, separate letter seeking duly signed copies of all the documents submitted at the time of applying for UASL as per existing guidelines may be obtained."

Through this note, Sh. A. Raja ordered that the existing LOI proforma may be used, that is, no vetting of LOI proforma was required.

1109. At the same time, he also ordered that the priority for allocation of spectrum was clearly defined in the WPC guidelines. What does this mean? This means that spectrum allocation would be as per the guidelines being followed by the WPC Wing. What were those guidelines? These guidelines are contained in the Guidelines dated 25.01.2001, Ex PW 36/DA, relevant part of clause 26 of the same reads as under:

"*For Wireless Access Systems in local area, not more than 5+5 MHz in 824-844 MHz paired with 869 – 889 MHz band shall be allocated to any Basic Service Operator including the existing ones on first come first served basis. The same principle shall be followed for allocation of frequency in 1880-1900 MHz band for Micro cellular architect based system.*"

1110. The first-come first-served policy relating to grant of wireless licence for allocation of spectrum was again reiterated by Sh. A. Raja in his letter dated 26.12.2007, Ex PW 7/C, to the Hon'ble PM. This policy was again recorded in the note dated 07.01.2008, Ex PW 42/DB, following which LOIs for new UAS licences were finally ordered to be issued and were, in fact, issued on 10.01.2008.

1111. From the order of Sh. A. Raja dated 04.12.2007, it is clear that the earlier order dated 18.10.2007, Ex PW 60/C-6, fixing priority from the date of payment of the required fee stood superseded. Despite my best efforts, I could not lay my hand on any formal communication to WPC Wing conveying this observation/ order to the WPC Wing.

1112. However, PW 36 Sh. D. S. Mathur in his cross-examination dated 24.04.2012, pages 2 and 3, deposed as under:

> ".....I have been shown note dated 07.11.2007 of Sh. Nitin Jain, Director (AS-I), already Ex PW 36/B-10. This note was placed before me. I agreed with the decisions which have been recorded in para 5 of this note. I did not record anywhere on the file that I agreed with the decisions recorded in para 5 alone and disagreed with other decisions recorded in the file. It is wrong to suggest that my evidence on this point is false being the result of afterthought and tutoring. The note of Sh. Nitin Jain also records background of my note dated 25.10.2007, Ex PW 36/B-6, and there was no need to agree or disagree with it. As per this note of Sh. Nitin Jain, pending applications were to be processed as per the existing policy. As per this note, the applications of TTML,

TTSL and M/s RTL were to be considered as per the directions of Hon'ble TDSAT. I am not aware if due to the pendency of applications of TTML and TTSL for dual technology, the new applications were also kept pending. I am not aware if the matter of COAI Vs. Union of India was listed before the Hon'ble TDSAT for 09.01.2008. I also do not know if on that day, the prayer of COAI to stay the issuance of dual technology licence was rejected. I do not know if issuance of LOI to the new applicants was delayed due to the pendency of the aforesaid litigation regarding dual technology spectrum....."

Here, Sh. D. S. Mathur deposed that pending applications were to be considered as per existing policy. Existing policy was allocation of spectrum on first-come first-served basis. However, on other important issues, he pleaded ignorance.

1113. PW 36 in his further cross-examination dated 24.04.2012, page 6, deposed in a contradictory manner as under:

".....A UAS Licencee can provide both wireline and wireless services. A UAS Licencee first acquires licence on payment of entry fee and then exercises its option regarding choice of technology. I cannot say if neither in the application nor in the LOI it is required to be mentioned that applicant would provide wireline or wireless services or would use GSM or CDMA technology without looking at the documents. Even for grant of WPC licence for spectrum, the seniority would be as per the date of receipt of application in the DoT. It is wrong to suggest that seniority for WPC licence for spectrum is determined as per the date of receipt of application in the WPC wing. **Volunteered**: If two applications bears the same date of receipt in the

WPC wing, then their seniority would be determined on the date of receipt in the DoT for UAS Licence.

I cannot say if this practice was never followed during my tenure as Secretary, DoT. I cannot say, without looking at the documents, if Bharti Airtel applied for allocation of spectrum in Chennai service area on 13.06.2006 and Aircel cellular applied for additional spectrum on 09.10.2006, but both these operators were allocated spectrum on the same date....."

Here, Sh. D. S. Mathur changed his version. He deposed that for allocation of spectrum, priority should be from date of receipt of application in DoT and not in WPC. This matches with the suggestion of Sh. Shah Nawaz Alam.

The conclusion of the above evidence is that applications were to be processed as per existing policy and the seniority for allocation of spectrum was to be determined from date of application to DoT. This deposition of Sh. D. S. Mathur is contrary to deposition of Sh. D. Jha, extracted above, and clause 26 of Guidelines dated 25.01.2001. Thus, Sh. A. Raja finally reiterated in his order dated 04.12.2007 that priority for allocation of spectrum is clearly defined in WPC Guidelines. It means WPC should implement it.

Filing and Withdrawal of Affidavit from TDSAT

1114. As already noted above, the dual technology policy was challenged by COAI before Hon'ble TDSAT on 22.10.2007 itself. As per note dated 31.10.2007, Ex PW 60/D (D-108), petition No. 286/2007 titled COAI Vs. Union of India was heard by the Hon'ble TDSAT on 24.10.2007 and thereafter, the matter

was adjourned to 12.11.2007. On 12.11.2007, Hon'ble TDSAT passed order, Ex PW 36/DL-1 (D-99), wherein learned SG was directed to file an affidavit and learned SG also assured the Hon'ble TDSAT that till criteria for allocation of spectrum was finally determined, the question of allocation of spectrum would not arise. The matter was then adjourned to 12.12.2007. In terms of order dated 12.11.2007, vide note dated 12.11.2007 itself, Ex PW 36/DL-3 (D-108), Sh. R. K. Gupta was authorized to file an affidavit before Hon'ble TDSAT and the affidavit, Ex PW 60/F-1 (D-90), was filed on 13.11.2007. However, when the matter was heard again on 12.12.2007 by Hon'ble TDSAT, learned SG submitted that since the COAI had disassociated itself from the committee appointed to recommend revised criteria for spectrum allocation, he would not be bound by his statement dated 12.11.2007. Thereon, Hon'ble TDSAT passed order dated 12.12.2007, Ex PW 102/A (D-99), relieving the learned SG of his statement made by him on behalf of Government of India. This fact was taken on record by DoT vide note dated 12.12.2007, Ex PW 60/G-8 (D-108), recorded by Sh. R. K. Gupta, as well as in note dated 14.12.2007, Ex PW 36/D-1 (D-8), recorded by Sh. Nitin Jain. In this note, it is clearly mentioned that on 12.12.2007 learned SG was relieved of the statement recorded in the affidavit filed before Hon'ble TDSAT on 13.11.2007, that is, affidavit Ex PW 36/DL-4 (6/c of D-8). Note Ex PW 36/D-1 recorded by Sh. Nitin Jain itself states that learned SG wanted to be relieved of his statement recorded in the affidavit in the Court on 13.11.2007, as placed at page 6/c

of the file. At page 6/c, is the affidavit, Ex PW 36/DL-4, filed by Sh. R. K. Gupta and settled by Sh. G. E. Vahanwati. The order dated 12.12.2007 of Hon'ble TDSAT also records that learned SG is relieved of his statement. Naturally, the affidavit Ex PW 36/DL-4 stood withdrawn.

1115. PW 60 Sh. A. K. Srivastava in his cross-examination dated 11.09.2012, pages 2 and 3, deposed about constitution of a committee on spectrum allocation as under:

> ".....It is correct that COAI had filed a petition before the Hon'ble TDSAT impleading Union of India/ DoT as respondent bearing No. 286/2007. The COAI had challenged the decision of Government/ DoT dated 17.10.2007 on TRAI recommendations and press release issued consequent thereto on 19.10.2007. It is correct that DoT had constituted a committee to look into the issues of spectrum allocation criteria and COAI also had a nominee on that committee. It is also correct that later on COAI disassociated itself from this committee. I am unable to recall the reason for COAI disassociating itself from the committee....."

File D-8: Action Point for Allocation of Spectrum: As per Submission before TDSAT

1116. This file was opened in view of the order dated 12.12.2007, passed by the Hon'ble TDSAT and the submissions made by the learned SG on that day and regarding he (learned SG) being relieved of his statement. The first note was recorded by PW 110 Sh. Nitin Jain, Director (AS-I), on 14.12.2007, Ex PW 36/D-1, which reads as under:

> "**Subject: Orders dated 12th December 2007 passed by Hon'ble Telecom Disputes Settlement and Appellate Tribunal (TDSAT) in Petition No.**

286 of 2007 filed by M/s. Cellular Operators Association of India (COAI) & others Vs Union of India & Anrs. And other matters.

1. Following four related cases were heard by Hon'ble TDSAT on 12.12.2007:
(i) Petition No. of 286 of 2007- COAI & others Vs Union of India.
(ii) Petition No. of 316 of 2007- Dishnet Wireless Ltd. Vs. Union of India.
(iii) Petition No. of 317 of 2007- Aircel Vs Union of India.
(iv) Petition No. of 319 of 2007- Tata Teleservices Ltd. & Anr. Vs Union of India & Ors.

2. The copy of respective Orders dated 12.12.2007 of Hon'ble TDSAT in above cases are placed below at 1/c to 4/c which may kindly be seen. During the hearing, Director (AS-I), DDG (AS-I) alongwith various other TEC/ WPC wing/ DOT/ TRAI officers were present.

3. Broadly the following statements were made by the Ld. Solicitor General before Hon'ble TDSAT during his pleadings:-

When the matter started, Ld. Solicitor General stated that he would like to address the Hon'ble Court first. This was because he had made a statement before the Court on 12 November 2007 and that had been recorded in the form of an affidavit as directed by the TDSAT. He read out the COAI letter dated 7 December 2007 in full. He stated that the letter was couched in very unfortunate terms and it was equally unfortunate that the COAI had disassociated itself from the Committee which had been appointed at its instance. In view of this he stated that he wanted to be relieved of his statement recorded in the affidavit in the Court on 13 November 2007. At this stage, Counsel for the Petitioners stated that they were

pressing for stay and that they were insisting that no allocation of Spectrum should take place at all till the matter is heard. One of the Senior Counsel for the Petitioners, Sh. C S Vaidyanathan said that he wanted to know what the Government was proposing to do. He said that the Ld. Solicitor General had not clarified his position. To this the Ld. Solicitor General responses and said that there was no lack of clarity on the part of the Government at all. Firstly, there were a few existing service providers whose Spectrum needed to be raised to 6.2 MHz as part of contractual terms. Mr. Ramji Srinivasan, learned counsel for Tata Teleservices, said CDMA operators also needed to be raised to 5 MHz. The Ld. Solicitor General stated that they would be give this if they justified their entitlement. Thereafter, there were applicants in 22 circles who were given licences in December 2006 who would be given Startup Spectrum. He pointed out that this included IDEA and VODAFONE who were Petitioners before the TDSAT and remarked that surely they did not want Spectrum to be denied to them. He then said that Spectrum would also be given to those companies who had been permitted dual technology use. At this stage, Counsel for TATA, Mr Ramji Srinivasan said, "What about Tatas?" The Ld. Solicitor General stated that the application of Tatas for dual technology use would be considered favourably. Mr. Ramji Srinivasan told the court that he was not sure what this meant. To this, the Hon'ble Chairperson remarked, "The statement made by the Solicitor General is very clear and needs no further clarification." Thereafter, the Ld. Solicitor General further stated that the pending applications for licences would be cleared in accordance with the existing policy. At this stage, the Counsel for the Petitioners again applied for stay and insisted that the Hon'ble TDSAT should record that they were pressing for stay. The Learned Chairperson then passed the order and specifically recorded that the

application for stay is rejected.

4. Any further allocation of additional spectrum will be as per decision of the Government and Learned SG has informed the court that he will file an affidavit alongwith decision of the Government on the issue involved in this case accompanied with the decision of the committee.

5. It is submitted that in view of the above, DoT/ WPC wing is to take action immediately on points stated by Ld. Solicitor General in para 3 above."

It is recorded in the note that learned SG wanted to be relieved of his statement recorded in the affidavit dated 13.11.2007.

1117. This note was marked to PW 60 Sh. A. K. Srivastava, DDG (AS), who recorded note dated 14.12.2007, Ex PW 36/D-2, indicating priority for allocation of spectrum as submitted by the learned SG before the Hon'ble TDSAT. This is the note on which prosecution is relying for fixing priority of TTSL and TTML for allocation of dual technology spectrum, and the same reads as under:

"Following action points emerge from above which should be expedited immediately as there is no stay granted Hon'ble TDSAT:
(i) Allocation of contractual spectrum upto 6.2 + 6.2 MHz and upto 5+5 MHz for GSM & CDMA respectively subject to justification to existing licensees as per policy.
(ii) Allocation of initial startup allocation of GSM Spectrum of 4.4+4.4 MHz as per policy in respect of existing licensees who were granted UAS licences in December 2006.
(iii) Allocation of initial startup allocation of GSM

Spectrum of4.4+4.4 MHz in respect of existing licensees who have been granted permission for Dual Technology spectrum.
(iv) Processing of pending request of M/s Tata Teleservices for usage of Dual Technology spectrum as per policy.
(v) Processing the pending applications for grant of new UAS licences as per existing policy."

1118. It may be noted that this note deals with the priority in which spectrum would be allocated by the WPC Wing, that is, first to the existing operators, subject to justification; then initial spectrum to the licensees, who were granted licence in December 2006; then to the dual technology applicants; then pending request of TTSL would be taken up; and thereafter the pending applications for new UASL would be processed. The file was marked upward to Member (T), who agreed with the same and marked the file to Secretary (T) for approval for showing the file to learned SG about the action being taken by the department. The Secretary (T) agreed to the same and marked the file to Member (T), who recorded the following note:

"Ld SG may kindly see the note above & course of action for advice pl."

1119. The file went to the learned SG, who recorded the following note dated 14.12.2007, Ex PW 36/D-5:

"I have seen the note prepared by Nitin Jain Director. It correctly records what transpired before the Hon'ble TDSAT. I confirm that the action points prepared by the DDG (AS) are in order."

Thereafter the file was marked to Secretary (T) who

marked the file to Member (T) and who marked the file to DDG (AS)/ Wireless Advisor.

Thereafter, Wireless Advisor recorded the following note dated 14.12.2007:

> "Reference notes on prepage. Extracts have been retained for WPC wing use. The file is returned for further necessary action by AS branch."

1120. As per statement of PW 60 Sh. A. K. Srivastava, dated 14.08.2012, page 5, the then Wireless Advisor Sh. P. K. Garg had recorded the above note.

1121. Thereafter he marked the file to DDG (AS), who, in turn, marked the file to Director (AS-I). Thereafter, there is no noting on the file about this issue. However, a fresh note dated 26.12.2007, Ex PW 36/D-6, begins at 4/N about proceedings before Hon'ble Delhi High Court.

Allocation of Spectrum as per Priority in Note, Ex PW 36/D-2

1122. The case of the prosecution is that the spectrum ought to have been allocated as per the priority indicated in note Ex PW 36/D-2 (D-8) recorded by Sh. A. K. Srivastava and agreed to by learned SG and Secretary (T) and ultimately approved by Sh. A. Raja on 03.01.2008 vide his signature Ex PW 36/D-10. However, the crucial question again is: Whether this order of priority was officially communicated to the WPC? PW 110 Sh. Nitin Jain, who recorded the relevant note dated 14.12.2007, in his examination-in-chief dated 21.03.2013, page 10, deposed as under:

> ".....I have been shown DoT file D-8, already Ex

PW 36/D, wherein there is a note prepared by me on 14.12.2007, which bears my signature at point A and is already Ex PW 36/D-1, pages 1/N and 2/N. On 12.12.2007, there was a hearing of four petitions, referred to in detail in para 1 of the note, before the Hon'ble TDSAT. During the hearing, learned SG made a statement in the Court and I have captured that statement and further development in the case in this note. This note was concurred by the then learned SG also by his note Ex PW 36/D-5, page 2/N.

I have been shown note dated 26.12.2007, already Ex PW 60/L-35, page 4/N. The same is in my handwriting and bears my signature at point B. Vide this note, I had stated that there is no stay granted either by Hon'ble TDSAT or Hon'ble High Court in the matter....."

1123. There is no material on the record to show that the aforesaid order of priority was also conveyed to the WPC Wing as Sh. P. K. Garg, the then Wireless Advisor, has not been examined as a witness. No other witness stated that the aforesaid priority was communicated to the WPC Wing. However, PW 57 Sh. R. J. S. Kushvaha in his examination-in-chief dated 16.07.2012, page 6, deposed about priority by which spectrum was to be allocated as under:

".....As per an affidavit filed before the Hon'ble TDSAT by DoT in November 2007, it was decided that spectrum would be allocated first to the existing service providers as additional spectrum, then to pending applications of licencees to whom licencees were granted in 2006 and then to dual technology operators....."

1124. However, in his cross-examination dated 20.07.2012, pages 10 and 11, PW 57 deposed as under:

> ".....I have been shown press release dated 19.10.2007 already Ex PW 36/DK-12, at pages 212 to 214 of the aforesaid file. This press release was processed and examined in the file of AS cell and not on the file of WPC wing. I cannot say anything on the press release and officers of AS cell would be in a better position to tell about this. I cannot say anything about this press release. I am not in a position to elaborate the press release. The processing of the applications for allocation of spectrum in the WPC wing was to be done as per the policy prescription of the Government of India. In November 2007, an affidavit was filed by DoT before the Hon'ble TDSAT. However, I do not remember the exact context in which this affidavit was filed. I also do not remember as to what were the issues in the litigation in which the affidavit was filed. I cannot confirm if later on this affidavit was withdrawn by DoT. I have been shown DoT file D-72, already Ex PW 36/DK-7, wherein at page 139 of the WPC file, there is extract of file noting of AS cell, which talks about such an affidavit, but I cannot say anything about it. However, it bears my initials at point A. The same is now Ex PW 57/DF. I had read this before signing it, but even after reading it today I cannot say anything about the extract of file noting by AS cell therein. It is wrong to suggest that I am deposing falsely at the instance of CBI....."

Sh. R. J. S. Kushwaha deposed that processing of application for dual technology was to be done as per policy prescription of government of India.

A bare perusal of the evidence shows that the witness is very evasive about contents of affidavit and its withdrawal and the procedure to be followed for allocation of spectrum. He first deposed that spectrum was to be allocated as per priority indicated in the affidavit, but later on wobbled by

deposing that he did not know if the affidavit was withdrawn.

However, in his further cross-examination dated 24.07.2012, page 10, PW 57 deposed as under:

> ".....The affidavit of November 2007 was withdrawn after the statement of learned SG....."

The aforesaid conduct of the witness shows that he did not want to tell truth to the Court.

Withdrawal of Affidavit

1125. It may be noted that PW 87 Sh. D. Jha recorded note dated 17.01.2008, 13/N, in file Ex PW 16/L (D-49), for allocation of spectrum to Vodafone Essar Spacetel Limited. In this note, the factum of withdrawal of affidavit and the learned SG being relieved of the statement made by him was taken note of. In para 4, it is also noted that in view of this Government could now consider allocating initial spectrum in accordance with the policy/ guidelines. This note was also signed by PW 57 Sh. R. J. S. Kushvaha, Joint Wireless Advisor, and was approved by Sh. A. Raja on 05.02.2008.

1126. Again, on 19.08.2008, PW 87 Sh. D. Jha recorded a note, Ex PW 57/G, for allocation of spectrum to Datacom, Volga (Unitech), Loop, TTSL and Allianz and this note was also recorded on the basis of priority as per date of receipt of application. This is indicative of the fact that WPC was not following the priority as given in the action points recorded in Ex PW 36/D-2, but was simply going by first-come first-served policy.

1127. PW 74 Ms. M. Revathi, Assistant Wireless Advisor, and PW 121 Sh. T. K. Varada Krishnan, observed in notes, recorded by them, that the aforesaid affidavit, from the filing of which the aforementioned order of priority for allocation of spectrum was culled out, was later on withdrawn. They also observed that the spectrum was to be allocated on first-come first-served basis, that is, from the date of receipt of application for allocation of spectrum in the WPC Wing. It is clear from note dated 01.11.2008, Ex PW 74/A-1, recorded by PW 74 Ms. M. Revathi for allocation of spectrum in J&K service area. It is also clear from note dated 03.11.2008, Ex PW 87/E (D-52), recorded by PW 121 Sh. T. K. Varada Krishnan for allocation of spectrum in Rajasthan service area. PW 121 also followed the same pattern while recording note Ex PW 87/D (D-48) for allocation of spectrum in Assam service area. To the same effect is the note dated 22.09.2008, Ex PW 74/B (D-65) recorded by Ms. M. Revathi for allocation of spectrum in Gujarat service area, where even TTSL was one of the applicants.

1128. To make things absolutely clear, it is instructive to extract relevant parts of note dated 01.11.2008, Ex PW 74/A-1 (D-63), recorded by Ms. M. Revathi, which read as under:

> "The case relates to requirement of initial **GSM spectrum** to new UAS licensees i.e. M/s Datacom, Idea, Unitech (earlier Adonis), S. Tel and Loop Telecom in **Jammu & Kashmir service area.**
> ……
> ……
> 3. As per the affidavit filed by the Solicitor General on behalf of GOI in Hon'ble TDSAT on 12.11.07, the order of priority given was:

i) Old demand for additional spectrum
ii) Start up spectrum for Dec'2006 licensees and
iii) Spectrum for dual technology

Since the affidavit has been withdrawn on 12.12.07, the order of priority remains as 1st come 1st served i.e, the date of application for allotment of spectrum.

3.1 Current status of the pending requests from the existing/ new operators for allotment of additional/ start up GSM spectrum in Jammu & Kashmir service area as per the date of application for spectrum is as given below:

Operators Name	Date of application for spectrum	Remarks
Datacom	27.02.08	Start up Spectrum
Idea	28.02.08	Start up Spectrum
Unitech (earlier Adonis)	03.03.08	Start up Spectrum
S. Tel	05.03.08	Start up Spectrum
Loop Telecom	07.03.08	Start up Spectrum

…….
……."

1129. PW 74 Ms. M. Revathi in her cross-examination dated 01.11.2012, pages 3 and 4, deposed regarding withdrawal of affidavit, as under:

".....In file Ex PW 74/A (D-63) pertaining to allocation of start-up spectrum in J&K service area, the allocation of spectrum was done on the basis of first-come first-served. However, in this file, I also took an additional fact on record regarding withdrawal of an affidavit by the learned SG from Hon'ble TDSAT on 12.12.2007. In view of the withdrawal of the affidavit, the priority remained as

per the principle of first-come first-served....."

1130. Even in Gujarat service area, where apart from initial spectrum, additional spectrum was also allocated to Vodafone, the principle of first-come first-served was followed as is clear from note dated 22.09.2008, Ex PW 74/B-1, recorded by PW 74 Ms. M. Revathi.

1131. DW 1 Sh. A. Raja also in his cross-examination by the prosecution dated 17.07.2014, pages 9 and 10, deposed about withdrawal of affidavit as under:

> ".....**Ques**: Kindly take a look on your letter dated 26.12.2007, Ex PW 7/C, written to the Hon'ble Prime Minister. In this letter you have mentioned that spectrum would be allocated to the existing operators as additional spectrum on the basis of subscriber based criteria, to licencees who were given licences in 2006, to dual technology applicants and to new applicants, as and when licences were given. Would you please explain whether the spectrum was contemplated by DoT to be allocated in this sequence only?
> **Ans**: This sequence was mentioned here as this was undertaken by the learned SG on behalf of the Government in the proceedings pending before Hon'ble TDSAT between COAI and Government of India. As I remember, during the course of proceedings in the Hon'ble TDSAT, this undertaking was withdrawn by the SG as the COAI did not give cooperation to the Government to proceed further by making frivolous demands. So there was no question of following the aforesaid sequence in the allocation of spectrum by the DoT.
>
> However, at the time the letter was written, the DoT intended to follow the aforesaid sequence to satisfy COAI so that a congenial atmosphere prevails....."

Thus, Sh. A. Raja also deposed that the aforesaid affidavit was withdrawn.

1132. Sh. A. Raja in his cross-examination dated 21.07.2014, pages 1 and 2, deposed as under:

> ".....The sequence of priorities as mentioned by me in my letter to the Hon'ble Prime Minister and as narrated by me in the aforesaid question, said to have been undertaken by the learned SG before the Hon'ble TDSAT, were narrated/ briefed to me by the officers of the department and same must be in the record, but I am unable to point out the exact record where the same is available. However, I am sure to the effect that an order was passed by the Hon'ble TDSAT and from that undertaking the SG was later on relieved by the Hon'ble TDSAT. In this regard, I am relying on the orders dated 12.12.2007 and 12.11.2007, already Ex PW 102/A and Ex PW 36/DL-1 respectively, passed by the Hon'ble TDSAT. I did not go through the entire record as it was not put up to me but relied upon the briefing given to me by my officers and the same is a matter of record.
>
> **Ques**: I put it to you that the sequence of priorities for allocation of spectrum, as narrated by you in your letter to the Hon'ble Prime Minister Ex PW 7/C, was never withdrawn by the learned SG before Hon'ble TDSAT?
>
> **Ans**: On seeing the order of Hon'ble TDSAT dated 12.12.2007, the SG was relieved from the undertaking on this date. My letter to the Hon'ble Prime Minister is dated 26.12.2007, where I mentioned the sequence of allotment of spectrum to, that is, "additional spectrum to the eligible existing operators as per TRAI norm, that is, subscriber based criteria, followed by those who got licence in 2006, dual technology and to new applicants as and when licences are given. An affidavit to this effect will be

filed in both Hon'ble TDSAT and Delhi High Court". As I mentioned in this letter, as per my memory, affidavit was filed by the department in the first week of January 2008. Therefore, question of withdrawing any undertaking does not arise....."

It is to be noted that the case of the prosecution is that the affidavit was never withdrawn. It is erroneous on the part of the prosecution to say so as the affidavit stood withdrawn. Sh. R. J. S. Kushvaha and Ms. M. Revathi have deposed that the affidavit was withdrawn. Sh. A. Raja also deposed on the same lines.

1133. It is interesting to take a look on the cross-examination of DW 1 Sh. A. Raja dated 21.07.2012, pages 10 and 11, which reads as under:

".....**Ques**: I put it to you that you did not follow the sequence of priorities for allocation of spectrum in case of TTSL/ TTML, that is, first the additional spectrum to be allotted to the existing operators, second to applicants waiting since 2006, third the dual technology applicants and then the new licencees?
Ans: The allocation of spectrum is always done on the basis of the application to the WPC. In case of additional spectrum to the existing operators on the basis of the subscriber based criteria, the spectrum will be given when they are eligible for the same. Spectrum allotted to Reliance, HFCL and Shyam Telelink were governed by the order of 17.10.2007 and 18.10.2007. The order of sequence which was mentioned in my letter to Hon'ble Prime Minister, was placed before the Hon'ble TDSAT, as an undertaking given by me to the Hon'ble Prime Minister. Therefore, the applications of the Tata

were not covered either in the additional spectrum on the basis of subscriber criteria or the dual technology applicants filed in 2006. Tata applications were disposed of as per the extant policy, that is, date of application to the WPC, since they did not fall within the aforesaid categories, being subsequent applicants. This position was maintained right from 22.10.2007 onwards, both in the file notings and in the affidavits filed before the Hon'ble TDSAT and Delhi High Court....."

Here, Sh. A. Raja is categorical that TTSL/ TTML were not covered by the letter he wrote to Hon'ble Prime Minister. He also deposed that allocation of spectrum was always done on the basis of priority from date of application to WPC.

1134. Let me take note of the deposition of PW 102 Sh. G. E. Vahanwati on the point of filing and withdrawal of affidavit, dated 27.02.2013, pages 1 to 4, which reads as under:

".....I have been shown copy of a petition titled Cellular Operators Association of India (COAI) and others Vs. Union of India and another, being petition No. 286 of 2007 before the Hon'ble TDSAT, New Delhi, already Ex PW 60/E (D-97). This petition was filed principally for the reason challenging the decision permitting cross-over from CDMA to GSM also. This petition was coming up on 24.10.2007 for hearing before Hon'ble TDSAT. I was requested by the Government to appear before it and I did appear on 24.10.2007. I have been shown copy of the order dated 24.10.2007, passed by the Hon'ble TDSAT, already Ex PW 36/DK-15 (D-99). This is the same order which is passed by the Hon'ble TDSAT on that date.

In the course of the hearing on 24.10.2007, Hon'ble TDSAT had asked me to look into the

matter personally and the matter was adjourned to 12.11.2007. Before next date, the department of Telecom had set up a committee on 07.11.2007 to examine the norms with regard to allocation of spectrum. When the matter came up for hearing on 12.11.2007 before the Hon'ble TDSAT, I informed the Hon'ble TDSAT that such a committee has been set up. I had also briefly addressed the Hon'ble TDSAT on the issue and I gave an assurance that till the committee gives its report which was expected in three weeks, no spectrum would be allocated. I also pointed out that the petitioner's representatives were on this committee. The Hon'ble TDSAT asked us to put what I had said on affidavit and adjourned the matter to 12.12.2007.

I have been shown a copy of the order dated 12.11.2007 passed by the Hon'ble TDSAT in the aforesaid matter, already Ex PW 36/DL-1 (D-99). This is the same order which was passed by the Hon'ble TDSAT on that day. I have been shown copy of the affidavit dated 13.11.2007 under the signature of Sh. Rajesh Kumar Gupta, which was filed on behalf of Union of India before the Hon'ble TDSAT. This affidavit was settled by me. This is the correct copy of the affidavit alongwith annexures R-1 to R-4, which was settled by me and the same is already Ex PW 60/F-1. Through this affidavit the Hon'ble TDSAT was assured that until the committee, constituted by the DoT, as stated by me above, gave its report, spectrum wont be allocated. This affidavit also allayed the apprehensions of the petitioners regarding the priority for allocation of spectrum.

Ques: Sir would you please tell this Court as to what developments took place before the next date of hearing, that is, 12.12.2007, in connection with this matter?

Ans: Before 12.12.2007, the COAI withdrew from the committee constituted by the DoT.

Therefore, on 12.12.2007 I informed the

Hon'ble TDSAT that they (petitioners) had withdrawn from the committee and requested the Hon'ble TDSAT to relieve me from my statement made on 12.11.2007. The Hon'ble TDSAT agreed to do it and relieved me of my statement dated 12.11.2007. The petitioners applied for stay before the Hon'ble TDSAT itself and their prayer for stay was rejected.

I have been shown copy of the order dated 12.12.2007, passed by the Hon'ble TDSAT in the aforesaid matter. This is the correct copy of the order passed on that day and the same is now Ex PW 102/A (D-99).

Later, when I was in Mumbai, I came to know, sometime around last week of December 2007, that COAI had filed a writ petition before Hon'ble Delhi High Court challenging the order dated 12.12.2007 passed by Hon'ble TDSAT and that petition was being moved during the vacation. I was unable to come to Delhi and Sh. Vikas Singh, learned Additional Solicitor General, was briefed to appear for Union of India. To my knowledge, no stay was granted in favour of the petitioner by Hon'ble Delhi High Court.

I have been shown DoT file D-8, already Ex PW 36/D, wherein my attention has been invited to note dated 14.12.2007, already Ex PW 36/D-1, recorded by Sh. Nitin Jain. On going through this note, I find that this represents a true picture of the developments before the Hon'ble TDSAT up to 12.12.2007. I have also been shown note dated 14.12.2007, under the signature of Sh. A.K. Srivastava, already Ex PW 36/D-2, and this note also represents true picture of the developments before the Hon'ble TDSAT.

I have been shown note dated 14.12.2007 recorded by me and which bears my signature at point E, which I identify. This note is already Ex PW 36/D-5....."

The deposition shows that the affidavit allayed the apprehensions of petitioners regarding priority in allocation of spectrum. However, the affidavit stood withdrawn when COAI withdrew from the committee constituted by DoT to recommend revised spectrum allocation criteria.

1135. The material on record shows that on withdrawal of affidavit, the WPC started following the principle of first-come first-served for allocation of spectrum, ignoring the action points recorded by Sh. A. K. Srivastava in his note Ex PW 36/D-2. This becomes all the more clear from the cross-examination of PW 74 Ms. M. Revathi dated 01.11.2012, pages 3 and 4, which reads as under:

> ".....In file Ex PW 74/A (D-63) pertaining to allocation of start-up spectrum in J&K service area, the allocation of spectrum was done on the basis of first-come first-served. However, in this file, I also took an additional fact on record regarding withdrawal of an affidavit by the learned SG from Hon'ble TDSAT on 12.12.2007. In view of the withdrawal of the affidavit, the priority remained as per the principle of first-come first-served....."

Thus, WPC Wing continued to allocate spectrum on the premise that the affidavit filed before Hon'ble TDSAT had been withdrawn and spectrum was to be allocated as per the existing policy of first-come first-served. This effectively means that the WPC Wing continued with the allocation of spectrum on first-come first-served basis, whatever may be the order of the Minister. This would become more clear as the order proceeds further.

What Priority WPC was actually following?

1136. Prosecution examined seven witnesses from WPC, that is, PW 57 Sh. R. J. S. Kushvaha, JWA; PW 73 Sh. M. K. Rao, DWA; PW 74 Ms. M. Revathi, AWA; PW 77 Sh. K. Sridhara, Member (T); PW 87 Sh. D. Jha, DWA; PW 91 Sh. R. P. Aggarwal, WA; and Sh. 121 T. K. Varadakrishnan, DWA.

1137. Let me take note of their evidence as to how WPC was fixing priority for allocation of spectrum.

1138. PW 57 Sh. R. J. S. Kushwaha, Joint Wireless Adviser (JWA), in his examination-in-chief dated 12.07.2012, page 1, deposed about role of WPC in spectrum allocation as under:

> ".....WPC wing is the nodal agency for spectrum management and radio regulatory functions. The cases of frequency assignment and grant of licences to various wireless users, which include among others, the government ministries and departments, public sector units and private sector is done by this wing. The requirement of spectrum by private sector is both for captive as well as public services. Captive services means the spectrum used by the private user for its own internal communications. However, the spectrum requirement by telecom service providers is considered after grant of service licence by DoT. Whenever a licence is granted to a private operator for providing public services, the type of services are governed by the service licence....."

Thus, spectrum requirement is considered after the service provider has obtained licence.

1139. PW 57 Sh. R. J. S. Kushvaha, JWA, in his further examination-in-chief dated 16.07.2012 pages 5 and 6, deposed as to the priority by which spectrum was being allocated by

WPC, as under:

> ".....The new licences for telecom services are granted by Access Services (AS) group of DoT.
>
> WPC wing deals with allotment of spectrum. Spectrum is allotted to all the wireless users in the country and that includes the Government Ministries, departments, security agencies, para-military forces, defence, public sector units as well as private sector including telecom service providers. Additional spectrum is required by the existing telecom operators from time to time. New service providers are allotted start up spectrum as per the provisions of the licence agreement.
>
> In accordance with the relevant provisions of the service licence agreement, separate application is required to be made by telecom operators to WPC wing for allotment of start up spectrum. The application should be on the prescribed format and it should contain all information as desired therein, that is, copy of the service licence, copy of amendment to existing service licence, if any. At the time of submission of application for allotment of spectrum, no fee is required to be paid. The date of receipt of such application for the allotment of spectrum, complete in all respects, is considered as date of priority for allotment of spectrum by WPC wing in a particular service area. In case an application is filed, but the same suffers from some deficiencies, its seniority would be considered only from the date when the deficiencies are made up. No instance came to my notice fixing seniority in any other manner for allotment of spectrum. However, an instance had come to my notice regarding date of priority for dual technology operators when priority for allotment of spectrum was to be fixed as per date of payment of entry fee.
>
> The additional spectrum to existing service providers was allotted as per existing subscriber linked criteria, availability of spectrum, justification and based on the request by the telecom service

providers in a particular service area. The date of receipt of application for allotment of spectrum in the WPC wing would determine the inter se seniority of existing service providers as well as the new licencees....."

The witness is categorical that separate application is required to be made for allocation of spectrum.

The witness is also categorical in deposing that priority for spectrum allocation is the date of application to WPC, complete in all respects.

1140. PW 57 Sh. R. J. S. Kushvaha deposed in his examination-in-chief on 17.07.2012 and 18.07.2012, that spectrum was allocated during his tenure in Tamil Nadu, Kerala, Karnataka, Andhra Pradesh, Orissa, Kolkata, Madhya Pradesh, Mumbai and Maharashtra service areas, as per files D-68, D-50, D-49, D-67, D-55, D-64, D-51, D-60 and D-70. He also deposed that in these service areas, sufficient spectrum was available to meet the requirements of all applicants. He deposed that in these service areas, applications were processed by the WPC as per the order of date of receipt of application in WPC. He has deposed that the seniority was determined as per the date of receipt of application, complete in all respects. In all nine service areas, TTSL and TTML were applicants for allocation of dual technology spectrum also and they have been placed last in the order of priority, as their applications were received last on 05.03.2008. This was justified by Sh. R. J. S. Kushvaha on the pretext that sufficient spectrum was available for all applicants in these service areas. If the seniority from date of payment of

prescribed fee was to be followed, then TTSL and TTML should have been placed first in the order of priority in all nine service areas as they had deposited fee on 10.01.2008. Here lies the problem that people say one thing and do exactly the opposite. The seniority list must have been prepared as per official direction, even if sufficient spectrum was available for all.

1141. PW 57 Sh. R. J. S. Kushvaha, JWA, in his further examination-in-chief dated 18.07.2012, pages 7 to 11, deposed in great detail as to what was the issue in spectrum allocation in Delhi service area, as under:

> ".....During my tenure as Joint Wireless Advisor between 31.05.2007 to 26.08.2008, spectrum was not allocated for Delhi service area. The case for allotment of spectrum for Delhi service area could not be processed for want of certain clarity on inter se priority between two different categories of licencees. During mid-August 2008, the then Deputy Wireless Advisor Sh. Dinesh Jha used to tell me that the then Wireless Advisor Sh. R. P. Aggarwal was insisting on processing of case files for the service areas where adequate/ sufficient spectrum was not available to meet the requirement of all the telecom service providers. The sufficient spectrum was available for certain parts of the country particularly in the southern states and, as such, the cases for allotment of spectrum were not very complex.
>
> In the service areas such as Delhi service area, where sufficient spectrum was not available, the issue related to inter se priority between different categories of licencees viz., dual technology licence holder and new UAS Licencees, became very important. I used to tell Sh. Dinesh Jha to inform the then Wireless Advisor Sh. R. P. Aggarwal that inter se priority issue is very important and it needs to be clarified before cases are processed and files are

submitted with some proposal. This continued for a day or two during that period. On 22.08.2008 the then Wireless Advisor Sh. R. P. Aggarwal called me and asked me to accompany him to the chamber of the then Secretary (T) Sh. Sidharath Behura for discussing the processing of cases for the service areas where sufficient spectrum was not available including the case for Delhi service area. This was in the late afternoon of that day. When I reached the chamber of Sh. Sidharath Behura, the then Secretary (T), alongwith Sh. R. P. Aggarwal, two officers of DoT, Sh. A. K. Srivastava, the then DDG (AS), and Sh. K. Sridhara, the then Member (T), were already present. The issues related to spectrum allotment to the such service areas where sufficient spectrum was not available, requirement of different categories of the licencees including requirement of additional spectrum to the existing licencees, start up spectrum for the new UAS Licencees and dual technology licencees, the affidavits filed by the DoT before the Hon'ble TDSAT and other Courts also were discussed. I specifically raised the issue of clarity and guidance on inter se priority issue between dual technology licence holder and new UAS Licencees. The background of my raising this issue of clarity on inter se priority between dual technology licence holder and new UAS Licenees was that the DoT had declared a policy for determining the seniority for dual technology licence holder from the date of payment of entry fee. In case of new UAS Licencee, the date of receipt of complete application in WPC wing was to determine the seniority of such new UAS Licencees. If the case of dual technology licence holder and new UAS Licencees were processed together and sufficient spectrum was not available in a particular service area, then how to determine the inter se seniority between the two, that is, dual technology licence holder and new UAS licencees, and this issue required clarity. On this issue, none of the officers present in that meeting room provided

any clarifications. At the end of the discussion, it was decided to seek the opinion of learned Solicitor General of India. On 22.08.2008, it was a Friday. On 23rd and 24th August 2008 I did not attend the office as they were closed holidays being Saturday and Sunday.

On arrival in the office on 25.08.2008, I was informed that I have been transferred to Regional Licensing Office, Ghitorni. However, the official order was served upon me on 26.08.2008. I relinquished the charge of Joint Wireless Advisor (L) in Sanchar Bhawan on 26.08.2008 in the afternoon and joined as Joint Wireless Advisor in Regional Licensing Office, Ghitorni, New Delhi, on 27.08.2008 in the forenoon.

DoT had formulated a policy on dual technology and announced it through a press release dated 19.10.2007. I had seen that press release. I have been shown DoT file D-5 vol. I, already Ex PW 36/A-3, wherein at pages 212 to 214, there is a press release issued by DoT. It is the same press release which was issued on dual technology on 19.10.2007. The same is already Ex PW 36/DK-12. This press release has been signed by Sh. A. K. Srivastava, the then DDG (AS) at point A. I identify his signature. My understanding of the policy announced through the press release Ex PW 36/DK-12 was that the date of payment of the fee shall determine the inter se seniority for the spectrum allotment only amongst the dual technology operators. The issue of this press release was not raised by anyone in the meeting held on 22.08.2008 in the chamber of the then Secretary (T) Sh. Sidharath Behura. I did not raise the issue of this press release, but I had raised the issue of determining the inter se seniority of dual technology holders vis-a-vis new UAS Licence holders.....”

The witness is clear that in case of dual technology applicant, date of payment should have determined priority and

in case of new UAS licence, the date of receipt of application in WPC would have determined the seniority. The strange thing is that he did not follow this procedure in the service area where he recommended the allocation of spectrum as noted above.

Sh. R. J. S. Kushvaha also deposed about a meeting on 22.08.2008.

1142. However, PW 60 Sh. A. K. Srivastava failed to recall any meeting being held on 22.08.2008 and deposed in his examination-in-chief itself dated 25.08.2012, page 8, about the meeting as under:

> ".....I am unable to recall if there was a meeting held in the chamber of the then Secretary (T) Sh. Sidharath Behura on 22.08.2008 and attended by Sh. R. J. S. Kushvaha, JWA, Sh. R. P. Aggarwal, WA, and myself....."

Thus, there are two versions about meeting of 22.08.2008. Since the version of Sh. R. J. S. Kushvaha is not supported by official record, his deposition is suspect on this point. Moreover, no other witness has supported his version.

Inter se priority

1143. PW 57 Sh. R. J. S. Kushwaha, JWA, in his further cross-examination dated 20.07.2012, pages 6 and 7, deposed as under:

> ".....I have not seen any rule for determining the seniority of applicants in the WPC wing. **Volunteered**: However, the procedure is that the date of the receipt of the applications is taken as a date of priority.
>
> I do not know since when this procedure is

being followed in the WPC wing. However, when I joined as JWA on 31.05.2007, this procedure was being followed. This procedure would be uniformly followed for all UAS Licencees in all service areas. I am unable to recall if on 04.03.2008, applications were received in the WPC wing from TTSL and TTML for allotment of spectrum. However, if record is shown to me, I may be able to tell. I have been shown DoT file D-68, already Ex PW 57/E, and at page 159, there is an application dated 04.03.2008 of TTSL received in the CR section on 05.03.2008 for allocation of spectrum, which is already Ex PW 57/E-7, for Orissa service area. This letter refers to applications for twenty service areas. This letter also refers to their earlier application dated 10.01.2008. I do not remember as to what steps, if any, were taken in the WPC wing to find out the status of applications of TTSL dated 10.01.2008. It is correct that the licencees of January 2008 filed applications for allotment of spectrum generally during the months of February-March 2008. I do not recall having seen any note prepared regarding which service area was to be processed first for the allotment of spectrum. These applicants also included dual technology GSM applicants. As far as my understanding is concerned, there was no policy to determine the inter se seniority between new UAS licencees and dual technology applicants for allocation of spectrum.

Ques: Did you initiate any note seeking guidance or clarification as to how this inter se seniority was to be determined?

Ans: I did not initiate any formal note....."

The witness deposed that there was no policy to determine inter-se seniority between UAS Licensees and dual technology applicants. However, he also deposed that date of application to WPC was taken as the date of seniority for

allocation of spectrum. He did not know if there is any rule to determine the seniority of applicants to WPC. He is ignorant about Clause 26 of Guidelines dated 25.01.2001 relating to allocation of spectrum as per first-come first-served principle.

1144. In his further cross-examination dated 20.07.2012, pages 15 and 16, PW 57 deposed as under:

> ".....I have been shown DoT file D-64, already Ex PW 57/K, wherein in note sheet 7/N, already Ex PW 57/K-1, the names of applicant companies for allotment of spectrum are mentioned and these have been mentioned in the order of date of receipt of their applications in WPC wing. I cannot comment on the seniority of these applicants as one of the applicants, that is, TTSL, is a dual technology applicant for Tamil Nadu service area including Chennai. It is wrong to suggest that I am deliberately avoiding to tell this Court that these applications are in order of seniority. As per this note sheet, the application of TTSL was processed as per amended UAS Licence. It is correct that while listing the names of the applicants in this note sheet, the name of TTSL was listed as per date of receipt of application in WPC wing. This process of listing of names was followed in all the nine service areas in which I recommended the proposal for allocation of spectrum. Volunteered: I could not recommend allocation of spectrum for Orissa service area as I was busy somewhere. However, the same process was followed for Orissa service area also.
>
> My understanding is that as per the press release dated 19.10.2007, the date of seniority of a dual technology applicant was to be determined with reference to date of payment of entry fee within the dual technology (GSM) applicants for spectrum allocation. I cannot say if the policy laid down in the press release, Ex PW 36/DK-12, was applicable to the applications received till that date as only the AS

cell officials can give this clarification....."

This aforesaid cross-examination shows that Sh. R. J. S. Kushvaha is not sure as to how the seniority is to be fixed in case of dual technology applicants. As noted above, in the nine service areas in which he was involved in processing applications, he fixed the seniority of TTSL and TTML from the date of application to WPC, complete in all respects, that is, application accompanied by a copy of amendment to licence. In this case, it was 05.03.2008, but he also deposed that his understanding was that date of seniority of the dual technology applicants should be determined from the date of payment of entry fee. He also did not know if the concept of seniority from date of payment applied to three companies only. This deposition of Sh. R. J. S. Kushvaha is contrary to record as he himself did not follow the priority from the date of payment, while fixing priority of TTSL in nine service areas.

1145. PW 57 Sh. R. J. S. Kushvaha, JWA, in his further cross-examination dated 23.07.2012, page 1, deposed as under:

> ".....Additional spectrum was allotted to existing operators in some of the service areas. It is correct that additional spectrum to the existing operators and start up spectrum to the new operators was allotted as per the inter se seniority in the order of receipt of their applications in the WPC wing....."

Here he again confirmed the principle of priority from date of application to WPC.

1146. PW 57 Sh. R. J. S. Kushvaha in his further cross-examination dated 23.07.2012, pages 1 and 2, deposed as

under:

> ".....I have been shown DoT file D-70, already Ex PW 57/N, and in this file, note sheet already Ex PW 57/N-1, wherein name of the applicants for allotment of spectrum are mentioned. This list has been prepared as per the order of the receipt of applications in the WPC wing. These applicants included new licencees, existing licencees and dual technology applicants. **Volunteered**: This list does not reflect inter se seniority of the applicants as a dual technology applicant is also involved here.
>
> This fact was not recorded by me anywhere either in this note sheet or any note sheet relating to allotment of spectrum where all three categories of licencees were involved. It is wrong to suggest that I am telling lie on this point and the note sheet Ex PW 57/N-1 reflects order of inter se seniority of the applicants. It is correct that wherever existing operators were applicants for additional spectrum and new licencees were applicants for start up spectrum, the inter se seniority between them was listed by WPC in order of the receipt of applications in the WPC wing....."

Again, he deposed that seniority for additional spectrum and start-up spectrum was determined from date of application to WPC. Dual technology spectrum is also additional spectrum.

PW 57 Sh. R. J. S. Kushwaha, JWA, in his further cross-examination on 23.07.2012, page 10, deposed as under:

> ".....As far as my understanding of the press release dated 19.10.2007 was concerned, it was that it talked of inter se seniority between the dual technology applicants only....."

The perusal of the entire evidence reveals that

priority for allocation of spectrum was being fixed from the date of receipt of application in the WPC Wing and in none of the cases, date of payment was taken note of. Thus, Sh. R. J. S. Kushvaha deposed against the official record.

Conduct of PW 57 Sh. R. J. S. Kushvaha

1147. PW 57 Sh. R. J. S. Kushvaha in his cross-examination dated 20.07.2012, pages 9 to 11, deposed as under:

> ".....I do not remember specific date, but recommendations were made by TRAI in 2007. I have been shown TRAI recommendations dated 28.08.2007, already Ex PW 2/DD. I have no information as to on which reference from DoT these recommendations were made by TRAI. On seeing the recommendations, I say that one of the recommendations pertain to usage of alternate technology and thus allocation of dual spectrum. I do not remember if on receipt of the recommendations, a committee was constituted in the DoT to examine these recommendations. I also do not remember if I was a member of that committee. I have been shown DoT file D-5 vol. I, already Ex PW 36/A-3, wherein at page 140 there is a report dated 10.10.2007 of the committee, already Ex PW 36/A-8 and covering letter thereof is already Ex PW 36/A-7. I was a member of the committee that made this report. Covering letter as well as the report bears my signature at point C on each page.
>
> I have been shown press release dated 19.10.2007 already Ex PW 36/DK-12, at pages 212 to 214 of the aforesaid file. This press release was processed and examined in the file of AS cell and not on the file of WPC wing. I cannot say anything on the press release and officers of AS cell would be in a better position to tell about this. I cannot say

anything about this press release. I am not in a position to elaborate the press release. The processing of the applications for allocation of spectrum in the WPC wing was to be done as per the policy prescription of the Government of India. In November 2007, an affidavit was filed by DoT before the Hon'ble TDSAT. However, I do not remember the exact context in which this affidavit was filed. I also do not remember as to what were the issues in the litigation in which the affidavit was filed. I cannot confirm if later on this affidavit was withdrawn by DoT. I have been shown DoT file D-72, already Ex PW 36/DK-7, wherein at page 139 of the WPC file, there is extract of file noting of AS cell, which talks about such an affidavit, but I cannot say anything about it. However, it bears my initials at point A. The same is now Ex PW 57/DF. I had read this before signing it, but even after reading it today I cannot say anything about the extract of file noting by AS cell therein. It is wrong to suggest that I am deposing falsely at the instance of CBI……."

A committee was constituted to examine TRAI Recommendations. Sh. R. J. S. Kushvaha was also a member of the committee. The committee gave its report, Ex PW 36/A-7 (Page 140, D-5), which has been signed by Sh. R. J. S. Kushvaha at point C. However, Sh. R. J. S. Kushvaha could not recall if he was a member of the committee. In such circumstances, it is difficult to rely on the deposition of such a witness, who himself does not remember such an important event as to whether he was a member of the committee or not. Perusal of file D-5 reveals that the order dated 20.09.2007, Ex PW 36/A-6, for constitution of committee was noted by Sh. R. J. S. Kushvaha by appending his signature. Note Ex PW 36/A-8 as

well as forwarding note Ex PW 36/A-7 have also been signed by him. Not only this, for fixing priority for dual technology applicants, he is relying on press release dated 19.12.2007, Ex PW 36/DK-12, but also disowns all knowledge about this. He is also ambiguous and confused about the affidavit filed before Hon'ble TDSAT. Thus, the conclusion is that the evidence of Sh. R. J. S. Kushvaha cannot be relied upon.

1148. PW 57 Sh. R. J. S. Kushvaha in his further cross-examination dated 20.07.2012, page 13, deposed as under:

> ".....**Ques**: This has been brought on record by the prosecution in your examination-in-chief that a meeting was held on 22.08.2008 in the chamber of the then Secretary (T). Did you state so to the IO in your first statement dated 22.01.2011?
> **Ans**: I had told this fact to the IO, but I do not remember if I had stated so on 22.01.2011 or in subsequent statements. Confronted with his statement dated 22.01.2011 already Ex PW 57/DA-1, wherein it is not so recorded....."

Thus, he contradicted himself about the meeting of 22.08.2008. No other witness deposed so about such meeting nor any record is available. PW 60 Sh. A. K. Srivastava also does not remember any such meeting.

1149. PW 57 Sh. R. J. S. Kushvaha in his further cross-examination dated 23.07.2012, pages 1 and 2, deposed as under:

> ".....I have been shown DoT file D-70, already Ex PW 57/N, and in this file, note sheet already Ex PW 57/N-1, wherein name of the applicants for allotment of spectrum are mentioned. This list has been prepared as per the order of the receipt of

applications in the WPC wing. These applicants included new licencees, existing licencees and dual technology applicants. **Volunteered**: This list does not reflect inter se seniority of the applicants as a dual technology applicant is also involved here.

This fact was not recorded by me anywhere either in this note sheet or any note sheet relating to allotment of spectrum where all three categories of licencees were involved. It is wrong to suggest that I am telling lie on this point and the note sheet Ex PW 57/N-1 reflects order of inter se seniority of the applicants. It is correct that wherever existing operators were applicants for additional spectrum and new licencees were applicants for start up spectrum, the inter se seniority between them was listed by WPC in order of the receipt of applications in the WPC wing....."

Here again he reiterated the principle of priority from date of application to WPC. However, he also attempted to show that priority of dual technology applicants should have been fixed as per the press release dated 19.10.2007.

1150. However, a bare look at the press release dated 19.10.2007, Ex PW 36/DK-12, page 214 (D-5, Vol. I), will make the things clear. The relevant part of the press release is extracted as under:

".....In order to further enhance the penetration of access services for rapid expansion of tele-density, it has also been decided that the existing private UAS Licensees may be permitted to expand their existing networks by using alternate wireless technology i.e. the present UAS Licensee who is using GSM technology for wireless access may be permitted to use CDMA technology and vice-versa. The spectrum for the alternate technology, CDMA or GSM (as the case may be) shall be allocated in the applicable

frequency band subject to availability after payment of prescribed fee. Allocation of spectrum for the alternate technology may be done to private UAS Licensees on payment of prescribed fee, which will be an amount equal to the amount prescribed as entry fee for getting a new UAS licence in the same service area. The existing UAS Licensees, who have already applied for allocation of spectrum for the alternate technology shall also be considered for allocation of spectrum in alternate technology from the date of payment of prescribed fee. BSNL and MTNL being incumbent operators shall be permitted usage of alternative technology and allocated spectrum for the alternate technology without paying the prescribed fee. For the purpose of payment of licence fee and spectrum charges, the stream wise revenue of different technologies shall be considered....."

1151. If this press release is read carefully, it is clear it is in two parts. It says that allocation of spectrum for alternate technology to UAS licences may be done on payment of prescribed fee which shall be equal to entry fee for a UAS licence in a service area. This is the general part of the order. The next part deals with existing UAS licences who had already applied for allocation of alternate technology. Here it specifically says that they shall be considered for allocation of spectrum in alternate technology from the date of payment of prescribed fee. The fixing of priority is missing in the general part of the order. It may be noted that the date on which press release was issued, that is, 19.10.2007, TTSL/ TTML were not applicants for dual technology as they had applied only on 22.10.2007, vide applications Ex PW 36/DK-13 and 36/DK-14. Hence, their

priority was to be fixed as per the general order, which in effect means that priority from date of payment was not to be granted to them. However, it is altogether a different matter that in all cases the WPC followed the principle of first-come first-served.

1152. It is apparent that Sh. R. J. S. Kushvaha himself did not follow the press release while fixing seniority of dual technology applicants in the service areas where files were processed by him and was fixing the seniority as per order of receipt of applications in the WPC Wing. This would become more clear from the cross-examination of PW 57 Sh. R. J. S. Kushvaha, dated 24.07.2012, pages 2 and 3, where he introduced the requirement of amendment to licence, which reads as under:

> ".....An application of a dual technology applicant would be processed if it is accompanied by amendment to licence agreement only. It is not necessary that it be accompanied by a copy of in-principle approval.
>
> I processed applications for allotment of spectrum in nine service areas and the applicants included TTSL and TTML also. However, in all these service areas, sufficient spectrum was available to meet the requirement of all applicants together. The applications were processed in the order of their receipt in the WPC wing. There is no specific order to this effect seen by me. The first application was filed by the Reliance Communication for allotment of GSM spectrum on 19.10.2007, addressed to Wireless Advisor, which is part of Ex PW 57/D-4. Next application was filed by it on 08.11.2007, which is also part of same exhibit. However, the last application was filed by it on 10.12.2007, which was accompanied by an amendment to licence agreement dated 06.12.2007 and this application is

already Ex PW 57/D-4. Similar applications were also filed for other service areas. The earlier two applications were not processed as they were not accompanied by a copy of amendment to licence agreement. A copy of amendment to the licence agreement was also forwarded by the AS cell to the WPC wing and a copy of it is also part of the application dated 10.12.2007. This amendment was under signature of Sh. Raj Kataria, the then under secretary. The in-principle approval is dated 18.10.2007. A letter written by Reliance Communications, addressed to MOC&IT, for allocation of spectrum is available at page 146 in the DoT file D-72, already Ex PW 36/DK-7. This letter was also marked to me and bears my signature at point A and is now Ex PW 57/DL. This was written by Reliance pursuant to decision of Hon'ble TDSAT dated 12.12.2007. A CDMA operator cannot be allotted GSM spectrum unless there is amendment to the licence agreement....."

1153. He deposed that seniority of dual technology applicant would be determined from the date of application accompanied by a copy of amendment to licence. He also deposed as to how the priority of Reliance Communication was determined for dual technology from 12.12.2007 and not from 19.10.2007, that is, the date of payment.

1154. PW 57 Sh. R. J. S. Kushvaha in his further cross-examination dated 24.07.2012, pages 3 and 4, deposed as under:

".....IO had shown me copies of applications dated 10.01.2008 filed by TTSL and TTML for allocation of dual technology spectrum. I did not find them accompanied by an amendment to licence agreement. I have been shown DoT file D-68, already Ex PW 57/E, and in this file at page 159

there is an application of TTSL for allocation of GSM spectrum. The application is already Ex PW 57/E-7. The amendment to licence agreement is dated 04.03.2008 and the application was filed on the same day. Amendment is annexed with the application. The processing of these applications could have been done either on 04.03.2008 or thereafter, as amendment to licence agreement is dated 04.03.2008. The amendment to licence agreement was approved by the then MOC&IT on 27.02.2008 and his signature appears at point A on the note sheet 4/N, now Ex PW 57/DL-2......"

Here, Sh. R. J. S. Kushvaha changed his version and deposed that processing of application of TTSL could have been done only on 04.03.2008 or thereafter and not from date of payment.

1155. Even otherwise, in nine service areas, in which applications were processed by Sh. D. Jha and Sh. R. J. S. Kushvaha for allocation of spectrum, they did not mention the order of priority at all. They nowhere mentioned that the priority was being fixed as per the order of receipt of applications in the WPC or by any other criteria. They also did not mention that sufficient spectrum was available in that service area. This would become clear from note dated 16.04.2008, Ex PW 57/E-1, recorded by Sh. D. Jha and agreed to by Sh. R. J. S. Kushvaha, for allocation of spectrum in Orissa service area. The note reads as under:

"The case relates to requirement of initial **GSM** spectrum to new UAS licensees i.e. M/s Idea, Datacom, S Tel, Nahan and Loop in Orissa telecom service area. Further, M/s TTSL has also requested for GSM spectrum in the service area for dual

technology based on their amended UAS licence regarding spectrum allocation.

2. No cases for allotment of additional spectrum are pending.

3. Assessment of spectrum utilization by Defence in GSM 1800 MHz band, based on the records available in WPC Wing, reveals that some spectrum in GSM 1800 MHz band, beyond what has been coordinated by Defence, is not used by Defence and thus appears to be available which could be considered for earmarking on trial basis.

4. Spectrum charges will be levied on total spectrum including the trial spectrum as per applicable rates from the date such trial spectrum is earmarked.

5. In view of the above and subject to outcome of the court cases, it is proposed to earmark:

(a) Initial 4.4+4.4 MHz spectrum to M/s Idea on trial basis.
(b) Initial 4.4+4.4 MHz spectrum to M/s Datacom on trial basis.
(c) Initial 4.4+4.4 MHz spectrum to M/s Nahan on trial basis.
(d) Initial 4.4+4.4 MHz spectrum to M/s S Tel on trial basis.
(e) Initial 4.4+4.4 MHz spectrum to M/s Loop on trial basis.
(f) Initial 4.4+4.4 MHz spectrum to M/s TTSL on trial basis for the use of dual technology.

For kind consideration and approval please."

Perusal of the note makes it clear that this note is bald one without any indication of seniority or other features of

the case.

The end result is that, the testimony of Sh. R. J. S. Kushvaha cannot be relied upon, the same being full of ambiguities and somersaults and also being contrary to official record. His testimony deserves to be discarded in toto.

1156. PW 87 Sh. Dinesh Jha, Dy. Wireless Adviser, deposed about the procedure followed for allocation of spectrum in his examination-in-chief dated 04.12.2012, pages 5 to 9, as under:

> ".....Between 2004 to 2007, the practice was that whose application is received first in WPC wing would be allocated spectrum first. This applies to existing licence holders also, who seek additional spectrum, as per the subscriber based criteria. However, in October 2007, it was decided that whosoever would make the payment first would get the spectrum first, but the order in this regard was not available even to the officers working in WPC wing. Up to August 2008, as long as I remained posted in WPC wing, I dealt with seven or eight such cases of GSM spectrum allocation, where adequate spectrum was available for all the licencees in the service area.
>
> I have been shown WPC file D-68, already Ex PW 57/E, pertaining to allocation of spectrum in Odisha service area. In this file, there is a note dated 16.04.2008, already Ex PW 57/E-1, recorded by me proposing allocation of spectrum in Odisha service area to different service licencees, that is, six licencees. In this note, I had serially numbered the six service providers and the serial numbers/ positions were given as per the date of receipt of application in the WPC wing. One of the applicants, that is, TTSL, was for dual technology spectrum.
>
> In this file, there is an application of Idea Cellular Limited, already Ex PW 57/E-2, which was received in the WPC wing on 28.02.2008 for

allocation of spectrum. The application of Datacom was received on 27.02.2008 and a fax copy of the application is available on the file. However, the original application, already Ex PW 57/E-3, was received on 28.02.2008. Application of S. Tel, already Ex PW 57/E-4, was received on 03.03.2008. Application of Unitech in the name of Nahan Properties (P) Limited, already Ex PW 57/E-5, was received on 03.03.2008. Application of Loop Telecom (P) Limited, already Ex PW 57/E-6, was received on 05.03.2008. Application of TTSL, already Ex PW 57/E-7, was received on 05.03.2008.

Ques: The applications of Idea Cellular and Datacom were received on 28.02.2008 and that of Loop Telecom and TTSL were received on 05.03.2008. How did you determine the priority vis-a-vis the applications received on the same date?

Ans: Since in this circle, adequate spectrum was available, I did not care much about inter se priority between the applicants.

However, in strict compliance of policy, the applicant whose application is received first would be given priority first and then spectrum would be allocated. I cannot say as to how inter se priority of two applications received on the same date would be determined.

I know Sh. A. K. Narula, who has since retired and was once posted as Assistant Wireless Advisor in WPC. Ms. Revathi succeeded me as Assistant Wireless Advisor and after my transfer, my seat remained vacant for few days.

I have been shown WPC file D-66, already Ex PW 74/F, pertaining to allocation of spectrum in UP (East) service area. In this file, there is a note dated 05.09.2008, recorded by Sh. A. K. Narula, Assistant Wireless Advisor (T), pertaining to allocation of initial spectrum in this service area. I identify his signature at point A and the note is now Ex PW 87/B. In this note, he has mentioned the date of receipt of application for UAS Licence, date of

signing of licence agreement and date of receipt of application in WPC wing. This proposal for allocation of spectrum was approved by the then MOC&IT Sh. A. Raja by appending his signature at point B, page 2/N. In this service area, the proposal was for six service providers for allocation of spectrum, but the spectrum was allocated only to three service providers as only that much spectrum was available.

I have also been shown WPC file D-59, already Ex PW 74/K, pertaining to allocation of spectrum in Punjab service area. In this file, there is a note dated 05.09.2008, recorded by Sh. A. K. Narula, Assistant Wireless Advisor (T), pertaining to allocation of initial spectrum in this service area. I identify his signature at point A and the note is now Ex PW 87/C. In this note, he has mentioned the date of receipt of application for UAS Licence, date of signing of licence agreement and date of receipt of application in WPC wing. This proposal for allocation of spectrum was approved by the then MOC&IT Sh. A. Raja by appending his signature at point B, page 2/N. In this service area, the proposal was for six service providers for allocation of spectrum, but the spectrum was allocated only to three service providers as only that much spectrum was available.

I have also been shown WPC file D-48, already Ex PW 74/D, pertaining to allocation of spectrum in Assam service area. In this file, there is a note dated 08.12.2008, recorded by Sh. T. K. Vardakrishnan, Deputy Wireless Advisor (V), pertaining to allocation of initial spectrum in this service area. I identify his signature at point A and the note is now Ex PW 87/D. In this note, he has mentioned only date of receipt of application in WPC wing. The proposal was for allocation of GSM spectrum to six applicant service providers. This proposal for allocation of spectrum was approved by the then MOC&IT Sh. A. Raja by appending his signature at

point C, page 3/N....."

In this deposition, Sh. D. Jha deposed that the order regarding priority from date of payment was not available to the officers working in the WPC. It was his duty to ask for a copy of the order or to go by the available orders. Furthermore, he deposed that he did not care about the seniority as sufficient spectrum was available in the Orissa service area. This is a wrong notion. The application must have been sequentially listed as per their seniority, even if sufficient spectrum was available. It is an excuse invented to escape responsibility.

1157. PW 87 Sh. D. Jha in his examination-in-chief dated 04.12.2012, pages 10 to 12, further deposed as under:

> ".....**Ques**: In application Ex PW 57/E-7, it is mentioned that the applicant TTSL had earlier filed an application on 10.01.2008 for allocation of GSM spectrum under dual technology for Orissa service area. Why did not you process that application?
> **Ans**: I had not seen the application of TTSL for dual technology spectrum dated 10.01.2008 for any service area. In the application dated 05.03.2008, TTSL had enclosed a copy of amendment of its licence agreement dated 04.03.2008. However, its claim for allocation of spectrum arose only after amendment to licence agreement which is dated 04.03.2008.
>
> It could become a reason for not processing its applications dated 10.01.2008, even if that had been received in the WPC wing. I was transferred from WPC wing on 26.08.2008. I was once called to DoT for tracing out that application. Only one application for Karnataka service area was traced out from an almirah, which was earlier in my possession, during my posting there.

I had moved the proposal for allocation of spectrum, but the order came only for service areas where adequate spectrum was available. I had put up proposals for allocation of spectrum in all service areas where adequate spectrum was available. I did not put up any case for any service area, in which adequate spectrum was not available for all the applicants. I know Sh. R. P. Aggarwal, who was Wireless Advisor, during the period from May 2008 to December 2008. He asked me to put up a proposal for allocation of spectrum in Delhi service area, where adequate spectrum was not available. I told him that since no order exists for allocation of spectrum, inter se between the new applicants and dual technology applicants, such an order may be issued first, so that the processing could be easy for us. Here the problem was that spectrum was available only for one service provider.

Ques: In service areas where adequate spectrum was available, TTSL was also one of the applicants. In that cases in putting the proposal, you followed the principle of chronological order of applications. In Delhi service area also, you could have put up the proposal by putting the application in chronological order despite availability of spectrum only for one service provider. What prevented you from doing this?

Ans: I came to know that the criteria had been changed to the effect that whosoever would deposit the money first, after receipt of letter of intent, would get spectrum first. Since this was change for the first time after 2004, I persisted with the idea that there should be an order for the subordinate officer to work on it.

Ques: Did any conversation take place between you and Mr. R. P. Aggarwal regarding allocation of spectrum in Delhi service area, if so, what and on which date?

Ans: The conversation took place on Friday in the month of August 2008 before my transfer two three

times. The conversation was as to how to put up the case and I insisted on an order in this regard. However, on coming Monday I was transferred....."

Here, Sh. D. Jha deposed that the seniority of a dual technology applicant is required to be taken from the date when the application is filed accompanied by a copy of amendment of licence agreement. He deposed that application of TTSL dated 05.03.2008 was accompanied by a licence agreement date 04.03.2008. He further deposed that this could be a reason that the application of TTSL dated 10.01.2008 was not processed. Here he forgot about the date of payment. He is not sure if date of payment is the criteria or the date of receipt of application, complete in all respects, is the criteria.

1158. PW 87 Sh. D. Jha in his cross-examination on 05.12.2012, page 2, deposed as under:

".....I came to know that spectrum would be allocated first to a service provider who deposited the money first from the order of the department accepting TRAI recommendation. I had seen this in the policy file of AS Cell, DoT. I have seen DoT file D-5 vol. II, already Ex PW 36/A-21, and therein is a chart, already Ex PW 11/E, and this fact is mentioned in column 6.23. I have spoken so on the basis of my understanding of this column. It is wrong to suggest that my understanding on this point is incorrect....."

In his examination-in-chief dated 04.12.2012, pages 5 and 6, as extracted above, Sh. D. Jha deposed that the order that whosoever would make the payment first would get spectrum first was not available to the officers of WPC Wing.

However, in the above cross-examination, he deposed that he came to know about it from the order of the department accepting TRAI Recommendations. He also deposed that he saw this in AS file D-5, Ex PW 36/A-21. PW 57 clearly deposed that the order was received in the WPC Wing. This shows that the witnesses are evasive in their deposition and are prone to do whatever they wish do. He did not put up the file for Delhi service area on the pretext that criteria was not clear. This is a wrong notion. He should have put up the file by following the principle of priority from the date of application to WPC or following priority from date of payment as claimed by him. If he had any genuine objection, he could have recorded it in the note.

1159. PW 87 Sh. D. Jha in his further cross-examination dated 05.12.2012, page 3, deposed regarding no allocation of dual technology spectrum unless there is amendment in the licence agreement and application is accompanied by a copy of it, as under:

> ".....In file D-64, already Ex PW 57/K, regarding allocation of spectrum in Tamil Nadu circle, there is an application of TTSL already Ex PW 57/K-8, dated 04.03.2008, regarding allocation of spectrum. This application had also come to me and I had read it carefully. It is correct that in this application, the applicant company had referred to its application dated 10.01.2008. Similar reference was made in other applications dated 04.03.2008 of this company for allocation of spectrum in other service areas. I did not make an attempt to trace out the application dated 10.01.2008 despite the same being referred in this application and other applications. I did not do

so as till that date, that is, 04.03.2008, no spectrum was allotted on letter of intent. By this I mean by that date there was no amendment to its service licence agreement consequent to in-principle approval granted to it on 10.01.2008. For this reason I did not think it necessary to look for these applications dated 10.01.2008....."

PW 87 Sh. D. Jha in his further cross-examination on 05.12.2012, page 5 deposed as under:

".....It is correct that it was my duty in WPC wing to maintain the seniority of applicants date-wise as received in the WPC wing from CR section for allocation of spectrum....."

About inter-se seniority, he further deposed in his cross-examination dated 05.12.2012, page 7, as under:

".....In case two applications were received in the CR section on the same date for allocation of spectrum, I would fix the priority as per the diary number given by the CR section. In the note Ex PW 57/DG in file Ex PW 36/DL-2, no information was sought regarding inter se priority between new applicants and dual technology applicants, so I did not initiate any note on this point subsequent to this note. I never initiated any note seeking clarity on priority between new applicants and dual technology applicants. It is correct that I did not initiate such a note as till 20.02.2008 there was no issue relating to priority between new applicants and dual technology applicants. It is correct that file Ex PW 87/A did not come to me at all. However, I came to know about the order of Secretary (T) from the senior officer, that is, Sh. P. K. Garg, the then Wireless Advisor. From the perusal of this file, it appears that this file was not marked to him....."

About inter-se seniority of the applicants, whose

applications were received on the same day, in his examination-in-chief, dated 04.12.2012, page 7, he deposed that he cannot say as to how the inter-se priority of two applicants received on the same day would be determined. However, on the very next day, in his cross-examination, wisdom dawned on him and he deposed that priority would be fixed as per the diary number given by the CR section. Viewed in totality, this witness is wavering in his deposition as per his whims and convenience. The end result is that his testimony also is not worthy of reliance. It deserves to be discarded in its entirety.

1160. PW 73 Sh. M. K. Rao, Dy. Wireless Adviser, in his examination-in-chief dated 30.10.2012, pages 2 and 3, deposed as under:

> ".....For allocation of spectrum, applications are received in the CR Section of DoT alongwith a copy of service licence agreement or amended copy of existing service licence. From there, the applications would come in the WPC wing. For processing these applications, the applications would be marked to Assistant Wireless Advisor. He/ she will process the applications.
> **Ques**: Please tell this Court if processing of the applications is necessary even if there is no availability of spectrum for allocation?
> **Ans**: There are no guidelines in this regard. However, applications have to be processed.
> **Ques**: Please tell this Court as to how priority of various applicants is maintained for allocation of spectrum?
> **Ans**: The priority will be maintained as per date of receipt of application in the CR section in complete form, that is, application is received with a copy of service licence agreement or amended copy thereof, as the case may be....."

1161. PW 73 Sh. M. K. Rao, Dy. Wireless Advisor, in his cross-examination, pages 5 and 6, also deposed as under:

> ".....After application for allotment of spectrum is processed by Assistant Wireless Advisor, he proposes a date of priority depending upon date of receipt of application in CR section alongwith with required papers. If two applications are received on the same day, the priority of the applicants would be fixed as per the serial number given by the CR section. This process is followed for both GSM as well as dual technology service applicants....."

He further deposed at page 7 as under:

> ".....The policy of first-come first-served applies to both, GSM and CDMA applicants....."

This witness is categorical that priority is to be fixed as per date of receipt of application for allocation of spectrum. In case two applications are received on the same day, priority is fixed as per serial number given in CR section.

1162. PW 74 Ms. M. Revathi, Assistant Wireless Adviser, in her examination-in-chief, dated 31.10.2012, page 2, deposed as under:

> ".....I have been shown DoT file D-63, WPC Wing, pertaining to allocation of initial spectrum in J&K telecom service area. It is a genuine file and was opened in the official course of business in DoT. The same is now collectively Ex PW 74/A. I have been shown note available at pages 1/N and 2/N dated 01.11.2008, which was recorded by me. The subject matter of note was allocation of initial GSM spectrum in J&K service area. There is a table of service providers incorporated in my note which shows their seniority sequentially.

Ques: How did you fix this seniority?
Ans: This seniority was fixed as per the date of receipt of applications for allocation of spectrum in CR section after signing of the service licence agreement, complete in all respects.
Ques: How did you come to know that the seniority would be fixed in this manner?
Ans: This procedure was told to me by my seniors and I was also convinced about the logic behind it.

My seniors who told me about the procedure were Dr. Ashok Chandra and Sh. R. P. Aggarwal....."

This witness is also categorical that priority is to be fixed as per date of receipt of application for allocation of spectrum.

1163. PW 74 Ms. M. Revathi in her further examination-in-chief, dated 31.10.2012, page 4, deposed as under:

".....I have been shown DoT file D-65, WPC Wing, pertaining to allocation of initial spectrum in Gujarat telecom service area. It is a genuine file and was opened in the official course of business in DoT. The same is now collectively Ex PW 74/B. I have been shown note available at pages 1/N and 2/N dated 22.09.2008, which was recorded by me. The subject matter of note was allocation of initial GSM spectrum in Gujarat service area. There is a table of service providers incorporated in my note which shows their seniority sequentially. It bears my signature at point A and the note is now Ex PW 74/B-1. In this, apart from operators, who were to be allocated start-up spectrum, one operator is there, that is, Vodafone, for allocation of additional spectrum. In allocating start-up spectrum as well as additional spectrum, the principle of date of receipt of applications, complete in all respects, in CR section was followed. I proposed allocation of start-up spectrum only for three operators, namely,

Datacom, Volga and Swan....."

It may be noted that she reiterated this on pages 7 and 8 also.

In her cross-examination on 01.11.2012, page 1, PW 74 Ms. M Revathi deposed as under:

> ".....It is correct that Tata's application for GSM spectrum was given priority w.e.f 05.03.2008. It was based upon two things, that is, signing of amended service licence agreement and date of application for allocation of GSM initial spectrum, received in the CR section. It was uniform principle that priority would be considered for all circles from date of receipt of applications, when the application is complete in all respects....."

Similarly, on 01.11.2012 in her cross-examination, page 2, PW 74 Ms. M. Revathi deposed as under:

> ".....Whenever spectrum becomes available, it would be allocated to those waiting for it as per prevailing policy prescription and guidelines. It is correct that when I issued allocation letters to some of the operators as stated by me in my examination-in-chief, those were issued under the policy of first-come first-served basis....."

PW 74 in her further cross-examination dated 01.11.2012, pages 3 and 4, deposed as under:

> ".....In file Ex PW 74/A (D-63) pertaining to allocation of start-up spectrum in J&K service area, the allocation of spectrum was done on the basis of first-come first-served. However, in this file, I also took an additional fact on record regarding withdrawal of an affidavit by the learned SG from Hon'ble TDSAT on 12.12.2007. In view of the withdrawal of the affidavit, the priority remained as

per the principle of first-come first-served....."

Thus, Ms. M. Revathi is also clear that priority for allocation of spectrum was the date of receipt of application in the WPC, complete in all respects. She also deposed that application of TTSL was given priority from 05.03.2008 as it was accompanied by a copy of the amended licence agreement.

1164. PW 121 Sh. T. K. Varada Krishnan, Joint Wireless Adviser, in his examination-in-chief dated 10.05.2013, pages 19 and 20, deposed as under:

> "....**Question:** How the interse priority used to be decided between the new and dual technology applicants in the WPC Wing in the years 2007-2008?
> **Answer:** The date of receipt of application in Central Registry, complete in all respects, decides the priority for allotment of spectrum.
> In case of a new applicant, a copy of service licence agreement and in case of dual technology applicant, the amendment to existing service licence agreement for use of the dual technology, are required to be attached with the application and then the application would be taken as complete for allocation of spectrum.
> **Court Question:** How would you decide the interse priority between new applicants and dual technology applicants?
> **Answer:** There was no interse priority....."

PW 121 Sh. T. K. Varada Krishnan in his cross-examination dated 10.05.2013, page 23, deposed as under:

> "....It is correct that an applicant has first to get UASL licence and only then, can he apply for allocation of spectrum. The two processes, that is, applying for UASL licence and applying for spectrum are two separate but sequential processes....."

This witness is also categorical that receipt of application in CR section, complete in all respects, decides priority for allocation of spectrum.

1165. PW 77 Sh. K. Sridhara, Member (T), in his examination-in-chief dated 10.12.2012, pages 4 to 6, deposed as under:

> ".....Till 31.03.2007, the procedure followed for allocation of spectrum was allocating spectrum for the applicants who had applied first with the WPC wing. The persons who needed spectrum were the mobile service providers/ existing service providers, landline service providers who needed CDMA, broadcasters, satellite, Defence and many companies who wanted point to point communication etc.
> **Ques**: What was the policy of the WPC wing for allocation of spectrum to existing operators vis-a-vis new licencees till 31.03.2007?
> **Ans**: The policy followed was to allocate spectrum to whosoever had applied first with the WPC wing. The new applicants were given licences only when spectrum was available after meeting the requirements of the existing operators.
>
> TRAI in its recommendations dated 28.08.2007 had recommended the concept of dual technology applicants, that is, the existing licencees who were operating in GSM/ CDMA technology, would be permitted to operate in the alternate technology namely CDMA/ GSM.
> **Ques**: What was the recommendation of TRAI regarding allocation of spectrum to a dual technology applicant?
> **Ans**: The recommendation of TRAI was that the existing licencees will be eligible for new technology and they should be treated like any other existing licencees in the queue and the inter se priority of allocation may be determined by DoT.

Ques: What decision was taken on this by the then Minister regarding aforesaid recommendation?
Ans: The Minister decided that "allocation of spectrum in alternate technology should be considered from the date of such request to WPC subject to the payment of required fees", as is reflected in Ex PW 36/A-15 dated 17.10.2007, page 9/N, in file Ex PW 36/A-3, D-5.

This was the existing practice also as the applicant first had to pay the entry fee and then apply to WPC for allocation of spectrum.
Ques: By 17.10.2007 you had three type of applicants, that is, existing operators, new licencees and dual technology applicants. Did the DoT take any decision to determine inter se seniority between the three categories for allocation of spectrum?
Ans: I do not remember if any decision was taken or not on this point.

The start up spectrum is given to the new licencees and the dual technology applicants in alternate technology. No decision was taken by the department to determine inter se seniority between these two type of applicants also....."

This witness justified the order dated 17.10.2007, Ex PW 36/A-15, passed by Sh. A. Raja relating to dual technology.

Member (T) PW 77 Sh. K. Sridhara, who was Administrative Incharge of WPC, in his cross-examination dated 10.12.2012, pages 14 and 15, deposed about seniority of applicants in the WPC as under:

".....The draft letter Ex PW 7/B dated 02.11.2007 was shown to me at the residence of Minister and after going through the same, I told the Minister that the contents of the same were generally correct. It is correct that the three applicants for alternative technology was Reliance Communications, Shyam

Telelinks and HFCL, as on 18.10.2007, as is recorded in file D-5, page 20/N, in the note dated 18.10.2007, Ex PW 36/A-16. As per note dated 02.11.2007, already Ex PW 36/B-8, the application of TTSL for alternate technology was to be considered after decision of Hon'ble TDSAT. It is correct that this position was reiterated in note dated 07.11.2007, already Ex PW 36/B-10, in file D-7. It is true that my subordinate officers did not put up any note to me seeking any policy decision regarding inter se seniority between new applicants and dual technology applicants. It is correct that WPC continued to follow the existing procedure of determining the seniority of the applicants by the date of receipt of applications in the WPC for allocation of spectrum. It is correct that as per note Ex PW 42/DB in the same file, some of the applicants were given extended time to comply with LOI conditions or other requirements, even after issuance of LOIs till March 2007. It is correct that at that time, the number of applications were limited and this procedure could have been followed without any difficulty. In this procedure, the issue of seniority never arose....."

The gist of this testimony is that WPC continued to follow the principle of fixing priority from the date of receipt of application in WPC, that is, first-come first-served.

1166. PW 91 Sh. R. P. Aggarwal, Wireless Adviser, deposed in his examination-in-chief dated 12.12.2012, pages 2 and 3 as under:

".....Whenever an application is received in the WPC wing for assignment of frequency, we see the date of receipt of application in the WPC wing for seniority.

Normally, Deputy Wireless Advisor puts up the proposal for assignment/ allocation of frequencies.

Thereafter, the file goes to Joint Wireless Advisor and then it comes to Wireless Advisor. Thereafter, the file comes to Wireless Advisor, who also peruses the file and if found correct, it is sent to Member (T), Secretary (T) and Minister (C) for approval.

For allocation of additional spectrum as well as for start up spectrum, the competent authority is Minister (C).

I have been shown WPC file D-50, already Ex PW 36/DK-1, which is a file of WPC wing and is genuine official file, for allocation of GSM spectrum for Kolkata service area. I joined as Wireless Advisor on 01.05.2008. During the course of my official duties as Wireless Advisor, it came to my knowledge that in the month of January 2008, DoT had issued 120 LOIs followed by signing of UAS licence agreements. In this file, there is a note dated 16.07.2008, already Ex PW 57/F, page 11/N, recorded by Sh. D. Jha, Deputy Wireless Advisor, for allocation of start up GSM spectrum in Kolkata service area to new UAS licencees. The applicants also included TTSL for alternate technology, that is, GSM. This note was put up to me on 16.07.2008. In this case, the date of receipt of application was not mentioned in the note. I asked as to how the priority of applicants was fixed and I was told that priority was fixed as per date of receipt of applications in the WPC wing. I was satisfied about the seniority accorded to the applicants and this was according to date of receipt of applications. A list was also shown to me pertaining to date of receipt of applications. The policy of fixing seniority of applicants as per date of receipt of application in the WPC wing was being followed from before and this was the practice. This was the policy to my knowledge also, so I was convinced about it. I simply marked the file to Member (T), who, in turn, marked the file to Secretary (T) and the Secretary (T) returned the file to me by recording “pl. speak” at point E. At that time, Sh. Sidharath Behura was Secretary (T), and

he is now present in Court. I do not remember the discussion which took place between me and Sh. Sidharath Behura, but I again resubmitted the file as it was on 19.08.2008. The proposal was approved by the then Minister Sh. A. Raja on 28.11.2008, by appending his signature at point A. My signature appears at points C and F. On dealing with this file, I got acquainted with the policy of WPC wing....."

This witness also reiterated the policy of first-come first-served in allocation of spectrum, determined from date of receipt of application in WPC.

1167. PW 61 Sh. G. S. Grover, Member (Services), who was acting as Member (T), on 26.08.2008, deposed in his examination-in-chief dated 05.09.2012, pages 1 and 2, as under:

".....I have been shown DoT file D-54, already Ex PW 57/P, pertaining to GSM spectrum allocation in Mumbai and Delhi service areas, wherein at page 21/N there is a note of Sh. R. P. Aggarwal, the then Wireless Advisor, dated 25.08.2008, already Ex PW 57/P-7. This note was put up to me on 26.08.2008 for the reason that Member (T) was on leave on that day and I was his link officer. I read this note, which was sent by Wireless Advisor Sh. R. P. Aggarwal and I further marked this note to Secretary (T)/ Hon'ble MOC&IT. My signature appears at point D dated 26.08.2008, page 21/N. On that day, Mr. Behura was Secretary (T) and Sh. A. Raja was MOC&IT. After approval being granted by MOC&IT, the file was also put up to me on 27.08.2008 in its downward movement. My signature in this regard is at point E....."

In his cross-examination of the same date, at pages 2 and 3, he deposed as under:

> ".....In this note Sh. R. P. Aggarwal recorded that earmarking of spectrum in Delhi service area may be on trial basis. In this note, he had recorded that Swan Telecom (P) Limited had applied earlier than other companies mentioned in the note for allocation of GSM spectrum in WPC wing. I marked this note to the Secretary (T) and MOC&IT believing the note of Sh. R. P. Aggarwal to be correct and as per fact and policy of the department. It is correct that neither Sidharath Behura nor A. Raja nor anyone else had spoken to or insisted upon me to recommend the case....."

This witness also reiterated the first-come first-served policy. Thus, the WPC was following the principle of first-come first-served in the matter of allocation of spectrum.

1168. The conclusion from the analysis of the evidence of the aforesaid witnesses from the WPC is that priority for allocation of spectrum continued to be determined from date of application to WPC, complete in all respects. Even Sh. R. J. S. Kushvaha and Sh. D. Jha did not fix priority of dual technology applicants from the date of payment in the service areas for which files were processed by them. They tried to justify it by taking shelter under the pretext of availability of sufficient spectrum. The official record does not support their view. By making oral statements they tried to dilute, or if I may say, disown their own mistake of not putting up the file for Delhi service area despite official direction. The matter cannot be allowed to rest merely on their ipsi dixit. The end result is that the evidence of Sh. R. J. S. Kushvaha and Sh. D. Jha does not inspire confidence because their deposition lacks assertiveness,

cogency and does not find support from the official record. There is no persuasive heft in their evidence. Accordingly, their evidence cannot be relied upon and is liable to be rejected in toto. This means that priority of TTSL/ TTML was to be determined from the date of application to WPC, that is, 05.03.2008 and not from date of payment, that is, 10.01.2008.

Fixation of seniority of Reliance, Shyam Telelinks and HFCL

1169. These three dual technology applicants were issued in-principle approval on 18.10.2007 vide note Ex PW 36/DK-10 (D-5). The applications of Reliance for grant of Dual Technology spectrum, that is, GSM, was processed in file D-72 and was approved by Sh. A. Raja on 09.01.2008, vide note Ex PW 36/DK-8. The earliest applications of Reliance for allocation of dual technology spectrum were received on 07.02.2006 in DoT and one of such applications is Ex PW 57/C for Delhi service area. Thereafter, applications were filed by Reliance on 07.09.2006 and one of such applications is Ex PW 57/DN-3 for Mumbai service area. It may be noted that as per note dated 23.10.2007, Ex PW 36/A-18, recorded by Sh. R. K. Gupta in file D-5, Reliance Communications Limited had made the payment on 19.10.2007 itself.

1170. Now the question is: From which date priority of Reliance for allocation of dual technology spectrum was fixed? As noted above, the case of Reliance for Dual Technology was processed vide note dated 17.12.2007, Ex PW 36/DK-8 (D-72), recorded by PW 87 Sh. D. Jha and was also agreed to by PW 57

Sh. R. J. S. Kushvaha, when the file was marked upward. The answer to the question as to from which date the priority of Reliance was fixed lies in the deposition of PW 57 Sh. R. J. S. Kushvaha in his examination-in-chief dated 16.07.2012, pages 8 and 9, which reads as under:

> ".....I came to know about the policy on dual technology only through the press release dated 19.10.2007. I have been shown note dated 17.12.2007 at pages 13/N and 14/N in the aforesaid file. This note was initiated by Sh. Dinesh Jha, the then Assistant Wireless Advisor (V), on 17.12.2007. I identify his signature at point A. The note is already Ex PW 36/DK-8. Through this note he had processed the applications of Reliance Communication, (earlier Reliance Infocom) for allocation of GSM spectrum for different service areas including Punjab dated 10.12.2007. The application of Punjab Service area is available at page 183. With the application for Punjab Service area, a copy of amendment to licence agreement dated 06.12.2007 and the application form on a prescribed format were submitted. The application with its annexures is Ex PW 57/D-4. This application was treated as complete in all respects and, as such, seniority was determined from this date, though earlier applications were also referred to....."

Thus, Sh. R. J. S. Kushvaha gave up the case of the prosecution that the priority for dual technology applicant was to be fixed from date of payment, but he was neither re-examined or cross-examined by the prosecution. The prosecution is now bound by his deposition.

In an authority reported as **Gangabhavani Vs. Rayapati Venkat Reddy and Others, AIR 2013 SC 3681**,

Hon'ble Supreme Court dealt with the importance of cross-examination of the witness and also emphasized the necessity of giving an opportunity to a witness to explain his position. Though the case dealt with cross-examination of a witness by an opposite party, the spirit of the authority also fully applies to cross-examination by a party of its own witness. It was observed in paragraph 17 as under:

> "This Court in Laxmibai (Dead) Thr. L.Rs. & Anr. v. Bhagwantbuva (Dead) Thr. L.Rs. & Ors., AIR 2013 SC 1204 examined the effect of non-cross examination of witness on a particular fact/circumstance and held as under:
>
> "31. Furthermore, there cannot be any dispute with respect to the settled legal proposition, that if a party wishes to raise any doubt as regards the correctness of the statement of a witness, the said witness must be given an opportunity to explain his statement by drawing his attention to that part of it, which has been objected to by the other party, as being untrue. Without this, it is not possible to impeach his credibility. Such a law has been advanced in view of the statutory provisions enshrined in Section 138 of the Evidence Act, 1872, which enable the opposite party to cross-examine a witness as regards information tendered in evidence by him during his initial examination-in-chief, and the scope of this provision stands enlarged by Section 146 of the Evidence Act, which permits a witness to be questioned, inter alia, in order to test his veracity. Thereafter, the unchallenged part of his evidence is to be relied upon, for the reason that it is impossible for the witness to explain or elaborate upon any doubts as regards the same, in the absence of questions put to him with respect to the circumstances which indicate that the version of events provided by him, is not fit to be believed, and the witness himself, is unworthy of credit. Thus, if a

party intends to impeach a witness, he must provide adequate opportunity to the witness in the witness box, to give a full and proper explanation. The same is essential to ensure fair play and fairness in dealing with witnesses."

This authority fully applies to the fact of this case.

1171. From the deposition of Sh. R. J. S. Kushvaha, it is clear that though the in-principle approval to Reliance was issued on 18.10.2007 and they had made the payment of the required fee immediately on 19.10.2007, but its licence agreement was amended only on 06.12.2007. Accordingly, its priority was fixed from this date, that is, 06.12.2007, and not from date of payment of 19.10.2007 (D-9), note dated 27.11.2007, Ex PW 3/C-2. One of such applications of Reliance is dated 10.12.2007, Ex PW 57/D-4 (D-72) and is accompanied by a copy of amendment to UAS licence agreement dated 06.12.2007. As such, priority for allocation of dual technology spectrum of Reliance was fixed from the date on which application, complete in all respects, accompanied by a copy of amendment of licence agreement dated 10.12.2007, was filed and not from date of payment. This was done by Sh. D. Jha and Sh. R. J. S. Kushvaha. Incidentally this note was also signed by the then Wireless Advisor Sh. P. K. Garg and Member (T) Sh. K. Sridhara and was finally approved by Sh. A. Raja. However, all of them appear to be ignorant of this. At the cost of repetition, the priority of Reliance was fixed from the date of application, complete in all respects, received in the WPC and not from date of payment.

1172. Similarly, the allocation of Dual Technology spectrum to HFCL for Punjab service area was dealt with in file D-59, Ex PW 74/K, vide note dated 05.09.2008, Ex PW 87/C, recorded by Sh. A. K. Narula, Assistant Wireless Advisor. In this note also, the priority of HFCL was fixed from the date of signing of licence agreement and not from date of payment. The same was approved on 08.09.2008 by the Minister.

1173. Similarly, allocation of Dual Technology spectrum to Shyam Telelinks for Rajasthan service area was dealt with in file D-58, Ex PW 110/E, vide note dated 12.09.2008 recorded by Ms. M. Revathi, Assistant Wireless Advisor. Shyam Telelinks was shown as priority No. 1 from 17.01.2008. Though the same was not approved due to some clarifications being sought by the Secretary.

1174. It is useful to take a look on the cross-examination of PW 35 Sh. T. Narsimhan, Deputy CEO of Sistema Shyam, dated 02.04.2012, pages 11 and 12, which reads as under:

> ".....I have been shown D-72, wherein there is an application made by Shyam Telelink for cross-over technology licence in Rajasthan circle dated 07.08.2006. The same is now Ex PW 35/DG. DoT wrote a letter to the company in this regard asking for detailed planning and the office copy is now Ex PW 35/DH and the company submitted its plan accordingly. UASL was technology neutral. Dual technology was permissible even in 2006, when we made our applications.
>
> TRAI recommendations of August 2007 clarified the existing position regarding no capping and the fee to be charged for UAS Licence for dual technology. I did not enter into any conspiracy with anyone to obtain dual technology as it was

permissible. DoT gave my company in principle approval for dual technology on 18.10.2007 to use dual technology. Applications for GSM spectrum was made by the company on 13.12.2007 after company had made payment of requisite entry fee. On the same day, the company made an application to the WPC Wing for the allocation of spectrum.

I have been shown D-74, collectively Ex PW 35/DJ, wherein on page 67 there is an internal note dated 10.01.2008 and I cannot say anything about it. Without amendment of UAS licence, application to WPC Wing for allocation of spectrum cannot be considered....."

1175. This witness also deposed that without amendment to licence agreement, application for spectrum cannot be considered. Hence, date of payment loses all importance as the application is not complete unless it is accompanied by amendment to licence agreement.

It is also beneficial to take a look on note dated 10.01.2008, recorded by Sh. D. Jha in file D-74, Ex PW 35/DJ, relating to dual technology allocation to Shyam Telelink in Rajasthan service area, which reads as under:

"The case relates to requirement of initial GSM spectrum to M/s Shyam Telelink Ltd. in **Rajasthan telecom service area**. It is mentioned in their application that they have obtained in-principle approval to use GSM technology under existing UAS licence vide AS Group No. 20-100/2007/Spectrum/AS-1/2 dated 18.10.2007. They have applied for GSM spectrum in GSM 1800MHz band.

2. The necessary amendments in their UAS licence are required to be made before they are eligible for the use of GSM technology. Earlier, the amendments

to this effect were incorporated in the UAS licence of M/s Reliance Communications Ltd. for the use of GSM technology.

3. We may write to AS Group to provide the copy of the amendment to the UAS licence of M/s Shyam Telelink Ltd. to process their case further for consideration of allotment of initial GSM spectrum. Draft is placed below for kind approval."

This note also makes it clear that dual technology spectrum cannot be granted without amendment to licence.

1176. Similarly, PW 39 Sh. Surender Lunia, Managing Director of Infotel Business Solutions Limited, a company of HFCL group, in his cross-examination dated 26.04.2012, page 10, deposed as under:

".....I have been shown DoT file D-72, already Ex PW 36/DK-7, wherein on page 68, there is a letter written by our company to DoT for allocation of GSM spectrum and the said letter is now Ex PW 39/DB. The said letter is dated 11.07.2006 and is signed by our Chief Technical Officer Sh. Surendra Nath. When this letter was sent, our company was operating in CDMA network. If this request was allowed, we would have operated in both the technologies, that is, CDMA and GSM. We applied for GSM technology as we thought that it was more viable technology....."

1177. As such, it is clear that the WPC Wing was following the principle of first-come first-served, that is, priority was being determined from the date of application to WPC Wing, complete in all respects, that is, for dual technology applicant the application was deemed to be complete on the date it was filed,

accompanied by copy of amendment to licence agreement. WPC Wing was not following the priority date from the date of payment as far as the dual technology applicants were concerned. Thus, there is no doubt that Sh. R. J. S. Kushvaha and Sh. D. Jha deposed contrary to official record, in the creation of which they themselves were party.

Two applications received on the same day

1178. PW 87 Sh. D. Jha deposed in his cross-examination dated 05.12.2012, page 7 as under:

> ".....In case two applications were received in the CR section on the same date for allocation of spectrum, I would fix the priority as per the diary number given by the CR section. In the note Ex PW 57/DG in file Ex PW 36/DL-2, no information was sought regarding inter se priority between new applicants and dual technology applicants, so I did not initiate any note on this point subsequent to this note....."

1179. On this point, PW 60 Sh. A. K. Srivastava deposed in his examination-in-chief dated 01.08.2012, page 5 as under:

> ".....The applications are received at the reception of Sanchar Bhawan in Central Registry (CR) section. The process of receipt of applications is an open and continuous process. Whenever an application is received in CR section, they put a number thereon and get the same receipted in the AS cell. The AS cell takes the applications on its record. The application is processed in a file and a number is given to the file. The applications are processed company wise. There are twenty two service areas in India. Separate application is required for UAS licence in each service area. The seniority of the applications is maintained as per date of receipt in

> the CR section. However, if more than one applications are received on the same day for the same service area, their priority is fixed as per the order of receipt in the CR section, which is revealed by the diary number....."

1180. Thus, the principle of fixing seniority of applications received on the same day is also clear, that is, if more than one application is received on the same day, the priority would be by serial number assigned by the CR Section, that is, the priority would be as per the order of receipt of application.

Transfer of Officials and Inter se Seniority

1181. It is the case of the prosecution that issue relating to inter-se seniority for allocation of spectrum to new UAS licensees and dual technology applicants was not clear. It is the case of the prosecution that there was no clarity on this issue. It is case of the prosecution that when Sh. R. J. S. Kushvaha and Sh. D. Jha did not put up the file for Delhi service area relating to the matter of allocation of dual technology spectrum for lack of clarity regarding fixation of seniority of TTSL, they were summarily transferred. It is case of the prosecution that this was done to help STPL.

1182. Defence denied this submission submitting that it was a routine transfer.

Both parties invited my attention to the evidence on record in great detail.

Let me examine it in the light of evidence on record.

1183. PW 57 Sh. R. J. S. Kushwaha in his examination-in-

chief dated 16.07.2012, pages 10 and 11, deposed as to how applications were being processed in WPC, as under:

> ".....In January 2008, LOIs were issued by DoT to new applicants. In February-March 2008, the applications were started to be filed before the WPC wing for allotment of spectrum by the new UAS Licencees. The application was required to be accompanied by a copy of licence agreement. During this period, the applications of Tata Teleservices Limited (TTSL) and Tata Teleservice (Maharashtra) Limited (TTML) were also received for GSM spectrum. They were granted in-principle approval on 10.01.2008, that is, TTML was granted in-principle approval for two service areas and TTSL was granted in-principle approval for remaining service areas. The applications filed with the WPC wing for allotment of spectrum are processed service area wise. Till my posting in WPC wing up to 26.08.2008, applications were processed for the service areas where sufficient spectrum was available to meet the requirement of all the eligible operators in that service area. The sufficient spectrum was available mostly in southern states of the country and the applications were processed and recommended by me in the service areas of Tamil Nadu, Kerala, Karnataka, Andhra Pradesh, Orissa, Kolkata, Madhya Pradesh, Mumbai and Maharashtra....."

1184. PW 57 Sh. R. J. S. Kushvaha in his examination-in-chief dated 18.07.2012, pages 7 to 15, deposed in great detail about the processing of file of Delhi service area for allocation of spectrum. This has already been extracted above.

1185. PW 57 in his cross-examination dated 23.07.2012, pages 3 and 4, deposed about Delhi service area as under:

> ".....Only two three days prior to 22.08.2008, Mr.

Dinesh Jha had told me that Mr. R. P. Aggarwal was asking him to put up a note regarding allocation of spectrum in the service areas where sufficient spectrum was not available including Delhi service area. I did not ask him to put up a note on this issue, that is, Mr. R. P. Aggarwal asking Mr. Dinesh Jha to put up such a note for allocation of spectrum in the service areas where sufficient spectrum was not available. I also did not put up any such note. This was not done as we wanted to clarify the issue orally with the senior officers before putting a note. It is correct that whenever any issue involving a policy arises, a note is put up, which goes up to the highest authority.

It was decided in the meeting held on 22.08.2008 that opinion of learned SG may be obtained and this was to be obtained on 25.08.2008. I did not put up any note seeking opinion of the learned SG on this issue. I do not remember to have asked Mr. Dinesh Jha to put up such a note seeking opinion of learned SG. Whenever opinion of any law officer is to be sought, a note is initiated by the concerned wing. This issue related to WPC wing....."

PW 57 Sh. R. J. S. Kushwaha in his further cross-examination dated 24.07.2012, page 8, deposed as under:

".....I did not put up any note seeking clarification about the inter se seniority of dual technology applicants vis-a-vis new UASL applicants. I did not put up any note in this regard in DoT file D-70, Ex PW 57/N, pertaining to allotment of spectrum in Maharashtra service area as sufficient spectrum was available to be allotted to all the operators mentioned in the note sheet Ex PW 57/N-1. I have been shown note Ex PW 57/N-10 recorded by Sh. R. P. Aggarwal on 26.08.2008 regarding allocation of spectrum in Maharashtra service area. I cannot say anything about this note. It is wrong to

suggest that sufficient spectrum was not available for allotment in Maharashtra service area....."

Thus, the witness himself did not put any note seeking clarification on the issue. In service areas where sufficient spectrum was available, the priority was fixed by him as per date of application. He could have followed the same here also and could well have recorded his objections/ viewpoint.

1186. PW 87 Sh. D. Jha in his examination-in-chief dated 04.12.2012, page 10 to 12, deposed about processing of file of Delhi service area as under:

".....**Ques**: In application Ex PW 57/E-7, it is mentioned that the applicant TTSL had earlier filed an application on 10.01.2008 for allocation of GSM spectrum under dual technology for Orissa service area. Why did not you process that application?
Ans: I had not seen the application of TTSL for dual technology spectrum dated 10.01.2008 for any service area. In the application dated 05.03.2008, TTSL had enclosed a copy of amendment of its licence agreement dated 04.03.2008. However, its claim for allocation of spectrum arose only after amendment to licence agreement which is dated 04.03.2008.

It could become a reason for not processing its applications dated 10.01.2008, even if that had been received in the WPC wing. I was transferred from WPC wing on 26.08.2008. I was once called to DoT for tracing out that application. Only one application for Karnataka service area was traced out from an almirah, which was earlier in my possession, during my posting there.

I had moved the proposal for allocation of spectrum, but the order came only for service areas where adequate spectrum was available. I had put

up proposals for allocation of spectrum in all service areas where adequate spectrum was available. I did not put up any case for any service area, in which adequate spectrum was not available for all the applicants. I know Sh. R. P. Aggarwal, who was Wireless Advisor, during the period from May 2008 to December 2008. He asked me to put up a proposal for allocation of spectrum in Delhi service area, where adequate spectrum was not available. I told him that since no order exists for allocation of spectrum, inter se between the new applicants and dual technology applicants, such an order may be issued first, so that the processing could be easy for us. Here the problem was that spectrum was available only for one service provider.

Ques: In service areas where adequate spectrum was available, TTSL was also one of the applicants. In that cases in putting the proposal, you followed the principle of chronological order of applications. In Delhi service area also, you could have put up the proposal by putting the application in chronological order despite availability of spectrum only for one service provider. What prevented you from doing this?

Ans: I came to know that the criteria had been changed to the effect that whosoever would deposit the money first, after receipt of letter of intent, would get spectrum first. Since this was change for the first time after 2004, I persisted with the idea that there should be an order for the subordinate officer to work on it.

Ques: Did any conversation take place between you and Mr. R. P. Aggarwal regarding allocation of spectrum in Delhi service area, if so, what and on which date?

Ans: The conversation took place on Friday in the month of August 2008 before my transfer two three times. The conversation was as to how to put up the case and I insisted on an order in this regard. However, on coming Monday I was

transferred....."

Here the prosecution itself is putting up a case that Sh. D. Jha could have put up the file for allocation of spectrum in Delhi service area by putting up applications in chronological order, but he is taking cover under the plea of change of criteria, which plea is patently false. It was his duty to put up the file, more so, when he was asked to do it. If he had any objection, he could have also put up the same in the note, but he had no business to not to put up the file, more so, when asked to do so by superior authority.

1187. PW 91 Sh. R. P. Aggarwal, Wireless Adviser, in his examination-in-chief dated 12.12.2012, pages 3 to 6, deposed about Delhi service area as under:

> ".....I have been shown DoT file D-81, already Ex PW 77/A, pertaining to transfer/ posting of Group A officers in WPC. This is an official file of WPC wing. In this file, there is a note dated 23.08.2008, already Ex PW 77/B, recorded by me proposing transfer of three officers, namely, Sh. R. J. S. Kushvaha, Joint Wireless Advisor, Sh. D. Jha, Deputy Wireless Advisor, and Sh. G. K. Aggarwal, RLO, Kolkata.
>
> These two officials, namely, Sh. R. J. S. Kushvaha and Sh. D. Jha, were asked to put up the file for allocation of spectrum in Delhi service area. However, they refused to put up the file stating that there was no clarity on inter se seniority between dual technology applicants and new licencees. I asked both of them to put up the file. Sh. D. Jha was asked to put up the file as he also used to initiate the files. I told them that there was no criteria/ policy for determining inter se seniority of dual technology applicants and new licencees and, as such, the date of receipt of applications for spectrum in WPC wing

should be taken as criteria and the file be put up. Despite this, they did not put up the file.

There was pressure from the Private Secretary of the Minister Sh. R. K. Chandolia to put up the file for Delhi service area. I came to know about R. K. Chandolia being PS to the Minister as I used to receive telephonic calls from him. From middle of August 2008, Sh. R. K. Chandolia started asking me to put up the file for Delhi service area. First I kept telling him that file was being put up, but when Sh. R. J. S. Kushvaha and Sh. D. Jha refused to put up the file, I apprised him with the situation. Then R. K. Chandolia told me that these two officials should be transferred. I tried to make R. J. S. Kushvaha and D. Jha understand the situation and also supplied them with the criteria and asked them to put up the file, but they did not listen to me. I do not recall if any meeting took place in this regard in the chamber of Secretary (T). After submitting this proposal, I marked it to Member (T). Sh. R. K. Chandolia was also present in the chamber of Member (T) when I took the proposal to Member (T). He asked me as to how the alternate arrangement would be made for filling up these two posts and thereafter, he suggested two alternative names by recording his note Ex PW 77/C. Secretary (T) approved the proposal for transfer of the two officers on 25.08.2008 by appending his signature at point C, which I identify.

I have been shown WPC file D-54, already Ex PW 57/P, for allocation of GSM spectrum in Delhi and Mumbai service areas. In this file, there is a note dated 25.08.2008, already Ex PW 57/P-7, recorded by me for allocation of spectrum in Delhi service area. I sequentially recorded all the applicants in this note following the criteria of date of receipt of applications in the WPC wing. These applicants included TTSL for dual technology, that is, GSM. I had gone through all the papers pertaining to TTSL, but I do not specifically recall if I had also gone

through the in-principle approval granted to it. Sh. R. J. S. Kushvaha and Sh. D. Jha told me that as per them, the priority for dual technology applicant is date of payment of entry fee in the AS wing. To my understanding, this criteria was limited to dual technology applicants only. I told the two officials about this criteria. I kept this criteria in mind while recording this note, that is, Ex PW 57/P-7. There was no one else left to put up the note, on the transfer of Sh. Kushvaha and Sh. D. Jha, so I was forced to put up this note. Moreover, it was not known as to how much time would be taken in the implementation of the transfer order and there was pressure also from R. K. Chandolia to put up the file immediately, so I did it. The proposal for allocation of spectrum in Delhi service area was approved by the Minister on the recommendation of Secretary (T).

Ques: What prevented you from warding off the pressure being put up on you by R. K. Chandolia?

Ans: In my opinion what I was putting up was correct, so I put up the note. I also obeyed R. K. Chandolia as he was conveying orders of the office of Minister....."

In his cross-examination, pages 8 and 9, he also deposed as under:

".....I recommended the transfers suo motu as well as on the pressure of the office of the Minister as these two officers were not complying with the orders. It is correct that in my statements dated 12.02.2011 and 04.03.2011, Ex PW 91/DA and DB, I had denied the pressure from the office of the Minister or any other officer in transferring these officers. This I could have told generally without any specific question being put up to me. **Volunteered**: However, I had told so in my next statement to the IO.

It is correct that completion of tenure in the DoT was one of the reasons leading to the transfer of

two officers, but their disobedience was the main reason and to save them from disciplinary action....."

He further deposed "my note dated 25.08.2008, already Ex PW 57/P-7, is correct as per then existing legal procedure."

1188. It is clear that Sh. R. P. Aggarwal had correctly asked the two officials to put up the file and had also supplied the criteria to them. It was the duty of these officials to put up the file as per the direction of Sh. R. P. Aggarwal and to record their objections also, if they felt so strongly about it. The deposition of Sh. R. P. Aggarwal is cogent, reasonable and acceptable.

1189. PW 77 Sh. K. Sridhara, Member (T), in his examination-in-chief dated 10.12.2012, pages 7 to 9, deposed about transfer of Sh. R. J. S. Kushvaha and Sh. D. Jha as under:

".....I have been shown DoT file D-81 pertaining to transfer/ posting of group A officers in WPC/ WMO etc. It is an official file of DoT and was opened in the official course of business. The file is now collectively Ex PW 77/A. In this file, there is a note dated 23.08.2008, pages 7/N and 8/N, recorded by Sh. R. P. Aggarwal, the then Wireless Advisor. I identify his signature at point A and the note is now Ex PW 77/B. This note was put up for the transfer of three officers, Sh. R. J. S. Kushvaha, Sh. D. Jha and Sh. G. K. Aggarwal. After recording this note, Sh. R. P. Aggarwal marked it to me. He personally brought the file to me. When the note was brought to me, I orally told him that I was not incharge of transfer and posting and advised him to get the note processed through the administration. On that, he asked me to suggest substitutes who would be posted in place of the three officers, if they

were transferred. Then I suggested the alternative names. I asked Sh. R. P. Aggarwal as to what led him to record this note regarding transfer of officers and he told me that there is lot of delay in putting up the files by the two officers, that is, Sh. D. Jha and R. J. S. Kushvaha. Then I suggested that Sh. R. J. S. Kushvaha is an efficient officer and why he wanted him transferred unnecessarily and thereon he told me that if I take the responsibility of putting up the files in time, he may not press for transfer of the officers. I did not want to get into their quarrel. I also recorded a note suggesting the name of the substitutes of even date and my note is now Ex PW 77/C. Again Sh. R. P. Aggarwal recorded a note dated 25.08.2008 containing a revised proposal wherein the name of Sh. G. K. Aggarwal was deleted and only two officers namely Sh. D. Jha and Sh. R. J. S. Kushvaha were suggested to be transferred. I identify his signature at point B and the note is now Ex PW 77/D. This proposal was approved by Secretary (T) Sh. Sidharath Behura by appending his signature at point C on 25.08.2008, which I identify. Thereafter, it was processed through the administration."

The reason cited by this witness also is that the two officials were not putting up the files despite being directed to do so. His deposition is also reasonable and acceptable.

1190. Furthermore, DW 22 R. K. Chandolia, in his examination-in-chief dated 04.08.2014, pages 14 and 15, deposed as under:

".....**Ques**: Did you have any role in putting up the file for allocation of spectrum in Delhi service area?
Ans: I had no role in this.

I had no role in transfer of any officer of WPC including Sh. R. J. S. Kushvaha and Sh. D. Jha....."

DW 22 in his cross-examination dated 05.08.2014, page 13, denied his role in transfer of the two and deposed as under:

> ".....I know Sh. R. P. Aggarwal, who was Wireless Advisor in the DoT. It is wrong to suggest that I pressurized him to put up the file for Delhi service area for allocation of spectrum. It is wrong to suggest that when I was told by Sh. R. P. Aggarwal that Sh. R. J. S. Kushvaha and Sh. D. Jha were not putting up the file for Delhi service area, I asked him to get them transferred. It is a fact that these two officers were transferred, but it is wrong to say that they were transferred on my asking....."

DW 1 Sh. A. Raja in his further cross-examination, dated 22.07.2014, page 5, deposed as under:

> "....."**Ques**: I put it to you that you got two officials, namely, D. Jha and R. J. S. Kushvaha, of WPC transferred deliberately for not processing the application of STPL for Delhi service area as per your desires?
> **Ans**: It is incorrect. The internal transfer of officers would take place as per the norms and it would not be put up to me and, as such, I did not have any knowledge of this....."

In the cross-examination of DW 22 Sh. R. K. Chandolia there is nothing of any significance which could discredit his testimony.

1191. Perusal of evidence on record reveals that these two officers were defying the orders of the Wireless Advisor Sh. R. P. Aggarwal regarding putting up of file of Delhi service area for allocation of spectrum. As already noted above, they had put up the file for other service areas by chronologically noting the

priority of the applicants and they could have done the same for Delhi service area also. Moreover, as far as cases of Reliance and other dual technology applicants are concerned, they themselves had ignored the date of payment for fixation of seniority and instead went by fixation of seniority as per the date of receipt of application, complete in all respects. Thus, their plea that they were not putting the file as there was lack of clarity regarding the criteria is totally false. They were rightly transferred for defying the orders of superior officer.

This is all the more clear from the fact that on the date of payment of prescribed fee for dual technology, that is, on 10.01.2008, the applications of TTSL and TTML were not accompanied by copy of amendment to licence agreement and, as such, were incomplete. These applications could not have been processed. The deposition of Sh. R. J. S. Kushvaha and Sh. D. Jha is that an incomplete application cannot be processed.

1192. PW 57 Sh. R. J. S. Kushwaha in his examination-in-chief itself dated 18.07.2012, pages 6 and 7, deposed about processing of incomplete application as under:

> ".....I have been shown a folder, part of D-80, which contains five applications submitted by TTSL for Karnataka service area, Idea Cellular Limited for Karnataka service area, two applications Loop Telecom (P) Limited for Orissa and Kerala service area and S-Tel for Orissa service area respectively to DoT for allocation of spectrum. These applications were received in the CR section of DoT. The application of TTSL is already Ex PW 41/N-7. The application of Idea Cellular is now Ex PW 57/O. The applications of Loop Telecom (P) Limited are Ex PW 57/O-1 and O-2. The application of S-Tel is now Ex

PW 57/O-3. The applications of Idea and Loop Telecom (P) Limited were initialed by me at point A. These applications were not complete. These all five applications were not accompanied by photocopy of licence agreement or amendment to existing licence agreement in case of TTSL or even a reference was not made in the application that the applicant had signed the licence agreement with the DoT or amendment to the existing licence agreement. On the incomplete applications, spectrum cannot be allotted but they can be retained in the file. Sometimes we write to/ intimate the applicant to make up the deficiencies in the application and sometimes we just retain it on the record without any intimation to the applicant. As such, there is no such standard procedure.

In case of application, which is complete in all respects and is fit to be allotted spectrum, these applications are processed and case is submitted for approval of competent authorities. After the necessary approvals, the frequency allotment letter is sent to the applicant licencee....."

1193. PW 87 Sh. D. Jha also deposed on 04.12.2012, page 10, already noted above, that claim for dual technology spectrum arises only when application is accompanied by a copy of amendment to licence agreement.

1194. The above evidence makes it clear that an incomplete application for allocation of spectrum could not have been processed and would not give rise to any claim to priority. Thus, Sh. R. J. S. Kushvaha and Sh. D. Jha, by their own logic, could not have related back the priority of TTSL/ TTML to 10.01.2008, that is, date of payment, as the applications were incomplete, being not accompanied by a copy of amendment to licence agreement. In the end, there is no

merit in the submission of prosecution that these two officers were transferred to facilitate allocation of spectrum to STPL, at the cost of TTSL in Delhi service area.

Grievance of TTSL/ TTML

1195. Now the question is: What was the grievance of TTSL and TTML? Their grievance was that their priority should have been fixed from the date of payment for dual technology, that is, 10.01.2008. PW 41 Sh. Anand Dalal, in his examination-in-chief dated 01.05.2012, page 10, deposed about it as under:

> ".....We had filed an application on 04.03.2008 regarding GSM spectrum in each circle consequent to amendment to our UAS Licence bearing reference to our application dated 10.01.2008. I do not remember as to when GSM spectrum was allocated to us for each service area, but it was allocated between the period April 2008 to March 2009. However, we did not get the spectrum for Delhi service area till date despite being ahead in priority as payment was the only criteria....."

The prosecution case is that TTSL/ TTML should have got priority in Delhi service area from 10.01.2008, as per the criteria of date of payment.

On the other hand, defence argued that priority of TTSL was rightly fixed from 05.03.2008, as the priority was always from date of application to WPC, complete in all respects. It is case of the defence that date of payment was never a criteria followed by WPC.

1196. Let me take note of the evidence on this point.

1197. PW 126 Ms. Niira Radia, who was advising Tata's on

telecom matters deposed in her examination-in-chief dated 28.05.2013, pages 2 and 3, as under:

> ".....I am aware that TTSL had applied for dual technology licence in 2007. TTSL was granted a dual technology licence in 2008. However, it did not get the spectrum.
> **Ques**: Why did TTSL not get the spectrum?
> **Ans**: TTSL was advised that they were in the queue and would be granted spectrum as and when it would be available.
>
> I was coordinating the telecom matters with the Tatas and was not acting in this field singly. TTSL had applied for dual technology spectrum for Delhi service area also.
> **Ques**: Could you please tell this Court as to what was the number of TTSL in the queue for dual technology spectrum in Delhi service area?
> **Ans**: I am not aware of their number for dual technology spectrum in Delhi service area. However, there was enough correspondence between Tatas and DoT saying that TTSL was ahead in the queue by virtue of their dual technology licence. They were existing CDMA operators.
> **Ques**: What do you mean by "TTSL being ahead of others"?
> **Ans**: They were ahead of everybody else.
> **Ques**: Could you please tell the reason as to why TTSL was not granted spectrum in Delhi service area despite being ahead of everyone else, as you were handling their affairs in this regard?
> **Ans**: TTSL did not get the spectrum first as it was advised by DoT that it was not ahead of others.
>
> TTSL was advised in this regard by the DoT orally. Swan Telecom (P) Limited had got the spectrum in Delhi service area. Reliance Communications had also got the spectrum.
> **Ques**: You have already stated that Tatas were ahead of everyone else in the queue. Could you please tell this Court as to why in such a situation Swan

Telecom (P) Limited and Reliance Communications got the spectrum first?
Ans: TTSL had opposed allocation of spectrum to STPL and Reliance Communications. However, they were advised that they were in the queue and as and when the spectrum would be available they would get it. This was the only reply we got from the DoT....."

This witness did not cite any reason as to why TTSL did not get the spectrum. Perhaps, she knew that the denial was for right reasons. There is nothing of any significance in her deposition. Her deposition is of no use to prosecution.

1198. Investigating Officer PW 153 Sh. Vivek Priyadarshi in his cross-examination dated 25.11.2013, pages 8 and 9, deposed about priority of TTSL from the date of payment, as under:

".....**Ques**: Would it be correct to say that in November 2007 the DoT had sufficient spectrum to provide start-up spectrum to three new operators in Delhi service area and that this got reduced to one operator in January 2008 pursuant to allocation of spectrum under the dual technology approval?
Ans: The DoT had already granted in-principle approval for dual technology to three licencees in October 2007, which were to be granted spectrum. Further, few new licencees of 2006 were also awaiting start-up spectrum. Few existing licencees had also reached the laid down criteria for allocation of additional spectrum. The DoT had decided to allocate these prior to decision on allocation of dual technology spectrum to TTSL/ TTML and also to grant of new licences and spectrum in respect of pending applications. After these allocations the spectrum was available only for one operator as on 11.01.2008 and as per decision taken by DoT it had

to be to TTSL as dual technology spectrum, as it paid the requisite fee on 10.01.2008 and its seniority had to be decided on the basis of payment of such fee for allocation of spectrum. In this background, it is incorrect that spectrum for one new licencee was available on 10.01.2008. It is also incorrect that sufficient spectrum for three new licencees was available in November 2007 in aforesaid background……."

Thus, the investigating officer also deposed that the date of priority of TTSL/ TTML was from date of payment, that is, 10.01.2008.

1199. In brief, the grievance of TTSL was that date of payment criteria should have been followed in case of allocation of spectrum to them. However, this criteria was not followed by WPC in any case, including the case of three companies, that is, Reliance, Shyam Telelinks and HFCL, to whom permission for dual technology spectrum was issued vide order dated 18.10.2007. Moreover, TTSL was not covered by the order dated 18.10.2007 of Sh. A. Raja as it applied only to the then pending applicants, that is, RCL, HFCL and Shyam Telelinks Limited.

1200. Perusal of the testimony of all the witnesses would reveal that WPC was following the principle of determining priority from the date of receipt of application to WPC, complete in all respects. Even in the case of Reliance, Shyam Telelinks and HFCL, the date of seniority was fixed from the date of receipt of application complete in all respects. These were the three pending dual technology applicants to whom the order

dated 18.10.2007, Ex PW 60/C-6, applied. Their seniority was also fixed from the date of receipt of application in WPC and not from the date of payment. Apart from that, I have no hesitation in holding that TTSL/ TTML was not covered by the order dated 18.10.2007 and the press release dated 19.10.2007.

1201. Accordingly, I do not find any merit in the submission of prosecution that the priority of TTSL and TTML ought to have been fixed from the date of payment of prescribed fee, that is, 10.01.2008 and not from 05.03.2008.

Loss of Applications of TTSL/ TTML

1202. It is the case of the prosecution that TTSL and TTML had filed twenty applications, Ex PW 41/M-1 to M-20, on 10.01.2008 for allocation of GSM spectrum/ dual technology spectrum in as many service areas. It is the case of the prosecution that these applications were misplaced/ lost at the instance of conspiring public servants. My attention has been invited to the deposition of witnesses as well as documents on record in great detail.

1203. On the other hand, the defence contended that these applications were not misplaced at the instance of any accused. It is the case of the defence that these applications were misplaced either from the office of Wireless Advisor or from the office of PW 57 Sh. R. J. S. Kushvaha, Joint Wireless Advisor. It is the case of the defene that Sh. R. J. S. Kushvaha and Sh. D. Jha misplaced these applications and both have been examined as prosecution witnesses. My attention has been invited to the

evidence on record in detail.

1204. Let me take note of the evidence on record.

1205. According to PW 45 Sh. Surinder Singh Negi, UDC, CR Section, DoT, New Delhi, applications of TTSL/ TTML for dual technology spectrum (GSM spectrum) were received on 10.01.2008 and were entered by him at serial No. 389 to 411 in Dak register of CR Section, Ex PW 45/B (D-95). On receipt of these applications in the CR Section, he also entered these in peon book of CR Section, Ex PW 29/A (D-91) at entry, Ex PW 45/F, page 59, and handed over the same to PW 29 Sh. Yogender Pandey for distribution. PW 29 handed over this dak, mentioned in entry, Ex PW 45/F, to PW 27 Ms. Reena Saxena, PS to Wireless Advisor. She deposed that the dak was received by her and was recorded at serial No. 105, D-94, Dak register of Wireless Advisor. On recording the dak, she marked it to the office of Joint Wireless Advisor and was sent to that office through PW 29 Sh. Yogender Pandey.

1206. However, Sh. Yogender Pandey could not say as to whether he delivered the dak recorded at serial No. 105 in the office of Joint Wireless Advisor or not, as his duty was to deliver letters. However, in his cross-examination he admitted that if the aforesaid dak was marked to Joint Wireless Advisor, he must have delivered the same to his PA.

1207. PW 28 Ms. Deepa Rohra, who was Personal Assistant to Joint Wireless Advisor (L), that is, PW 57 Sh. R. J. S. Kushvaha, deposed that dak mentioned at entry No. 105 of dak register (D-94) of Wireless Advisor was not recorded in the dak

register D-92, Ex 28/A, of the office of Joint Wireless Advisor. She could not say if the aforesaid dak reached the office of Joint Wireless Advisor or not. She further deposed in her cross-examination that if the letters diarized at serial No. 105 in D-94, reached the JWA (L) or not can be stated by him alone.

1208. Thus, all the four witnesses have not deposed anything indicating that the applications of TTSL or TTML were misplaced at the instance of anyone. Their evidence is just plain and pedestrian as to what has been recorded or not recorded in the registers. The deposition is of no help to the prosecution.

1209. PW 57 Sh. R. J. S. Kushvaha in his examination-in-chief dated 18.07.2012, page 5, explained as to how applications for allocation of spectrum are dealt with, as under:

> ".....The applications for allotment of spectrum are first received in the Central Registry section of DoT in Sanchar Bhawan, New Delhi. These applications are then sent to the office of Wireless Advisor. Wireless Advisor then marks these applications to the concerned Joint Wireless Advisor by putting his initials. The receipts of the applications from CR section are diarized in the office of the Wireless Advisor after the same is marked by him to the concerned Joint Wireless Advisor. The office of Joint Wireless Advisor receives the dak in a folder after the same is diarized in the office of Wireless Advisor. The folder is put up before the Joint Wireless Advisor. From 31.05.2007 to 26.08.2008, I was working as Joint Wireless Advisor (Licensing) in the Sanchar Bhawan. These applications for allotment of spectrum are put up before Joint Wireless Advisor (Licensing) and in his absence they may be put up before the another Joint Wireless Advisor or directly to the concerned Deputy Wireless Advisor. After the dak is seen by the Joint Wireless Advisor and is

marked by him to Deputy Wireless Advisor, the same is diarized in the office of Joint Wireless Advisor. In January 2008, Mrs. Deepa Rohra was posted as Personal Assistant to Joint Wireless Advisor (L) and was looking after diarizing of dak, attending of telephone etc. If Mrs. Deepa Rohra were not available in office on a particular day, the dak would be delivered to the Deputy Wireless Advisor even without diarizing the same....."

Prosecution did not ask any question about receipt of applications of TTSL/ TTML for allocation of dual spectrum, in the absence of his PA Ms. Deepa Rohra, by him from the office of Wireless Advisor. The witness thus is silent about the applications of TTSL/ TTML.

1210. He deposed in his cross-examination dated 23.07.2012, pages 12 and 13, as under:

".....It is correct that my former PA Mrs. Deepa Rohra was called by the CBI to record her statement regarding loss of some applications of TTSL. However, I do not know if my former peon was called or not. She did not discuss anything with me before going to CBI office. She also did not discuss anything after returning from CBI office. I was interrogated about loss of applications of TTSL. I do not remember if the IO had recorded about this or not.

I do not remember to have seen any communication from TTSL addressed to WPC wing, pointing out loss of their applications. I did not see any note or file generated in the WPC wing in this regard. I do not remember to have seen any police complaint by the WPC in this regard.

During my tenure in WPC wing as Joint Wireless Advisor from 31.05.2007 to 26.08.2008, I performed my duties diligently and honestly. I did not favour any telecom operator and treated all

operators alike. I also did not favour TTSL in any manner. To my knowledge no one ever complained against me for favouring TTSL....."

Thus, TTSL also did not complain about loss of its applications.

1211. The applications of TTSL/ TTML were marked to the office of Joint Wireless Advisor as per entry No. 105 of the dak register D-94 of the office of Wireless Advisor. In the deposition of Sh. R. J. S. Kushvaha nothing came on record regarding receipt of these applications in his office and indicating any deliberate loss of these at the instance of someone, including any conspirator/ accused. The prosecution did not even put question to the witness as to whether these applications were, in fact, received in his office or not. In the absence of evidence, how can fault be attributed to any individual.

1212. PW 73 Sh. M. K. Rao in his examination-in-chief dated 30.10.2012, page 3, deposed as under:

".....I have been shown CR section's register of DoT, D-95, already Ex PW 45/B. In this register, the applications received from M/s TTML and TTSL have been recorded at serial No. 389 to 411, already Ex PW 45/E (collectively). I sent to the CBI only one application recorded at serial No. 392, which application is already Ex PW 41/N-7. I cannot say as to where the remaining applications of TTSL/ TTML have gone as I was not there....."

PW 73 in his cross-examination dated 30.10.2012, page 8, deposed as under:

".....Since I was not in the concerned section of DoT office, New Delhi, I cannot say if the almirah,

from which file of M/s Tata for Karnataka service area was found out, was in the custody of Sh. D. Jha from mid 2004 to August 2008. Confronted with portion A to A of statement Ex PW 73/DA, where it is recorded that Sh. D. Jha was custodian of almirah during that period....."

This witness also did not depose anything about loss of applications of TTSL/ TTML.

1213. PW 74 Ms. M. Revathi in her examination-in-chief dated 31.10.2012, pages 15 and 16, deposed as under:

".....**Ques**: How did you come to know that applications filed by TTSL/ TTML dated 10.01.2008 for allocation of GSM spectrum under dual technology were missing?
Ans: CBI had asked WPC wing to submit all applications filed by TTSL/ TTML on 10.01.2008. Accordingly, we started locating these applications, but could not find despite searching all the almirahs and files, where these applications could be and then I came to know about the applications being missing.
Ques: Whether you were successful in tracing out these applications?
Ans: Only one application for Karnataka service area could be traced.
Sh. D. Jha did not hand over formal charge to me....."

In her cross-examination dated 01.11.2012, page 5, she deposed as under:

".....On receipt of letter from CBI asking for applications of TTSL/ TTML, all dated 10.01.2008, entire GSM section searched for the applications. However, when the applications could not be traced out, we took the help of Sh. R. J. S. Kushvaha and Sh. D. Jha. The applications of three other operators

were also traced out when the CBI had asked for them, that is, of Idea, Loop and S. Tel. These applications were also of January 2008....."

This witness also did not depose anything about the role of anyone in the loss of applications. However, the applications were marked to JWA(L), when the same went missing. The applications were recovered from the almirah which was once under the custody of Sh. D. Jha, who is a prosecution witness.

1214. Investigating Officer PW 153 Sh. Vivek Priyadarshi in his cross-examination dated 19.11.2013, pages 4 and 5, deposed as under:

"....."It is correct that applications of TTSL and TTML for dual technology GSM spectrum, which were dated 10.01.2008, went missing from the office of DoT. Investigation did not reveal that these applications went missing from the office of Joint Wireless Advisor. The applications went missing from WPC wing, but it could not be specifically established as to from which office of this wing the same went missing. It is correct that these applications were received in the office of Wireless Advisor as per peon book Ex PW 29/A and thereafter, marked to JWA (L), as per the register Ex PW 27/A collectively, entry No. 105. However, this entry does not bear signature of anyone in token of receipt of applications in the office of JWA (L). It is wrong to suggest that these applications were received in the office of JWA (L) and from there the same went missing. It is further wrong to suggest that I am making a false statement on this point....."

1215. According to investigating officer, these applications

went missing from WPC Wing, but he absolves Sh. R. J. S. Kushvaha of his responsibility, perhaps rightly as he alongwith Sh. D. Jha supported the prosecution case here and there. However, he also did not blame any of the accused for the loss of applications of TTSL/ TTML.

1216. The applications of TTSL and TTML, Ex PW 41/M-1 to M-20, were received in the CR Section on 10.01.2008 and were recorded at serial No. 389 to 411 in dak register D-95. For distribution to the office of Wireless Advisor, an entry was made in the Peon book D-91 vide Ex PW 45/F, page 59. PW 29 Sh. Yogender Pandey delivered the dak mentioned at page 59 to the office of Wireless Advisor and was received by PW 27 Ms. Reena Saxena. She recorded an entry at serial No. 105 in Dak register D-94 of the office of Wireless Advisor and marked the dak to Joint Wireless Advisor. However, there is no evidence in this dak as to whether the applications of TTSL/ TTML, were received in the office of Joint Wireless Advisor or not. In the entire evidence led on record and referred to above in detail, there is no material indicating that these applications were lost or misplaced at the instance of any of the accused persons.

1217. Accordingly, I do not find any merit in the submission of the prosecution that these applications were misplaced at the instance of accused persons to wrongfully deprive TTSL/ TTML of dual technology spectrum with a view to benefit accused companies.

Delay in Amendment of Licence Agreement of TTSL and TTML

1218. It is the case of the prosecution that note for amendment to UAS licence agreement of TTSL was put up by Sh. Raj Kataria vide his note dated 14.01.2008, Ex PW 60/N-28 (D-47). It is the case of the prosecution that the said file reached Sh. A. Raja on 23.01.2008. It is the case of the prosecution that Sh. A. Raja deliberately delayed its approval till 27.02.2008 in order to facilitate early filing of applications for allocation of spectrum to WPC by STPL and Unitech group, so that they may have lead over TTSL and TTML in the matter of allocation of spectrum. It is the case of the prosecution that this delay was a conspiratorial act on the part of Sh. A. Raja to help the accused companies.

1219. On the other hand, defence refuted it submitting that TTSL, being an existing licensee, was failing in meeting roll-out obligations of its existing licences and had also not cleared its past dues relating to these licences. It is the case of the defence that on account of these deficiencies in the case of TTSL, the amendment to the licence agreement got delayed. It is their case that there was no conspiracy at all and the fault for the delay, if any, lies with TTSL. It is the case of the defence that TTSL was not at all eligible for spectrum.

1220. It may be noted that as per clause 43.5(ii) of licence agreement, a licensee can provide services only in already allocated/ contracted spectrum band. However, as per 43.5(iv), licensor has a right to modify or amend the procedure for allocation of spectrum. In view of this condition, a service licence is required to be amended before dual technology

spectrum can be granted to an existing licensee. Reliance was the one of the three companies to whom in-principle approval for dual technology was granted on 18.10.2007 vide note, Ex PW 36/DK-10, in file D-5. Accordingly, its service licence was amended and this was dealt with in file CD-135, Ex PW 36/DS. The amendment was approved by Sh. A. Raja on 05.12.2007 and amendment to licence was issued on 06.12.2007. An application for dual technology is considered complete only when it is accompanied by a copy of amendment to licence. In this case also process of amendment took about two months.

Let me take note of the evidence on record on the point of "amendment of licence", "roll-out obligations" and "no dues" in order to understand whether there was any unreasonable delay in the process of amendment of licence.

Proceedings for amending the Licence

1221. Note dated 14.01.2008, Ex PW 60/N-28 (D-47), for amending the licence of TTSL was put up by Sh. Raj Kataria, Under Secretary (AS-III). The file reached Sh. A. Raja on 23.01.2008, but it was cleared by him only on 27.02.2008. It is the case of the prosecution that this delay of more than one month was deliberate on the part of Sh. A. Raja to deprive TTSL of valuable spectrum, particularly in Delhi service area, which was the most lucrative service area. I proceed to examine it.

Let me take note of the evidence on this point as well as requirement of amendment of licence.

1222. PW 41 Sh. Anand Dalal in his examination-in-chief

dated 01.05.2012, pages 8 and 9, deposed as under:

> ".....We had not made an application to the DoT for amendment of our licence consequent to grant of in-principle approval, but the DoT amended our licence on 04.03.2008, which is an administrative process. I do not know what process was followed by DoT in amending our licence, but we were informed that the amendment would be done on 04.03.2008. The amendment was carried out by amending certain clauses of the existing licence agreement....."

In cross-examination dated 01.05.2012, page 16, PW 41 deposed as under:

> ".....I have been shown letter D-82, already Ex PW 41/N-8, wherein annexure 9 is a letter written by Sh. Anil Sardana, the then managing director of TTSL, to the then Minister, MOC&IT, wherein in para 3 at points A to A it is mentioned, inter alia, that "only Datacom was ahead of TTSL in making the requisite payment in all nineteen circles and M/s Swan was ahead of TTSL and Datacom only in Delhi and Mumbai circles". The annexure is now Ex PW 41/DC. **Volunteered**: This para also contains the line "there were no other requirements to be complied for dual technology. There was even no need for UASL amendment as technology neutrality (including dual technology) was permitted under NTP-1999"....."

Sh. Anand Dalal is under the impression that since technology neutrality is permitted by NTP-99, amendment to licence is not required. However, this is not the correct appreciation.

1223. It is also beneficial to take note of further deposition of PW 41 Sh. Anand Dalal, who in his cross-examination dated

02.05.2012, page 10, deposed as under:

> ".....I have been shown page 171/C of D-47 vol. I, wherein there is a letter dated 28.02.2008 written by DoT to TTSL and TTML asking to collect amendments to UAS Licence agreements. The same is now Ex PW 41/DK. It is correct that our licences were amended on 04.03.2008 by DoT and letter Ex PW 41/O, is a letter alognwith application for allocation of GSM spot frequency for existing 20 UASL areas and metros, though earlier request of 10.01.2008 is also mentioned therein. It is wrong to suggest that this letter alongwith application was required because our amendments were carried out on 04.03.2008 as amendment is just an administrative process. I cannot say whether amendment to licence is a legal process and, as such, an important requirement....."

He is not sure of the requirement to amend the licence before dual technology spectrum can be allocated.

However, in his cross-examination dated 14.05.2012, page 8, PW 41 deposed about amendment of licence as under:

> ".....It is correct that in-principle approval, annexure I to Ex PW 41/N-8 (D-82), granted to us contemplated amendment of the existing UAS Licences. I do not know as to when Reliance Communications applied for in-principle approval for dual technology. I do not know if Reliance Communications applied for in-principle approval for GSM technology on 18.10.2007. I also do not know if they were granted GSM spectrum on 10.01.2008 after amendment of their existing licence. I cannot say if wireless operating licence cannot be applied for dual technology without amendment of the existing UAS Licence. **Volunteered**: Wireless Operating Licence can be

applied only after WPC allocates/ earmarks spectrum....."

In the end, Sh. Anand Dalal admitted that the in-principle approval granted to TTSL/ TTML contemplated amendment of licence.

1224. PW 57 Sh. R. J. S. Kushvaha in his examination-in-chief itself dated 16.07.2012, pages 5 and 6, deposed about requirement of amendment of licence as under:

".....In accordance with the relevant provisions of the service licence agreement, separate application is required to be made by telecom operators to WPC wing for allotment of start up spectrum. The application should be on the prescribed format and it should contain all information as desired therein, that is, copy of the service licence, copy of amendment to existing service licence, if any. At the time of submission of application for allotment of spectrum, no fee is required to be paid. The date of receipt of such application for the allotment of spectrum, complete in all respects, is considered as date of priority for allotment of spectrum by WPC wing in a particular service area. In case an application is filed, but the same suffers from some deficiencies, its seniority would be considered only from the date when the deficiencies are made up. No instance came to my notice fixing seniority in any other manner for allotment of spectrum. However, an instance had come to my notice regarding date of priority for dual technology operators when priority for allotment of spectrum was to be fixed as per date of payment of entry fee....."

PW 57 Sh. R. J. S. Kushvaha in cross-examination dated 24.07.2012, pages 3 and 4, deposed as under:

".....I have been shown DoT file D-47 vol. I,

already Ex PW 48/B, and as per note at point A on letter dated 19.10.2007 of TTSL, a copy of the letter was also marked to the Wireless Advisor. The letter is now Ex PW 57/DL-1.

IO had shown me copies of applications dated 10.01.2008 filed by TTSL and TTML for allocation of dual technology spectrum. I did not find them accompanied by an amendment to licence agreement. I have been shown DoT file D-68, already Ex PW 57/E, and in this file at page 159 there is an application of TTSL for allocation of GSM spectrum. The application is already Ex PW 57/E-7. The amendment to licence agreement is dated 04.03.2008 and the application was filed on the same day. Amendment is annexed with the application. The processing of these applications could have been done either on 04.03.2008 or thereafter, as amendment to licence agreement is dated 04.03.2008. The amendment to licence agreement was approved by the then MOC&IT on 27.02.2008 and his signature appears at point A on the note sheet 4/N, now Ex PW 57/DL-2....."

Thus, Sh. R. J. S. Kushvaha admitted to the requirement of amendment to licence before dual technology spectrum could be allocated. He also deposed that the processing of application of TTSL could not have been done before 04.03.2008 as its licence was not amended.

1225. PW 87 Sh. D. Jha in his cross-examination dated 05.12.2012, page 7 and 8, deposed about the requirement of amendment of licence as under:

".....In file Ex PW 74/DD pertaining to dual technology Punjab to HFCL, I had put up a note dated 10.01.2008, already Ex PW 74/DD-1, pertaining to application of HFCL for allocation of GSM circle in Punjab service area. My signature

appears at point A. Through this note, I had proposed to the AS cell that service licence agreement of the applicant may be amended and only then the application would be valid and cited the precedent of RCL where such amendments were done. I also wrote an internal note in this regard and an office copy of the same is now Ex PW 87/DF, already mark PW 74/DA. This was done by me as per precedent of dual technology applicants including RCL....."

This witness also deposed about the requirement of amendment of licence before allocation of dual technology spectrum.

1226. PW 60 in his examination-in-chief dated 24.08.2012, pages 21 to 24, deposed about grant of in-principle approval to TTSL and amendment of licence as under:

".....I have been shown DoT file D-47 vol. I, already Ex PW 48/B, pertaining to amendment to UAS Licence of TTSL, in which another file No. 20-100/2007/AS (part J) regarding in-principle approval to use GSM technology was later on merged. I have been shown office copy of in-principle approval dated 10.01.2008 granted to TTSL for the use of GSM technology for eighteen service areas. The same was received by Sh. Anand Dalal from the company on 10.01.2008 in the committee room of DoT. The same is signed by Sh. R. K. Gupta at point A and is now Ex PW 60/N-27 (192/C).

I have also been shown office copy of in-principle approval dated 10.01.2008 granted to TTML for the use of GSM technology for two service areas. The same was received by Sh. R. K. Mehrotra from the company on 10.01.2008 in the committee room of DoT. The same is signed by Sh. R. K. Gupta at point A and is already Ex PW 41/DJ (195/C).

I have been shown pages 1/N to 4/N of this file, that is, Ex PW 48/B, wherein there is a note of Sh. Raj K. Kataria, Under Secretary (AS-III), dated 14.01.2008. Through this note he took on record the factum of compliance with in-principle approval for use of GSM technology by TTSL for eighteen service areas and proposed amendment to existing UAS licences. His signature appears at point B, page 4/N, which I identify. The note is now Ex PW 60/N-28. He marked the file to Director (AS-III) Sh. Sukhbir Singh, who in turn, marked the file to DDG (AS), that is, myself, and I marked the file to Member (T) Sh. K. Sridhara, who in turn, marked to Member (F), who marked the file to Advisor (F), who was on tour, and DDG (LF) Sh. B. B. Singh. On account of Advisor (F) being on tour, DDG (LF) Sh. B. B. Singh recorded a note dated 18.01.2008 agreeing with the proposal of Sh. Raj Kataria and marked the file to Member (F). The note of Sh. B. B. Singh is now Ex PW 60/N-29. Signature of Sh. Sukhbir Singh is at point C, that of myself at point D, of Sh. K. Sridhara at point E, of Ms. Manju Madhavan at point F and that of B. B. Singh at point G, page 4/N, which I identify. Member (F) marked the file to Secretary (T) Sidharath Behura on 21.01.2008, who in turn, marked the file to MOC&IT Sh. A. Raja on 23.01.2008 and he granted the approval on 27.02.2008 for carrying out the amendment as above. Signature of Ms. Manju Madhavan appears at point H and that of Sh. Sidharath Behura at point J. After granting the approval, Sh. A. Raja marked the file to Secretary (T) Sh. Sidharath Behura, who initialed it on 28.02.2008 at point K. The file was received in the AS cell on 28.02.2008 vide my endorsement at point L. This file moved out of the office of the Secretary (T) in its journey upward on 23.01.2008 and remained in the office of the MOC&IT till 28.02.2008 before its journey downwards. The endorsement to the effect that the file was out from the office of Secretary (T) on 23.01.2008 is at point

M and the endorsement to the effect that it was received in the office of MOC&IT on 24.01.2008 is at point N. The Minister had signed the file on 27.02.2008 and in its downward journey it was signed by Secretary (T) on 28.02.2008 at point K, page 4/N.

I have been shown page 5/N of this file, wherein there is a note of Sh. Sukhbir Singh, Director (AS-III), dated 29.02.2008 regarding the proposed amendments to be carried out in the existing UAS licence agreements of TTSL in view of the approval of the Minister on 27.02.2008. His signature appears at point A, which I identify and the note is now Ex PW 60/N-30. After recording this note, he marked the file to me and I approved the same on 03.03.2008 vide my signature at point B and marked the file to Director (AS-III), who in turn, marked the file to Under Secretary Sh. Raj Kataria to issue the letter to the company intimating the proposed amendments in the UAS licence. Signature of Sh. Sukhbir Singh appears at point C and that of Sh. Raj Kataria at point D, page 5/N....."

The witness explained in detail as to how the amendment to licence of TTSL was approved on clearance of past dues. From his deposition, no deliberate delay can be inferred.

1227. PW 36 Sh. D. S. Mathur in his examination-in-chief dated 10.04.2012, pages 11 and 12, deposed about amendment of licence and separate application to WPC wing in the case of RCL, as under:

".....I have been shown file, D-47, vol. II, which is a DoT file and is now collectively Ex PW 36/F. I have been shown note available at page 147/C of the file. This note was initiated by Sh. Santokh Singh, legal advisor, DoT, on 30.11.2007, regarding criteria for

allocation of spectrum to enable M/s RCL to move a separate application to WPC wing for authorization of use of radio wave spectrum under specified terms and conditions of WPC licence. He had proposed that WPC wing may be apprized of the pendency of a case before Hon'ble TDSAT in petition No. 286 of 2007. He marked the note to me. I recorded that the decision may be deferred for a week and marked the file on 05.12.2007 to the then Minister Sh. A. Raja. He passed the order on that very day that there is no reason to defer, necessary amendments may be issued immediately and marked the file to me. The file came back to me on the same day and I marked the same to DDG (AS) Sh. A. K. Srivastava. The note of Sh. Santokh Singh available at page 147/C is Ex PW 36/F-1. My note alongwith signature on this page is Ex PW 36/F-2. Order of the Minister alongwith his signature is Ex PW 36/F-3. My signature also appears at point A on this page. A copy of this note is also available in file D-47 vol. I, page 178....."

Thus, the licence of RCL was also amended before allocation of dual technology spectrum.

1228. PW 75 Sh. Sukhbir Singh in his examination-in-chief dated 02.11.2012, page 4, deposed about amendment of licence of TTSL as under:

".....I have been shown DoT file D-47, already Ex PW 48/B, pertaining to amendment to UAS Licence of TTSL, maintained in AS-III. In this file, there is a note dated 14.01.2008, pages 1/N to 4/N, recorded by Sh. Raj K. Kataria, Under Secretary. His signature appears at point B and the note is already Ex PW 60/N-28. This note pertains to proposed amendment to licence of TTSL. Sh. Raj K. Kataria marked this file to Director (AS-III), the post held by me. I read the note and endorsed it to DDG (AS) Sh. A. K. Srivastava. At that time, there was only one post of

DDG, that is, DDG (AS). This note reached the Minister, MOC&IT, Sh. A. Raja through official channel, who finally approved it by appending his signature at point A on 27.02.2008....."

PW 75 Sh. Sukhbir Singh in his cross-examination dated 02.11.2012, pages 8 to 10, deposed about time taken for conveying the amendment of licence to Reliance, after approval by the competent authority, as under:

".....I have been shown DoT file D-47 (vol. II), already Ex PW 36/F, wherein there is a note dated 13.02.2008 recorded by Sh. Raj K. Kataria, Under Secretary, pages 7/N to 10/N. I identify his signature at point A and the note is now Ex PW 75/DA. After recording this note, this was marked to me and I marked it upwards by appending my signature at point B. Through this note, in-principle approval dated 30.01.2008 granted to Reliance Telecom was taken on record for Assam and North-East service areas and based on that, approval of amendment in licence was sought. The amendment in licence was approved on 18.03.2008 and the amended licence was issued on 02.04.2008. The amendment was approved by the then MOC&IT Sh. A. Raja by appending his signature at point A on page 12/N, which signature I identify. My signature appears at point A, page 14/N, wherein on the movement of file downwards, I directed Under Secretary to issue amended UAS Licence and the licence was amended accordingly. The office of amended licence is now Ex PW 75/DB, which was issued under the signature of Sh. Raj K. Kataria at point A. The time taken in this process is normal, but on account of note sheet dated 26.03.2008, 13/N, being interposed in between, it took some extra time.

I have been shown CD file-135, already Ex PW 36/DS. This is official file of DoT, opened in the AS cell, in the official course of business. On reading

this file, I find that in-principle approval was granted to Reliance Communications Limited on 18.10.2007, as mentioned on page 13/N and amendment was issued on 06.12.2007, as mentioned on the same page, that is, in the note of Sh. Raj K. Kataria, available at pages 13/N and 14/N. The note is now Ex PW 75/DC. After recording this note, he marked the file to me and I marked the file upward by appending my signature at point A....."

A perusal of the aforesaid evidence reveals that amendment of licence is required for obtaining dual technology spectrum. No witness deposed that there was any undue delay in approving amendment of licence of TTSL, nor any such question was put by the prosecution. Sh. Sukhbir Singh categorically deposed that the time taken in the process for approving the amendment was normal one. The prosecution is building its case solely for the reason that file reached Sh. A. Raja on 23.01.2008, but he signed it on 27.02.2008. Delay by itself is not criminal. Defence attributed the delay to lack of clearance of dues by TTSL.

Pending Dues against TTSL

1229. It is the case of the defence that for allocation of dual technology spectrum an existing licensee is also required to clear its previous dues. It is submitted that dual technology spectrum is also additional spectrum and for allocation of every chunk of additional spectrum, clearance of pending dues is necessary.

1230. On the other hand, it is the case of the prosecution that the amendment to licence of TTSL was delayed deliberately

and unreasonably on the pretext of pending dues against existing licences. It is submitted that this condition is applicable only to initial allocation of spectrum and not for dual technology spectrum.

1231. Let me take note of evidence on record.

1232. Relevant part of the in-principle approval dated 10.01.2008, Ex PW 60/N-27 (D-47), issued to TTSL, which reads as under:

> "……
> ……
> 6. At the time of further allotment of spectrum in either GSM or CDMA technology, allotment will be subject to the existing policy/ guidelines as amended from time to time, subject to availability and condition that in case the eligibility of the licensee for allocated spectrum in other technology falls below the criterion set for spectrum allotment in the specified technology for the last consecutive six months then the corresponding chunk of spectrum in that technology will be surrendered by the licensee before any further allotment of spectrum is considered.
> ……
> ……"

This stipulation lays down that additional spectrum shall be allocated subject to existing policy, that is, requirement of policy prevailing on the date of allocation of additional spectrum would have to be met by the licensee.

Whether Dual Technology Spectrum is Additional Spectrum?

1233. Here, most important question is: Whether dual technology spectrum is additional spectrum?

TRAI in its report dated 28.08.2007, Ex PW 2/DD, while dealing with the issue of dual technology, recorded following comments of stakeholders, pages 108 and 109, as under:

> "Although the licensing regime for UASL has now been made technology neutral, because of the legacy of the past and the fact that GSM and CDMA operators were given initial frequency allocation from separate frequency bands namely 800 MHz for CDMA, and 900 MHz for GSM, the growth path for these two technologies are separate and at present based on subscriber numbers. Therefore licensee using one technology should not be assigned additional spectrum meant for the other technology to avoid legal complications.
> ……
> ……
> A licencee using one technology may be assigned, on request, additional spectrum meant for other technology under the same licence.
> ……
> ……"

The Authority accepted it and made the following recommendation in para 4.27, which reads as under:

> "Therefore, the Authority recommends that a licencee using one technology may be permitted, on request, usage of alternative technology and the allocation of dual spectrum."

The purpose of extracting this is that dual technology spectrum is also known as additional spectrum.

1234. PW 21 Dr. V. K. Budhiraja in his cross-examination dated 17.02.2012, page 20, deposed on similar lines as under:

> ".....If dual technology licence was given to an

operator, then the start up spectrum allocated to it was/ is known as additional spectrum……..”

Similarly, PW 35 Sh. T. Narsimhan, Deputy CEO, Sistema Shyam, in his cross-examination dated 02.04.2012, page 8, deposed as under:

“…….When my company made an application to WPC for GSM spectrum under cross-over technology, it had 5MHz of CDMA spectrum in Rajasthan circle. My company got additional GSM spectrum for partial districts in Rajasthan in December 2008……..”

Thus, there is material on record to indicate that dual technology spectrum is also known as additional spectrum and it has to be allocated as per existing policy.

1235. It is also useful to take a look on the cross-examination dated 21.11.2013, pages 14 and 15, of Investigating Officer PW 153 Sh. Vivek Priyadarshi, which reads as under:

“……..The policy for dual technology came into public domain on 19.10.2007. It is correct that in press release Ex PW 36/DK-12, there is a line at portion A to A to the effect that “No additional spectrum may be allocated to licencees without fulfilling the roll-out obligations”. This applies to additional spectrum, apart from start-up. It is wrong to suggest that my deposition is wrong on this point. TTSL and TTML were eligible to apply despite this requirement, for dual technology spectrum as well as seeking allocation of spectrum. It is wrong to suggest that I am deposing falsely on this point. I am not aware if TTSL and TTML had not paid spectrum charges in excess of Rs. 100 crore. It is correct that while amending licence of RCL, legal

opinion of Legal Advisor (T) was obtained as is indicated by Ex PW 36/DS-3 (CD-135). He was not examined in this regard. It is wrong to suggest that my deposition is contrary to the DoT record. It is wrong to suggest that a licence cannot be amended if roll-out obligations are not fulfilled or spectrum charges are not paid or penalty in this regard is not cleared by an existing operator. It is wrong to suggest that I am deposing falsely to project these two companies as aggrieved entities and making STPL a scapegoat."

Investigating officer also deposed that clearance of past dues was not a condition for allocation of dual technology spectrum as he made a distinction between additional spectrum, start-up spectrum and dual technology spectrum. This distinction does not appear to be correct.

Existing Policy

1236. Now the question is: What was the then existing policy for grant of additional spectrum?

PW 36 Sh. D. S. Mathur in his cross-examination dated 19.04.2012, pages 4 to 6, deposed about existing policy as under:

".....I have been shown note sheet dated 03.10.2005 of Sh. P. K. Mittal regarding stipulation of seeking no due certificate. The same is now Ex PW 36/DQ-12. As per note sheet 34/N, dated 28.12.2005, UASL Guidelines were notified by the department and the applicant was asked to furnish certain information as per new guidelines. The note sheet is now Ex PW 36/DQ-13. I have been shown note sheet dated 25.05.2006 of Sh. P. K. Mittal, at page 42/N. The note sheet is now Ex PW 36/DQ-14. As per this note sheet, it was proposed that further

availability of spectrum and bond is indicated in the licence agreement, so it is proposed not to mention in the letter of intent (LOI). I have been shown note sheet dated 13.11.2006, pages 51/N and 52/N, of Sh. R. K. Gupta. The note sheet is now Ex PW 36/DQ-15. My signature appears at points A and B. The applicant submitted FIPB approval on 13.11.2006 and thereafter, LOI was granted. The signature of the then Minister Sh. Dayanidhi Maran appears at point C....."

Sh. D. S. Mathur referred to a note dated 03.10.2005, Ex PW 36/DQ-12 (D-590), which is about clearance of dues of an existing licence before seeking a new licence and the note reads as under:

"The matter was discussed with Member (F) in a meeting held on 3.10.2005 in which Adv (P) also participated.

2. It was clarified that the clause relating to no dues certificate of the applicant company/ sister concern/ associated company is there in the Letter of Intent for grant of new licence. It was also clarified that here the associate or sister concern means companies with 10% or more common equity holding. Various action taken notes submitted to the Standing Committee were also seen.

3. Thereafter, it was desired that the present stipulation of seeking 'no dues certificate' in respect of payments arising out of any licence granted under Section 4 of Indian Telegraph Act, 1885 including Indian Wireless Telegraphy Act, 1933 to an applicant company or any promoter/ partner thereof or associate or sister concern may continue."

This case is related to issue of licence to Essar Spacetel (P) Limited. Here, the DoT decided that existing

stipulation of clearance of "dues" should continue for grant of new licence. As already referred to above, the in-principle approval also speaks of allocation of dual technology spectrum, subject to existing stipulation/ policy. Thus, existing policy envisages clearance of past dues for allocation of additional spectrum also.

Pendency of Dues of Tata and Clearance thereof

1237. PW 60 Sh. A. K. Srivastava in his examination-in-chief dated 24.08.2012, pages 14 to 17, deposed about past dues of TTSL and TTML and clearance thereof as under:

> ".....I have been shown DoT file D-43, already Ex PW 16/F, pertaining to signing of UAS licence agreement with M/s Tata Tele Services Limited (TTSL). This file was opened in the DoT in the official course of business for the said purposes. In this file, on pages 32/N and 33/N, there is a note dated 18.02.2008 recorded by Sh. Madan Chaurasia, SO (AS-I), taking on record that LOIs were issued to this company for three service areas, namely, Assam North-East and J&K, and that company had complied with all the conditions of LOIs and sought permission for signing the licence agreement. His signature appears at point A, page 33/N, which I identify and the note is already Ex PW 57/DL-3.
>
> After recording this note, he marked the file to ADG (AS-I), who in turn, marked it to Director (AS-I), who in turn marked the file to DDG (AS), that is, myself. I recorded a note dated 18.02.2008 asking the Wireless Advisor if the company had cleared its dues. My note alongwith signature is now Ex PW 60/N. After recording this note, I marked the file to Wireless Advisor. I have been shown page 34/N of this file, wherein there is a note of Engineer (CDMA) of WPC Wing dated 19.02.2008 to the effect that

TTSL had not supplied the desired information by that date. The said note is now Ex PW 60/N-1 and eventually file reached Wireless Advisor Sh. P. K. Garg, who also recorded a note to the effect that decision may be taken in the light of the fact that the company had not provided the desired information and marked the file to Member (T), who in turn, marked the file to Member (F), who in turn, marked the file to Secretary (T) Sh. Sidharath Behura. The note of Sh. P. K. Garg is now Ex PW 60/N-2. Secretary (T) also recorded a note approving my note to the effect that licence agreement may be signed after obtaining fresh no dues certificate from WPC wing. After recording this note, he marked the file to the then MOC&IT Sh. A. Raja on 22.02.2008. Note of Sh. Sidharath Behura dated 22.02.2008 is now Ex PW 60/N-3. However, there is another note of Sh. Sidharath Behura dated 27.02.2008 on the left margin of the same page to the effect that no dues certificate had been issued by the WPC wing and no issue remained thereafter. This was approved by Sh. A. Raja on the same day. Note of Sh. Sidharath Behura on the margin is now Ex PW 60/N-4. Signature of Sh. P. K. Garg is at point B, of Member (T) at point C, of Sh. Sidharath Behura at points D and E and that of Sh. A. Raja at point F. I identify all signatures. Thereafter, this file was received in the AS cell on 27.02.2008 vide my endorsement at point G.

Again on 03.03.2008, Sh. Madan Chaurasia recorded a note for asking the applicant company through a letter to come and sign the licence agreement for three service areas. His signature appears at point A, which I identify. The note is now Ex PW 60/N-5. Thereafter, the file was marked to me through proper channel and I approved the proposal and DFA, by appending my signature at point B, page 35/N, dated 03.03.2008. The office copy of the said letter, dated 03.03.2008 for three service areas, is available at page 58 of this file and is now Ex PW

60/N-6. It bears signature of Sh. R. K. Gupta at point A, which I identify. The said letter was received by someone from the company. The official copies of three LOIs dated 10.01.2008 issued to this company and on which receipt was acknowledged by the authorized representative are available at pages 428 to 430 of this file and are already Ex PW 56/C, 56/D and 56/E respectively....."

It is clear from the deposition that past dues of TTSL were pending.

1238. PW 41 Sh. Anand Dalal in his cross-examination dated 01.05.2012, pages 14 to 16, deposed about pendency of past dues against TTSL, as under:

".....It is correct that on 10.01.2008, in-principle approval was granted for GSM technology by DoT. It is correct that after receipt of LOIs for three circles and in-principle approval for dual technology on 10.01.2008, TTML and TTSL were writing to DoT for issuance of no dues certificates. **Volunteered**: However, this no dues certificate pertained to these three circles only, that is, J&K, Assam and North-East, which was an LOI criterion and not criteria for in-principle approval for dual technology. It is wrong to suggest that no dues certificate is required at the stage of allocation of spectrum also.

It is correct that there was a litigation on no dues, that is, WPC dues, between TTML & TTSL on one side and WPC on the other side before the Hon'ble TDSAT. I have been shown DoT file D-43, already Ex PW 16/F, wherein there is a letter dated 22.02.2008, written by Sh. Ashok Sud to Secretary, DoT, regarding issuance of no dues certificate by WPC. The letter is now Ex PW 41/DB. I have been shown photocopy of an order of Hon'ble TDSAT dated 17.01.2008, which is annexure of letter Ex PW 41/DB. This order notes certain payments to be made by us to the DoT and certain information to be

submitted by us to the DoT. I am not aware if there was some doubt in DoT as to whether no dues certificate would hold good or not in view of the aforesaid order of Hon'ble TDSAT. I am not aware if a meeting was held on 25.02.2008 in the DoT to the effect that though the TTSL and TTML had not supplied the requisite information, the no dues certificate would hold good in view of both being operating companies having large subscriber base. I am not aware if this file was cleared by the then Minister Sh. A. Raja on 27.02.2008. For three new service areas, UAS Licences were issued to TTSL on 03.03.2008. It is correct that amendments were made in the existing UAS Licence for GSM technology on 04.03.2008. It is wrong to suggest that we applied to WPC for GSM spectrum on 04.03.2008 because we were aware that this application could be considered only after the amendment of the existing licence....."

PW 41 in his further cross-examination dated 02.05.2012, pages 8 to 10, also deposed about past dues as under:

".....I have been shown D-44, already Ex PW 36/DL-48, wherein at page 447, there is a letter written by Sh. N. Srinath, on letterhead of VSNL, to the then Minister Sh. A. Raja. However, I do not recognize this letter as I do not recognize the signature of Sh. N. Srinath. The letter is now mark PW 41/DA. I have not seen any letter written by Sh. N. Srinath nor has he written any letter in my presence. I am not aware if Sh. N. Srinath ever requested Sh. A. Raja to grant one time waiver from no dues certificate so that DoT does not insist on no dues certificate for grant of UAS Licence and dual technology licence. Sh. Madhav Joshi is President (legal and regulatory) in TTSL and I can identify his signature.

I have been shown page 11 of D-44, wherein

there is a letter written by Sh. Madhav Joshi to Sh. A. K. Srivastava, DDG (AS), on 13.12.2007. It bears the signature of Sh. Madhav Joshi at point A and the letter is now Ex PW 41/DG. This letter was also written seeking waiver from production of no dues certificate for sister concerns. I do not know if this condition was waived or not. It is correct that TTSL knew that no dues certificate is a condition precedent for a new UAS Licence because it had obtained various licences in the past also.

I have been shown DoT file D-47 vol. I, wherein at page 128/C, there is a letter addressed to Sh. Ashok Sud, President (corporate affairs), TTSL, by DoT. This letter was received by us and the same is now Ex PW 41/DH. This letter deals with amendment of existing UAS Licence regarding spectrum allocation. At page 195/C, there is office copy of in-principle approval to use GSM technology granted to TTML by the DoT. The same is now Ex PW 41/DJ. Whenever a licence is amended, except the amended clause, all other terms and condition remain unchanged. **Volunteered**: As per my understanding, no dues certificate was not a criteria for in-principle approval and DoT never asked for this in case of in-principle approval and TDSAT judgment is already there in our favour....."

PW 41 Sh. Anand Dalal, Sr. Vice President, Corporate Regulatory Affairs, admitted that TTSL had not cleared its past dues and litigation was also pending in this regard, though he denied that this condition of clearance of dues was applicable to dual technology spectrum also.

1239. It is also beneficial to take a look on the cross-examination of PW 56 Dr. Rakesh Mehrotra, Chief Regulatory Officer, TTSL, dated 13.07.2012, page 8, which reads as under:

".....Our officials used to remain in touch with WPC

wing on day today basis but I do not remember if they were in touch regarding no dues also. It might be one of the subjects. I do not remember, as such, if due to no dues, amendment of UAS licence was pending....."

This witness was not sure about clearance of dues before allocation of dual technology spectrum. In the end, it is clear that past dues were pending against TTSL.

Whether clearance of past dues necessary for allocation of dual technology spectrum?

1240. Here most relevant question is: Whether clearance of past dues was necessary before amendment of licence agreement?

PW 57 Sh. R. J. S. Kushvaha in his cross-examination dated 24.07.2012, pages 4 and 5, deposed about clearance of past dues and amendment of licence as under:

".....I have been shown DoT file D-43, already Ex PW 16/F, and therein at note sheet dated 19.02.2008, page 34/N, my signature appears at point A. In the note sheet it is recorded that TTSL had not supplied the requisite information in terms of orders of Hon'ble TDSAT dated 17.01.2008. The note sheet at pages 32/N to 34/N is collectively Ex PW 57/DL-3. Perhaps up to 2001, dues were being collected by the WPC wing and thereafter, when finance division came into being, this work was being looked after it. I might have dealt with issue of no dues certificate of TTSL as part of my duties. Amendment of a UAS Licence pertaining to a CDMA operator for granting it permission to use GSM technology is an additional facility granted to an existing operator. No dues certificate is to be obtained before amending the existing licence for

use of alternate technology. However, this work is looked after by AS cell. In file Ex PW 16/F, there is a letter dated 15.01.2008, page 347, written by Sh. Raj Kataria to Sh. R. K. Gupta. I identify the signature of Sh. Raj Kataria at point A and the letter is now Ex PW 57/DL-4. However, I do not have any knowledge of the letter. It is wrong to suggest that I have full knowledge of the letter and deliberately feigning ignorance....."

PW 57 Sh. R. J. S. Kushvaha, Joint Wireless Advisor, who is an officer of the rank of Joint Secretary to the Government of India, made it clear that clearance of past dues was necessary before amending the licence agreement for allocation of dual technology spectrum.

1241. PW 77 Sh. K. Sridhara, Member (T), an officer of the rank of Special Secretary to the Government of India, in his cross-examination dated 11.12.2012, pages 2 and 3, deposed as to how and when dues were cleared by TTSL and TTML, as under:

".....Sh. P. K. Garg recorded a note dated 19.02.2008, already Ex PW 60/N-2, in file D-43, Ex PW 16/F, regarding information which was not provided by TTSL, page 34/N, and this note was also placed before me and I marked it to Member (F) and Secretary (T). Secretary (T) Sh. Sidharath Behura recorded his note dated 22.02.2008, already Ex PW 60/N-3, and marked the file to the Minister. Sh. P. K. Garg also recorded a note dated 26.02.2008 regarding issuance of no dues certificate to TTSL on 18.01.2008, which may be treated valid on that date. I identify his signature at point A. The note is now Ex PW 77/DB, page 56. In the upward movement of the file, the note also came up before me, I agreed with the note and marked it to

Secretary (T) by appending my signature at point B and he also agreed with the proposal and recorded his note in this regard of even date, now Ex PW 77/DC. I identify his signature at point C. A corresponding note was also recorded by Secretary (T) in this regard at page 38/N, already Ex PW 60/N-4, dated 27.02.2008, by referring to the aforesaid page. After approval by the Minister, the file was again placed before me during its downward movement. On the basis of the note of Secretary dated 22.02.2008, already Ex PW 60/N-3, the Minister approved the proposal on 27.02.2008 by appending his signature at point F. I am not sure if the note Ex PW 60/N-4 was recorded by Secretary (T) during downward movement of the file or during discussion with the Minister. However, during the downward movement, the file was also marked to me by Secretary (T)....."

1242. In the above testimony, PW 77 deposed about note dated 26.02.2008, Ex PW 77/DB, recorded by the then Wireless Advisor Sh. P. K. Garg, regarding clearance of dues by TTSL and issue of no dues certificate. Thereupon, Secretary (T) Sh. Siddhartha Behura recorded note dated 26.12.2008, Ex PW 77/DC, regarding clearance of dues by TTSL and treating the no dues certificate as adequate. Thereon, on 27.02.2008, Sh. A. Raja approved the signing of licence agreement for the three service areas, that is, Assam, North-East and J&K, in file D-43. On the same day, that is, 27.02.2008, he also approved amendment of licence of TTSL in file D-47.

1243. DW 1 Sh. A. Raja in his examination-in-chief dated 02.07.2014, pages 13 and 14, deposed about dues of TTSL as under:

"……..**Ques**: Kindly take a look on DoT file D-47, already Ex PW 48/B, pertaining to amendment of UAS licence to TTSL. Would you please tell this Court as to when the file reached you, when it was disposed of by you and why the file remained pending in the intervening period between the two dates?

Ans: I have seen the file and despite seeing the file, I am unable to recall as to exactly when the file reached me. However, the file was cleared by me on 27.02.2008. In the interregnum, it was in the public domain that there was a proceeding between DoT and Tatas pending before the Hon'ble TDSAT with regard to no dues certificate. The representative from Tatas also formally met me and requested me that as they did not file the no dues certificate and they were working towards clearing their dues shortly, as they were having other files for fresh UAS applications for three other circles and, as such, they wished to clear their dues alongwith the three files. For these reasons, they were not able to file their no dues certificate. I went through the file as I got the message from the department and Tatas, and decided that this may be cleared alongwith the files with which they were wishing to file the no dues certificate, since there would be no adverse consequences even if the file was retained with me, that is, the file would have remained either with the Director or any other officer of DoT awaiting no dues certificate. When other files came to me, this file was also cleared with those files on the same day……."

Here, Sh. A. Raja explained that since dues were pending against TTSL and they were trying to clear the same, it was decided that the file relating to dual technology would also be cleared with the file with which they were trying to clear the dues.

1244. However, it is also instructive to take note of cross-examination of Sh. A. Raja dated 22.07.2014, pages 3 to 5, wherein he deposed about requirement of no dues certificate, as under:

> ".....**Ques**: I put it to you that you deliberately delayed in-principle approval to Tatas in order to benefit STPL and Unitech group of companies?
> **Ans**: It is incorrect. The applications of Tata were processed as per the extant policy and therefore, no question of benefiting STPL and Unitech group of companies arises.
> **Ques**: I put it to you that there was no condition of submission of no dues certificate by Tatas either as per letter of in-principle approval or in the note dated 14.01.2008 put up to you for your approval or also in your approval dated 27.02.2008?
> **Ans**: No dues certificate is mandatorily required under the procedure established and followed by the DoT and, as such, it need not be reflected in the aforesaid three documents. However, TRAI in its recommendations of 2007 had clearly spelt out how the additional spectrum for alternate technology and the additional spectrum to the existing operators on the basis of subscriber based criteria would be allocated, where it has been clearly mentioned that additional spectrum shall not be allotted unless the operator is complying with no dues certificate and roll-out obligation.
> **Ques**: I put it to you that Tatas being existing operators, the condition of no dues certificate was not applicable to them and that is why this condition does not find mention in the aforesaid three documents?
> **Ans**: It is incorrect in view of my above answer.
> **Ques**: I put it to you that you deliberately delayed the approval of amendment in the existing UAS licence of Tatas so that STPL may get priority in Delhi service area for allotment of spectrum?

Ans: It is incorrect. The delay was only on the part of Tatas in clearing their previous dues, which was mandatorily required in this case....."

The version as given by Sh. A. Raja is reasonable one and matches with the testimony of Sh. R. J. S. Kushvaha and other material on record. Thus, at least two witnesses, that is, Sh. R. J. S. Kushvaha and Sh. A. Raja deposed that clearance of past dues is mandatory before amendment of licence.

1245. The case of the prosecution is that the clearance of past dues of existing licences was not a pre-condition for amendment of licence for dual technology spectrum.

On the other hand, the case of the defence is that clearance of dues was a necessary condition even for amendment of licence for obtaining dual technology spectrum.

The in-principle approval speaks about dual technology spectrum being allocated subject to existing policy/ guidelines, as amended from time to time. The note, Ex PW 36/DQ-12, referred to above, speaks about clearance of past dues as an existing stipulation and also for continuation of the same. This indicates that clearance of past dues is an existing policy stipulation and is required to be met before any additional/ dual technology spectrum can be allocated. This is further fortified by the cross-examination of PW 57 Sh. R. J. S. Kushvaha, referred to above, wherein he clearly deposed that no dues certificate is to be obtained before amending the existing licence for use of alternate technology. PW 41 Sh. Anand Dalal deposed that dues were pending against TTSL and PW 77 Sh. K.

Sridhara deposed that the note regarding their clearance was put up by Sh. P. K. Garg, the then Wireless Advisor, only on 26.02.2008 and thereafter, file was signed by Sh. A. Raja on 27.02.2008. Sh. A. Raja, as DW 1, also deposed that pending dues were required to be cleared before licence for dual technology spectrum could be amended.

1246. Though note dated 14.01.2008, Ex PW 60/N-28, recorded by Sh. Raj Kataria does not indicate any requirement of clearance of dues. However, the evidence referred to above shows that clearance of previous dues was necessary for amendment of licence and the licence of TTSL was amended immediately after the issue of past dues was settled.

Even if prosecution case is accepted that clearance of past dues was not necessary for amendment of licence and the process was delayed, the accused have given a good and reasonable explanation for delay, if any, in amending the licence. An accused is not supposed to prove its case beyond reasonable doubt. He has just to explain his conduct in reasonable and acceptable manner. It is a fact, as noted above from the evidence on record, that dues were pending against TTSL and the same were cleared by them and this fact was taken on record by the Wireless Advisor on 26.02.2008 vide Ex PW 77/DB and Minister cleared the file on 27.02.2008, that is, next day itself.

In view of this, I do not find any merit in the submission of prosecution that the amendment of licence was delayed for any conspiratorial reasons under the pretext of

pending dues.

Roll-out Obligations

1247. It is the case of the defence that TTSL, being an existing licensee, was under obligation to fulfill roll-out obligations of its existing licences before seeking allocation of dual technology spectrum. It is the case of the defence that TTSL was not meeting the roll-out obligations of its existing licences and hence it was not entitled to allocation of dual technology spectrum, which is also known as additional spectrum. It is submitted that failure to meet roll-out obligations is indicative of the fact that earlier allocated spectrum is not being utilized in an optimal and efficient manner. When the earlier allocated spectrum is not being utilized properly, how can a licensee claim to be entitled to allocation of additional spectrum? It is the case of the defence that TTSL was not entitled to the allocation of dual technology spectrum as it was not meeting its roll-out obligations and whatever and wherever dual technology spectrum was allocated to it, had been allocated wrongly and without any justification. The case of defence is that it had no justification for allocation of spectrum in Delhi service area.

1248. On the other hand, prosecution has argued that fulfillment of roll-out obligations of an existing licence was not a condition for allocation of dual technology spectrum. It is the case of the prosecution that a false plea is being taken that TTSL was not meeting its roll-out obligations of its existing

licences and a wrong act is being attempted to be justified on this specious plea.

1249. Let me take note of the evidence on record.

1250. Para 6.31 of TRAI Recommendations accepted by the DoT vide Ex PW 36/A-14, reads as under:

> "6.31 Without any change in the provision of LD, in case the roll out obligation is not met even after 52 weeks of the period prescribed for completing roll out obligations, the Authority recommends that the reference to termination of license in clause no. 35.2 of UASL may be replaced by the following:
> ……
> ……
> (ii) No additional spectrum may be allocated to licensees till he does not fulfill the roll-out obligations."

Thus, a licensee who has not fulfilled roll-out obligations will not be granted any additional spectrum.

1251. In its consultation paper dated 12.06.2007, Ex PW 131/E-2, para 4.17, the Authority had raised "Issues for consideration". In paragraph 4.17, questions 1 and 2, the Authority used the words "additional spectrum" for dual technology also and the same read as under:

> "Q1. In view of the fact that in the present licensing regime, the initial spectrum allocation is based on the technology chosen by the licensee (CDMA or TDMA) and subsequently for both these technologies there is a separate growth path based on the subscriber numbers, please indicate whether a licensee using one technology should be assigned additional spectrum meant for the other technology under the same license?

Q2. In case the licensee is permitted, then how and at what price, the licensee can be allotted additional spectrum suitable for the chosen alternate technology;"

This is required to be read with para 4.27 of TRAI Recommendations dated 28.08.2007, already quoted above.

1252. It is instructive to take note of the relevant part of the Press Release dated 19.10.2007, Ex PW 36/DK-12, issued on permitting use of dual technology, which reads as under:

".....For failure to meet roll out obligation within prescribed time schedule, the existing stipulation of termination of license under Clause 35.2 of UAS Licence Agreement shall continue. In addition, Performance Bank Guarantee (PBG) may also be forfeited and the service provider may be asked to resubmit PBG of the same amount. No additional spectrum may be allocated to licensees without fulfilling the roll out obligations. In case of spectrum auction, a Licensee, who has not met roll-out obligation against an existing licence, should not be eligible to participate in any spectrum auction till the roll out obligation is met. Any proposal for permission for merger shall not be entertained till the roll obligation is met; however, request for permission for acquisition may be entertained. Roll out for each licensed service area is to be dealt separately. In case of violation of roll out conditions, government may consider termination of license in certain cases....."

It may be noted that, as already noted, dual technology spectrum is also known as additional spectrum.

1253. PW 41 Sh. Anand Dalal in his cross-examination dated 14.05.2012, pages 7 and 8, deposed as under:

".....I am aware of press release issued by DoT

dated 19.10.2007. I do not remember if this press release contemplated that no additional spectrum may be allocated to licencees without fulfilling roll-out obligations. It is wrong to suggest that TTSL was not entitled to in-principle approval for GSM technology on account of its failure to meet out earlier roll-out obligation. NTP-1999 talks about technology neutrality and the DoT came out with the press release for the first time on 19.10.2007 and we applied accordingly....."

The defence put up its case to Sh. Anand Dalal, Sr. Vice President, Corporate Regulatory Affairs, TTSL, to the effect that TTSL was not entitled to dual technology spectrum for failure to meet its existing roll-out obligations, but he pleaded ignorance about this.

1254. PW 60 Sh. A. K. Srivastava deposed about roll-out obligations in his examination-in-chief dated 17.08.2012, page 10, referring to file D-6, as under:

".....I have been shown pages 5/N and 6/N of this file, wherein there is a note of Sh. Madan Chaurasia dated 20.12.2007. Signature of Sh. Madan Chaurasia appears at point A, which I identify, and the note is now Ex PW 60/K-145. This note pertains to no dues certificate and status of fulfillment of roll-out obligations by the six companies, including Tata Tele Services Limited, mentioned in para 3 of the note. This note was prepared on the asking of the companies to find out if any dues were pending against them and if so, to what extent and also about status of the fulfillment of the roll-out obligations by them and they may be informed accordingly, so that they may not be disadvantaged in the issuance of new UAS licences. This proposal was approved by me on 20.12.2007 vide my endorsement at point B. Office copies of the letters

issued to various sections of the DoT are available at pages 48 to 51, whereby the requisite information was asked. The same are now Ex PW K-146, K-147, K-148 and K-149 respectively.....”

PW 60 Sh. A. K. Srivastava, DDG (AS), deposed that TTSL had not fulfilled its roll-out obligations at least till 20.12.2007, though on the face of it, the note is restricted to new UAS licences alone.

1255. PW 57 Sh. R. J. S. Kushvaha in his cross-examination dated 23.07.2012, pages 10 to 12, deposed about roll-out obligations, as under:

“.....I have been shown DoT file D-5, already Ex PW 36/A-3, wherein at page 133, are recommendations of a committee constituted by the DoT for examining the TRAI recommendations. In para 1.23, the committee recommended that the recommendations of TRAI to the effect that when existing licencee becomes eligible for additional spectrum specific to the new technology, it has to be treated as any other licencee in the queue may be accepted. The report of the committee is already Ex PW 36/A-8. I was a member of this committee. I do not know if while granting additional spectrum to an existing licencee for new technology, roll-out obligations and enforcement thereof are to be considered as these matters are looked after by TERM Cell of DoT. I came to know about the dual technology policy of the Government through press release dated 19.10.2007. It is correct that some cases were processed in the WPC wing for earmarking of spectrum to new UAS Licencees and TTSL, based on the applications received in the WPC wing. As far as my understanding of the press release dated 19.10.2007 was concerned, it was that it talked of inter se seniority between the dual technology applicants only. I cannot say if no

spectrum can be allotted to an applicant without fulfilling roll-out obligation as this matter is looked after by TERM cell and TERM cell did not communicate to us any case where roll-out obligations were not fulfilled. I had gone through the press release Ex PW 36/DK-12.

…….

…….

Processing of applications for allotment of spectrum was part of my job as an officer of the WPC wing. It is wrong to suggest that it was my job to examine that roll-out obligations have been fulfilled by an applicant before allocating spectrum to it. It is wrong to suggest that even in the case of TTSL I was to examine if they have fulfilled the roll-out obligations. I do not know if TTSL had not fulfilled its roll-out obligations. It is wrong to suggest that it had come to my notice that TTSL had not fulfilled its roll-out obligations. It is further wrong to suggest that despite that I processed their applications……."

It is clear from the deposition of Sh. R. J. S. Kushvaha, Joint Wireless Advisor, an officer of the rank of Joint Secretary, that he is evasive in his replies about fulfillment of roll-out obligations before granting dual technology spectrum. However, it is clear from his testimony also that dual technology spectrum is also known as additional spectrum.

1256. PW 36 Sh. D. S. Mathur, the then Secretary (T), in his cross-examination dated 12.04.2012, pages 8 and 9, deposed as under:

"……..It is correct that TRAI recommended that a licencee using one technology may be permitted on request usage of alternative technology and thus, allocation of dual spectrum, para 6.21 of the recommendations. I have been shown D-7, Ex PW

36/B, wherein on page 27, already Ex PW 36/B-1, there is a draft proposed to be sent to the learned SG wherein para 8 (i) it was proposed that for in principle approval of alternative technology, the operator must have met out existing roll out obligations. In the same paragraph the handwritten changes were made by me in my hand. Paragraph 4.35 of the recommendations Ex PW 2/DD says that for getting alternative technology approval, the existing operator must meet out roll out obligations……."

This deposition shows that DoT was cognizant of the fact that before allocating dual technology spectrum, a licensee must meet roll-out obligations. Thus, by preparing draft Ex PW 36/B-1, the endeavour of the department was to ensure that only serious players apply for allocation of dual technology. Though it is different matter that draft was not ultimately approved.

In his further cross-examination dated 19.04.2012, pages 5 and 6, PW 36 Sh. D. S. Mathur deposed about roll-out obligations as under:

"……..I have been shown photocopy of a DoT file CD No. 8, bearing No. 20-225/2004 (Bharti Genmat./ BS-III), now collectively Ex PW 36/DQ-16. This file was put up to the then Minister before my joining regarding for imposition of liquidated damages for failure to meet roll-out obligations and these companies included TTML and TTSL also. The amount of penalty on TTML and TTSL as mentioned in the note is Rs. 140 crores. The note sheet is Ex PW 36/DQ-17. My signature appears at point A wherein I suggested re-examination of the issue. My signature also appears at page 66/N at point A. As per this note, show cause notice was to be issued to

the companies for imposition of liquidated damages, as per the minutes of telecom commission. This note is now Ex PW 36/DQ-18.

…….

……..

I do not know if roll-out obligations were met by the Tatas till my retirement on 31.12.2007……..”

Thus, Sh. D. S. Mathur is clear that TTSL/ TTML defaulted in meeting roll-out obligations and imposition of damages were contemplated by department.

In his further cross-examination dated 20.04.2012, pages 3 and 4, PW 36 deposed about roll-out obligations, as under:

“……..It is wrong to suggest that my aforesaid note Ex PW 36/B-6 was out of context as para 3.1.1 of NTP-1999 pertains to cellular service providers licence which has been stopped as stated earlier after introduction of UAS Licences. Press release is issued for the information of general public so that everything comes in public domain in a transparent manner and becomes known to the stakeholders. Copy of the press release was sent to Sh. T. K. A. Nair, Principal Secretary to Hon'ble Prime Minister, under my signatures, vide letter Ex PW 36/E-6. In this it was reiterated that the pending applications for UAS Licences would be processed as per existing policy. As far as I remember there was no response from the office of Hon'ble PM to this letter regarding press release Ex PW 36/DK-20. I cannot say if this press release sent to the office of Hon'ble PM later than the letters of the then Minister Sh. A. Raja already Ex PW 7/A and 7/B, both dated 02.11.2007. In press release already Ex PW 36/DK-12, it is mentioned that the spectrum for the alternate technologies, CDMA or GSM, as the case may shall be allocated in the applicable frequency band subject

to availability after payment of prescribed fee. The press release also said that no additional spectrum may be allocated to licencees without fulfilling the roll-out obligations."

Thus, the Secretary is categorical in deposing that the press release dated 19.10.2007, Ex PW 36/DK-12, envisaged that no additional spectrum in alternate technology would be allocated without fulfilling the roll-out obligations.

The perusal of the deposition of PW 36 Sh. D. S. Mathur, the then Secretary (T), reveals confusion about the dual spectrum policy in the DoT. Vide letter dated 26.10.2007, Ex PW 60/C, an opinion was also sought from learned SG about fulfillment of roll-out obligations by an existing licensee before seeking dual technology spectrum/ additional spectrum. However, no opinion was given on that by the Law Ministry. Sh. D. S. Mathur also deposed that TTSL and TTML were not fulfilling their roll-out obligations till 31.12.2007. He also accepted that the press release dated 19.10.2007, Ex PW 36/DK-12, issued regarding permission to use dual technology contained the condition that no additional spectrum in alternative technology would be allocated to a licensee without fulfilling the roll-out obligations. Sh. D. S. Mathur was Secretary (T) at the relevant time when all major incidents took place regarding formulation of policy and processing of files for which LOIs were issued on 10.01.2008. He did not clarify anywhere that in the Press Release additional spectrum meant any spectrum other than dual technology spectrum. It may be noted that in the record placed before the Court, any spectrum

allocated to a licensee beyond 6.2 + 6.2 MHz is also known as additional spectrum. However, the way the word "additional spectrum" has been used by TRAI and also by DoT in press release dated 19.10.2007, shows that it refers to dual technology spectrum also.

1257. PW 77 Sh. K. Sridhara, Member (T), in his cross-examination dated 11.12.2012, pages 4 to 6, deposed as under:

> ".....As Member (T), I was Ex-officio Secretary to Government of India. I was a senior officer of Indian Telecom Service and, as such, I have knowledge and experience of telecom services as well as policy matters.
> .....
> .....
> The draft Ex PW 36/B-1 contains the policy decision of DoT and at the end two alternatives for processing of applications and issuance of LOIs. This draft was prepared by AS cell. It is correct that this draft was prepared on 24.10.2007 after the issuance of press release dated 19.10.2007, after acceptance of TRAI recommendations by the Government. It is correct that in order to ensure that only serious players were to be considered for such request for dual technology spectrum those applicants who had already met the existing roll-out criteria were to be considered, as per this draft. However, this draft was not approved anywhere, so this cannot be a condition precedent for earmarking spectrum. Even the final draft Ex PW 36/B-4 was sent for consideration, but was not approved. This final draft was sent for consideration, but did not get final approval of the Law Ministry or of learned Solicitor General.
>
> On receipt of TRAI recommendations dated 28.08.2007, a committee was constituted in the DoT to consider the recommendations and I was chairman of the committee. Clause 6.31 (ii) of TRAI recommendations as mentioned in Ex PW 11/E, was

for existing operators and not for initial spectrum. As per sub-clause (iii), an existing operator cannot participate in spectrum auction till the roll-out obligations were met. This was finally accepted by the Government also.
Ques: If an existing operator does not meet out roll-out obligations, but applies for dual technology spectrum, would the DoT allocate spectrum despite his failure to meet out existing roll-out obligations?
Ans: Both are different technologies, hence there is no co-relation between the two. However, I am not sure if there are restrictions on allocation of spectrum to such an operator or not....."

PW 77 Sh. K. Sridhara, Member (T), attempted to clarify that clause 6.31(ii) of TRAI Recommendations was applicable to existing operators. He deposed that in order to ensure that only serious players were considered for allocation of dual technology spectrum, the condition of meeting roll-out obligations was envisaged in the draft. However, in the end, he left the issue in confusion by replying to a very simple and straight question stating that he was not sure if there were restrictions on allocation of spectrum to dual technology applicants, who failed to fulfill roll-out obligations.

1258. PW 81 Sh. Madan Chaurasia in his cross-examination dated 22.11.2012, pages 10 and 11, deposed about roll-out obligations as under:

".....I have been shown a DoT file pertaining to dual technology applicants, already Ex PW 57/DK. This is an official file of DoT. In this file I recorded a detailed note sheet dated 07.08.2009 regarding pending request for usage of dual technology. It bears my signature at point C and is already Ex PW 57/DK-2. This note sheet was recorded by me as per

> the prevailing policy of the Government. At that time, applications for dual technology of Shyam Sistema, TTSL and Etisalat DB were pending. In this note sheet, I, inter alia, recorded that before processing the pending request for dual technology spectrum of these three companies, it is also expected to get roll-out of services by these companies using their single technology spectrum so that these companies do not hoard scarce natural resource of spectrum....."

Thus, the condition of meeting roll-out obligations before allocation of dual technology spectrum was envisaged in 2009 also and this was as per prevailing policy.

Though note dated 07.08.2009 was recorded at a later stage, but it contains a statement of fact as deposed to by the witness that it was recorded as per the prevailing policy of the Government. What was the prevailing policy of the Government? The note indicates that the policy was that before processing the pending requests of dual technology applicants, it was expected to ensure roll-out of services by these companies using their single technology spectrum so that these companies did not hoard scarce natural resource of spectrum. This is a reasonable view. If a company is unable to use its single technology spectrum, optimally and efficiently, it has no valid reason to seek dual technology spectrum.

1259. Investigating Officer PW 153 Sh. Vivek Priyadarshi in his cross-examination dated 18.11.2013, pages 10 and 11, deposed about roll-out obligation as under:

> ".....It is correct that one of the issues to be investigated in the case was roll-out obligations, as

contained in the order passed by Hon'ble Supreme Court on 16.12.2010. I did not investigate whether roll-out obligations were complied with or not by TTSL and TTML in respect of their existing licences, as the directions pertained to new licences alone. I did not investigate whether no dues certificates were obtained by TTSL and TTML from WPC wing in respect of their existing UAS licences when they applied for GSM spectrum, as the file relating to allocation of GSM spectrum did not bring out such requirement.

Ques: I put it to you that compliance with roll-out obligations and obtaining of no dues certificate was mandatory in respect of existing licences before applying for dual technology GSM spectrum?

Ans: I do not remember about any such guidelines as applicable during December 2007 and January 2008 because no such processing/ mention of the issue was found in the files of Reliance and TTSL for such requirements before allocation of dual technology GSM spectrum.

It is wrong to suggest that I am deposing falsely on this issue....."

The investigating officer admitted that he did not investigate the issue of roll-out obligations and clearance of dues.

1260. On the basis of the aforesaid evidence, it has been vehemently argued by the defence that TTSL was not entitled to any dual technology spectrum at all as it was not meeting out its roll-out obligations for the single technology spectrum allocated to it earlier and the aforesaid evidence has been referred to in detail.

This has been disputed by the prosecution contending that the only requirement for an existing licensee to

obtain dual technology spectrum was the requirement to deposit the prescribed fee, which TTSL had deposited. It is the case of the prosecution that there was no requirement of fulfillment of earlier roll-out obligations for obtaining dual technology spectrum.

1261. I have carefully considered the rival submissions in the light of material on record and the evidence referred to by the parties. I do find that there is no clear-cut and specific requirement prescribed anywhere that for obtaining dual technology spectrum, apart from depositing the prescribed fee, an applicant was also required to fulfill its earlier roll-out obligations. However, if the documents and the deposition of the witnesses, as referred to above, are read carefully and conjointly, such an inference may reasonably be drawn.

1262. Furthermore, when the case was put to the witnesses, who are senior officers of DoT, including the then Secretary (T), they failed to clarify the issue. Not only this, they added to the confusion. Sh. R. J. S. Kushvaha deposed that he could not say if no dual technology spectrum could be allocated to an applicant without fulfilling the roll-out obligations. Sh. D. S. Mathur admitted that the press release stated that no additional spectrum may be allocated to a licensee without fulfilling its roll-out obligations, but he failed to clarify as to what the words “additional spectrum” meant in the press release. Sh. K. Sridhara also added to the confusion by not clarifying the issue. Sh. Madan Chaurasia did not clarify if there was any change in the Government policy regarding dual

technology when the note dated 07.08.2009 was recorded by him as he stated that the note was recorded by him as per the prevailing policy. Thus, he indicates that as per the prevailing policy, fulfillment of roll-out obligations of existing licences was necessary for obtaining dual technology spectrum.

1263. In the end, it is clear that TTSL and TTML had not fulfilled their earlier roll-out obligations and they were allocated dual technology spectrum in several service areas, except Delhi. From the above material on record, it is reasonable to presume that TTSL was perhaps not entitled to dual technology spectrum for non-fulfillment of its roll-out obligations. The defence has thus succeeded in creating a grave doubt about the eligibility of TTSL/ TTML for allocation of dual technology spectrum on this count also.

1264. The conclusion from the above discussion is that TTSL/ TTML were not entitled to any priority from the date of payment, that is, 10.01.2008. There is also grave doubt if they were at all entitled to allocation of dual technology spectrum due to failure to clear their past dues and also non-fulfillment of roll-out obligations. The prosecution has thus failed to prove its case on any point referred to above.

Intra-service Roaming Arrangement

1265. It is the case of the prosecution that Sh. A. Raja and Sh. Siddhartha Behura in conspiracy with Sh. Shahid Balwa and Sh. Vinod Goenka asked DoT officers to put up a note for recommending intra-service roaming arrangement between two

service providers by amending the terms and conditions of UAS licence. It is the case of the prosecution that despite objection by the TRAI conveyed vide its letter dated 24.04.2008, Ex PW 11/S [D-826 (d)], on the ground that amendment of terms and conditions of licence requires compliance with Section 11 of the TRAI Act, Sh. A. Raja and Sh. Siddhartha Behura unauthorizedly proceeded to amend the licence agreement to make it mandatory for all service providers. It is further submitted that this was done to benefit STPL, and STPL alone was able to sign a Memorandum of Understanding with BSNL for such an arrangement on 13.10.2008. In this regard, my attention has been invited to BSNL file D-79, Ex PW 43/A. It is the case of the prosecution that this is indicative of close coordination between Sh. A. Raja, Sh. Siddhartha Behura, Sh. Shahid Balwa and Sh. Vinod Goenka and also the fact that STPL was receiving continuous patronage of Sh. A. Raja. It has been repeatedly submitted at the bar that this was due to conspiratorial acts on the part of Sh. A. Raja and Sh. Siddhartha Behura.

1266. On the other hand, defence has argued that such an arrangement was in public interest and the notes were initiated by DoT and BSNL officials on their own initiative. It is the case of the defence that there is no evidence at all indicating any conspiratorial act by Sh. A. Raja or Sh. Siddhartha Behura in this regard.

1267. Both parties have invited my attention to the files D-78; Ex PW 75/A; D-79, Ex PW 43/A, and D-826 (d) containing

letter dated 24.04.2008, Ex PW 11/S, as well as to the deposition of the witnesses.

1268. This issue was dealt with by DoT officials in file D-78, Ex PW 75/A. The first note, Ex PW 75/A-1, was recorded on 04.06.2008, by PW 75 Sh. Sukhbir Singh, which reads as under:

> "**Sub: Intra-Service area Roaming - Access Services Licences.**
>
> Roaming arrangements/agreements are normally entered into with other Access Service Licensees by various access service providers for the service areas where they do not have licence to provide services. Therefore, so far the request for mandatory roaming facilities among various service providers has not been agreed to. However, there is no bar in entering into roaming agreements subject to the mutual commercial agreements by various service providers in a service area. The existing clauses regarding scope of various Unified Access Services (UAS) and Cellular Mobile Telephone Services (CMTS) Licences are placed at 1/C to 5/C for kind reference please.
>
> 2. In order to remove any ambiguity, it will be appropriate to clarify this by exclusively specifying in the licence conditions.
>
> 3. It is proposed to add the following formulation below the existing clause 2.2(a)(i) of the UASL, clause 2.1(a) of CMTS Licences issued in 2001 or thereafter, clause 12.6(a) of CMTS Licences issued prior to 2001 and clause 2.2(a) of UASL migrated from CMTS Licence.
>
> "Note: A Licensee may enter into mutual commercial agreements for intra service area roaming facilities with other licensed Cellular

Mobile Telephone Service Licensees/Unified Access Service Licensees. Further, TRAI can also prescribe tariffs/charges for such facilities within the provisions of TRAI Act, 1997 as amended from time to time."

4. As per clause 5.1 of UAS licenses, CMTS Licences issued in 2001 or thereafter and clause 14(ii) of CMTS circle Licences & clause 13(ii) of CMTS metro circle Licences issued prior to 2001, the licensor reserves the right to modify at any time the terms and conditions of the respective licenses, in public interest or for proper conduct of telegraph.

5. Accordingly, draft amendment letter to all the existing Unified Access Services (UAS) and Cellular Mobile Telephone Services (CMTS) Licences is placed at 6/C.

Submitted for kind consideration and approval of the above proposal please."

1269. On recording this note, PW 75 Sh. Sukhbir Singh marked the file to PW 92 Sh. P. K. Mittal, DDG (AS-II), who agreed with the same and signed it. From there, file went to Member (Services) PW 61 Sh. G. S. Grover, who was also working as Member (T), and he also agreed to the same and appended his signature. He marked the file to Secretary (T) Sh. Siddhartha Behura, who also agreed to the same and appended his signature. From there, file went to Sh. A. Raja, who recorded note, dated 11.06.2008, which reads as under:

"Approved. Secretary may discuss with the industries for making it mandatory."

The file was marked downward to Secretary (T).

1270. Let me take note of the evidence on record.

1271. There is no indication in the file that above note was initiated at the initiative of Sh. A. Raja or Sh. Siddhartha Behura. It is also on record that Sh. A. Raja added a rider that the matter may be discussed with the industry.

1272. PW 75 Sh. Sukhbir Singh, Director (AS-III), who recorded the note, in his examination-in-chief dated 02.11.2012, pages 1 to 4, deposed as under:

> ".....I have been shown DoT file D-78 pertaining to amendment to access service licence regarding intra-service area roaming. This file was opened in the official course of business in the AS cell of DoT and is a genuine file. The same is now collectively Ex PW 75/A. In this file, I have been shown a note dated 04.06.2008, page 1/N. This note was put up by me and it bears my signature at point A and is now Ex PW 75/A-1. As director (AS-III), my job was to look after post-licence work, that is, maintenance, day-to-day queries of the service providers, implementation of licence conditions etc. In the note Ex PW 75/A-1, I had signed the same in the capacity of director (AS-IV) as the matter pertained to the jurisdiction of director (AS-IV), who was not available on that day, that is, 04.06.2008 and the matter came to me as link officer. Sh. P. K. Mittal, DDG (AS-II), asked me to put up note Ex PW 75/A-1. The subject dealt with in this note is intra-circle roaming agreement inter se the service providers.
>
> **Ques**: What was the subject dealt with in the note Ex PW 75/A-1?
>
> **Ans**: This note was for amendment in UAS Licence agreement to the effect that an optional intra-service roaming agreements can be signed between the service providers.
>
> A draft copy of the proposed amendment to the licence agreement was also put up by me

alongwith the note Ex PW 75/A-1. The said draft is now Ex PW 75/A-2. Both the note as well as the draft were prepared by DDG (AS-II) Sh. P. K. Mittal. On 04.06.2008, he asked me to come to his room. Accordingly, I went to his room, where he asked me to read this note and the draft and I read accordingly. He further asked me if I was convinced after reading the same. There was no reason for me to doubt anything in this as Sh. P. K. Mittal was DDG in DoT since 2001, as far as I remember. On reading the note and the draft, I find the same to be in public interest as a mobile user would get a signal where he would not otherwise get the same. On 04.06.2008, on account of some personal problems I had reached the office quite late at about 12 noon. My wife was seriously ill and in the early morning I had taken her to hospital. After recording the note Ex PW 75/A-1, I marked the file to Sh. P. K. Mittal, DDG (AS-II). He, in turn, marked the file to Member (T), who, in turn, marked the file to Secretary (T) and he ultimately marked the file to Minister, MOC&IT. I identify signatures of all four. Signature of Sh. P. K. Mittal is at point B, of Sh. G. S. Grover, Member (T) at point C, of Sh. Sidharath Behura, Secretary (T) at point D and that of Minister, MOC&IT, Sh. A. Raja at point E.

On looking at the file, I find that the proposal was approved by the Minister on 11.06.2008, though I was not link officer on that day. Sh. Raj K. Kataria was Under Secretary in DoT and I was his immediate official superior. I can identify his signature.

I have been shown office copy of a letter dated 12.06.2008 issued to all service providers with copy to Secretary (TRAI) etc. It bears signature of Sh. Raj K. Kataria at point A, which I identify. The office copy of the letter is already Ex PW 21/DL……."

However, in cross-examination, page 6, PW 75 deposed as under:

".....It is correct that note Ex PW 75/A-1 was clarificatory in nature. It is wrong to suggest that this note was drafted by me on my own. After reading the note, I owned the same in public interest. This note was marked by me to the Minister through proper channel as Minister was competent to approve it....."

In his further cross-examination, pages 10 and 11, PW 75 deposed as under:

".....I cannot say if TRAI recommendations were taken or not before issuance of amendment Ex PW 75/DD-1 or the corrigendum Ex PW 75/DD-2. It was recorded by me in my note Ex PW 75/A-1, inter alia, that there was no bar in entering into roaming agreement subject to mutual commercial agreement by service providers in a service area. It was clarificatory in nature. I cannot say much if TRAI recommendations on this were required or not as the matter pertained to some other section. As the note was prepared by Sh. P. K. Mittal and seemed to be in public interest, I did not check if TRAI recommendations were required on that or not....."

The author of the note, both in examination-in-chief as well as cross-examination, holds Sh. P. K. Mittal responsible for the note. The note itself is silent as to on whose initiative it was recorded.

1273. PW 92 Sh. P. K. Mittal, DDG (AS-II), in his examination-in-chief, dated 03.01.2013, pages 2 to 4, deposed as under:

".....I have been shown DoT file D-78, already Ex PW 75/A, pertaining to amendment to access service licence reference intra-service area roaming, which is an official file of DoT.
Ques: Please explain the meaning of roaming and

why the same is required?

Ans: Roaming is a feature of mobile services, which is used to provide services to a subscriber where due to some reasons service of one operator, that is, the original operator of the subscriber is not available either in the same service area or in other service area. The subscriber can avail the services even in the service areas where its original operator does not have the licence.

Roaming arrangements between service providers are part of service agreement. Intra-service area roaming is an arrangement for providing services as aforesaid in the same service area, whereas inter-service area roaming is an arrangement for providing services in different service areas.

In the aforesaid file Ex PW 75/A, there is a note dated 04.06.2008, already Ex PW 75/A-1, and this note was put by Sh. Sukhbir Singh. After recording this note, Sh. Sukhbir Singh marked the same to me and after agreeing with the note, I marked it to Member (T) and Member (T), in turn, marked it to Secretary (T), who, in turn, marked it to MOC&IT, who also approved the note asking to discuss mandatory roaming arrangement.

Ques: You have already stated that roaming arrangement was part of service agreement. If it was so, what was the need for putting up this note?

Ans: It was desired by Secretary (T) and Member (T) in the month of May 2008 that the intra-service area roaming should be made mandatory as there were issues of non-availability of spectrum in some of the service areas in some locations, but the roaming arrangements were not mandatory arrangements were mutual commercial arrangements between the various operators. Hence this note.

I was asked by Secretary (T) and Member (T) to put up a note making intra-circle roaming arrangements mandatory, but I submitted that it can

only be a mutual commercial arrangement between various service providers. There was no specific prohibition in the licence agreement prohibiting intra-service roaming arrangement between various service providers. I was asked to put up a note to make intra-service area roaming arrangement mandatory, so I put up this note submitting that mandatory roaming arrangements are not feasible. This was in the nature of a clarification, though we used the word "amendment" in the note, proposing amendment of clause 2.2 (a) (i) of the UAS licence agreement. The draft amendment approved by Minister is already Ex PW 21/DL.

UASL Guidelines dated 14.12.2005 were issued during my tenure as DDG (AS). These guidelines are already Ex PW 2/DB. Before these guidelines, the guidelines dated 11.11.2003, already Ex PW 11/DE, were in operation. The guidelines of 14.12.2005 were needed as FDI was permitted, directly or indirectly, up to 74% in telecom service sector and some other guidelines pertaining to CEO/COO etc., were also changed....."

In his cross-examination on the same day, pages 4 and 5, PW 92 deposed as under:

".....I was told by Secretary (T) that a representation had been received from an Hon'ble Member of Parliament regarding intra-service roaming. My statement was recorded by the IO. I had told the IO about being told so by the Secretary (T). My statement is now Ex PW 92/DA. However, therein it is not mentioned that I was told so by the Secretary (T). It is correct that in the note Ex PW 75/A-1, it is not mentioned that the direction regarding putting up this note was given by Secretary (T).

Court Ques: Why did not you mention it, though you have stated above that the note was put up on the direction of Secretary (T) and Member (T)?

Ans: Normally, such directions were not used to be incorporated in the note as per the practice and the practice was that verbal directions were not to be indicated in the note.

It is wrong to suggest that no such direction was given by Secretary (T)....."

In his further cross-examination on the same day, page 6, PW 92 deposed as under:

".....It is correct that there is a manual of office procedure which all public servants are supposed to follow. Public servants are guided and governed by CCS Conduct Rules. It is not necessary to reduce into writing oral directions given by superior to his junior. It is wrong to suggest that I am deposing falsely on this point....."

This witness, who is senior officer of the rank of Joint Secretary to Government of India, by way of oral deposition, in contradiction to official record, shifted the burden to other officer for the above note.

1274. PW 61 Sh. G. S. Grover, Member (Services), who was acting as Member (T) on 04.06.2008, deposed in his cross-examination dated 05.09.2012, pages 3 and 4, as under:

".....Whatever note is initiated by an officer is initiated by him as per his own wisdom. None of my subordinates complained to me that he was under any influence or pressure. Any subordinate of the link officer can approach the other link in case of need....."

This evidence indicates that the note would and should be taken to be put up by Sh. Sukhbir Singh in his own wisdom in ordinary course of official business.

1275. The note about intra-service roaming arrangement was recorded by PW 75 Sh. Sukhbir Singh. He deposed that he initiated it on the asking of PW 92 Sh. P. K. Mittal. However, Sh. P. K. Mittal blamed the note on Secretary (T) Sh. Siddhartha Behura and Member (T) Sh. K. Sridhara. However, perusal of the note does not reveal that it was put up at the instance of any superior officer. The note was initiated by PW 75 Sh. Sukhbir Singh, Director (AS-IV), who himself is a senior officer and is expected to be responsible also. PW 92 Sh. P. K. Mittal is an officer of Joint Secretary level. They ought to have recorded in the note as to why and at whose instance it was being put up, but they did not do it. Member (T) Sh. K. Sridhara, who has been examined as PW 77, was not asked any question by the prosecution in this regard. Sh. Siddhartha Behura in his statement under Section 313 CrPC denied having given any instruction in this regard to Sh. P. K. Mittal. How can Sh. Siddhartha Behura and Sh. K. Sridhara be held responsible for this note by way of oral evidence in total disregard of written official record?

Furthermore, on that day, two officers, namely, Director (AS-IV) as well as Member (T) were on leave. PW 75 Sh. Sukhbir Singh was link officer to Director (AS-IV) and PW 61 Sh. G. S. Grover was link to Member (T). When the two concerned officers were on leave, what was the urgency for Sh. P. K. Mittal to get the note put up on the same day. Moreover, note, Ex PW 75/A-1, was recorded by PW 75 Sh. Sukhbir Singh on 04.06.2008 and was agreed to by Sh. P. K. Mittal on the same

day. It was agreed to by Sh. Siddhartha Behura, Secretary (T) on the next day, that is, 05.06.2008. It was finally approved by Sh. A. Raja on 11.06.2008. This shows that there was no urgency created either by Secretary (T) or Sh. A. Raja. If it were so, Sh. A. Raja would also have signed the note on the same day. In view of these facts, the note regarding intra-service roaming appears to be the doing of Sh. P. K. Mittal and later on when the things heated up, he shifted the blame to others. Not only this, he did not complain of any pressure to PW 61 Sh. G. S. Grover, who is an officer of the rank of Ex-Officio Secretary to the Government of India. In these circumstances, when the written record does not reveal the involvement of any senior officer, it is not acceptable that the note, Ex PW 75/A, was got put up by PW 92 Sh. P. K. Mittal at the instance of Secretary (T) Sh. Siddhartha Behura or the Minister Sh. A. Raja. This version of the prosecution cannot be accepted.

1276. Furthermore, this file, that is, D-78 does not reconcile with the proceedings in file D-79 of BSNL. This file, that is, D-79 was opened on 28.05.2008, that is, before the opening of file D-78, already referred to above.

The first note in file D-79 about roaming was recorded by Sh. J. R. Gupta on 28.05.2008 and the same reads as under:

"**Bharat Sanchar Nigam Limited**
(A Government of India Enterprise)
O/o Director (Ops)

No. Dir(O)/BSNL/Misc./2008 Date: 28-05-2008

Subject: National In-roaming in BSNL Network.

The matter of having National Roaming arrangements with Private Operators have been coming up time and again for discussions in the recent past. Recently, several additional licenses have been granted for Mobile Service. The new Operators have had discussions for having the roaming arrangements with BSNL.

2. The above matter was discussed in the Management Committee Meeting today. It was felt that BSNL will be able to generate additional revenue by permitting only in-roaming (so that there is no outgo of the revenue) to the new Operators. It has been directed by the Management Committee that this matter may be examined once again and a Note be submitted to the Management Committee with all the pros and cons. This may be done within 7 days....."

1277. Perusal of the note reveals that the issue of roaming arrangement was pending before the BSNL since long and was not a new issue arising pursuant to conspiracy of Sh. A. Raja with Sh. Shahid Balwa. Many service providers had applied for roaming arrangement with BSNL from time to time including Reliance, TTSL, Spice, Datacom and STPL. Their applications are dated 07.11.2007, 19.02.2008, 08.05.2008 and 29.02.2008. Though STPL had also filed applications thereafter including the ones dated 28.04.2008 and 04.06.2008. It may be noted that STPL had made an application for roaming arrangement with BSNL as early as 29.02.2008, available at 7/c (D-79). Thus, STPL was not the only company seeking roaming

arrangement with BSNL. It is difficult to reconcile the developments of D-78 and D-79 to infer conspiracy.

Why Roaming Arrangement with STPL only?

1278. A question may arise, and contended by prosecution also, as to why roaming arrangement was entered into by BSNL with STPL only. The answer to this lies in note dated 11.09.2008 recorded at 10/N and 11/N of D-79, which reads as under:

> "Kindly refer Board Note at 24/c, para 1 of which mentions that proposals were received from (1) M/s Reliance, (2) M/s TTSL, (3) M/s Spice, (4) M/s Datacom & (5) M/s Swan. Para 4 (iv) approved by the Board restricts intra circle roaming arrangement with operators having overall all India market shares of 5% or less. According to this condition, M/s Swan & M/s Datacom only, as on date, out of requests received, qualify and both are included in the comprehensive note for consideration by the Management Committee of BSNL vide note placed in file as 35/c. Put up for orders please."

The note records that only STPL and Datacom met the eligibility criteria for roaming arrangement.

1279. The management committee of BSNL considered the issue of roaming arrangement on 10.06.2008 vide Ex PW 43/C-1 and initially it was not in favour of the same. The case of the prosecution is that if the management committee was not in favour, then the decision to permit roaming was result of a conspiracy. However, this decision was not final and the management committee referred the matter to BSNL Board. Ultimately, the proposal was approved by the BSNL Board on

27.08.2008 vide note, Ex PW 43/C-12. The decision to sign the Memorandum was approved by the management committee on 04.09.2008 vide note, Ex PW 43/C-14, and MOU dated 13.10.2008, Ex PW 43/C-23, was signed between BSNL and STPL.

1280. PW 43 Sh. Vivek Narayan, Deputy General Manager, BSNL, did not depose anything from which any conspiratorial act can be inferred. In his cross-examination, he denied that there was any direction from the DoT in this regard. In his detailed deposition, there is nothing of any significance from which any conspiracy can be inferred.

1281. It is also interesting to take note of the cross-examination of PW 21 Dr. Vinod Kumar Budhiraja, Chief Regulatory Officer, STPL, who in his cross-examination dated 17.02.2012, pages 4 and 5, deposed as under:

> ".....It is correct that as per licence agreement the licencees were at liberty to have roaming agreement with other licencees. It is also correct that no explicit approval of DoT was required for doing it (objected to). It is also correct that as far as roaming is concerned there is no difference between inter-circle and intra-circle roaming in the UAS Licence agreement (objected to).
>
> It is correct that I negotiated roaming agreement on behalf of STPL with the BSNL. I have been shown photocopy of a letter dated 04.06.2008 (D-79) written under my signature on behalf of STPL to BSNL. The letter is correct and is now Ex PW 21/DJ. I have also been shown a photocopy of MoU signed between STPL and BSNL. The same has been signed by me at point A and is now Ex PW 21/DK alongwith its annexure. The MoU is dated 13.10.2008. It is correct that at that time besides the

application of STPL, applications of several other companies for roaming arrangements were also being considered by BSNL. It is correct that the reason for considering the application of STPL for roaming (intra-circle) by BSNL was that other applicants had substantial subscribers base and in case of their getting the roaming facility they would be competing directly with the BSNL (objected to). It is correct that this MoU for intra-circle roaming was no converted into an agreement. It is also correct that charges which the STPL was supposed to pay to BSNL under this MoU was more than 52 paise apart from other heavy expenses which per to borne by STPL. The roaming charges in the MoU was higher than that of other operators. The DoT had issued clarifications regarding intra-circle roaming. I have been shown a letter dated 12.06.2008 (D-78) and the same was issued to all service providers and is now Ex PW 21/DL....."

1282. The deposition of PW 21 Sh. V. K. Budhiraja in the cross-examination appears to be reasonable and acceptable as it matches with the official record. What is interesting is the objection taken by learned Public Prosecutor on the important issues deposed to by the witness. The witness deposed that the licensees were at liberty to enter into roaming arrangement and for that no approval of DoT was required. What was there to object? But the Prosecutor objected. Furthermore, the witness deposed that there is no difference between inter-circle roaming and intra-circle roaming. This was also objected to by the Prosecutor. Not only this, the witness deposed that the reason for considering the application of STPL for intra-circle roaming by BSNL was that other applicants had substantial subscriber base and in case of their getting the roaming facility, they would

be directly competing with the BSNL. This is a reasonable explanation, but this too was objected to by the Prosecutor. This attitude of taking unnecessary objections reflects adversely on the prosecution and shows that it does not want the truth to come out as it had no case.

1283. In the conclusion, I do not find any merit in the submission of the prosecution that the issue of roaming arrangement was result of criminal conspiracy between the accused persons.

Leasing out House by R. K. Chandolia

1284. It is the case of the prosecution that Sh. R. K. Chandolia rented out his residential house C-6/39, 2nd Floor, Safdarjung Development Area, New Delhi to Associated Hotels Private Limited, a sister concern of DB Realty Limited on 03.03.2009. It has been argued that this shows the close relation between Sh. R. K. Chandolia and STPL, Sh. Shahid Balwa & Sh. Vinod Goenka. It is the case of the prosecution that this also indicates that the accused were in conspiracy.

On the other hand, the defence has argued that the renting out of property is of no significance, as at best it only shows the relation between the parties and is not indicative of any conspiracy. Furthermore, it has been argued that it has not been established on the record that Associated Hotels Private Limited is a sister concern of DB Realty Limited.

1285. Both parties have invited my attention to the deposition of PW 8 Sh. Vijender Kumar Sharma, Vice President

(Regulatory) of DB Realty Limited, PW 21 Dr. Vinod Kumar Budhiraja, Chief Regulatory Officer of STPL (now Etisalat DB Telecom Private Limited) and PW 10 Sh. Vijay Kumar, Zonal Inspector, MCD and the documents tendered by them on record.

1286. PW 21 Dr. Vinod Kumar Budhiraja proved the Lease Deed, Ex PW 21/A, between Associated Hotels Private Limited and Sh. R. K. Chandolia. PW 8 Sh. Vijender Kumar Sharma proved the payment of rent to Sh. R. K. Chandolia. PW 10 Sh. Vijay Kumar, MCD Inspector proved that in MCD record, the mutation of the property C-6/39, 2nd Floor, Safdarjung Development Area, New Delhi, is in the name of Sh. R. K. Chandolia and his wife Smt. Neeta. Perusal of the material on record indicates at best that the property belongs to Sh. R. K. Chandolia and his wife and that it was rented out to Associated Hotels Private Limited. It is disputed by the defence that the Associated Hotels Private Limited is the sister concern of DB Realty having concern with Sh. Shahid Balwa and Sh. Vinod Goenka. Even if this fact is correct, merely renting out the property does not show anything more than an ordinary relationship of landlord and tenant between Sh. R. K. Chandolia and Sh. Shahid Balwa. It is not indicative of any conspiracy by itself, unless supported by some other legally admissible evidence, which is missing in this case. Hence, this fact is of no avail to the prosecution.

Offloading of Shares by STPL and Unitech

1287. It is the case of the prosecution that after allocation

of spectrum, both companies, that is, STPL and Unitech Group Companies offloaded their shares. It is the case of the prosecution that Etisalat (Mauritius) Limited subscribed to 11,29,94,228 shares of STPL on 17.12.2008 for a consideration of about Rs. 3228 crore. It is also argued that Genex Exim Venture Private Limited also subscribed to 1,33,17,245 shares of STPL for Rs. 380 crore. It is the case of the prosecution that Dynamix Balwa Group promoted by Sh. Shahid Balwa and Sh. Vinod Goenka, thus earned about Rs. 2818 crore, as Tiger Trustees Limited held by them was having 90% equity of STPL. It is also the case of the prosecution that Unitech Group Companies also offloaded their shares to Telenor Asia Private Limited, which agreed to infuse extra equity in the companies for a 66.5% stake. It is the case of the prosecution that by offloading the shares of the companies, the promoters of Unitech Group Companies earned Rs. 2342 crore.

On the other hand, the case of the defence is that this offloading by the two companies was by way of issue of fresh equity and shares held by promoters were not sold at all. It is the case of the defence that the money received by issue of fresh equity remained with the companies and no money reached the promoters. It is the case of the defence that issue of fresh equity was not prevented either by law or guidelines of DoT.

1288. Both parties have invited my attention to evidence led on record for days together regarding offloading of shares by the two companies and the receipt of money by the

companies through banking channels. My attention has been invited to the bank records indicating receipt of money by the two companies. The deposition of the witnesses has been copiously read at the bar. My attention has also been invited to the various provisions of the Companies Act, 1956.

1289. However, suffice to say that at that time, offloading of shares or issue of fresh equity was not prohibited by any rule or guideline. There was no lock-in period prescribed at that time by any rule or guideline.

1290. Investigating Officer PW 153 Sh. Vivek Priyadarshi in his cross-examination dated 25.11.2013, page 13, deposed about the infusion of fresh equity as under:

> ".....**Ques**: I put it to you that the infusion of funds in a company by way of issuance of fresh equity is not tantamount to sale of equity?
> **Ans**: It is correct. However, beyond a point if the fresh equity issued exceeds the equity held by its promoters, it may tantamount to transfer of control and is governed by the applicable DoT and FDI guidelines.
>
> These guidelines have been issued by DoT from time to time on the basis of TRAI recommendations. It is wrong to suggest that my answer in this regard is without any foundation in law....."

However, the investigating officer could not point out any specific guidelines preventing offloading of shares.

Moreover, at the relevant time, there were no guidelines which prevented infusion of fresh equity by off-loading of shares. Accordingly, the offloading of the shares by the two companies and the receipt of money in consideration

thereof is of no help to the prosecution.

In the end, there is no merit in the submission of the prosecution that TTSL was wrongly denied dual technology spectrum in Delhi service area and the same was equally wrongly allocated to STPL.

IV. Issue relating to Eligibility of STPL and Unitech Group Companies: Role of A. Raja, Siddhartha Behura, Shahid Balwa, Vinod Goenka, Sanjay Chandra, Gautam Doshi, Surendra Pipara and Hari Nair

1291. The issue is: Whether the two companies were ineligible on the date of filing of applications and if so, whether their ineligibility was ignored due to conspiracy?

Filing of Application by STPL for UAS Licences: Role of Sh. Anand Bhatt

1292. It is the case of the prosecution that STPL belonged to Reliance ADA group, an existing licensee, on the date of application, that is, on 02.03.2007. RCL, a company of Reliance ADA Group, was operating on CDMA standard. It is also the case of the prosecution that STPL filed applications in thirteen service areas where Reliance ADAG/ RCL had no GSM spectrum, so that it can avail the facility of GSM spectrum also without any permission from DoT. It is the case of the prosecution that STPL belonged to Reliance ADA group and, as such, it was in violation of clause 8 of UAS Guidelines. It is also the case of the prosecution that applications were filed by PW 2 Sh. A. N. Sethuraman, an employee of Reliance ADA group.

On the other hand, the case of the defence is that on the date of application, STPL belonged to Sh. Anand Bhatt who, later on, transferred the company to DB group. It is the case of defence that on the date of applications the company was compliant to clause 8 of UASL Guidelines dated 14.12.2005. It is the case of the defence that there was no violation of any Guidelines, what to talk of clause 8 of Guidelines dated 14.12.2005.

1293. Let me take note of the evidence of Sh. A. N. Sethuraman, who had submitted the applications with the DoT.

PW 2 Sh. A. N. Sethuraman, Group President, Reliance ADA Group, deposed in his examination-in-chief on 14.11.2011 that he had filed application dated 23.01.2007, Ex PW 2/A (D-10), for UAS licence in J&K service area for STPL, which was received in CR Section of DoT on 25.01.2007.

He also deposed that he had filed applications dated 02.03.2007 for UAS licence for Punjab service area, Ex PW 2/J (D-10, page 78), Andhra Pradesh service area, Ex PW 2/O (D-221), Gujarat service area, Ex PW 2/P (D-223), Haryana service area, Ex PW 2/Q (D-224), Karnataka service area, Ex PW 2/R (D-225), Kerala service area, Ex PW 2/S (D-226), Maharashtra service area, Ex PW 2/T (D-227), Rajasthan service area, Ex PW 2/U (D-229), Tamil Nadu service area, Ex PW 2/V (D-230), UP (W) service area, Ex PW 2/W (D-232), UP (E) service area, Ex PW 2/X (D-231), Delhi service area, Ex PW 2/Y (D-222) and Mumbai service area, Ex PW 2/Z (D-228) for STPL, which were received in CR Section of DoT on 05.03.2007.

He also filed application dated 02.03.2007, Ex PW 2/Z-6, for Assam service area and application, Ex PW 2/Z-9, for North-East service area.

PW 2 in his further examination-in-chief dated 14.11.2011, page 26, deposed that though he was on the payroll of Reliance ADA Group (P) Limited, but he signed the applications on the instructions of Sh. Anand Bhatt, as under:

> ".....I am on the payroll of Reliance Anil Dhirubhai Ambani Group Private Limited. I signed these applications in the capacity of authorized signatory of M/s Swan Telecom (P) Limited. I signed these applications on the telephonic instructions of Sh. Anand Bhatt, who introduced himself as one of the directors of M/s Swan Telecom (P) Limited. Volunteered. This call was received by me at the time of signing of application for J&K circle. Similar call was received by me for other circles. Volunteered. He also asked me to keep everything ready, that is, all the applications....."

In his cross-examination dated 14.11.2011, pages 27 and 28, he deposed as under:

> ".....I have seen Ex PW 2/B and on seeing that I say that these documents were received by me in my office one or two days before my signatures on the letter, that is, 23.01.2007. It is correct that before filing this application, I had received a call in my office from one Sh. Anand Bhatt, which was attended by my secretary. On being informed about the call, I called back Sh. Anand Bhatt. On my calling back, I was told by Sh. Anand Bhatt to file this application and the application was filed by my assistant Sh. Satish Shastri. I have seen letter Ex PW 2/C and before signing this letter I was told by Sh. Anand Bhatt to do the needful in this regard. I have seen documents Ex PW 2/D, 2/E, 2/F, 2/G and 2/H.

My assistant Sh. Satish Shastri was told by DoT that these documents were also required and accordingly, I contacted Sh. Anand Bhatt and these documents were sent to me and thereafter, the same were sent to the DoT. It is correct that fifteen applications for the remaining fifteen circles were filed on the same day. When I saw these applications these were fully prepared and dated as 02.03.2007. The instructions regarding keeping the applications ready must have been received by me from Sh. Anand Bhatt before 02.03.2007. On getting the applications ready, I contacted Sh. Anand Bhatt and asked for further instructions and he told me to hold on for a couple of days as certain formalities were to be completed. He called me again on 05.03.2007 and told me to go ahead and submit the applications. Sh. Anand Bhatt did not tell me about completing the formalities of agreement with any party. He simply told me that formalities are over and asked me to go ahead and to file the applications. Applications for Assam and North-East circles were withdrawn on the same day, that is, on 06.03.2007. It is correct that withdrawal of these applications was done on the instructions of Sh. Anand Bhatt....."

1294. Thus, from the above deposition of PW 2 Sh. A. N. Sethuraman, both in examination-in-chief as well as cross-examination, it is clear that he had signed and filed the applications on the asking of Sh. Anand Bhatt. The case of the defence is that by that time the company stood transferred to him (Anand Bhatt). The prosecution did not challenge this version of the witness, either by re-examination or by way of cross-examination. Thus, the role of Sh. Anand Bhatt stands established in examination-in-chief of prosecution witness itself and has also gone unchallenged. Though the witness deposed

that he had filed the applications on the asking of Sh. Anand Bhatt, but question still remains as to who owned STPL on the date of applications?

Who Owned STPL on the Date of Applications?

1295. The core issue in the case is as to who owned STPL on the date of applications? How the company was incorporated? If the company was incorporated by Reliance ADA group, whether the company stood transferred from the Reliance group to DB group on the date of filing of applications? It is the case of the prosecution that on 02.03.2007, when the applications for thirteen service areas were filed by STPL, it was an "Associate" company of Reliance Communications Limited (RCL)/ Reliance Telecom Limited (RTL). It is the case of the prosecution that since these companies, that is, RCL and RTL, were already operating telecom licences in the thirteen service areas, STPL was not eligible to apply for fresh UAS licences, being an "Associate" of the aforesaid two companies. It is the case of the prosecution that as per clause 8 of Guidelines for Unified Access Service Licence dated 14.12.2005, an "Associate" company of an existing licensee could not apply for another licence in the same service area. Hence, STPL was ineligible on the date of applications, that is, on 02.03.2007. It is the case of the prosecution that not only this, accused Hari Nair misrepresented to the DoT that Tiger Traders (P) Limited (TTPL), which owns 90.1% equity in STPL, was owned by Indian Telecom Infrastructure Fund, held by Ashok Wadhwa

Group of companies. It is the case of the prosecution that this was a false representation as the company was held by Reliance ADA group and was also funded by it. Hence, STPL was ineligible on the date of applications.

1296. On the other hand, the case of the defence is that the company (STPL) already stood transferred from Reliance ADA group to Sh. Nilesh Doshi and Sh. Sunil Doshi and from them to Sh. Anand Bhatt and Sh. Ashok Wadhwa and from them to DB group on 02.03.2007, the date when the applications were filed. On that day, it was a DB group company and RTL held only a minority shareholding in this company, limited to 9.9% only and, as such, the company was fully eligible to apply for fresh licences.

1297. The question is: Whether STPL was eligible on the date of applications? Whether there was any Fund established to own Tiger Traders (P) Limited and STPL, if so, by whom? What was the role of Sh. Anand Bhatt and Sh. Ashok Wadhwa in this? Whether STPL belonged to Reliance ADA group on the date of applications?

Reason for Ineligibility: STPL belonged to Reliance ADA Group?

1298. It is the case of the prosecution that STPL was a company of Reliance ADA group, which was already having pan India licence for access services. In this regard, the evidence of PW 2 Sh. A. N. Sethuram, Group President, Reliance ADA group, is relevant. In his examination-in-chief dated 11.11.2011, page 2, he deposed as under:

> ".....I know Reliance Communications Limited. It is engaged in the business of telecommunications service. Reliance Communications Limited has PAN India UAS Licence, but I do not know for how many circles. I also know about M/s Reliance Telecom Limited. Originally, M/s Reliance Telecom Limited was having licences for seven circles. Later on two States were bifurcated, that is, Bihar and Madhya Pradesh. Reliance Communications Limited was operating on CDMA technology and Reliance Telecom Limited was operating on GSM technology....."

1299. As per examination-in-chief of PW 19 Sh. Sateesh Seth dated 14.02.2012, page 13, RTL is a subsidiary of Reliance Communications Limited. Note dated 07.05.2008, Ex PW 110/C-3 (D-5), recorded by Sh. R. K. Gupta, is also relevant, which contains similar facts.

1300. Hence, it is the case of the prosecution that since RCL was operating on CDMA technology, it used STPL, which was its group company, for filing applications for fresh UAS licences, so that it may get GSM technology also. It is the case of the prosecution that STPL applied only in those service areas where RCL was having CDMA technology. It is the case of the prosecution that since STPL was a company of Reliance ADA group, it was ineligible to apply for fresh licences. This issue is at the root of the whole controversy in the instant case.

Incorporation of STPL and its Ownership on the date of Applications: Role of Sh. Anand Bhatt and Sh. Ashok Wadhwa

1301. PW 14 Sh. Paresh Rathod, DGM, Reliance Power

Limited, who was one of the first directors of STPL, earlier Swan Capital (P) Limited, deposed about its incorporation and transfer.

PW 14 Sh. Paresh Rathod in his examination-in-chief dated 16.01.2012, pages 1 to 3, deposed as under:

> ".....In Reliance Infrastructure Limited, I was working in its secretarial team. The job of secretarial team includes formation of new companies, ensuring statutory compliances, maintenance of statutory records, transfer of shares etc.
> ....
> ....
> Company Secretary of the company is part of secretarial team. The secretarial team of Reliance Infrastructure Limited was headed by Sh. Ramesh Shenoy, who was also a company secretary. As on today, I am working in Reliance Power Limited. As long as I worked in Reliance Infrastructure Limited, I was reporting to Sh. Ramesh Shenoy. From my joining and till my transfer in 2008 to Reliance Power Limited, I kept working in Reliance Infrastructure Limited.
> I know as to what a shell company means. It is a company formally incorporated for future business use by the business group.
> ....
> ....
> Reliance ADA Group comprises five to six listed companies and around 300 subsidiaries of these companies or the unlisted companies. In 10 to 11 companies of the group, I was appointed director including Reliance World Limited, Swan Capital (P) Limited, Tiger Traders (P) Limited etc....."

He further deposed about other director Sh. Dinesh Modi, page 3, which reads as under:

> ".....I have been shown D-364, which are minutes

of Swan Capital (P) Limited. The same is now collectively Ex PW 14/A (for identification) (objected to). I have been shown the minutes of the first meeting of the company held on 15.07.2006 and the same are correct and are already Ex A-14 (three pages/ sheets). I know Sh. Dinesh Modi, who is also a company secretary and was also working in secretarial team of Reliance Infrastructure Limited. Sh. Dinesh Modi and myself worked together as long as I was in this company. Sh. Dinesh Modi was appointed director of Swan Capital (P) Limited with me. The signature at point A appears to be of Sh. Dinesh Modi and was appended on 28.12.2006....."

1302. In his further examination-in-chief, page 6, he deposed about the appointment of Sh. Ashok Wadhwa and Sh. Anand Bhatt as directors on the board of the company, as under:

".....I have also been shown minutes of board meeting of Swan Capital (P) Limited held on 22.01.2007 at 1 PM. The meeting was attended by Sh. Dinesh Modi, Sh. Paresh Rathod, Sh. Surendra Pipara, Sh. Ashok Wadhwa and Sh. Anand Bhatt and all were seen by me in that meeting. As per these minutes, it was resolved that "Sh. Surendra Pipara, Sh. Ashok Wadhwa and Sh. Anand Bhatt be and hereby appointed as additional directors of the company". As per item No. 6 and 7, Sh. Dinesh Modi and myself resigned as directors of the company. As per item No. 8, Sh. Hari Nair was appointed as company secretary. I cannot say anything about beyond item No. 7 as I participated in the meeting till item No. 7 as by that item I had resigned. I know and recognize Surendra Pipara. I recognize Hari Nair also. I cannot say as to who signed these minutes....."

1303. In his further examination-in-chief, page 6 itself, he

deposed about incorporation of Tiger Traders (P) Limited, as under:

> ".....I have been shown D-365, which contains minutes of Tiger Traders (P) Limited. The same is collectively Ex PW 14/B (for identification) (objected to). I have been shown minutes of the first meeting of the board of the company held on 22.03.2006 and the same was attended by Sh. Ashish Kareykar and Sh. Paresh Rathod (myself). The meeting was chaired by Sh. Ashish Kareykar on my request. These minutes appear to have been signed by chairman Sh. Ashish Kareykar at point A. The same is Ex PW 14/C (objected to)....."

1304. In his further examination-in-chief, page 8, he deposed about the appointment of Sh. Nilesh Doshi and Sh. Sunil Doshi on the board of Tiger Traders (P) Limited, as under:

> ".....I have also been shown minutes of the board meeting of Tiger Traders (P) Limited held on 15.05.2006 at 2 PM. The same was attended by Sh. Ashish Kareykar and Sh. Paresh Rathod (myself). I cannot say as to who had signed the minutes at point A. The minutes appear to be correct and are now Ex PW 14/F (objected to). Vide item No. 2, sh. Nilesh Doshi was appointed as an additional director of the company. Vide item No. 3 Sh. Sunil Doshi was appointed as additional director of the company. Vide items No. 4, 5 and 6 other issues were discussed.
>
> I have been shown minutes of the board meeting of Tiger Traders (P) Limited held on 22.05.2006. The meeting was attended by Sh. Nilesh Doshi and Sh. Sunil Doshi. Vide items No. 3 and 4, Sh. Ashish Kareykar and Sh. Paresh Rathod (myself) resigned as directors of the company. I do not know as to who signed minutes at point A. The minutes are mark PW 14/A....."

1305. In his further examination-in-chief, page 10, he deposed about his appointment on and resignation from the board of STPL and Tiger Traders (P) Limited as under:

> ".....Sh. Ramesh Shenoy, my Head of the Department asked me to become a director of Swan Capital (P) Limited. I became director in rest of the companies also on the asking of Sh. Ramesh Shenoy. I resigned as director from the companies, that is, Swan Capital (P) Limited and Tiger Traders (P) Limited, on the asking of Sh. Ramesh Shenoy....."

This witness deposed that the meeting dated 22.01.2007 of the board of the STPL was attended by Sh. Ashok Wadhwa and Sh. Anand Bhatt also and they were seen by him in the meeting. He also deposed that on 15.05.2006, Sh. Nilesh Doshi and Sh. Sunil Doshi were appointed on the board of Tiger Traders (P) Limited. This version was not challenged by the prosecution, either by re-examination or in cross-examination.

1306. Not only this, in his cross-examination, page 14, he deposed as under:

> ".....When a company is transferred from one management to another management on account of change of directors and shareholders, a transition period of some three to six months is required for handing over and taking over. Generally, board meeting is held first and its minutes are recorded later on....."

This witness deposed that STPL was incorporated by employees of Reliance ADA group and was transferred first to Sh. Nilesh Doshi and Sh. Sunil Doshi and thereafter, to Sh. Ashok Wadhwa and Sh. Anand Bhatt. The prosecution did not

challenge this version, either by re-examination or cross-examination. Now the prosecution is bound by this deposition. In an authority reported as **Raghubir Singh Vs. State of Punjab, AIR 1976 SC 91**, Hon'ble Supreme Court while dealing with the deposition of a witness, who was examined by the prosecution but deposed in favour of defence, made the following observations in paragraph 7 as under:

> ".....The importance of this evidence cannot be over-exaggerated, particularly since Sharma was a witness examined on behalf of the prosecution and this incident was narrated by him in his examination-in-chief. It cannot lie in the mouth of the prosecution to disown this evidence given by Sharma. If this evidence is true, as it must be taken to be- and it must be said in fairness to the counsel on behalf of the State that nothing was urged against it- it is impossible to accept the prosecution story that the appellant demanded bribe of Rs. 400/- for Brar or Rs. 50 for himself or that Jagdish Raj agreed to pay the same. This evidence, in our opinion, completely destroys the foundation of the prosecution case and knocks the bottom out of it. This evidence also falsifies the statement of Jagdish Raj that he did not see the appellant in the morning of 31st July 1968 and it was only at 1.30 p.m. that with the raiding party he went for the first time on that day to the office of the appellant. Jagdish Raj is completely belied by this evidence on an important part of the prosecution case."

1307. Let me take note as to what Sh. Nilesh Doshi says, who has been examined as PW 17. In his examination-in-chief dated 08.02.2012, pages 1 and 2, he deposed as under:

> ".....I am a practicing chartered accountant. In 2006, I was appointed as Consultant in Reliance

ADA Group. At the time of my joining, my consultancy fee was Rs. 22 lacs per annum. I know Mr. Gautam Doshi, Surender Pipara and Hari Nair. I came into contact with Mr. Gautam Doshi in the year 1989 when I consulted him on behalf of my clients.

I also know Sh. Ashok Wadhwa, who is a fellow chartered accountant, since 2001. I also know Sh. Sunil Doshi as a fellow chartered accountant since 1983. After joining Reliance ADA Group as Consultant, I was appointed director of some companies and these companies included Parrot, Tiger and Zebra. However, I am not in a position to recall their full names. Whenever meeting of board of directors of a company is held, its minutes are recorded. The staff members of the company types and prepares the minutes of board meeting. I am not aware as to what procedure is followed to convey decision of the board to the staff members for recording the minutes as this was being done by Mr. Sunil Doshi....."

In his further examination-in-chief, pages 4 and 5, he deposed about his appointment on the board of Tiger Traders (P) Limited and also of Sh. Ashok Wadhwa and Sh. Anand Bhatt as under:

".....I have been shown D-365, which contains minutes of various board meetings of Tiger Traders (P) Limited held for the dates 22.03.2006, 30.03.2006, 31.03.2006, 15.05.2006, 22.05.2006, 22.09.2006, 16.11.2006 and 22.01.2007. The register containing these board minutes is already Ex PW 14/B collectively. The resolution dated 22.03.2006 is already Ex PW 14/C, dated 31.03.2006 is already Ex PW 14/E, dated 15.05.2006 is already Ex PW 14/F, dated 22.05.2006, earlier mark 14/A, is now Ex PW 17/F, dated 02.09.2006 is now Ex PW 17/G, dated 16.11.2006 is now Ex PW 17/H and dated

22.01.2007 is now Ex PW 17/J. The name of the company, which I mentioned as Tiger above, is Tiger Traders (P) Limited. As per minutes Ex PW 14/F dated 15.05.2006, Sh. Sunil Doshi and myself were appointed as directors of Tiger Traders (P) Limited. These board minutes are signed by Sh. Sunil Doshi at point A. I attended this meeting as director for the first time. The next meeting of board of directors of this company attended by me was held on 22.05.2006 and its minutes are Ex PW 17/F and have been signed by Sh. Sunil Doshi at point A. I identify his signatures. As per resolution passed in this meeting and as mentioned at point B, item 5, authorized signatories for banking operation were appointed. Ex PW 17/G and H bear signature of Sh. Sunil Doshi at point A, which I identify. As per resolution Ex PW 17/J dated 22.01.2007, Sh. Surender Pipara, Sh. Ashok Wadhwa and Sh. Anand Bhatt were appointed additional directors of Tiger Traders (P) Limited. In this meeting itself, my resignation as well as that of Sh. Sunil Doshi as directors was also accepted. I cannot identify as to who signed the minutes of the board meeting Ex PW 17/J....."

In his further examination-in-chief, pages 5 and 6, he deposed as under:

".....The minutes of the meeting held on 22.01.2007 Ex PW 17/J, must have been signed in the next meeting of the board. As long as I remained present in the meeting dated 22.01.2007, it was resolved that Surender Pipara, Ashok Wadhwa and Anand Bhatt were appointed as additional directors and resignations of Sunil Doshi and myself were accepted. The minutes Ex PW 17/J have been signed by the Chairman on 06.02.2007, as per the record....."

In his further examination-in-chief dated

09.02.2012, pages 1 and 2, he deposed has under:

> ".....I have been shown attendance sheet for the meeting of board of directors of Tiger Traders (P) Limited held on 22.01.2007 in which names of Sh. Surender Pipara, Sh. Anand Bhatt, Sh. Ashok Wadhwa, Sh. Dinesh Modi and Sh. Paresh Rathod have been recorded in the attendance sheet. However, name of Sh. Sunil Doshi and myself does not figure in the attendance sheet. The attendance sheet is Ex PW 17/O-1 (objected to). I have also been shown minutes of the aforesaid meeting held on 22.01.2007 in which Sunil Doshi, myself, Surender Pipara, Ashok Wadhwa and Anand Bhatt have been shown present. The minutes are already Ex PW 17/J. The attendance sheet has only been signed against the name of Surender Pipara, Dinesh Modi and Paresh Rathod and has not been signed against the name of Anand Bhatt and Ashok Wadhwa....."

1308. In his cross-examination, he deposed that he as well as Sh. Sunil Doshi are independently practicing Chartered Accountants and have never been employee of any company.

About the tenure of his directorship on the board of Tiger Traders (P) Limited, in his cross-examination dated 09.02.2012, page 16, PW 17 deposed as under:

> ".....Between June 2006 and January 2007, Sh. Sunil Doshi and myself were the only two directors of Tiger Traders (P) Limited. From May 2006 to till date, Sh. Sunil Doshi and myself are the only directors of Parrot Consultants Services (P) Limited and Zebra Consultants (P) Limited....."

About the transfer of Tiger Traders (P) Limited and STPL to Sh. Anand Bhatt, he deposed in his cross-examination dated 09.02.2012, pages 17 to 20, as under:

".....As Sh. Sunil Doshi and myself were the only two directors of these three companies, we were in complete control of the companies. These three companies were controlled by two independent practicing chartered accountants. I have been shown Ex PW 17/J, board minutes of Tiger Traders (P) Limited dated 22.01.2007 and therein items No. 1 to 6 contain business transacted in my presence and during the remaining items, I was not present. The minutes in this exhibit from point A to A have been correctly recorded. As per this document, Ashok Wadhwa was present for items No. 3 to 12 and Sh. Anand Bhatt was present for items No. 4 to 12. When business mentioned in items No. 3 to 6 was done, Ashok Wadhwa and myself both were present in the meeting. During the business mentioned in items No. 4 to 6, Sh. Anand Bhatt was also present with us. This meeting started at 4 PM and I resigned in the midst of meeting. As per minutes Ex A-21, of Swan Capital (P) Limited dated 22.01.2007, Tiger Traders (P) Limited had acquired 10,000 shares of this company. Anand Bhatt had told me that he and Ashok Wadhwa had attended the meeting of Swan Capital (P) Limited at 1 PM before coming to attend the meeting of Tiger Traders (P) Limited at 4 PM. Ashok Wadhwa also told me the same thing. As per minutes Ex A-21, the shares of Swan Capital (P) limited were purchased by Tiger Traders (P) Limited from Himanshu Aggarwal, Powersurfer Interactive (India) (P) Limited and Reliance Energy Management Services (P) Limited. After purchase of shares of Swan Capital (P) Limited by Tiger Traders (P) Limited, Swan Capital (P) Limited came under the control of Parrot Consultants (P) Limited, Zebra Consultants (P) Limited and Tiger Traders (P) Limited. Technically Swan Capital (P) Limited also came under the control of Sunil Doshi and myself, but by the time I and Sunil Doshi left the meeting as mentioned in Ex PW 17/J, the transaction was not complete. The share transfer finally takes place on

the receipt of consideration amount. It is not necessary that transfer deed of shares be signed only after receipt of consideration amount. Mr. Anand Bhatt was also an independent solicitor having large solicitor firm namely Wadia Ghandy and Company. Mr. Anand Bhatt independently approached me in 2006 to create structure of companies and for my advice also. He wanted these companies for his foray into telecom business. Anand Bhatt told me that Ashok Wadhwa wanted to invest in telecom business for himself as well as his clients. It was not discussed by Sh. Anand Bhatt with me that if companies were formed for telecom business, necessary equipments would come from Reliance companies.

I will not be able to identify signature of Sh. Anand Bhatt. It is in my knowledge that Anand Bhatt was creating telecom infrastructure fund. Anand Bhatt had informed me that he had an arrangement made with DB group in March 2007. I am not in the know of any agreement between Anand Bhatt and DB group dated 03.03.2007. Anand Bhatt had told me that he was representing DB Group from March 2007 itself. Anand Bhatt had also informed me that Ashok Wadhwa was part of telecom infrastructure fund. Anand Bhatt became director of Tiger Traders (P) Limited and Swan Capital (P) Limited on account of his interest in telecom. As per the information given by Anand Bhatt, Ashok Wadhwa also became director of these two companies for the same reason. In the inter-locked structure of Tiger Traders (P) Limited, Parrot Consultants (P) Limited and Zebra Consultants (P) Limited, Tiger Traders (P) Limited was later on replaced by Aanchal Soft Tech (P) Limited. The inter-locked structure of Parrot Consultants (P) Limited, Zebra Consultants (P) Limited and Aanchal Soft Tech. (P) Limited still exists till date. This inter-locked structure of companies is controlled even today by Sunil Doshi and myself. Generally, consent

is taken of the person who is appointed as director in the company. A person may be appointed as director, by informing him alone, in a private company and his consent may be taken later on. I do not think it is statutory requirement to maintain attendance sheet of directors attending a board meeting. Signing an attendance sheet by the directors is merely a practice, not strictly followed. If a director, attending a meeting, omits to sign attendance sheet, it will not affect the business conducted in the meeting. IO had not shown me any attendance sheet nor any question was asked about it.

…….

……. Tiger Traders (P) Limited was in DB Group since March 2007……."

The witness deposed on all aspects of transfers of STPL including payment of consideration on transfer of shares.

1309. In his further cross-examination, pages 23 and 24, he further deposed about the role of Sh. Anand Bhatt and Sh. Ashok Wadhwa as under:

"……..As per minutes of Ex PW 17/L, Sh. Sunil Doshi and myself attended the meeting of Tiger Traders (P) Limited dated 07.02.2007 as directors of Parrot Consultants (P) Limited and Zebra Consultants (P) Limited, both shareholding companies. In this meeting, Sh. Anand Bhatt and Sh. Ashok Wadhwa were also present. Both remained present throughout in this meeting being directors of Tiger Traders (P) Limited. As per these minutes, the proposal regarding amendment of object clause was proposed by Sunil Doshi and seconded by myself. This was done by me as per the suggestion of Sh. Anand Bhatt. The proposal regarding change of name clause was moved by me and seconded by Sunil Doshi and this proposal was also at the

suggestion of Sh. Anand Bhatt.

I know Sh. Anand Bhatt since 1985. I remained closely associated with him as we used to seek advice of each other on corporate matters and accountancy. Anand Bhatt is taken to be an authority on company law and company matters. I look up to him as a wizard on company matters. Sh. Anand Bhatt informed me that less than ten per cent shares of the proposed telecom company would be held by Reliance Telecom Limited and remaining would be held by telecom fund headed by Ashok Wadhwa and Anand Bhatt. It is correct that when Anand Bhatt proposed such a thing, Sunil Doshi offered Zebra Consultants (P) Limited, Parrot Consultants (P) Limited and Tiger Traders (P) Limited for this purpose. This was done as it generally takes three to four months to incorporate a company and complete all compliances. It is correct that Anand Bhatt advised Sunil Doshi and myself to resign from directorship of Tiger Traders (P) Limited. He also informed me that thereafter Surender Pipara, Ashok Wadhwa and Anand Bhatt himself would be directors of this company. It is correct that all financial decisions of Tiger Traders (P) Limited were taken by Sunil Doshi as long as we remained directors of Tiger Traders (P) Limited. All these discussions between me and Anand Bhatt took place in the course of ordinary business deal. Entire conversation between me and Anand Bhatt, deposed to by me today, was in the ordinary course of business....."

The above version of the witness was not challenged by the prosecution, either by re-examination or by way of cross-examination. The witness clearly deposed that Tiger Traders (P) Limited and STPL stood transferred to Sh. Ashok Wadhwa and Sh. Anand Bhatt, as this was offered by Sh. Sunil Doshi.

1310. PW 19 Sh. Sateesh Seth, non-executive Director in

RTL, in his cross-examination dated 15.02.2012, page 6, deposed about investment of RTL in STPL and appointment of Sh. Surendra Pipara on the board as under:

> ".....I have been shown a certified copy of balance sheet of Reliance Telecom Limited for the financial year ending on 31.03.2007 and the same is correct and is now Ex PW 19/DB (collectively). I am a director in this company. In schedule E, pertaining to investments, an investment of Rs. 992 crore in 99,20,000 numbers of non-convertible and non-cumulative redeemable preference shares has been shown at point A. It is also correct that Surender Pipara was nominated as employee director in Swan Capital and Tiger Traders (P) Limited by the business team....."

In his further cross-examination on pages 8 and 9, he deposed about telecom company to be set up by Sh. Anand Bhatt and Sh. Ashok Wadhwa and role of Reliance group in that as under:

> ".....I know Mr. Anand Bhatt since 1995 in the capacity of professional consultant and I used to meet him off and on in social gatherings. I do recall that I met him in the third week of December 2006 and talked about the transactions relating to Swan Capital (P) Limited. He told me that he was in advance discussions with telecommunication team, that is, the business team. He told me that he had certain clients which were interested in entering telecom business, that is, 2G. He further told me that Mr. Ashok Wadhwa was in the process of getting some private equity funds for investing in this business. He just told me that it would be for one circle, but did not name the circle. He also told me that he was looking for a telecom group from Reliance which would hold equity shares in compliance with the rules. He also told me that he

would be director and Mr. Ashok Wadhwa would also be a director, if he invests. He also told me that if Reliance Group invests, they would allow one of their employees to become an employee director. He did not tell me that the said director, if appointed, would be working under him. This conversation took place between me and him in a social gathering.

The board of RTL was informed about the investment made and not their details in the meeting held on 30.01.2007....."

This witness also deposed about the role of Sh. Ashok Wadhwa and Sh. Anand Bhatt in STPL, but his version was also not challenged by the prosecution.

1311. PW 21 is Dr. V. K. Buddiraja, Chief Regulatory Officer, Etisalat DB Telecom (P) Limited. It may be noted that he is a former officer of Indian Telecom Service of 1970 batch and resigned from the Government in November 2000 and joined Reliance Infocomm, now Reliance Communications Limited, in December 2000 and worked there till April 2008. In April 2008, he left Reliance Infocomm and joined Etisalat DB Telecom (P) Limited. In his cross-examination dated 17.02.2012, pages 15 to 20, he gave a detailed explanation of the circumstances in which investment was made in STPL by Reliance group and the role of Sh. Anand Bhatt and Sh. Ashok Wadhwa, as under:

".....It is correct that in 2006 Reliance Infocom merged with Reliance Communications. I was employed with Reliance Infocom and after the demerger of the Reliance Industries Limited, Reliance Infocom became part of the Reliance ADA Group. While in Reliance Infocom, I was the head of National Wireless Enterprise business. While with Reliance Infocom/ Reliance Communications, I

worked in different positions like being CEO of Mumbai circle, then President (Compliance and Vigilance) etc. It is correct that I was part of wireless business team in the years 2006-07. This wireless business team was headed by Sh. S. P. Shukla.

It is correct that Reliance Communications and its subsidiaries had countrywide network of passive infrastructure and tower sites. In telecom world, EPC stands for Engineering Procurement and Commissioning and Reliance Communications had acquired this ability in respect of tower infrastructure. It is correct that by the year 2007, Reliance Communications had rolled-out more than 10,000 towers. Due to this, wireless business team thought of setting up an EPC team for implementing third party tower projects. A separate EPC team would be cost effective. The potential clients for the new EPC business were new licencees. It is correct that Reliance Communications Infrastructure Limited (RCIL) was wholly owned subsidiary of Reliance Communications. Reliance Communications Infrastructure Limited was licence holder from DoT in the category of IP-1 (infrastructure provider-1) in the year 2007. It was permitted to establish and maintain towers and also to rent, lease and to sell the same. I have heard of a contract by the name of Universal Service Obligation Funds Rural Development Promotion Scheme given by Government of India to RCIL in 2007 to build, maintain and lease towers (objected to).

One of the objectives of wireless business team in the year 2007 was to exploit towers and optical fiber assets by renting or leasing space on towers. These towers were configured to host multiple service providers. Every tower could service about four or more service providers. In order to generate revenue, this was part of business of Reliance Communications and its subsidiaries.

Mr. Inder Bajaj was also part of this business team. It is correct that Mr. Inder Bajaj of the wireless

business team informed me that one Mr. Anand Bhatt was guiding new company for applying telecom licence (objected to). This was informed to me and business team towards the end of 2006. It is correct that I was also informed that this would be funded by a private equity firm of Mr. Ashok Wadhwa. On this information, our business team discussed the subject of sale of infrastructural facilities with Sh. Anand Bhatt. It is correct that during those discussions, Anand Bhatt informed that Reliance Communications Group would be having first right of refusal in the matter of provision of telecom tower either on rental basis or EPC basis. He also told us that Reliance Communications Group company would also have to become an equity investor in a new company. In that discussion, it was also agreed that Rcom Group could take less than ten per cent equity to avoid any licencing issues. It is also correct that it was agreed that RCom group would also invest in preference shares. Mr. Anand Bhatt also informed us that he had identified a company which would make applications for new licence and the name of the company told was Swan Capital (P) Limited. In that discussion, it was also informed by Anand Bhatt that authorized share capital of Swan Capital (P) Limited would also be increased by him. I do not remember exactly if Anand Bhatt had also informed that for this an EGM of the company would be called. It is also correct that Anand Bhatt also informed that he himself and Ashok Wadhwa would become directors in the company. Mr. Anand Bhatt also proposed that one of the employees of Reliance ADA Group should become and employee director of the company and another employee of that group should be company secretary. It is correct that on this wireless business team gave instruction to the secretarial team and banking team of RTL to make necessary investment and remittances in/ to Swan Capital (P) Limited. Wireless business team also instructed the

secretarial team to appoint an employee director and company secretary in Swan Capital (P) Limited. The secretarial team would have taken necessary confirmation from the legal team for implementation of the decision. I have seen document Ex PW 19/C. As per this document RTL subscribed to 2,97,000 equity shares of Rs. 10 each of Swan Capital (P) Limited and 2,80,000 8% non-cumulative redeemable preference shares of Re. 1 each with the share premium of Rs.999 per share of the same company. This happened pursuant to all meetings with Anand Bhatt. The meetings between us and Mr. Anand Bhatt were held in the ordinary course of the business.

In the end of February 2007 also, wireless business team myself included had an occasion to meet Mr. Anand Bhatt. This meeting was held with respect to Swan Capital (P) Limited. The name of the company was changed to Swan Telecom (P) Limited on 15.02.2007. It is also correct that Anand Bhatt also informed us that viability of STPL would increase only with the obtaining of licences with larger coverage area. In that meeting Mr. Bhatt also informed us that he had a client by the name of DB group, which would invest in such a telecom project. In that meeting something like wireless business team agreeing to invest in additional equity and preference shares if notice of award for supply of towers were given to RCom group by Swan Telecom (P) Limited was discussed.

I am acquainted with the concept of vendor financing. The investment in preference shares of STPL was in the nature of vendor financing contract and subsequently, based on the aforesaid the wireless business team instructed the telecom secretarial team for making investment in equity and preference shares of STPL. In pursuance to this, the wireless business team sent a draft notice of award for execution by STPL. In due process, the secretarial team implemented this decision. I have

seen document Ex A-25 and pursuant to the above discussions investment as mentioned in this document to the tune of Rs. 1,04,94,000 equity shares of Rs. 10 per share and 96,40,000 8% non-cumulative redeemable preference shares of Re. 1 each with the share premium of Rs. 999 per share were subscribed by RTL to STPL. On seeing document Ex PW 1/H, I find that instructions were given to the bank to transfer 974,49,04,000 by RTL to STPL for preference shares referred to above. I was aware of this transaction, but I have seen the document for the first time. All our meetings with Mr. Anand Bhatt were with the business team in its ordinary course of business....."

This witness categorically deposed that Sh. Anand Bhatt, with the involvement of Sh. Ashok Wadhwa, was desirous of setting up a telecom company and accordingly, he acquired STPL. His version is that in this telecom company, Reliance ADA group was to have minority investment and also an employee director and this was done to secure tower business for Reliance ADA company. This version of the witness was not challenged by the prosecution, either in re-examination or cross-examination.

1312. PW 51 Sh. Mahesh Gandhi is a director in TCK Advisors (P) Limited and an independent investment Advisor. His company had invested in equity in DB Realty Limited and, as such, he joined the board of DB Realty Limited as a nominee director. Incidentally, he is a former officer of Indian Revenue Service of 1977 batch.

In cross-examination dated 03.07.2012, pages 7 and 8, PW 51 deposed about the role of Sh. Anand Bhatt and Sh.

Ashok Wadhwa and transfer of STPL to DB Group, as under:

> ".....During my interaction with the DB group and Anand Bhatt I came to know that Reliance Telecom was a minority equity partner in Swan Telecom (P) Limited. Anand Bhatt was looking after legal and regulatory work of Swan Telecom (P) Limited, but I cannot say anything about day-to-day work. I do recall that Ashok Wadhwa was also to assist in raising funds for Swan Telecom (P) Limited. I cannot recall if Ashok Wadhwa was initial director of Swan Telecom (P) Limited and Tiger Trustees (P) Limited. I am aware that Ashok Wadhwa could not arrange funding and Swan Telecom (P) Limited was taken over by promoters of DB Realty (P) Limited in first quarter of 2007. Anand Bhatt had requested our fund also to take minority equity stake in Swan Telecom (P) Limited in March 2007. I was informally requested by the promoters of DB Realty (P) Limited to carry out due diligence of Swan Telecom (P) Limited. I had advised the promoters of DB Realty (P) limited to keep Swan Telecom (P) Limited separate from this company as it would have impacted our investment and future initial public issue of DB Realty....."

He further deposed in his cross-examination, pages 8 and 9, as under:

> ".....Sh. V. S. Iyer, an independent chartered accountant, was handling the due diligence of the companies promoted by DB Realty promoters for the private equity transaction in January-March 2007. During due diligence of DB Realty (P) Limited, we came to know about the shareholders agreement executed between Swan Telecom (P) Limited, a DB group company, and Reliance Telecom in April 2007.
> **Court Question**: Did you know at that time that Swan Telecom (P) Limited was a group company of DB Group?
> **Ans**: Yes sir as it was mentioned in the due

diligence report....."

In his further cross-examination, pages 9 and 10, he also deposed about being approached by DB Realty group in February 2007 for funding of STPL, as under:

> ".....In February 2007 also, DB Realty group had approached us for promoter funding in Swan Telecom (P) Limited to the tune of Rs. 100 crores. Since we used to invest only in real estate and infrastructure business, we did not provide the funds. Our fund and IL&FS used to work together for real estate and infrastructure projects. I do not recall if we were approached again in April 2007 for equity investment in Swan Telecom (P) Limited, but we declined. On this they requested for debt and that was also declined for the reasons mentioned above. On our refusal to provide investment or debt to STPL, IL&FS agreed to arrange loan for it in May 2007. Whenever such loan is arranged, the company arranging the loan prepares an information memorandum and I assisted in preparation of this memorandum. IL&FS had circulated a executive summary in this regard. It takes three to four months to prepare such a summary. The preparation of summary started somewhere in May 2007. A copy of the preliminary information memorandum of October 2007 is part of D-500. The same is now Ex PW 51/DA, pages 183 to 388, alongwith annexures....."

This witness deposed about the role of Sh. Ashok Wadhwa and Sh. Anand Bhatt in STPL. He also deposed that Sh. Ashok Wadhwa could not arrange funding and STPL was taken over by promoters of DB Realty Limited in first quarter of 2007. He also deposed that in February 2007 itself, DB Realty group had approached him for promoter funding in STPL to the tune

of Rs. 100 crore. The witness also deposed on some very crucial points touching the merit of the case, but the prosecution did not challenge this version.

He also referred to IL&FS by deposing that his company used to work together with IL&FS.

1313. PW 109 Sh. Tushar Shah, who was working in IL&FS Financial Services Limited (IFIN) as Chief Operating Officer, at the relevant time, in his cross-examination dated 20.03.2013 pages 13 and 14, deposed as under:

> ".....**Ques**: What do you mean by debt syndication?
> **Ans**: Debt syndication implies arrangement or mobilization of debt funds from banks and financial institutions.
> This process approximately takes three to four months and starts from with executive summary, preliminary discussions with various lenders and preparation of information memorandum. It is correct that Ex PW 51/DA (D-500) indicates that in May 2007 Swan Telecom (P) Limited approached IFIN for credit facility of Rs. 1300 crore and bank guarantee of Rs. 717 million. It is correct that in view of this, IFIN took up debt syndication on behalf of DB Group....."

The deposition of these two witnesses indicate that, at least, the beneficial transfer of STPL had already taken place to the DB group in early 2007.

1314. PW 76 Sh. Faiyaz Ahmed, Assistant Manager (Accounts) of DB group, in his cross-examination dated 07.12.2012, page 5, also deposed as under:

> ".....It is correct that in May 2007, Sh. Ashraf, Sh. Satish Aggarwal, Sh. Atul Bhatnagar and myself were given the responsibility to raise finance for

Swan Telecom (P) Limited and to coordinate with IL&FS for that purpose....."

This witness thus, supported the version of PW 51 Sh. Mahesh Gandhi and this version also went unchallenged by the prosecution.

1315. PW 96 Sh. Deodatta Pandit joined DB group in January 2007 as Company Secretary of group company Neel Kamal Marine Drive Developers (P) Limited. He joined as Company Secretary of STPL on 22.10.2007. In his examination-in-chief dated 11.01.2013, pages 3 and 4, he deposed that before his joining as Company Secretary, STPL was with Reliance ADA group, as under:

".....After acquisition of Swan Telecom (P) Limited, I was transferred to that company as company secretary and a board resolution dated 05.10.2007 to that effect was passed by the board of Swan Telecom (P) Limited approving my appointment. Form 32 was required to be filed again on my appointment as company secretary of Swan Telecom (P) Limited. I am unable to recall as to which of the directors had filed Form 32 with ROC on my appointment with Swan Telecom (P) Limited as company secretary, but it was filed by one of the directors. I took charge as company secretary in Swan Telecom (P) Limited on 22.10.2007. Before that, I did not attend any board meeting of this company. Before my joining as company secretary of Swan Telecom (P) Limited, Sh. Hari Nair was company secretary of this company.

A company is statutorily required to maintain record pertaining to minutes of the board meetings, statutory registers, filing forms with the ROC and maintaining other statutory record. Before my taking charge of company secretary of Swan Telecom (P)

Limited, this company was with Reliance ADA Group. When I took charge of company secretaryship of this company, I also took charge of the records of the company. These records were handed over to me by Sh. Hari Nair……."

About his source of knowledge that STPL was a Reliance ADA group company when he took charge on 25.10.2007, in his cross-examination on 15.01.2013, page 18, PW 96 deposed as under:

"……..I came to know about the three companies belonging to Reliance group as once or twice I was called to Reliance ADA office and that is my only source……."

Sh. Deodatta Pandit also prepared the statutory register of Tiger Traders (P) Limited, D-818, Ex PW 96/B, statutory register of Giraffe Consultancy Services (P) Limited, D-372, Ex PW 96/C, and statutory register of STPL, D-819, Ex PW 96/F. This witness deposed that these statutory registers were prepared by him on the basis of digital record handed over to him and also on the basis of information obtained by him from ROC and from Reliance Group. The witness did not say anywhere that he recorded anything wrong in these documents or that he was asked by anyone to do so.

1316. Sh. Deodatta Pandit also prepared minutes dated 01.10.2007, Ex PW 72/B, minutes dated 05.10.2007, Ex PW 96/A and minutes dated 17.10.2007, Ex PW 96/K (D-364) of STPL. He also prepared the minutes of AGM of STPL held on 29.09.2007, Ex PW 96/J. He deposed that he prepared these minutes on the briefing of Sh. Hari Nair and Sh. Shahid Balwa.

He also prepared the minutes dated 08.08.2007, 01.10.2007, 05.10.2007, 17.10.2007 and 18.10.2007, Ex PW 72/D, Ex PW 72/E, 96/J-1 to J-3 respectively of Tiger Traders (P) Limited (D-365). He deposed that these minutes were prepared by him on the instructions of Sh. Shahid Balwa. He also prepared the minutes of Giraffe Consultancy Services (P) Limited in minutes book (D-366), Ex PW 96/E. He prepared the minutes of meeting dated 25.02.2007, Ex PW 96/E-1, after bringing the matter to the notice of Sh. Asif Balwa. He also deposed that information recorded in these minutes were obtained by him from the share transfer forms and from the instructions of Sh. Shahid Balwa. He also drafted the minutes of board meetings dated 30.06.2007 and 04.09.2007, Ex PW 96/E-2 and E-3. He also drafted the minutes of EGM dated 15.09.2007 and 29.09.2007, Ex PW 96/E-4 and E-5.

However, this witness nowhere deposed that he was asked either to record or to do anything wrong by anyone, including Sh. Shahid Balwa or that he recorded anything which was also false to his knowledge. In cross-examination on 14.01.2013, page 9, he deposed that he always complied with the provisions of Companies Act as well as the Code of Conduct of ICAI during his employment with the group. The case of the prosecution is that minutes of these companies were falsely prepared by him on the instructions of Sh. Shahid Balwa. However, the witness did not say so.

Transfer of Giraffe Consultancy Services (P) Limited

1317. As far as transfer of Giraffe Consultancy Services (P) Limited is concerned, PW 96 Sh. Deodatta Pandit deposed that he had obtained the information from digital record, share transfer forms and office of ROC about its transfer.

1318. These transfer forms have been signed by PW 3 Sh. Ashraf, a relative of Sh. Asif Balwa and an employee of DB group, who deposed that 1667 shares were purchased in his name on behalf of Sh. Shahid Balwa and later on these shares were transferred to Dynamix Balwa Infrastructure Limited (DBIL). The transfer forms dated 25.02.2007 and 29.02.2008 are Ex PW 3/DA and 3/DB. It may be noted that these transfer forms, though seized by CBI, were not placed on record by it for the reasons best known to it. It may be noted that the prosecution did not challenge the genuineness of these transfer forms. Rather it tried to withhold them. What does it mean? Perhaps it felt that these may weaken or even destroy its case.

1319. Furthermore, 1666 shares each, of Giraffe Consultancy Services (P) Limited, were purchased in the name of PW 68 Sh. Ujjwal Mehta, General Manager, Realgem Buildtech, a DB group company, and his wife Ms. Parul Mehta on 25.02.2007 and were later on transferred to Dynamix Balwa Infrastructure Limited on 29.02.2008. The transfer forms are Ex PW 68/A to F. PW 68 Sh. Ujjwal Mehta, General Manager of DB group, in his examination-in-chief dated 09.10.2012, pages 2 and 3, deposed as under:

> ".....In February 2007, Mr. Deodatta Pandit, company secretary, told me that they were going to invest in telecom sector and, as such, I alongwith my

wife were to sign purchase of shares of Giraffe Consultancy Services (P) Limited as per the instruction of Shahid Balwa. I did accordingly. After effecting the purchase of shares as per forms Ex PW 68/A, 68/B and 68/C, I handed over these forms to Sh. Deodatta Pandit....."

1320. PW 76 Sh. Faiyaz Ahmed, Assistant Manager (Accounts) of Neelkamal Realtors Towers (P) Limited, a company of DB group, also deposed that 1666 shares of Siddhartha Consultancy Services (P) Limited were purchased in his name in February 2007 vide transfer deed dated 25.02.2007, Ex PW 76/A, as the DB group was investing in telecom sector and these shares were transferred on 29.02.2008 to Dynamix Balwa Infrastructure (P) Limited vide transfer deed Ex PW 76/B. The prosecution did not challenge genuineness of these transfer deeds.

1321. PW 89 Sh. Ashraf Nagani, Executive Assistant in DB Group of companies, also deposed that 1666 shares of Giraffe Consultancy Services (P) Limited were purchased in his name on 25.02.2007 vide transfer form Ex PW 89/A and were transferred to Dynamix Balwa Infrastructure Limited on 29.02.2008 vide share transfer form Ex PW 89/B. In his cross-examination, he deposed that these shares were purchased in his name as a nominee of DB group.

1322. PW 148 Inspector Shyam Prakash in his cross-examination dated 09.10.2013, page 2, deposed as under:

".....Ques: I put it to you that during investigation it came to your knowledge that Satish Aggarwal had taken over entire accounting and banking work of

Giraffe, Swan, Tiger, Parrot International Venture (P) Limited and Cheetah Corporate Services (P) Limited from March 2007 itself?
Ans: I do not remember.
It is wrong to suggest that it had come to my knowledge and I deliberately did not take it on record as it was contrary to the prosecution case....."

The question is: Why did the investigating officer plead total amnesia on such a vital issue? Answer is obvious.

These four witnesses have confirmed that the shares of Siddhartha Consultancy Services (P) Limited were purchased by DB group in their names. PW 96 Sh. Deodatta Pandit did not depose anything about the genuineness or otherwise of these transfer forms. On the face of it, there is nothing wrong with these transfer forms. Even prosecution did not challenge the genuineness of these transfer forms. The investigating officer did not remember anything.

1323. In the end, his (PW 96) knowledge about the three companies belonging to DB group was not on the basis of any personal or documentary knowledge, but only on the basis that once or twice he was called to Reliance ADA office. In the circumstances of the case, this is nothing unusual as the companies were initially incorporated by the officials of Reliance ADA group and this group also continued minority investment in STPL even after its transfer to DB group. In the end, the evidence of this witness is of no use to the prosecution as he did not say anywhere that anything wrong was recorded by him or anybody asked him to record anything wrong. In any

case, the weight of the evidence is that the company stood transferred to DB group and only some paper work remained to be done, which was subsequently done by Sh. Deodatta Pandit.

1324. PW 100 Sh. Ashish Karyekar, Assistant Vice President, Reliance Infrastructure Limited, deposed that he was one of the subscribers to the Memorandum of Association of Parrot Consultants (P) Limited, Ex PW 14/DE (D-484), Zebra Consultants (P) Limited, Ex PW 14/DJ (D-483), Tiger Traders (P) Limited, Ex PW 14/DG (D-479), Giraffe Consultancy Services (P) Limited, Power Surfer Interactive (India) (P) Limited, Ex PW 24/F-2 (D-481) and Swan Consultants (P) Limited, Ex PW 6/T (D-395). He was also director on the board of Tiger Traders (P) Limited (D-365), Giraffe Consultancy Services (P) Limited (D-366), Parrot Consultants (P) Limited (D-367), Zebra Consultants (P) Limited (D-368) and Swan Consultants (P) Limited (D-371). He attended numerous meetings of the boards of five companies, as reflected in the minutes books. He resigned later on from the boards of these companies.

PW 100 in his examination-in-chief dated 21.02.2013, page 21, deposed about the circumstances in which he joined the boards of the above companies and resigned therefrom, as under:

> ".....Sh. Ramesh Shenoy always communicated to me regarding subscription of shares, as above. He also told me to resign from the directorship of the aforesaid five companies. The decision regarding incorporation of companies, subscription of shares, transfer of shares and my resignation were

communicated to me by Sh. Ramesh Shenoy. I am not aware as to who had taken these decisions....."

In his cross-examination by the learned Sr. PP, he denied the suggestion that Sh. Hari Nair told him to incorporate Parrot Consultants (P) Limited, Zebra Consultants (P) Limited and Tiger Traders (P) Limited, with employees of Reliance group. In further cross-examination of learned Sr. PP, he deposed that the decision to sell/ purchase shares in Tiger Traders (P) Limited was also conveyed to him by Sh. Ramesh Shenoy. In an authority reported as **Binapani Roja Vs. Rabindernath Sarkar and Others, AIR 1959 Cal 213**, it was held by Hon'ble Calcutta High Court that a suggestion in cross-examination, which is denied, is no evidence at all.

1325. In his cross-examination by defence on 22.02.2013, page 1, he deposed as under:

".....It is correct that Reliance group used to form shelf companies through their employees, which could be used for business purposes, as and when the opportunity arises. It is also correct that this practice is prevalent across all industries and all big companies form such companies. However, I have no idea if this is a legal practice. I am not aware if such large companies transfer such shelf companies to other companies for business purposes. It is correct that such companies are formed for business convenience. It is also correct that board meetings of such companies are held only to comply with statutory requirements as these companies do not carry any business. It is also correct that since 2006, I could have attended hundreds of board meetings of such companies....."

In his further cross-examination, pages 2 and 3, he deposed as under:

> ".....I am not much aware about the minute books and records of the five companies, about which I have deposed, as some other persons / secretarial officers were maintaining the records of these companies. Those persons may be in a better position to tell about the records of these companies. Two of such juniors were Shri Prakash Khedekar and Ms. Shubha Dalmia. I was made director in the aforesaid five companies for the reason that I was an employee of Reliance Infrastructure Limited. It is correct that if there is an error in the record of these companies, it is the responsibility of those persons who were maintaining the record. It is correct that the record of Giraffe Consultancy Services (P) Limited was also being maintained by the junior officer. I am not aware if this company was transferred to DB group in February-March, 2007. However, I do know that this company was transferred to DB group.
>
> I have been shown letter dated 31.01.2011, already Ex PW 14/DA, which bears my signature at point B and that of Shri Paresh Rathod at point A. **Volunteered**: This letter was written by me on the basis of my collective memory and not on the basis of any record.
>
> It is correct that in this letter, I had written that Siddharth Consultancy Services (P) Limited was transferred to DB group in a meeting held in February 2007....."

The witness thus displayed lack of seriousness about the sanctity of record maintained in the minutes books of the companies and disowned his responsibility in this regard. Furthermore, the letter to the CBI, Ex PW 14/DA, can be taken as a statement to the police and he contradicted himself on a

material point regarding Siddhartha Consultancy Services (P) Limited, being transferred to the DB group in February 2007 and thus rendered himself unreliable on this point.

The casual attitude of the witness is further reflected in his cross-examination, page 5, which reads as under:

> ".....It is correct that I resigned from the directorship of Giraffe Consultancy Services (P) Limited in February-March, 2007, but I continued to be director on being asked by Sh. Ramesh Shenoy. However, I do not recollect when the company was transferred to DB group, though I was asked to so work as director by Sh. Ramesh Shenoy. I do not recollect if I signed the documents of this company even after February-March, 2007. It is correct that my formal resignation was recorded in the record of ROC, Mumbai in 2011. Though, I resigned from the directorship of this company in February-March, 2007, but the formal form was not filed with the ROC till 2011 and in 2011, Sh. Ramesh Shenoy asked me to give a formal copy of resignation as the earlier copy of resignation could not be retrieved....."

PW 100 Sh. Ashish Karyekar did not recognize the minutes of board meeting of Giraffe Consultancy Services (P) Limited dated 25.02.2007, Ex PW 96/E-1, the date on which its shares were transferred to the nominees of DB group. He disowned all knowledge about this as he had not attended the board meeting.

However, in view of the attitude of the witness no reliance can be placed on his testimony as he continued to be a director even after his resignation, but denied the minutes citing the reason that he was director in so many companies and only

junior officers would be responsible for any error therein.

1326. PW 101 Sh. Hasit Shukla, President, Reliance Communications Limited, in his examination-in-chief dated 26.02.2013, pages 4 and 5, deposed about the minutes of STPL and Tiger Traders (P) Limited at the relevant time, that is, from 22.01.2007 onwards, as under:

> ".....I have been shown book containing the minutes of board meetings of Swan Capital (P) Limited, subsequently Swan Telecom (P) Limited, already Ex PW 14/A (D-364). Therein I have been shown minutes of the meeting of the board of the company held on 22.01.2007, already Ex A-21, which bears the signature of Sh. Surendra Pipara at point A and initials at point B on each page, which I identify. Similarly, I have also been shown minutes of the meeting held on 06.02.2007, already Ex A-23, which also bears signature of Sh. Surendra Pipara at point A and initials at point B, which I identify. I have also been shown minutes of the meeting held on 01.03.2007, wherein Surendra Pipara have been shown present as director. These minutes have been signed by him at point A and bears his initials at point B. The same is now Ex PW 101/H. I have also been shown minutes of the meeting held on 02.03.2007, already Ex A-25, which also bears signature of Sh. Surendra Pipara at point A and initials at point B, which I identify. I have also been shown minutes of the meeting held on 24.04.2007, already Ex PW 68/DA, which also bears signature of Sh. Surendra Pipara at point A and initials at point B, which I identify. I have also been shown minutes of the extra ordinary general meeting held on 07.02.2007, which minutes have also been signed by Sh. Surendra Pipara at point A and initialed by him at point B. The same are now Ex PW 101/H-1. I have also been shown minutes of the EGM held on 01.03.2007, which minutes have also been signed by

Sh. Surendra Pipara at point A, which I identify, and the same are now Ex PW 101/H-2.

I have also been shown the book containing minutes of the board meetings of Tiger Traders (P) Limited, already Ex PW 14/B collectively. Therein I have been shown minutes of board meeting held on 22.01.2007 and these minutes have been signed by Surendra Pipara at point A and initialed by him at point B, which I identify. These minutes are already Ex PW 17/J (D-365). I have also been shown the minutes of the board meeting held on 06.02.2007, and these minutes have also been signed by Surendra Pipara at point A and initialed by him at point B, which I identify. These minutes are now Ex PW 101/J. I have also been shown the minutes of the extra ordinary general meeting held on 07.02.2007, and these minutes have also been signed by Surendra Pipara at point A and initialed by him at point B, which I identify. These minutes are already Ex PW 17/L. I have also been shown the minutes of the board meeting held on 04.04.2007, and these minutes have also been signed by Surendra Pipara at point A and initialed by him at point B, which I identify. These minutes are now Ex PW 101/J-1. I have also been shown the minutes of the board meeting held on 24.04.2007, and these minutes have also been signed by Surendra Pipara at point A and initialed by him at point B, which I identify. These minutes are already Ex PW 72/C....."

It may be noted that this witness identified the signatures of Sh. Surendra Pipara on the minutes of two companies referred to above, that is, STPL and Tiger Traders (P) Limited. As per the minutes of STPL dated 22.01.2007, it stood transferred to Tiger Traders (P) Limited. Investment in equity shares as well as preference shares was made by RTL on this

date. On 22.01.2007 itself, vide item No. 15 of the minutes, the company decided to apply for UAS licence in Jammu & Kashmir service area. It may be noted that PW 101 Sh. Hasit Shukla is President of RCL and RTL is a subsidiary of RCL. What is the case of the prosecution? The case of the prosecution is that STPL was used by RCL/ RTL to apply for a UAS licence in service areas in which RCL was not having GSM spectrum. Who could have told the correct facts? This witness was competent to disclose these facts. However, the prosecution did not ask any question to this witness as to how and why investment was made in STPL by Reliance ADA group and to whom STPL belonged on 22.01.2007 and thereafter. The prosecution was satisfied only by getting the signatures of Sh. Surendra Pipara identified on the minutes of board meetings held on different dates.

1327. Similarly, in Tiger Traders (P) Limited, Sh. Sunil Doshi and Sh. Nilesh Doshi resigned and Sh. Surendra Pipara, Sh. Ashok Wadhwa and Sh. Anand Bhatt were appointed directors. The prosecution did not ask any question as to under what circumstances they were appointed and to whom Tiger Traders (P) Limited belonged on that day? Copy of the board resolution dated 01.03.2007, Ex PW 9/A, containing the names of Sh. Ashok Wadhwa and Sh. Anand Bhatt, with their power to spend the money, was also sent to the HDFC Bank, Fort Branch, Mumbai, vide letter Ex PW 1/C.

1328. PW 101 Sh. Hasit Shukla in his cross-examination dated 01.03.2013, page 1, deposed as under:

> ".....It is correct that apart from Surendra Pipara, Ashok Wadhwa and Anand Bhatt were also additional directors in Swan Telecom (P) Limited....."

PW 101 Sh. Hasit Shukla in his further cross-examination dated 01.03.2013, page 12, deposed about the role of Sh. Nilesh Doshi and Sh. Sunil Doshi as under:

> ".....Sh. Nilesh Doshi and Sh. Sunil Doshi, who were independently practicing chartered accountants, were directors of Tiger Traders (P) Limited, Parrot Consultants (P) Limited and Zebra Consultants (P) Limited from May 2006. It is correct that from May 2006 these two persons were controlling these three companies....."

About the role of Sh. Anand Bhatt, PW 101 Sh. Hasit Shukla deposed in his further cross-examination dated 01.03.2013, page 15, as under:

> ".....It is correct that business team informed me that Sh. Ashok Wadhwa was not able to raise the funds for larger roll-out in circles other that J&K circle, which was required. It is correct that Sh. Vinod Buddhiraja informed me that business team had taken a decision in consultation with Sh. Anand Bhatt that a third party be introduced who can bring substantial resources to make business viable....."

The perusal of the evidence of Sh. Hasit Shukla shows that STPL and Tiger Traders (P) Limited were taken over by Sh. Ashok Wadhwa and Sh. Anand Bhatt and the companies were in control of DB group with effect from 02.03.2007. It is more so when the prosecution did not challenge the genuineness of the minutes produced before the Court. The

evidence went unchallenged by the prosecution and it is now bound by it. It cannot be demolished by arguments across the bar.

1329. It may be noted that Sh. Anand Bhatt is no more. Sh. Ashok Wadhwa, who is a Chartered Accountant in Mumbai, has been examined as PW 71. He deposed that Sh. Anand Bhatt became a victim of Mumbai attack of 26.11.2008.

Sh. Ashok Wadhwa denied any role in STPL and Tiger Traders (P) Limited. In his examination-in-chief dated 17.10.2012, pages 3 to 7, he deposed about a Fund being established by Sh. Anand Bhatt for obtaining a telecom licence, as under:

> ".....**Ques**: Did Mr. Gautam Doshi give you any proposal to invest somewhere in January 2007? If it was so, where the investment was to be made? (objected to by Sh. H. H. Ponda, learned Sr. Advocate question being a leading question).
> **Court Order**: Objection Overruled.
> **Ans**: At the end of one of the meetings, which was held to resolve some internal differences of partners of RSM, there was a discussion around a telecom fund that Mr. Anand Bhatt was setting up and Mr. Gautam Doshi told me that Reliance ADA Group was considering a minority investment in a company that would apply for a telecom licence for Jammu and Kashmir. He also mentioned that the fund that was being set up by Sh. Anand Bhatt was going to acquire majority ownership in this company and he wanted to know whether I or my clients would have any interest in investing in the fund.
> **Ques**: Who was to provide telecom infrastructure for J&K service area?
> **Ans**: Reliance ADA group was to provide its passive infrastructure.

Ques: What was to be the amount of investment required for the project?
Ans: Rs. 100 to Rs. 200 crore.
Ques: What was your reply regarding this proposal?
Ans: I declined any interest in the project by investing personally. However, I told Mr. Gautam Doshi that once the licence was issued, I would be happy to discuss the opportunity with some of my high networth individual clients.
Ques: Did he (Gautam Doshi) ask you to meet someone else regarding this proposal?
Ans: Mr. Gautam Doshi suggested that if any of my high networth clients were to be interested, I could contact Mr. Anand Bhatt.

I knew Sh. Anand Bhatt from before. I had met him earlier. Sh. Anand Bhatt was a partner with Wadia Gandhy, a firm of Advocates. RSM required services of Wadia Gandhy on several occasions after my joining till it merged with Price Water House Cooper. Ratan S. Mama was already availing services of Wadia Gandhy even before my joining. Between 1997 to January 2007, I had met Sh. Anand Bhatt on several occasions.

On the suggestion of Sh. Gautam Doshi, I met Sh. Anand Bhatt in early February 2007 in his office at Fort, Mumbai.
Ques: What transpired in that meeting between you and Mr. Anand Bhatt?
Ans: Sh. Anand Bhatt informed me that he was in contact with several bankers to assist him raise money for the telecom fund. The fund was to acquire majority ownership in a company that was to apply for a telecom licence for J&K service area. He was looking at raising Rs. 100 to Rs. 200 crore and enquired whether any of my high networth clients would be interested in this opportunity. He also enquired on my interest in being the director in the company. I declined any interest in the board appointment and told Mr. Anand Bhatt that I would discuss the investment opportunity with my clients

once the telecom licence was issued.
Ques: When did the second meeting take place between you and Sh. Anand Bhatt in this regard and what was again discussed therein?
Ans: About after two three weeks of our first meeting, we met again, when I was visiting their offices regarding some RSM related work. I met Sh. Anand Bhatt and he mentioned that the telecom company in which his fund was to acquire majority ownership had decided to apply for many more telecom licences and therefore, he was looking at raising more than a thousand crore in the fund. He mentioned that given the large quantum required he would prefer to deal with one or two large investors rather than several high networth individuals. He also told me that the legal entities for raising the money and for application of licence had already been set up.
Ques: Did Mr. Anand Bhatt tell you the name of the company which was going to apply?
Ans: I do not recollect that.
Ques: What was your response to the discussion which took place in second meeting?
Ans: I told Mr. Anand Bhatt that since he had decided to seek investment from one or two large investors and since he was no longer interested in seeking investment from several high networth individuals, I would not discuss this proposal with my clients....."

This witness deposed that Sh. Gautam Doshi told him in January 2007 that Sh. Anand Bhatt was setting up a telecom Fund, in which he (Sh. Anand Bhatt) would have majority ownership while Reliance ADA group was considering minority ownership and that company would apply for J&K service area. It may be noted that the company (STPL) applied for J&K service area on 25.01.2007 vide application Ex PW 2/B.

This witness also deposed that Reliance ADA group was to provide passive infrastructure. It may be noted that minority investment as well as providing/ renting passive infrastructure is permitted by Guidelines dated 14.12.2005 as it leads to synergy in operations. Not only this, Sh. Ashok Wadhwa met Sh. Anand Bhatt in early February 2007. This witness also deposed that he again met Sh. Anand Bhatt after two three weeks and told him that they had decided to apply for more telecom licences. This approximately matches with the date of 02.03.2007, when applications for thirteen more service areas were filed by STPL. This witness also deposed that Sh. Anand Bhatt also told him that given the large investment he would like to deal with one or two large investors and a legal entity had already been set up. This version matches with the events in which the applications for telecom licences had been filed by STPL. This witness also deposed that Sh. Anand Bhatt enquired from him as to whether he would be a director in the company, but he declined. This is a reasonable explanation of the background of events.

In his further examination-in-chief, he deposed that Sh. Gautam Doshi also enquired from him if he would like to be on board of the company which was going to be set up for licence in Jammu and Kashmir service area and he declined. Obviously, this company is STPL. He also denied that he had attended the meeting of the board of STPL as director, held on 22.01.2007, minutes of which are Ex A-21, in minutes book, Ex PW 14/A (D-364). He also denied that he attended the meeting

of the board of the company held on 24.04.2007, wherein he was shown to be present as director and also to have resigned. He also denied that he had attended the board meeting of Tiger Traders (P) Limited on 22.01.2007, minutes of which are Ex PW 17/J in minutes book Ex PW 14/B (D-365). He also denied that he attended the meetings of the board of the company held on 06.02.2007, 04.04.2007 and 24.04.2007.

In his further examination-in-chief dated 17.10.2012, pages 13 and 14, he denied any investment in STPL as under:

> ".....**Ques**: Please take a look on the application for UAS Licence filed by Swan Capital (P) Limited for J&K circle on 25.01.2007, already Ex PW 2/A, wherein the company has shown its capital structure also as on page 59, already Ex PW 60/L-4, which was sent subsequently to DoT vide forwarding letter Ex PW 2/C, wherein "Ashok Wadhwa group" has been shown as one of the investors. Did you provide the details mentioned in Ex PW 60/L-4 to Swan Capital (P) Limited? (Objected to by Sh. H. H. Ponda, learned Sr. Advocate).
> **Ans**: There is no company by the name "Ashok Wadhwa Group". I do not know as to what the words "Ashok Wadhwa Group" mean here. These details were not provided by me to Swan Capital (P) Limited. Neither myself nor any member of my family have invested even a penny in this company. Same is my reply with respect to Tiger Traders (P) Limited or in any telecom fund....."

In his further examination-in-chief, regarding filing of Form 32 as director in STPL and TTPL, PW 71 Sh. Ashok Wadhwa, pages 15 to 17, deposed as under:

> ".....Form 32 is filled up regarding appointment of

a person as director/ managing director etc., of a company. I have been shown Form 32, already Ex PW 24/H-6, filed by Swan Telecom (P) Limited with ROC regarding appointment of its directors etc., wherein my name has also been mentioned as one of the directors appointed on 22.01.2007. I have no idea as to from where my details as mentioned in this form, in quite a length, were obtained. I have been shown another Form 32, already Ex PW 24/H-8, filed by Swan Telecom (P) Limited with ROC, Mumbai, wherein I have been shown to have resigned as director of this company w.e.f 24.04.2007. Again I have no idea as to from where my details as mentioned in this form were obtained by the company. I had no occasion to resign from the directorship of the company as I had never consented for being appointed to such a position.

I have also been shown Form 32, already Ex PW 24/B-6, filed by Tiger Trustees (P) Limited with ROC regarding appointment of its directors etc., wherein my name has also been mentioned as one of the directors appointed on 22.01.2007. I have no idea as to from where my details as mentioned in this form, in quite a length, were obtained. With this form, a scanned photograph of the all the newly appointed directors, including myself, is attached. My photograph is Ex PW 71/D. I did not supply this photograph to the company. I have no idea as to from where it was obtained by the company. A copy of an unsigned consent letter dated 22.01.2007 in my name is also attached with this, which I did not write. The same is now Ex PW 71/E (objected to).

I have also been shown another Form 32, already Ex PW 24/B-8, filed by Tiger Trustees (P) Limited with ROC, Mumbai, wherein I have been shown to have resigned as director of this company w.e.f 24.04.2007. Again I have no idea as to from where my details as mentioned in this form were obtained by the company. I had no occasion to resign from the directorship of the company as I had never

consented for appointed to such a position. A copy of an unsigned resignation letter dated 24.04.2007, in my name, is also attached with this, which I did not write, since I had not consented to be on the board of the company. The same is now Ex PW 71/F (objected to)....."

Thus, Sh. Ashok Wadhwa denied having been on the board of either STPL or Tiger Traders (P) Limited. He also denied having attended any meeting of the board of two companies. He also denied any investment in the two companies.

1330. However, in his cross-examination dated 17.10.2012, page 20, PW 71 deposed as under:

".....I keep myself updated about the developments in the financial market. I had heard in the market place that the company which Sh. Anand Bhatt had set up for telecom was being taken over by DB Group. Again said, I heard in the market place that there were discussions between the two in this regard....."

PW 71 in his further cross-examination dated 18.10.2012, page 1, deposed as under:

".....It is correct that Mr. Anand Bhatt told me that a company had been formed and it would apply for telecom licence. It is correct that he told me that some other company would hold majority equity in this company. It is also correct that he further told me that minority equity would be held by Reliance Telecom. Mr. Anand Bhatt was a well respected lawyer. I do not expect him that he could have given me any unlawful proposal. Mr. Anand Bhatt did not give me any proposal to act as a front company of Reliance ADA Group. He did not give me any proposal to create a web of companies so as to

conceal the real identity of telecom company, to be set up by Sh. Anand Bhatt. It is correct that whatever discussions took place between me and Sh. Anand Bhatt were for a bona fide business transaction....."

In his further cross-examination, page 2, PW 71 Sh. Ashok Wadhwa deposed as under:

".....It is correct that Mr. Anand Bhatt also told me that he assumed that I would accept the appointment as a director in the telecom company. In minutes Ex A-21 dated 22.01.2007 of Swan Capital (P) Limited, Mr. Dinesh Modi, Sh. Paresh Rathod, Sh. Surendra Pipara and Sh. Anand Bhatt have also been shown present, apart from myself. I do not know any of them, except Sh. Anand Bhatt. I do not have enmity towards them, but cannot say anything about them. There is no incident or reason which would make me believe that they have enmity with me.

Ques: Would you please tell this Court as to where were you on 22.01.2007?

Ans: All I can say is that I was not present in the meeting, but I am unable to recall as to where I was on that day....."

Thus, Sh. Ashok Wadhwa remembered things as per his convenience.

In his further cross-examination dated 18.10.2012, pages 10 and 11, about his DIN (Director Identification Number), he deposed as under:

".....As I understand, one has to apply for a DIN before taking appointment on the board of any company. I do not remember my DIN, but DIN is recorded against my name in Form 32, Ex PW 24/H-6, at point A, page 65. My e-mail ID has been recorded correctly at point B, page 65, in this form.

The mails sent on this ID are received either by me or by my secretary. I do not remember as to who was my secretary in 2007. I do not know if the purpose of mentioning ID here is that the approval of the form by ROC would be communicated to the concerned director by mail. It is wrong to suggest that a mail was sent to me by ROC confirming my appointment on the board of Swan Telecom (P) Limited. One needs only one DIN to be on the board of any number of companies, as permitted by law....."

Thus, Sh. Ashok Wadhwa did not remember even who his secretary was. This is, perhaps, because his important details were involved.

1331. In his further cross-examination dated 18.10.2012, pages 18 and 19, PW 71 Sh. Ashok Wadhwa deposed as under:

".....It is wrong to suggest that at the time of filing of Form 32 of IVF Advisors (P) Limited, I was aware that I was director in STPL and Tiger Trustees (P) Limited. We have an e-mail system in the office. Ambitpte.com is one of the domain used by my company. I have never used ambitrsm domain in the last five years. Sh. Pramod Menon is currently an employee, who is employed as my secretary....."

In his further cross-examination dated 18.10.2012, pages 19 and 20, Sh. Ashok Wadhwa deposed about his DIN as under:

".....I have been shown certified copies of three e-mails, two emanating from my company and other being received by my company, but I cannot say anything about the same. The same is now collectively mark PW 71/DA. However, one of the mails is addressed to Pramod Menon.

It is wrong to suggest that my office provided

all the details about me under my instruction to STPL and TTPL particularly regarding DIN, Pan Number, photograph, CIN etc. for the purpose of filing Form 32.

I have been shown D-478, already Ex PW 6/DE, wherein Form 32 of STPL, already Ex PW 24/H-6, page 66, and therein at point A name of Pannell Kerr Foster Consultants (P) Limited is mentioned. I do not remember if I was director in all the companies as are mentioned in this form. It is wrong to suggest that I am deliberately suppressing facts on this point....."

1332. PW 71 Sh. Ashok Wadhwa thus deposed that he had nothing to do with STPL and its directorship and that his presence in the board meetings of STPL and TTPL was falsely recorded. However, in the face of the record, his statement does not appear to be truthful. Oral statements as well as written record referred to above in detail show that Sh. Ashok Wadhwa was interested in formation/ acquisition of a company for venturing into telecom sector and in this quest he came in contact with Sh. Anand Bhatt and also on the board of STPL and attended a few meetings. His Form 32, Ex PW 24/H-6, which is a public document and is part of annual return of the company, contains details of all the companies in which he was director. How could such minute details about his directorship, his DIN number as well as CIN of the companies, in which he was director, could come in the possession of third parties? Obviously, this must have been supplied by him or under his authority. The authenticity of such document cannot be denied easily. In an authority reported as **Anita Malhotra Vs. Apparel**

Exports Promotion Council and another, AIR 2012 SC 31, while dealing with the question of Annual Returns filed by a company, Hon'ble Supreme Court observed in paragraph 14 as under:

> "Inasmuch as the certified copy of the annual return dated 30.09.1999 is a public document, more particularly, in view of the provisions of the Companies Act, 1956 read with Section 74(2) of the Indian Evidence Act, 1872, we hold that the appellant has validly resigned from the Directorship of the Company even in the year 1998 and she cannot be held responsible for the dishonour of the cheques issued in the year 2004."

1333. It is clear that Sh. Ashok Wadhwa did not disclose true facts as far as his directorship on the board of STPL and Tiger Traders (P) Limited is concerned and suppressed true facts. In this regard, cross-examination of PW 153 IO Sh. Vivek Priyadarshi dated 26.11.2013, pages 8 and 9, is relevant, which reads as under:

> ".....Ashok Wadhwa was examined for the first time perhaps in January 2011, that is, on 15.01.2011. Ashok Wadhwa appears as a director in DoT file, D-10 at page 82, already Ex PW2/J. Ashok Wadhwa was examined once by me and thereafter, he was examined by the assisting IO. Ashok Wadhwa was also got examined under Section 164 Cr.PC in March 2011. I do not remember, if Paresh Rathod, Pradeep Shah, Shyam Malpani and Ujwal Mehta were examined during investigation or not. However, these persons were not examined by me. I do not remember, if I asked V.M. Mittal to confront these four persons with the statement of Ashok Wadhwa.
> **Question:** I put it to you that it came to your

knowledge that Ashok Wadhwa was a director in STPL and TTPL during early investigation from the documents referred to above, but you recorded his statement as late as 15.01.2011 because you kept pressurizing him to give statement in favour of the prosecution and against the accused persons?
Answer: It is incorrect. However, the aforesaid documents were seized and scrutinized generally. The specific relevance of examining Ashok Wadhwa came to my knowledge in January 2011 itself.

It is wrong to suggest that I have given this explanation to cover up my deficiency....."

Sh. Ashok Wadhwa is an important witness as far as filing of applications for UAS licences by STPL is concerned and ought to have been examined at the earliest possible opportunity. His delayed examination also puts a question mark on the reliability of his deposition. Furthermore, Sh. Ashok Wadhwa, in a sense, disowned the prosecution case. Why? Because he admitted in his examination-in-chief itself that there was talk of a telecom Fund being set up by Sh. Anand Bhatt and that Fund was, in fact, set up, though he denied that the Fund was named as Indian Telecom Infrastructural Fund, the corporate beneficiary of which was Ashok Wadhwa group, as mentioned in Ex PW 60/L-4 (D-10).

1334. Furthermore, to his discredit, Sh. Ashok Wadhwa admitted that Sh. Pramod Menon was his Secretary, but he pleaded ignorance about the three e-mails sent by Sh. Pramod Menon to Sh. Prakash Khedekar regarding his appointment on the board of Swan Capital (P) Limited and Tiger Traders (P) Limited. Thus, Sh. Ashok Wadhwa blew hot and cold at the

same time. He remembered and recalled facts as per his convenience. In the end, his evidence does not inspire confidence, being contrary to record and also for its contradictions. In an authority reported as **Rajasthan State Industrial Development and Investment Corporation Vs. Diamond and Gem Development Corporation, AIR 2013 SC 1241**, Hon'ble Supreme Court observed as under:

> "A party cannot be permitted to "blow hot and cold", "fast and loose", or "approbate and reprobate"."

It may be noted that this applies to a witness also, more so to Sh. Ashok Wadhwa.

1335. In this regard, it is useful to take note of deposition of PW 139 Sh. Ramesh Shenoy, Company Secretary, Reliance Infrastructure Limited. It may be noted that he deposed that Swan Capital (P) Limited, later on Swan Telecom (P) Limited, was incorporated by Power Surfer Interactive (India) (P) Limited and Reliance Energy Management Services (P) Limited as shareholders, both group companies of Reliance Infrastructure Limited. He also deposed that this company was later on transferred to Sh. Nilesh Doshi.

1336. PW 139 Sh. Ramesh Shenoy in his examination-in-chief dated 21.08.2013, pages 3 and 4, deposed about STPL, TTPL etc. being initially Reliance companies, as under:

> ".....I have also been shown a statutory register of Swan Capital Pvt. Ltd., later on, Swan Telecom (P) Limited, already Ex PW96/F (D-819). Its original shareholders were Powersurfer Interactive (India) Pvt. Ltd. having 4999 shares and Reliance Energy Management Services Pvt. Ltd. having 5000 shares

as is reflected at page 1, already Ex PW96/F-1 and Sh. Himanshu Aggarwal with one share. I am acquainted with this register being head of the secretarial department. Powersurfer Interactive (India) Pvt. Ltd. and Reliance Energy Management Services Pvt. Ltd. are group companies of Reliance Infrastructure Ltd.

The initial directors of Swan Capital Pvt. Ltd. were Sh. Paresh Rathod and Sh. Dinesh Modi as is reflected in the column of directors in this register and the said page is already Ex PW96/F-7. Sh. Paresh Rathod and Sh. Dinesh Modi were employees of Reliance Infrastructure Ltd. The directors of Powersurfer Interactive (India) Pvt. Ltd. were Sh. Bharat Amberkar and Sh. Hari Nair. At that time, both were employees of Reliance Infrastructure Ltd., though, I am not sure of Hari Nair.

The directors of Reliance Energy Management Services Pvt. Ltd. were Sh. Mahesh Chand and Sh. Lalit Jalan, both employees of Reliance Infrastructure Ltd. At that time, Swan Capital Pvt. Ltd. was a group company of Reliance Infrastructure Ltd. The directors of Giraffe Consultancy Services Pvt. Ltd. were Sh. Paresh Rathod and Sh. Ashish Karyekar as reflected in the form 23AC, part of Ex PW24/F (D-481). These two were also employees of Reliance Infrastructure Ltd.

Companies by the name of Tiger Trustees Pvt. Ltd., Zebra Consultants Pvt. Ltd., Parrot Consultants Pvt. Ltd. and Swan Consultants Pvt. Ltd. were also permitted by us to use our premises for communication purposes and holding their board meetings. These four companies were also group companies of Reliance Infrastructure Ltd....."

1337. PW 139 Sh. Ramesh Shenoy in his cross-examination dated 29.08.2013, pages 2 to 4, deposed about transfer of STPL to Sh. Nilesh Doshi and Sh. Sunil Doshi, as under:

".....I knew Sh. Anand Bhatt, who is since no more, and I also know Sh. Kamalkant Gupta. Kamalkant Gupta was also a qualified company secretary. For getting qualified as a company secretary, one is required to undergo practical training also. It is correct that I recommended to Sh. Anand Bhatt for appointment of Kamalkant Gupta as company secretary of Swan Capital (P) Limited, but at that time his practical training was not complete and so, in his place I recommended the name of Hari Nair in January 2007. I also knew late Ms. Shubha Dalmia and I also know Sh. Prakash Khedekar. Both were deputed to carry out secretarial functions of Swan Capital (P) Limited in the year 2006-07. It was so done as Hari Nair had no practical experience of carrying out the work of company secretary, besides his other duties, which were taking up lot of his time. It is correct that Prakash Khedekar and Ms. Shubha Dalmia were reporting to Anand Bhatt directly. It is correct that digital signature of Hari Nair was kept with Shubha Dalmia and Prakash Khedekar for carrying out the secretarial work.

It is correct that in March 2007, Swan Telecom (P) Limited was taken over by DB group. It is correct that thereafter, secretarial work of this company was taken over by Sh. Venkatraman Iyer and his team. It is correct that after April 2007, I directed Hari Nair not to attend the board meetings of this company and accordingly, he never attended any of its meetings after April 2007. It is correct that Tiger Traders (P) Limited, Zebra Consultants (P) Limited and Parrot Consultants (P) Limited were incorporated by secretarial department of Reliance Infrastructure group at my instructions in 2006. These were shelf companies. The day-to-day work of these companies was assigned to Ms. Anita Gokhale, who was working as company secretary in Reliance Infrastructure group. It is correct that apart from Hari Nair there were seven eight qualified company secretaries who were working with various

departments and who appointed company secretaries just to show compliance with the law. However, the actual secretarial work of these companies was done by the secretarial department headed by me. These company secretaries were not reporting to me.

I have been shown e-mails, already Ex PW 139/C-1 and C-2 (D-379), and a copy of both was marked to me. I checked my mail inbox later in the day and found out these e-mails. It is correct that I came to know about e-mails Ex PW 139/C-3 to C-8 only when reported to me by Ms. Anita Gokhale, as no copy of the same was marked to me. It is correct that in context of these e-mails, I discussed with Ms. Anita Gokhale appointment of Nilesh Doshi and Sunil Doshi as directors in the aforesaid three companies, that is, Tiger Traders (P) Limited, Zebra Consultants (P) Limited and Parrot Consultants (P) Limited. These two persons were appointed as directors for the purpose of transferring these three companies to them. It is correct that each e-mail was not discussed separately....."

This witness deposed that STPL was taken over by DB group in March 2007 and the secretarial work of the company was taken over by Sh. Venkat Iyer.

1338. In his further cross-examination dated 29.08.2013, pages 10 to 13, he deposed about the transfer of company to Sh. Anand Bhatt and appointment of Sh. Anand Bhatt, Sh. Ashok Wadhwa and Sh. Surendra Pipara as directors, as under:

"....It is correct that in 2006-07, Dinesh Modi, Paresh Rathod, Ashish Karyekar, Prakash Khedekar and Abhijit Banerjee, all qualified company secretaries were working in secretarial department under me and used to report to me. It is correct that for completing the transfer of Swan Capital (P) Limited to Anand Bhatt, I had instructed Prakash

Khedekar to carry out electronic filing of forms with ROC for appointment of new directors in place of Paresh Rathod and Dinesh Modi. It is correct that Prakash Khedekar was instructed to carry out this work as he had undergone training in the newly introduced concept of electronic filing. It is correct that I had instructed Prakash Khedekar to coordinate with Anand Bhatt, Ashok Wadhwa and Surendra Pipara in this regard. It is correct that he kept me informed about the filing of these electronic forms, as and when required and filed with the ROC. I am familiar with RSM Ambit, well known consultancy and audit firm, as I had occasion to deal with it during my employment as Head of secretarial department. It is correct that Ashok Wadhwa was head of this group. It is correct that one Sh. Pramod Menon was his personal secretary. It is correct that Sh. Amit Bhatt was company secretary working with this group. Pramod Menon was coordinating with Prakash Khedekar to complete the formalities of the appointment of Ashok Wadhwa as director in Swan Capital (P) Limited and Tiger Traders (P) Limited and this fact was informed to me by Prakash Khedekar. It is correct that during this process, Prakash Khedekar informed me that he was facing difficulty due to mismatch of some details of Ashok Wadhwa. It is correct that I directed Prakash Khedekar to seek the help of office of Ashok Wadhwa in this regard. It is correct that on this, Prakash Khedekar sought clarification and details from the office of Sh. Ashok Wadhwa and the same were furnished by Pramod Menon and Amit Bhatt through e-mails and these e-mails were shown by him to me. If a copy of these e-mails is shown to me, I may recognize them.

I have shown e-mail dated 31.01.2007 from Prakash Khedekar to Pramod Menon, already Ex PW 100/DD, and this e-mail was seen by me and through this e-mail, certain clarifications were sought, as stated above, for appointment of Ashok

Wadhwa as director in Swan Capital (P) Limited and Tiger Traders (P) Limited. It is correct that the mismatch was due to non-location of CIN of his company RSM Ambit Co. (P) Limited. Clarification was also sought regarding change of name of the company and its address and consent letter of Ashok Wadhwa.

I have also been shown copy of another e-mail dated 01.02.2007, sent by Pramod Menon to Prakash Khedekar and this e-mail was also seen by me. The same is now Ex PW 139/DB. By this e-mail, Pramod Menon informed Prakash Khedekar that he was forwarding the said mail to Sh. Amit Bhatt, company secretary of RSM Ambit group, to furnish the detail and accordingly the mail was transferred to him. I have also been shown another e-mail dated 01.02.2007, sent by Amit Bhatt to Prakash Khedekar and copy of this e-mail was also seen by me and the same is now Ex PW 139/DC and through this mail, CIN and change of name of the company was also provided alongwith the address in respect of appointment of Ashok Wadhwa. These details were required to file Form 32 with ROC. It is correct that later on Sh. Prakash Khedekar informed me that he had obtained the requisite details of all three directors, namely, Ashok Wadhwa, Anand Bhatt and Surendra Pipara, and had uploaded the Form 32 on ROC website. It is correct that on filing of this form, a receipt is generated by the system of ROC and the receipt generated on filing of this form regarding Tiger Trustees (P) Limited was shown to me by Prakash Khedekar and this is available in file D-380, page 64, and the same is now Ex PW 139/DD and this receipt was generated in the name of Prakash Khedekar with payment through credit card.

It is correct that Prakash Khedekar had also shown me duly signed consent letter of Ashok Wadhwa to act as director both in Swan Telecom (P) Limited and Tiger Traders (P) Limited, which he had received from his secretary Pramod Menon. It is

correct that Ashok Wadhwa had directed Prakash Khedekar, through his secretary, that his signature should not appear in public domain and document should appear only with the word "sd", as informed to me by Prakash Khedekar. Sh. Prakash Khedekar also informed me regarding uploading of Form 32 of Ashok Wadhwa in this manner, while the forms of other directors were uploaded in the manner they were given....."

1339. In his further cross-examination dated 29.08.2013, page 18, PW 139 Sh. Ramesh Shenoy deposed about its (STPL) transfer to Sh. Anand Bhatt, as under:

".....It is correct that Anand Bhatt had told me that he was acquiring Swan Capital (P) Limited for telecom venture....."

This witness categorically deposed that the particulars of Sh. Ashok Wadhwa were supplied by his secretary Sh. Pramod Menon. He also deposed that STPL stood transferred to Sh. Anand Bhatt.

1340. The version of PW 139 Sh. Ramesh Shenoy asking particulars of Sh. Ashok Wadhwa by e-mail was confirmed by PW 100 Sh. Ashish Karyekar also in his cross-examination dated 22.02.2013, page 9, as under:

".....During 2006-07, I was in the secretarial department of Reliance Infrastructure Limited. Sh. Paresh Rathod, Sh. Abhijeet Banerjee and Sh. Prakash Khedekar, all qualified company secretaries, were also working in the same department. All four of us were working under Sh. Ramesh Shenoy. Sh. Prakash Khedekar was my colleague. I have been shown copy of an e-mail dated 31.01.2007, emanating from Sh. Prakash Khedekar and addressed to Sh. Pramod Menon, copy of which has

> also been sent, amongst others, to me also. The e-mail is now Ex PW 100/DD. The subject of the e-mail is appointment of Sh. Ashok Wadhwa as director in Swan Capital (P) Limited and Tiger Traders (P) Limited and information was also sought regarding CIN of Ambit Capital (P) Limited. I am not aware if in response to the e-mail, any information was received....."

This witness deposed that he had received a copy of e-mail regarding appointment of Sh. Ashok Wadhwa as director in STPL.

It is thus clear that Sh. Ashok Wadhwa falsely denied his appointment on the board of STPL and Tiger Traders (P) Limited.

Not only this, Sh. Ashok Wadhwa admitted in his cross-examination on 18.10.2012, page 7, that he knew Sh. Pradeep Sevanti Lal Shah.

1341. Let me take note of the evidence of Sh. Pradeep Sevanti Lal Shah, who has been examined as PW 72. In his examination-in-chief itself dated 19.10.2012, pages 2 to 8, he deposed about his appointment on the board of STPL and TTPL and presence of Sh. Anand Bhatt and Sh. Ashok Wadhwa in the board meetings as under:

> ".....I knew one Mr. Anand Bhatt. He was a Solicitor and partner of Wadia Gandhy firm of Advocates. I knew him as we were staying in the same area of Chowpati and we used to meet on walks. Professionally also, I had consulted him once. I also know Sh. Shyam Malpani, who is a chartered accountant in Mumbai. I know him since we used to meet in various seminars and conferences.
>
> I know Surendra Pipara also. I think I came to

know somewhere in April 2007. He was on the board of Swan Telecom (P) Limited. I know Sh. Ashok Wadhwa, who is also a renowned chartered accountant in Mumbai.

I know about Swan Telecom (P) Limited (STPL). I also know about company by the name of Tiger Traders (P) Limited, later on Tiger Trustees (P) Limited. I know about this companies, as I was invited to the board of these two companies by Sh. Anand Bhatt. Once Sh. Anand Bhatt met me and told me that he was on the board of these two companies and also invited me to the board of these two companies. He also told me that one of these companies had applied for a telecom licence and was awaiting for its grant. He also told me that at that time these two companies were not operational.

The first board meeting of the two companies, attended by me, was on 24.04.2007. The meetings were held somewhere at Vakola, Mumbai, but I am unable to recall the place as we were taken over there by an assistant of Sh. Shahid Balwa.

Ques: Who else were present in those meetings apart from yourself?

Ans: Sh. Anand Bhatt, Sh. Shyam Malpani, Sh. Ashok Wadhwa, and to the best of my memory, Sh. Surendra Pipara.

Ques: What business was transacted in the board meeting of STPL?

Ans: Appointment of myself and Sh. Shyam Malpani and resignation of Sh. Anand Bhatt and Sh. Ashok Wadhwa.

Thereafter, somewhere in August 2007, I attended another meeting of STPL. In that meeting, apart from myself, Mr. Shyam Malpani and Sh. Surendra Pipara were also present. In that meeting, normal routine business relating to accounts, convening AGM and other similar matters was transacted. I also attended one more meeting of this company held on 01.10.2007. On that day, I tendered my resignation from the board of the

company and Mr. Shahid Usman Balwa, Sh. Asif Balwa, Sh. Vinod Goenka and Sh. Rajiv Agarwal were appointed as director on the board of the company. In all, I attended three board meetings of this company. I am unable to recall as to who chaired the three meetings. Normally, in every board meeting chairman is elected and this fact is recorded. Normally, the minutes of a board meeting are signed by chairman.

I have been shown board minutes of Swan Telecom (P) limited, already Ex PW 14/A (D-364), wherein at page 72, there are minutes of the board meeting of STPL held on 24.04.2007, which are already Ex PW 68/DA and as per the minutes this meeting was chaired by Sh. Surendra Pipara. In the same minutes book, I have also been shown minutes of meeting held on 01.08.2007 and on reading the same, I recall that the meeting was attended by me and business transacted in that meeting has been correctly minuted. The same is now Ex PW 72/A. The minutes have been signed by the chairman of the meeting Sh. Surendra Pipara at point A, though I am unable to recognize or identify his signature. I have also been shown the minutes of meeting held on 01.10.2007, in which I tendered my resignation. First Sh. Vinod Goenka, Sh. Shahid Usman Balwa, Sh. Asif Balwa and Sh. Rajiv Agarwal were appointed as director on the board of the company and thereafter, I tendered my resignation. However, this fact is not mentioned in these minutes. I remained present throughout in the meeting. The minutes are now Ex PW 72/B. I tendered my resignation on my own as Sh. Shahid Usman Balwa, Sh. Asif Balwa, Sh. Vinod Goenka and Sh. Rajiv Agarwal were getting to the board and were operationalizing the company. I tendered my resignation in writing. As far as I remember, mostly all the existing directors had resigned to make way for the new ones.

I have been shown board minutes of Tiger

Trustees (P) Limited, already Ex PW 14/B (D-365), wherein at page 18, there are minutes of board meeting held on 24.04.2007. Mr. Anand Bhatt invited me to the board of this company. Either Sh. Anand Bhatt or office of Mr. Balwa had intimated me about this meeting. On getting the information about the meeting, I attended the same. The meeting was held at Vakola Building, Santa Cruz. The transport for attending the meeting was arranged by office of Balwa. Sh. Anand Bhatt, Sh. Ashok Wadhwa, Sh. Shyam Malpani and Sh. Surendra Pipara were present there, apart from myself, to the best of my memory. The business transacted on that day related to our appointment to the board and resignation of Sh. Anand Bhatt and Sh. Ashok Wadhwa. The next meeting of board of this company was attended by me in August 2007, though I do not remember the date. In this meeting, I had seen the minutes of previous meeting held on 24.04.2007. I have seen the board minutes on meeting held on 24.04.2007 and they are correct and are now Ex PW 72/C, earlier marked as mark PW 71/B. These minutes have been signed by the chairman of the meeting and Sh. Surendra Pipara was the chairman of the meeting, though I do not recognize his signature. (Objected to as the witness is not recognizing the signature of the chairman).

Court Order: Objection overruled as the witness has confirmed the minutes after reading the same.

I have been shown the board minutes dated 08.08.2007 and this meeting was also attended by me and the minutes recorded therein are correct and the minutes recorded therein correctly states the business transacted in the meeting. The same are now Ex PW 72/D. (Objected to and objection overruled for the aforesaid reason). I have been shown the board minutes of meeting held on 01.10.2007.

Court Observation: Despite the minutes being shown and repeatedly guided to be cool and careful,

the witness is trying to be evasive in the replies by resorting to technical pleas. He is advised to avoid this practice and to reply carefully and truthfully after understanding the question and looking at the record.

Ques: Please look at the board minutes of Tiger Trustees (P) Limited of a meeting held on 01.10.2007. The reading of the minutes show that in this meeting first the minutes of previous meeting held on 08.08.2007 were circulated, confirmed and signed by chairman. Have the minutes of the previous meeting held on 08.08.2007 been recorded correctly in which you were also present?

Ans: On reading the same, I find that the business transacted in the meeting held on 08.08.2007, Ex PW 72/D, has been correctly and faithfully recorded.

I was present in the meeting held on 01.10.2007 also. In this meeting, Asif Balwa, Vinod Goenka, Rajiv Agarwal and Shahid Usman Balwa were appointed on the board.

Ques: Who proposed these four names to be directors on the board of the company?

Ans: As per the minutes of the meeting, chairman proposed them to be directors on the board of the company. The minutes have been correctly recorded and are now Ex PW 72/E.

I resigned from the board of this company immediately thereafter. However, this fact has not been recorded in these minutes.

I had no shares of the two companies, namely, Swan Telecom (P) Limited and Tiger Trustees (P) Limited. I was not doing any professional work for these companies as they were not operational. I came to know Vinod Goenka and Shahid Usman Balwa in February-march 2007 for the first time while I was in discussion with Sh. Anand Bhatt in a party....."

1342. This witness knew Sh. Anand Bhatt, Sh. Surendra

Pipara, Sh. Ashok Wadhwa and Sh. Shyam Malpani. He joined the board of STPL and TTPL on the asking of Sh. Anand Bhatt and was taken to the place of meeting by an assistant of Sh. Shahid Balwa. He also deposed that in the meeting held on 24.04.2007, Sh. Ashok Wadhwa and Sh. Anand Bhatt were also present. In the cross-examination by the learned Sr. PP he denied the suggestion that he was appointed on the board of the two companies on the recommendations of Gautam Doshi.

1343. PW 72 Sh. Pradeep Sevanti Lal Shah in his cross-examination, pages 13 and 14, deposed as under:

> ".....It is correct that I was appointed as nominee of DB group in both the companies and had promised to watch the interest of this group. Sh. Shyam Malpani, who is also known to me, was also appointed on the board of these two companies, alongwith me. Shyam Malpani also told me that he was appointed for DB group and would also look after its interest (objected to). It is correct that whenever we sat together in a meeting, we knew that we were sitting there as a nominee of DB group as to watch its interest....."

In his further cross-examination, page 14, he deposed as under:

> ".....Mr. Venkat Iyer was part of DB group. He used to interact with me in respect to these companies. I cannot recollect if I had visited some banks somewhere in 2007 with Sh. Iyer for raising some funds for telecom venture. I had spoken to a banker only once telephonically. It is difficult for me to say if this talk took place on telephone in May 2007. Mr. Iyer had mentioned to me that company was in talks for funds with a consortium of banks. It is correct that as long as I was director in these two

companies, they were companies of DB group. The person who escorted me to the first meeting of these two companies was Sh. Ujjwal Mehta……."

PW 72 Sh. Pradeep Sevanti Lal Shah in his further cross-examination, page 16, deposed as under:

"……..Mr. Anand Bhatt had told me that these two companies had been taken over by DB group and this fact came to my notice before my joining to the board of these two companies. It is correct that I had resigned in October 2007, but it was accepted later on in September 2008……."

PW 72 Sh. Pradeep Sevanti Lal Shah in his further cross-examination, page 20, deposed as under:

"……..It is correct that all the business and financial transactions undertaken during my tenure as a director of STPL and TTPL were initiated, directed and implemented by the DB group……."

The version given by the witness was not challenged by the prosecution either by re-examination or cross-examination. Prosecution is now bound by his deposition and cannot discredit it by oral arguments alone.

1344. Not only this, the version of Pradeep Sevanti Lal Shah is also corroborated by PW 68 Sh. Ujjwal Mehta, General Manager, Realgem Buildtech, a DB group company. In his cross-examination dated 09.10.2012, pages 5 to 7, he deposed about STPL being acquired by DB Group as under:

"……..I also came to know that DB group was venturing in telecom sector also and the group would acquire a telecom company. It is correct that Sh. Deodatta Pandit had told me that my wife and me had to sign the forms Ex PW 68/A to 68/C as

nominee of DB group to acquire a company by the name of Giraffe Consultancy Services (P) Limited. This acquisition of the company was due to the DB group venturing into telecom sector. When the signing of forms was done by me and my wife, the talks with the potential investors were at an advanced stage. The three forms were signed on 25.02.2007 and the date has been mentioned correctly. I also used to exchange information with the potential investors about Giraffe Consultancy Services (P) Limited, Tiger Trustees (P) Limited and Swan Telecom (P) Limited. I was doing this work since February 2007 itself as a part of financial secretarial team. It is correct that the financial team of DB group had acquired control of financial aspects and documents and the secretarial team acquired secretarial control over the three companies in February 2007 itself. For the reason that DB house was under renovation, the registered office of Swan Telecom (P) Limited could not be shifted to it.

Since I was in financial secretarial team, I used to visit Raheja Chambers also at Santa Cruz to assist the board of the company in its meetings. After DB group took over Swan Telecom (P) Limited, I also used to coordinate with late Sh. Anand Bhatt to coordinate for revamp of its board of directors. It is also correct that as par of revamping process, Sh. Anand Bhatt and Sh. Ashok Wadhwa were to resign from board of directors. It is correct that in their place, Sh. Pradeep Shah and Sh. Shyam Malpani, who were independent chartered accountants, were appointed on the board of directors as nominee of DB Group.

On 24.04.2007 a meeting of board of directors of Swan Telecom (P) Limited was held at Raheja Chambers, in which I had coordinated the required things. In this meeting, Sh. Anand Bhatt, Sh. Ashok Wadhwa, Sh. Pradeep Shah, Sh. Shyam Malpani and Sh. Surendra Pipara were present. Since it was the

first meeting to be attended by Sh. Pradeep Shah and Sh. Shyam Malpani, it was my duty to escort them to the venue. I remained in attendance at the meeting for coordination purposes. After Sh. Anand Bhatt and Sh. Ashok Wadhwa (corrected on 10.10.2012) resigned, they left the venue....."

This witness deposed that as a member of financial secretarial team of DB group, he knew the facts and that DB Group had taken control of the documents and financial aspects of Giraffe Consultancy Services (P) Limited, Tiger Traders (P) Limited and STPL in February 2007 itself. The prosecution did not challenge this version either by re-examination or cross-examination. It is now bound by this deposition.

1345. PW 118 Sh. S. A. K. Narayanan, Company Secretary, DB Realty Limited, in his cross-examination dated 07.05.2013, page 9, deposed as under:

".....It is correct that secretarial records of Swan Telecom (P) Limited (now Etisalat DB Telecom (P) Limited), Tiger Traders Private Limited and Sidharth Consultancy Services Private Limited were kept at their respective registered offices, even though these companies had been taken over by DB Group in March 2007. It is correct that Sh. Venkat Iyer and Sh. Ujwal Mehta were coordinating with Sh. Anand Bhatt for updating their secretarial records....."

1346. PW 137 Sh. Jignesh Shah, another Company Secretary of DB group, in his cross-examination dated 19.08.2013, page 11, deposed as under:

".....Tiger Trustees Pvt. Ltd. and Swan Telecom (P) Limited (now Etisalat DB Telecom (P) Limited) came to DB group on 03.03.2007 by virtue of shareholder agreement, already Ex PW1/DA (D-449)....."

In his further cross-examination, page 13, he deposed as under:

> ".....It is correct that Giraffe Consultancy Services Pvt. Ltd. was a DB Group company w.e.f. 25.02.2007....."

In the cross-examination by learned Sr. PP, he denied the suggestion that he was deposing falsely on these points.

1347. In the end, in view of the deposition of above witnesses, I find that STPL, though initially incorporated by employees of Reliance ADA group, was transferred to Sh. Sunil Doshi and Sh. Nilesh Doshi, later on to Sh. Ashok Wadhwa and Sh. Anand Bhatt and then to DB group. I have no hesitation in saying that Sh. Ashok Wadhwa did not give the correct version of the events regarding his appointment on the board of STPL and whatever version he has given is contrary to record and, as such, his evidence cannot be relied upon.

1348. In the end, I find that there is enough evidence on record to believe that STPL was under the ownership, management and control of DB group by 03.03.2007. This is clear from the examination-in-chief as well as cross-examination of various witnesses referred to above in detail. It may be noted that defence has not to prove its case beyond reasonable doubt. To corroborate this conclusion, there is further material on record.

Shareholder's Agreement dated 03.03.2007

1349. It is also submitted by the defence that STPL stood

transferred to DB group by 03.03.2007 and my attention has been invited to a shareholder's agreement dated 03.03.2007, Ex PW 1/DA.

1350. However, authenticity of the agreement was challenged by the prosecution submitting that this document was created just to show the transfer of the company to DB group and is not a genuine document. This agreement was never acted upon as no document could be found about arrangement of unsecured loan of the sum of Rs. 100 crore to TTPL by DB group as referred to in the agreement. The case of prosecution is that it is a created document.

1351. PW 101 Sh. Hasit Shukla is a signatory to agreement, Ex PW 1/DA. In his cross-examination dated 01.03.2013, pages 8 to 10, deposed as to how the DB group stepped into STPL by way of Shareholder's Agreement, as under:

> ".....It is correct that in the end December 2006, wireless business team of RCom agreed to acquire minority stakes (less than 10%) for one of its companies (without identification) in a telecom venture to be set up by Sh. Anand Bhatt for his clients. This was mainly for enhancement of tower business.
>
> I have been shown D-449, wherein there is a document Ex PW 1/DA, which is a shareholders agreement entered into between Reliance Telecom Limited,Tiger Traders (P) Limited and Swan Telecom (P) Limited dated 03.03.2007. This has been signed by myself at point X on behalf of Reliance Telecom Limited, Sh. Anand Bhat at point Y on behalf of Tiger Traders (P) Limited and Sh. Hari Nair at point Z on behalf of Swan Telecom (P) Limited. I identify

all three signatures. Sh. V. S. Iyer has signed at points Z-1 to Z-3 as witness. It is correct that business team of RCom gave me instructions to sign this agreement. Business team told me that this agreement was drafted by Sh. Anand Bhatt. I was also told that the DB group would arrange Rs. 100 crore in Tiger Traders (P) Limited for their 90% equity stake and this fact is mentioned in this agreement also. I did not attend any of the two meetings of business team held with Anand Bhatt. I used to meet Anand Bhatt even prior to 03.03.2007.

Ques: During your meeting with Sh, Anand Bhatt, did he inform you about formation of a company for telecom business?

Ans: He did mention it to me.

Ques: What transpired in that meeting in which he mentioned telecom business to you?

Ans: He told me that he was identifying majority shareholders being corporate entities to start a telecom business where RTL based on its experience can invest up to less than 10%.

I signed the aforesaid agreement on the asking of business team as the business team told me as to what was discussed has been written in the agreement. Before signing it, I went through it generally. Business team told me that Sh. Anand Bhatt was to complete all the applications to be filed for UAS licence and for logistical purpose he would get the help of Sh. A. N. Sethuraman....."

1352. In his further cross-examination, page 16, he deposed about Shareholder's Agreement as under:

".....It is correct that when the shareholders agreement Ex PW 1/DA was signed, apart from others, Sh. Venkat Iyer, Sh. Ujjwal Mehta and other DB representatives were present. It is correct that w.e.f 03.03.2007, M/s Dynamix Balwa Infrastructure (P) Limited came to be in total control and ownership of M/s Swan Telecom (P) Limited. It was

also agreed on 03.03.2007 that Sh. Ashok Wadhwa and Sh. Anand Bhatt would resign as directors of Swan Telecom (P) Limited and Dynamix Balwa Infrastructure (P) Limited would appoint its nominees in due course. This process was coordinated by Sh. Venkat Iyer with the telecom business group of Reliance Communications under the supervision of Sh. Anand Bhatt....."

1353. Shareholder's agreement dated 03.03.2007, Ex PW 1/DA, between RTL, Tiger Traders (P) Limited and STPL, was proved by PW 1 Sh. Anand Subramaniam on 11.11.2011. PW 101 Sh. Hasit Shukla signed it on behalf of RTL whereas Sh. Anand Bhatt signed it on behalf of Tiger Traders (P) Limited. Sh. Hari Nair signed it on behalf of STPL. Sh. V. S. Iyer, an independent chartered accountant, signed it as an independent witness. This agreement states that Dynamix Balwa Infrastructure (P) Limited is in effective control and ownership of Tiger Traders (P) Limited and consequently it also owned STPL.

1354. Let me take note as to what PW 150 Dy SP Sh. V. M. Mittal deposed about this agreement. In his cross-examination dated 21.10.2013, page 14, by Sh. Vijay Aggarwal Advocate, he deposed as under:

".....The documents mentioned in letter Ex PW 150/P were seized by me, but I do not remember if I had requisitioned the same through a telephonic call or through a notice under Section 91 CrPC. I had seized these documents from Hari Nair, but it was not my job to classify whether he was a suspect or not. I do not know about any application moved by CBI in this case on 06.10.2012 for obtaining specimen signature of Hari Nair. It is correct that an

agreement by the name of shareholders agreement between Reliance Telecom Limited, Tiger Traders (P) Limited and Swan Telecom (P) Limited is mentioned in list of seized documents at serial No. 8 in Ex PW 150/P and a photocopy of this document is placed at pages 72 to 86 in D-449, which is already Ex PW 1/DA....."

1355. In his further cross-examination by Sh. Vijay Aggarwal Advocate, dated 22.10.2013, pages 1 and 2, PW 150 Sh. V. M. Mittal deposed about the Shareholders Agreement as under:

".....I had examined Sh. Alok Kumar and Sh. Sanat Kumar Aggarwal of PNB. At the time of their examination I had seen the PNB file D-500, already Ex PW 63/A. A copy of the shareholders agreement, already Ex PW 1/DA, is also available in this file at pages 272 to 301, which is dated 03.03.2007. I do not know if an original copy of this agreement was handed over to Sh. Rajesh Chahal, Dy. SP, by accused Shahid Usman Balwa. It is wrong to suggest that I did not take cognizance of this agreement despite obtaining a copy of it from Hari Nair so that accused could be falsely implicated in this case. **Volunteered**: During investigation I did not find the contents of the agreement to be true particularly regarding arrangement of unsecured loan up to sum of Rs. 100 crore to M/s TTPL.

This fact was found by me during investigation and I apprised the chief IO of it. It is wrong to suggest that I am introducing this fact just to confuse the trial. It is wrong to suggest that the contents of this agreement are correct. It is further wrong to suggest that I did not conduct any investigation in this regard as this was the document favourable to the accused. I had examined Sh. Hasit Shukla. I do not remember if I had examined Sh. V. S. Iyer about this document. I do not remember if I had examined

Hari Nair about this document also. I do not remember if I had examined Sh. Sanat Kumar Aggarwal and Sh. Alok Kumar regarding this document. It is wrong to suggest that since I am forgetting examining these witnesses, who are signatories to the aforesaid agreement and bank official, I did not investigate about this agreement. I did not recommend any action against the signatories to the agreement to the IO as it was not my job. It is correct that documents mentioned in Ex PW 150/P (D-449) were seized from Hari Nair....."

1356. It may be noted that this agreement was signed by PW 101 Sh. Hasit Shukla, President of RCL, which is the holding company of RTL. He is expected to be a responsible person and in the knowledge of full facts. However, the prosecution did not challenge Sh. Hasit Shukla about the genuineness of the agreement, either by re-examination or cross-examination. However, learned Sr. PP tried to discredit the document by referring to several internal contradictions in the document, including relating to arrangement of unsecured loan to the tune of Rs. 100 crore. The prosecution was trying to discredit the document solely by way of arguments at the bar and not by way of leading evidence or putting relevant questions to the witnesses in re-examination or cross-examination.

1357. It may also be noted that an original copy of the agreement was supplied to Dy SP Rajesh Chahal by Sh. Shahid Balwa vide letter Ex PW 147/DB. One copy of the same was supplied by Sh. Hari Nair vide letter Ex PW 150/P to PW 150 Sh. V. M. Mittal. One copy of the agreement was also available

in the record of the Punjab National Bank in file D-500. Thus, a copy each of the shareholder's agreement was obtained from three different sources. However, the prosecution did not try to discredit the witnesses, more particularly, the signatory to the agreement Sh. Hasit Shukla. It did not endeavour to discredit PW 63 Sh. Alok Kumar, who appeared from Punjab National Bank. It also did not try to discredit witnesses from DB group like PW 137 Sh. Jignesh Shah. Witnesses were not given opportunity to explain their conduct relating to this agreement, but the document was condemned by way of arguments. It must be noted that arguments are no substitute for evidence. Arguments are meant to clarify and elucidate facts and issues and not to create facts. Facts are collected from evidence led by the parties. If there are internal contradictions in the agreement, the witnesses ought to have been questioned and they might have explained the same. The question is not of any internal contradictions in the document. The question is as to who owned STPL on 03.03.2007? This agreement is part of the prosecution record and was put in defence by the accused in the cross-examination of the very first witness, that is, PW 1 Sh. Anand Subramaniam and the name of Sh. Anand Bhatt also figured in this agreement. Prosecution took no steps during the whole trial to put relevant questions to the witness for discrediting the agreement, but is solely relying on the arguments at the bar. This document makes it clear that Dynamix Balwa Infrastructure Limited was in effective control of Tiger Traders (P) Limited and STPL on this date.

1358. It may be noted that defence has only to create a doubt about prosecution case or to probablize a fact in its defence. The accused bears no burden of proof. Defence is not required to prove its case beyond reasonable doubt. It is the burden of the prosecution to do so. It is instructive to take note of the law laid down by the Hon'ble Supreme Court in an authority reported as **M. S. Narayana Menon @ Mani Vs. State of Kerala and another, (2006) 6 SCC 39**, wherein it observed in paragraphs 46 and 47 as under:

> "**46.** In *Harbhajan Singh v. State of Punjab* this Court while considering the nature and scope of onus of proof which the accused was required to discharge in seeking the protection of Exception 9 to Section 499 of the Penal Code, stated the law as under: (SCR pp. 242 H-243 A)
>
> > "In other words, the onus on an accused person may well be compared to the onus on a party in civil proceedings, and just as in civil proceedings the court trying an issue makes its decision by adopting the test of probabilities, so must a criminal court hold that the plea made by the accused is proved if a preponderance of probability is established by the evidence led by him."
>
> **47.** In *V. D. Jhingan v. State of Uttar Pradesh* it was stated: (SCR p. 739 H)
>
> > "It is well established that where the burden of an issue lies upon the accused he is not required to discharge that burden by leading evidence to prove his case beyond a reasonable doubt."
>
> (See also *State of Maharashtra v. Wasudeo Ramchandra Kaidalwar*)."

Similarly, in a recent authority reported as **State of**

Gujarat Vs. Jayrajbhai Punjabhai Varu, AIR 2016 SC 3218, Hon'ble Supreme Court observed in paragraph 13 about burden of proof as under:

> "The burden of proof in criminal law is beyond all reasonable doubt. The prosecution has to prove the guilt of the accused beyond all reasonable doubt and it is also the rule of justice in criminal law that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and other towards his innocence, the view which is favourable to the accused should be adopted."

1359. The shareholder's agreement Ex PW 1/DA speaks of DBIPL, on request of TTPL, arranging Rs. 100 crore of unsecured loans. The case of the prosecution is that no such loan was arranged and as such it is fake document. The case of the parties is found precisely in the cross-examination of PW 150 Dy SP V. M. Mittal, dated 25.10.2013, page 2, which reads as under:

> ".....It is wrong to suggest that the transfer of Rs. 100 crore on 02.03.2007 from Reliance Energy Limited to Sonata Investments Limited, Sonata to Oriental Buildtech (P) Limited, Oriental to Anant Raj Agencies (P) Limited, Anant Raj to Giraffe Consultancy Services (P) Limited, and of Rs. 95.51 crore from Giraffe to TTPL, was not a mere kite flying transaction....."

The case of the prosecution is that Rs. 100 crore, which was to be arranged by DBIL, was not raised by it, but was raised by Reliance group, which is denied by the defence. It is case of the prosecution that for this reason this document cannot be accepted. However, the prosecution did not put any

question of this nature to any witness.

1360. The importance of the agreement for defence is also reflected in the letter dated 11.12.2010, Ex PW 147/DB, written by Sh. Shahid Balwa to IO PW 153 Sh. Vivek Priyadarshi, through which Sh. Shahid Balwa had sent the documents to the IO including original shareholder's agreement dated 03.03.2007. In this letter, Sh. Shahid Balwa also requested that since the agreement is an original one and he did not possess any counterpart of the same, it may be handled carefully. The prosecution took no step to discredit the agreement by leading evidence, by way of cross-examination or re-examination.

1361. It may be noted that PW 148 Inspector Shyam Prakash in his cross-examination dated 09.10.2013, page 13, deposed about examination of Sh. Venkatraman S. Iyer, who signed the agreement as a witness, as under:

> ".....I had examined Venkatraman S. Iyer on 17.01.2011. I do not remember if I examined him on the aspects of shareholders agreement dated 03.03.2007 executed between Reliance Telecom Limited, TTPL and STPL....."

This officer is in the habit of forgetting all crucial facts.

1362. However, many things happened contemporaneously. This agreement was signed on 03.03.2007. Anant Raj Industries Limited had sent Rs. 100 crore to Giraffe Consultancy Services (P) Limited on 02.03.2007. Only a voucher Ex PW 98/C (D-382) was prepared in this regard. No security was executed. As already noted, four witnesses have

deposed that Giraffe Consultancy Services (P) Limited stood transferred to DB group in February 2007 itself. This transfer of Rs. 100 crore without any documentation shows that it had some link with the signing of shareholder's agreement, Ex PW 1/DA. The witnesses involved in the transfer of Rs. 100 crore are PW 18 Sh. Deepak Maheshwari, Chief Financial Officer, Reliance Capital Limited; PW 98 Sh. Amit Sarin, Director and Chief Executive Officer, Anant Raj Group, Delhi; and PW 136 Sh. Yogesh Sharma, President (Finance), Anand Raj Industries Limited.

PW 98 Sh. Amit Sarin did not give any acceptable reason as to why this amount was sent. PW 18 Sh. Deepak Maheshwari is also silent on this. However, PW 136 Sh. Yogesh Sharma in his examination-in-chief itself deposed that the money was sent by them for buying a property at Mumbai. Sh. Amit Sarin denied that the money was meant for DB group. However, the perusal of evidence of the three witnesses does not inspire much confidence as their deposition does not reveal anything in a reasonable, sequential and cogent manner. The money was transferred on 02.03.2007 and in the agreement dated 03.03.2007, Ex PW 1/DA, it was recorded that the unsecured loan has been raised. Thus, the transfer of money has some relation with the shareholder's agreement, though it might be that officials of Reliance ADA group or Sh. Anand Bhatt might have helped in raising this unsecured loan. In this regard, it is useful to take note of cross-examination of PW 68 Sh. Ujjwal Mehta, General Manager of Realgem Buildtech Limited, a

company of DB group, dated 09.10.2012, wherein, page 7, he deposed as under:

> ".....It is correct that existing investors of DB Realty desired that their funds ought not be used in telecom sector. It is correct that Giraffe Consultancy Services (P) Limited arranged the finances through Sh. Anand Bhatt to the tune of about Rs. 100 crore....."

1363. Similarly, PW 112 Sh. Sateesh Agarwal, General Manager (Finance & Accounts), DB Realty Limited, in his cross-examination dated 03.04.2013, page 11, deposed as under:

> ".....It is correct that I was coordinating about raising funds of Rs. 100 crore by Giraffe Consultancy Services (P) Limited. It is also correct that this company was taken over by nominees of DB group. It is correct that this amount of Rs. 100 crore was raised from Anant Raj Industries through Sh. Anand Bhatt. It is correct that for this Rs. 100 crore, I had met the official of Trikona Capital including Sh. Mahesh Gandhi....."

1364. Furthermore, PW 51 Sh. Mahesh Gandhi, who is a nominee director in DB Realty Limited and is a director in TCK Advisors (P) Limited, an independent investment advisor, in his cross-examination dated 03.07.2012, pages 12 and 13, deposed as under:

> ".....During my interaction with Anand Bhatt, I had occasion to meet members of Reliance Telecom business team, but I am unable to recall their names. On being told, I do recall the name of Sh. V. K. Buddhiraja and Sh. S. P. Shukla as members of Reliance telecom business team. I do not recall the name of Sh. Inder Bajaj. During this interaction, I came to know from Sh. Anand Bhatt that Reliance

Communications Limited was willing to provide vendor finance to Swan Telecom (P) Limited. Anand Bhatt had also told me that Swan Telecom (P) Limited had given an assurance to Reliance Communications Limited of right to first refusal regarding infrastructure releasing and purchasing....."

The deposition of this witness indicates that Sh. Anand Bhatt was known to Reliance people also and reinforces the testimony of PW 112 Sh. Sateesh Agarwal.

1365. Furthermore, it is clear from the deposition of Sh. Amit Sarin that Reliance group and Anant Raj group of industries have long standing business relationship. Similarly, as per PW 137 Sh. Jignesh Shah, Reliance Capital Limited is also a shareholder in Associated Hotels (P) Limited for the last fifteen years, which is a DB group company. In the end I find that there is merit in the submission of the defence that Ex PW 1/DA was executed on 03.03.2007, which shows that STPL was in effective control of DB group on that day and transfer of Rs. 100 crore by Anant Raj group has connection with this agreement.

1366. It may be noted that accused is not required to prove its case by strict evidence. In an authority reported **Rabindra Kumar Dey Vs. State of Orissa, (1976) 4 SCC 233**, Hon'ble Supreme Court observed in paragraph 7 as under:

"While the courts below have enunciated the law correctly, they seem to have applied it wrongly by overlooking the mode and nature of proof that is required of the appellant. A perusal of the oral and documentary evidence led by the parties goes to show that the courts not only sought the strictest possible proof from the appellant regarding the

explanation given by him, but went to the extent of misplacing the onus on the accused to prove even the prosecution case by rejecting the admissions made by the prosecution witnesses and by not relying on the documents which were in power and possession of the prosecution itself on the speculative assumption that they were brought into existence by the accused through the aid of the officers. Furthermore, the courts below have failed to consider that once the appellant gives a reasonable and probable explanation it is for the prosecution to prove affirmatively that the explanation is absolutely false. In a criminal trial, it is not at all obligatory on the accused to produce evidence in support of his defence and for the purpose of proving his version he can rely on the admissions made by the prosecution witnesses or on the documents filed by the prosecution. In these circumstances, the court has to probe and consider the materials relied upon by the defence instead of raising an adverse inference against the accused for not producing evidence in support of his defence, because as we have already stated that the prosecution cannot derive any strength or support from the weakness of the defence case. The prosecution has to stand on its own legs and if it fails to prove its case beyond reasonable doubt, the entire edifice of the prosecution would crumble down....."

Thus, the accused have successfully shown that they were in effective control of STPL since 02.03.2007 through Shareholder's Agreement, Ex PW 1/DA.

Transfer of STPL on 18.10.2007: Whether Consistent with Developments in DoT File D-5

1367. The case of the prosecution is that on receipt of

TRAI Recommendations dated 28.08.2007, when RCL got GSM spectrum under dual technology policy, Sh. Gautam Doshi, Sh. Hari Nair and Sh. Surendra Pipara transferred the control of STPL and structure of its holding companies to Sh. Shahid Balwa and Sh. Vinod Goenka. It is the case of the prosecution that this way they transferred a company, which was ineligible for grant of UAS licence on the date of applications to Dynamix Balwa group and facilitated the accused persons to cheat DoT in getting the licence, despite the company being ineligible on the date of application. The crux of the argument is that this company was transferred when RCL got in-principle approval for dual technology spectrum in thirteen service areas. The case of the prosecution is that the networth of STPL was structured/ created in such a manner that its association with RTL might not be detected by the DoT, so that it might not reject the application for being in violation of clause 8 of UASL Guidelines, though the entire company was held by Reliance ADA group. It is the case of the prosecution that Reliance Group transferred STPL to DB Group on getting in-principle approval for dual technology on 18.10.2007.

1368. It may be noted that TRAI Recommendations were received in DoT on 29.08.2007 and the processing thereof started in file D-5 on 12.09.2007. On 20.09.2007, a committee was constituted to study that Recommendations and it gave its report on 10.10.2007. The Recommendations were placed before the Telecom Commission on 10.10.2007 itself and the same were approved by it. Thereafter, a note dated 11.10.2007,

Ex PW 36/A-14, was recorded by PW 110 Sh. Nitin Jain seeking administrative approval of competent authority, that is, MOC&IT for implementation of Recommendations. The same was approved by Sh. A. Raja on 17.10.2007 vide his order Ex PW 36/A-15 and dual technology was also approved for the three pending applicants, including RCL. On the objection of Secretary (T), a further order dated 18.10.2007, Ex PW 60/C-6, on the point of dual technology, was passed by Sh. A. Raja and letter conveying in-principle approval to use GSM technology, Ex PW 60/C-9, was issued to the company on 18.10.2007 itself.

1369. What is the case of the prosecution? Its case is that when RCL got permission for dual technology spectrum, it transferred STPL to DB group. If it is so, the process of transfer of STPL must have started after 18.10.2007. It is useful to take note of the evidence of PW 96 Sh. Deodatta Pandit.

PW 96 Sh. Deodatta Pandit, Company Secretary of STPL, in his cross-examination dated 15.01.2013, page 19, deposed as under:

> ".....It is correct that I had given my consent to become company secretary of STPL on 01.10.2007....."

Thus, PW 96 Sh. Deodatta Pandit has deposed that he had given his consent to become Company Secretary of STPL on 01.10.2007. It is not the case of the prosecution that Reliance ADA group and DB group were already in conspiracy that on dual technology being permitted to RCL, they would transfer the ineligible company to DB group. There is no material on record

indicating that either Reliance ADA group or DB group knew in advance that RCL would certainly get permission for dual technology. The proceedings in DoT file D-5 do not support any such conspiracy. There is no material on record that either Sh. A. Raja or Sh. R. K. Chandolia conveyed any information to Reliance ADA group that RCL would get in-principle approval for dual technology and if so, when. On 01.10.2007, when Sh. Deodatta Pandit gave his consent to became secretary of STPL, the committee of DoT was still examining TRAI Recommendations and there was no inkling to anyone as to what the committee would recommend and what would be approved by the competent authority.

1370. If the company was so transferred to DB group on 18.10.2007, the process of appointment of Deodatta Pandit would also have started at least from 18.10.2007. These facts further indicate that the STPL was already in control of DB group, though the paper work may not be complete.

This conclusion is further fortified by the fact that STPL had applied for a loan to Punjab National Bank on 13.10.2007 vide application Ex PW 63/A-1 (D-500), in which it recorded that STPL was incorporated on 13.06.2007 and is controlled and managed by DB group. The application is accompanied by large number of documents, including information memorandum, Ex PW 51/DA, pages 183 to 388. PW 63 Sh. Alok Kumar, Chief Manager, PNB, in his examination-in-chief itself dated 21.09.2012, page 9, deposed that when credit facility of such a huge amount is involved, negotiation

with the party starts one or two months before submitting the application. According to PW 51 Sh. Mahesh Gandhi, preparation of such a file takes three to four months. The prosecution did not question the truthfulness of bank record, which also contained a copy of Shareholder's Agreement, Ex PW 1/DA. These facts thus falsify the prosecution case that STPL was transferred to DB group after RCL got in-principle approval for dual technology on 18.10.2007.

Funding of STPL by Reliance ADA Group

1371. It is the case of the prosecution that STPL was fully funded by Reliance ADA group out of the funds drawn from various companies of the group to make out its equity and networth and this was mainly done by Sh. Gautam Doshi in conspiracy with Sh. Surendra Pipara and Sh. Hari Nair. My attention has been invited to deposition of various witnesses and large number of fund transfer documents like cheques, RTGS receipts, invoices etc.

On the contrary, defence has disputed it submitting that the equity subscription by the Reliance ADA group was within permissible limits and its other investments were for purposes which were fully permissible. Let me take note of the evidence on record.

1372. PW 2 Sh. A. N. Sethuraman in his cross-examination dated 16.11.2011, page 14, deposed about funding as under:

> ".....As a responsible officer of the company I am aware about TRAI recommendations dated 28.08.2007 (D-596). I might have seen the

recommendations as these come to my office. I have seen these recommendations and the same are now Ex PW 2/DD. I have gone through these recommendations and after going through the same I am unable to say if the cross-holding clause would apply only after the grant of LOI. Except clause 8, bar of cross-holding in respect of equity shareholding, there is no other bar in respect of any other kind of funding, investment, shareholding. Again said, I do not understand the meaning of "stake" here....."

In his further cross-examination dated 17.11.2011, pages 3 to 5, he deposed that applications were filed after ensuring compliance with the guidelines and the deposition reads as under:

".....It is correct that I carefully went through the application before I signed the same. It is correct that I was more careful as an undertaking was also required to be signed. It is correct that I had gone (through) the UASL Guidelines, 2005 before signing the application and the undertaking. It is correct that apart from being careful in going through the application, undertaking and UASL Guidelines, I also obtained the legal opinion on telephone of Sh. Anand Bhatt, who was famous Solicitor. It is correct that Sh. Anand Bhatt was attached to a famous law firm named Wadia Gandhy and Company, having its principal office at Mumbai. It is correct that he was a partner in this law firm at the relevant time also. I was told that he was an expert in Corporate Law. I had asked Sh. Anand Bhatt whether he had followed the guidelines while filling up the application and the undertaking and he told me that he had done it personally and I may go ahead with signing the same. It is correct that only after I was fully satisfied about the correctness of the application and the undertaking, I signed the same and got it deposited

in the DoT through my associate, in January, 2007.

In March 2007, I had telephonic conversation on two three occasions with Sh. Anand Bhatt prior to submitting the applications for UAS Licences. It is correct that in one such discussion, Sh. Anand Bhatt told me that he had personally filled up the applications and undertakings and assured me about their correctness and asked me to go ahead with signing the same.

.....

.....

It is correct that Sh. Anand Bhatt was a Director in M/s Swan Capital (P) Limited in January, 2007. Sh. Ashok Wadhwa was also a Director in this company in January, 2007. Both of these facts are mentioned in Ex PW 2/A in para 15 of the application. It is also correct that in March 2007, Sh. Anand Bhatt was a Director in M/s Swan Telecom (P) Limited. It is also correct that Sh. Ashok Wadhwa was also a Director in March 2007, in this company. These facts are mentioned in Ex PW 2/J, 2/O and other applications also. It is correct that between January and March 2007, Swan Capital (P) Limited changed its name to M/s Swan Telecom (P) Limited. I cannot say if this change was effected from 15.02.2007, without seeing the document....."

1373. Sh. A. N. Sethuraman categorically deposed that there was no restriction for investment by debt instruments, such as debentures, preference shares, loan etc. by an existing licensee into another company seeking telecom licence in the same service area for the same service. He also deposed that the applications were filed after fully ensuring compliance with the UAS licence guidelines. The witness is categorical, both in examination-in-chief as well as in cross-examination, that the

applications were filed on the asking of Sh. Anand Bhatt, who was a director in STPL. This way he completely disowned the prosecution case, both regarding the ownership of STPL and on funding by Reliance group, by stating that there was no restriction on funding except funding by cross-holding of equity. However, the prosecution did not challenge this version either by re-examination or by cross-examination.

1374. It may be noted that clause 8 of UASL guidelines dated 14.12.2005, Ex PW 2/DB (D-586), restricts only substantial equity holding by one licensee company into another licensee company and substantial shareholding means an equity of 10% or more. In a way it permits cross-holding of equity below 10%. The minimum paid up equity for an applicant company is prescribed in clause 9 of the guidelines and that is mentioned in Annex-I to the guidelines. The required networth of an applicant company service area-wise is mentioned in clause 10. There is no clause in the guidelines restricting other investments by one company into another. However, annexure III to the guidelines contains the proforma of the application to be filled up for a UAS licence. Clause 14 of the proforma deals with business plan alongwith funding arrangement for financing the project. It does not contain any restriction on cross-funding by debt instruments. As such, there is no restriction that one licensee company cannot invest in another licensee company by way of debt instruments such as debentures, preference shares, deposits, letters of guarantee, comfort letters etc. It may be noted that debenture holders are creditors of a company while

shareholders are owners of the company. Funding requirement can be met by a company either through equity participation or through loan. Money received by a company by the issue of debentures is a loan, whereas money received by issue of shares is the capital of the company. Equity and debt are two separate and independent category of investment. Hence, as per these existing guidelines there can be no objection to investment by other instruments.

1375. It may also be noted that DoT had written a letter dated 10.12.2007, Ex PW 21/DB, to all companies seeking certain clarifications. There was an annexure, Ex PW 110/B-1, annexed to this letter. As per this annexure, information was sought on 25 items. Item 20 of the annexure seeks details of business plan alongwith funding arrangement for financing the project. There are no limitations on the sources of funding mentioned therein also. Furthermore, there is no restrictions on the employee of a telecom company holding minority investment, working in the company seeking UAS licence. This may be on the ground that somebody must be there to look after the minority investment and also for creating synergy between the two companies.

1376. Accordingly, I find the deposition of PW 2 Sh. A. N. Sethuraman to be legally acceptable when he deposed that except cross-holding by way of equity shares, there is no bar on other type of funding by instruments like preference shares, debentures etc. These are various categories of investments. Investment only in one category is prohibited beyond 10% or

more, that is, equity capital. Categorization and segregation of investment into various instruments must have been in the knowledge of the policy makers. However, they put restrictions only on equity investment and not on investment by means of debt instruments. This is a reasonable view which can be taken by anyone after reading the guidelines.

1377. Object of business and funding plan has been explained by TRAI in its report dated 12.03.2009 on "Lock-in period for Promoter's Equity and other related issues for Unified Access Service Licensees (UASL)" in para 3.5.2.35 as under:

> "The Authority has noted that as per the prescribed application form for grant of UAS licence, the applicant company is required to submit details of business plan along with the funding arrangement for financing the project. It clearly implies that before applying for a UASL license, the applicant should have a proper and definite plan in place to finance and execute the project. Therefore, situations requiring the need to sell equity in the licensee company immediately on receipt of the licence to fund and/ or execute the project should be viewed with great care and caution as any sale of equity in the wake of the grant of licence would raise concerns regarding the intent of such sale. Trading of license and spectrum, either directly or indirectly, with profit making as the sole objective of obtaining a license rather than provision of telecom service and improvement in accessibility, has to be prevented by putting in place adequate safeguards against it. A lock-in period for promoter's equity would not only ensure the participation by serious players, but also make certain their commitment to the telecom sector. It can also be said in favour of lock-in that lock-in of promoters' equity instills confidence in the licensee company, ensures

commitments and seriousness of the promoters and also provides stability to the sector."

Thus, a company applying for UAS licence should have financial resources to execute the project. However, there is no limitation as to where from funds would be procured except on equity, which is risk capital and controls a company. It is the equity holders who decide the policies of the company. They are the real masters of the company. Hence, limitation on equity capital.

1378. PW 19 Sh. Sateesh Seth, Non-executive director of RTL, deposed in his examination-in-chief about the investment/ divestment in STPL by way of equity & preference shares and the reasons thereof. In his examination-in-chief pages 8 and 9, he deposed as under:

> ".....I have been shown page 56 of D-373 and this is also a certified true copy of an extract of minutes of board meeting of Reliance Telecom Limited held on 30.01.2007. The same is now Ex PW 19/C. It appears to be signed by Sh. Gaurang Shah at point A. In this meeting, it was noted by the board 'the board was informed that pursuant to delegated authority for investment, the company has invested in 2,97,000 equity shares of Rs. 10/- each at par and 2,80,000, 8% non-cumulative redeemable preference share of Rs. 1/- each at a premium of Rs. 999/- per share of Swan Capital (P) Limited and the board noted the same....."

Regarding further investment and divestment, PW 19, in his further examination-in-chief, dated 14.02.2012, pages 10 to 12, deposed as under:

> ".....I have also been shown certified true copy of

extract of the minutes of the meeting of the board of directors of Reliance Telecom Limited held on 29.04.2007. I myself attended this meeting. This meeting was also attended by Sh. S. P. Shukla, Sh. Gautam Doshi and Sh. Anil Ambani. The certified true copy is signed by Sh. Gaurang Shah at point A. The same is now Ex PW 19/J. In this meeting, board noted that 'investment in 99,20,000 8% non-cumulative redeemable preference shares (NCRPS) each of Rs. 1/- each at a premium of Rs. 999/- per preference share aggregating to Rs. 992 crore of Swan Telecom (P) Limited (STPL) was in the nature of long term strategic investment. In view of the nature of the industry in which STPL is engaged viz. Telecommunication, involving long gestation period, investment in the books of the company be stated at cost and no provision for diminution as long term investment in STPL was required to be made. Sh. Gaurang Shah and Sh. Hasit Shukla were general authorized signatories and one of them signed the papers regarding this investment. Since the board only noted the investment, I cannot say who, in fact, executed this transaction.

I have also been shown certified true copy of extract of the minutes of the meeting of the board of directors of Reliance Telecom Limited held on 30.10.2007. I myself attended this meeting. This meeting was also attended by Sh. S. P. Shukla, Sh. Gautam Doshi and, perhaps by Sh. Anil Ambani. The certified true copy is signed by Sh. Gaurang Shah at point A. The same is now Ex PW 19/K. In this board meeting, board was informed about the disinvestment of 99,22,000 8% non-cumulative redeemable preference shares of Rs. 1/- each of Swan Telecom (P) Limited.

I have also been shown certified true copy of extract of the minutes of the meeting of the board of directors of Reliance Telecom Limited held on 30.01.2008. I myself attended this meeting. This meeting was also attended by Sh. S. P. Shukla and

Sh. Gautam Doshi. I am not very sure if Sh. Anil Ambani attended the meeting or not. The certified true copy is signed by Sh. Gaurang Shah at point A. The same is now Ex PW 19/L. In this meeting the board was informed about disinvestment of 1,07,91,000 equity shares of Rs. 10/- each of Swan Telecom (P) Limited. For signing the papers of this disinvestment, Sh. Gautam Doshi was authorized. However, board does not know as to who, in fact, dis-invested the same. I mean that decisions regarding disinvestment may be taken by someone else, that is, business team etc. The business team of Reliance Telecom (P) Limited was headed by Sh. S. P. Shukla. I was not part of the business team. There were many members of the business team but Sh. Gautam Doshi was not part of that business team....."

He further deposed, page 13, as under:

".....I have been shown D-373, Ex PW 19/C, wherein no disapproval or contrary opinion has been recorded by the board regarding investment in Swan Capital (P) Limited. Same is the position in reference to Ex PW 19/J. The disinvestment noted in Ex PW 19/L, must have been done by the business team as the matter came before the board only for noting....."

In the cross-examination by the learned Sr. PP, he denied the suggestion that the decision to invest in or divest from STPL was taken by Sh. Gautam Doshi and instead stated that the decision might have been taken by a series of people.

1379. In his cross-examination dated 14.02.2012, pages 17 and 18, he deposed as under:

".....I cannot say if actual investment in Swan Telecom Limited was made by Sh. Hasit Shukla, as I have not seen the papers. The decision to invest was

taken by business team and somebody else executed that decision and this decision was noted by the board, vide Ex PW 19/J. By noted, I mean that the decision was notified to the board but was, in fact, taken by the business team. It is correct that as per Ex PW 19/G, Gautam Doshi was authorized only to sign the transfer papers regarding disinvestment of 10791000 equity shares of Swan Telecom Limited. The authority conferred on Gautam Doshi, vide Ex PW 19/G, was valid only up to 31.03.2008....."

It may be noted that the authority to divest was conferred on Sh. Gautam Doshi on 01.12.2007 vide Ex PW 19/J (D-373).

1380. Regarding the investments being reflected in the balance sheets, PW 19 Sh. Sateesh Seth in his cross-examination dated 15.02.2012, pages 5 and 6, deposed as under:

".....It is correct that Reliance Telecom Limited is an hundred per cent subsidiary company of Reliance Communications Limited. It is also correct that balance sheet of Reliance Telecom Limited comes consolidated with balance sheet of Reliance Communications Limited.

If certified copy of balance sheet of these companies is shown to me, I would be able to identify the same. I have been shown a certified copy of balance sheet of these companies for the financial year ending on 31.03.2007 and same is correct and is now Ex PW 19/DA (collectively). As per point A at page 86 of this balance sheet, an investment of Rs. 10.79 crore in Swan Telecom (P) Limited for 1,07,91,000 equity shares is shown. At point B, an investment of Rs. 992 crore in 99,20,000 in 8% redeemable preference shares of Re. 1 each is shown in Swan Telecom (P) Limited. Both of these investments have been shown under the head Long-term Investments.

Page 97 of this balance sheet relates to "notes on accounts" and notes run into several pages. At page 99, the list of subsidiary companies of Reliance Communications Limited is available and at serial No. 58 of subsidiary companies, the name of Reliance Telecom Limited is mentioned.

At page 100, a list of associate companies of Reliance Communications Limited is available. In this list, the names of Swan Capital/ Swan Telecom, Tiger Traders/ Tiger Trustees, Zebra Consultants, Parrot Consultants, Swan Consultants do not figure. The name of Siddharth Consultancy/ Giraffe Consultancy also does not figure in the list. Since RTL is an hundred per cent subsidiary of Reliance Communications Limited, this list also includes subsidiaries/ associates of Reliance Telecom Limited. The above facts apply both to subsidiary and an associate company.

The aforesaid balance sheet has been certified by an independent statutory auditors, that is, M/s Chaturvedi and Shah and M/s BSR and Company, chartered accountants.

I have been shown a certified copy of balance sheet of Reliance Telecom Limited for the financial year ending on 31.03.2007 and the same is correct and is now Ex PW 19/DB (collectively). I am a director in this company. In schedule E, pertaining to investments, an investment of Rs. 992 crore in 99,20,000 numbers of non-convertible and non-cumulative redeemable preference shares has been shown at point A. It is also correct that Surender Pipara was nominated as employee director in Swan Capital and Tiger Traders (P) Limited by the business team....."

1381. As to why such a huge amount was invested in STPL by Reliance ADA group, PW 19 Sh. Sateesh Seth in his cross-examination dated 15.02.2012, pages 11 and 12, deposed as under:

".....Reliance Communications Limited and its subsidiaries have countrywide network of passive infrastructure and tower sites. I am not connected with Reliance Infratel in anyway. Reliance Telecommunication towers are configured to host multiple wireless service providers and it can have four or more tenants per tower. Tenants here means different telecom companies, who may use these towers. These towers can be used by the company itself and can also be rented out to other service providers. Renting out such towers is part of business of Reliance Communications Limited and its subsidiaries to generate revenue. I am not aware if this business of renting out was subsequently done by Vikata Engineering Services (P) Limited.

It is correct that Reliance Communications Limited has subscribed to non-convertible redeemable preference shares of different companies. Generally, if a large purchase order is placed on a company by another company, there is a practice of vendor arranging finance for the vendee company. This practice is more prevalent in capital intensive industries like telecom. This practice was being followed by Reliance Communications Limited also in the case of towers etc., whenever a big order was placed on it. It is correct that large investment was made by Reliance Telecom Limited in Swan Capital (P) Limited. It is also correct that a large order was placed by Swan Capital (P) Limited on Reliance Communications Limited and that is why, investment was made by Reliance Telecom Limited in Swan Capital (P) Limited. This decision was taken by business team....."

1382. As to why preference shares were issued at a huge premium, PW 19 Sh. Sateesh Seth in his cross-examination, pages 12 and 13, deposed as under:

".....Whenever a company increases its authorized capital, it has to deposit fee and stamp duty with the

Registrar of Companies as per rules. If preference shares are issued even then this fee is required to be paid. However, if preference shares are issued on premium, then no fee is required to be paid on the premium portion. Generally, companies follow this practice in order to avoid payment of high fees and stamp duty. Reliance Group companies also follow this practice to save fees and stamp duty....."

Thus, PW 19 Sh. Sateesh Seth deposed as to how much investment was made in STPL, who made the investment and why was it made. He justified the investment in STPL. His version was not challenged by prosecution, either by re-examination or cross-examination. His version is reasonable one. The gist of his evidence is that the investment by Reliance was within permissible limits and was also in permissible financial instruments.

1383. PW 101 Sh. Hasit Shukla, President, Reliance Communications Limited, in his examination-in-chief dated 25.02.2013, pages 3 to 5, deposed about investment and divestment in STPL as under:

".....I have been shown certified true copy of the extract of the minutes of the board meeting dated 30.01.2007 of Reliance Telecom Limited, already Ex PW 19/C. These minutes were required to be placed before the board of Reliance Communications Limited, it being the holding company of Reliance Telecom Limited. The decisions mentioned in this extract were not taken by me. These decisions might have been taken by the business team of Reliance Telecom Limited.

I have been shown certified true copy of the extract of the minutes of the board meeting dated 29.04.2007 of Reliance Telecom Limited, already Ex

PW 19/J. These minutes were required to be placed before the board of Reliance Communications Limited, it being the holding company of Reliance Telecom Limited. The decisions mentioned in this extract were not taken by me. These decisions might have been taken by the business team of Reliance Telecom Limited.

I have been shown certified true copy of the extract of the minutes of the board meeting dated 30.10.2007 of Reliance Telecom Limited, already Ex PW 19/K. These minutes were required to be placed before the board of Reliance Communications Limited, it being the holding company of Reliance Telecom Limited. The decisions mentioned in this extract were not taken by me. These decisions might have been taken by the business team of Reliance Telecom Limited.

I have been shown certified true copy of the extract of the minutes of the board meeting dated 30.01.2008 of Reliance Telecom Limited, already Ex PW 19/L. These minutes were also required to be placed before the board of Reliance Communications Limited, it being the holding company of Reliance Telecom Limited. The decisions mentioned in this extract were not taken by me. These decisions might have been taken by the business team of Reliance Telecom Limited....."

It may be noted that on 22.01.2007, RTL was allotted 2,97,000 equity shares of Rs. 10/- each by STPL vide board meeting dated 22.01.2007, minutes of which are Ex A-21. It was also issued 2,80,000 8% non-cumulative redeemable preference shares of Re. 1/- each at a premium of Rs. 999/- per NCRPS amounting to Rs. 1000/- per NCRPS, aggregating to Rs. 28 crore on the same date by STPL. This was noted by the board of RTL vide minutes dated 30.01.2007, Ex PW 90/C (D-373).

On 02.03.2007, RTL was also allotted 1,04,94,000 equity shares by STPL, minutes of which meeting are Ex A-25. On the same day, it was also allotted 96,40,000 8% non-cumulative redeemable preference shares of Re. 1/- each at a premium of Rs. 999/- per NCRPS aggregating to Rs. 1000/- per NCRPS. The investment in NCRPS was noted by the board of RTL on 29.04.2007 vide minutes Ex PW 19/J. The divestment from STPL of equity shares as well as NCRPS was noted by the board of RTL on 30.01.2008, vide minutes Ex PW 19/L and 19/K.

1384. Thus, RTL had invested an amount of Rs. 1000 crore and above in STPL. The question is: Who invested it and why was it invested? Whether the investment was permissible under Guidelines? Whether there is a challenge to its genuineness by prosecution by putting relevant questions to witnesses?

1385. PW 101 Sh. Hasit Shukla in his examination-in-chief dated 26.02.2013, pages 12 and 13, deposed about the investment in STPL as under:

> ".....The Reliance Telecom Limited had invested an equity about Rs. 10 crore in Swan Telecom (P) Limited. Reliance Telecom Limited had also invested about Rs. 970 crore in preference shares in Swan Capital (P) Limited with each share being of Re. One each and premium of Rs. 999/- per share. I do not know the reason for investing only this much amount as I personally did not deal with the case. This decision was the decision of business team comprised of many people including Sh. S. P. Shukla, Sh. Bhaskar Guha, Sh. Inder Bajaj and others, whose names I do not recollect. Sh. S. P. Shukla was heading this team....."

Sh. Hasit Shukla was cross-examined by the learned

Sr. PP, in which he denied that he was instructed by Sh. Gautam Doshi to make an investment of Rs. 29.7 lac into equity shares of Rs. 10/- each and Rs. 28 crore into preference shares of Re. 1/- each with premium of Rs. 999/- per share in STPL. He further denied the suggestion that he had invested Rs. 964 crore in preference shares of Re. 1/- each with a premium of Rs. 999/- per share in STPL as per the direction of Sh. Gautam Doshi.

1386. In his cross-examination by defence dated 01.03.2013, pages 10 and 11, he deposed about the divestment of Reliance from STPL as under:

> ".....It is correct that in August 2007, business team of RCom desired that non-cumulative redeemable preference shares of STPL be taken over by DB group. It is correct that the business team told me that Anand Bhatt held meeting with DB group in end of August 2007 and business team to work out modalities of unwinding of RTL transactions with STPL. It is correct that reconciliation took about 45 days as it was complicated exercise. It is correct that finally the unwinding took place in October 2007. It is correct that DB group purchased non-cumulative redeemable preference shares from RTL in October 2007. It is correct that DB group wanted to cancel infrastructure supply contract and they wanted it to be done on irrevocable right to use basis.
>
> It is correct that RTL sold 9.99% equity stake to Delphi Investments Limited in December 2007. It is correct that for this purpose the transaction and documentation was coordinated and arranged by Sh. Anand Bhatt.
>
> I have been shown D-500, already Ex PW 63/A, wherein my attention has been invited to business service and corporation agreement signed between STPL and RTL dated 18.10.2007. I signed it at point A on behalf of RTL and the agreement is

now Ex PW 101/DC. I am unable to identify the signature of the person who signed at point B on behalf of STPL....."

1387. PW 101 Sh. Hasit Shukla in his further cross-examination dated 01.03.2013, page 15, deposed about vendor finance by Reliance Communication group as under:

".....It is correct that Reliance Communications group was willing to provide requisite vendor financing provided Swan Capital (P) Limited, whose name got changed to STPL, places order for supply of equipments with Reliance Communication group....."

1388. PW 101 Sh. Hasit Shukla also deposed as to how and why the investment was made by RTL in STPL and that it was within permissible limits and in permissible financial instruments and his version was also not questioned by the prosecution, either by re-examination or cross-examination. For the sake of clarity, let me extract clause 8 again, which reads as under:

"No single company/ legal person, either directly or through its associates, shall have substantial equity holding in more than one LICENSEE Company in the same service area for the Access Services namely; Basic, Cellular and Unified Access Service. 'Substantial equity' herein will mean 'an equity of 10% or more'. A promoter company/ Legal person cannot have stakes in more than one LICENSEE Company for the same service area. A certificate to this effect shall be provided by the applicant's company Secretary alongwith application."

This clause 8 speaks only of equity and nothing else.

Let me now contrast this clause with clause 5A of the same Guidelines which deals with foreign holdings and speaks of many financial instruments and reads as under:

> "5.A The total composite foreign holding including but not limited to investments by Foreign Institutional Investors (FIIs), Non-resident Indians (NRIs), Foreign Currency Convertible Bonds (FCCBs), American Depository Receipts (ADRs), Global Depository Receipts (GDRs), convertible preference shares, proportionate foreign investment in Indian promoters/investment companies including their holding companies, etc., herein after referred as FDI, will not exceed 74 per cent. The 74 per cent foreign investment can be made directly or indirectly in the operating company or through a holding company and the remaining 26 per cent will be owned by resident Indian citizens or an Indian Company (i.e. foreign direct investment does not exceed 49 percent and the management is with the Indian owners). It is clarified that proportionate foreign component of such an Indian Company will also be counted towards the ceiling of 74%. However, foreign component in the total holding of Indian public sector banks and Indian public sector financial institutions will be treated as 'Indian' holding. The licensee will be required to disclose the status of such foreign holding and certify that the foreign investment is within the ceiling of 74% on a half yearly basis."

1389. If this clause is read carefully, it reveals that it mentions investment by means of various financial instruments and by several layer of companies. In contrast to this, clause 8 mentions only equity investment. Thus, clause 8 only prohibits equity investment by one licensee company into another licensee company and not other investment by means of other

financial instruments like debt instruments, preference shares etc. Policy maker is expected to have known all these nuances when these Guidelines were framed. They were expected to know the provisions of Companies Act relating to issue of shares and debentures. They could have very well prohibited investment by debt instruments also, but it was not done. Perusal of file Ex PW 60/DF reveals that when clause 8 was framed extensive consultations took place in DoT. Not only this, ICICI Bank, SBI Caps, TCIL, Law department etc., were consulted. What does this indicate? It indicates that cross-holding of debt was deliberately not included within the scope of clause 8. So, if one licensee company makes investment in other licensee company by means of debt instruments, it cannot be said that there is violation of clause 8. Excessive borrowings/ funding may lead to a perception of wrongdoing. It may not be to the liking of certain quarters. However, it is not prohibited by law and, as such, there is no illegality in cross-holding of debt.

Leasing of Passive Infrastructure

1390. Passive infrastructure was to be leased by RCL to STPL and for that a notification of award Ex PW 130/A was issued by STPL. The case of the prosecution is that NOA, Ex PW 130/A (D-449), was just a pretext to repay the money to RCL, which was paid by it to STPL, just to create its networth. However, only one witness PW 130 Sh. V. D. Rao, Sr. Vice President, RCL, was examined by the prosecution. This witness in his examination-in-chief deposed that NOA was correct and

only thereafter it was marked as an exhibit. However, in the cross-examination, he disowned it and deposed that he cannot say if it was genuine copy or not but added that it was the same copy which was seen by him in the CBI office. Prosecution did not put any question to the witness suggesting that this document was created just to justify the return of money from STPL to RCL. The prosecution did not question the witness about the genuineness of the document. No other witness said anything about this document. Moreover, it is just a photocopy. As such, there is no evidence at all that this is a fake document created by Sh. Gautam Doshi. In such a situation, how can prosecution argue that this document was used as a ruse to return the money by STPL to RCL on the pretext of providing passive infrastructure.

1391. PW 137 Sh. Jignesh Shah, Company Secretary, DB group, in his cross-examination dated 19.08.2013, pages 7 to 9, explained the transfer of money of Rs. 974 crore as under:

> ".....I am acquainted with the accounts of Swan Telecom (P) Limited (now Etisalat DB Telecom (P) Limited) as it was DB group company since 03.03.2007. I have been shown a certified copy of ledger account of Reliance Communications Ltd. in the books of Swan Telecom (P) Limited (now Etisalat DB Telecom (P) Limited) from 01.04.2006 to 31.03.2008. I am acquainted with this account as I assisted the audit team being company secretary and having knowledge of accounts. The same is now Ex PW137/DA and this has been certified by me. In this ledger account, a payment of Rs.974 crore has been shown by Swan Telecom (P) Limited (now Etisalat DB Telecom (P) Limited) to Reliance Communications Ltd. and this payment was for

acquiring passive infrastructure. However, the order was cancelled and this amount was refunded back by Reliance Communications Ltd. to the extent of Rs.800 crore between 22.05.2007 and 25.05.2007. However, the remaining amount of Rs.174 crore was returned between the months of June to October, 2007 as there was a dispute between the parties, which was resolved with the intervention of Sh. Anand Bhatt.

I have also been shown a certified copy of ledger account of Vikata Engineering Pvt. Ltd. in the books of Swan Telecom (P) Limited (now Etisalat DB Telecom (P) Limited) for the same period. This has also been certified by me and is now Ex PW137/DB. As per this statement, Rs.800 crore was given by Swan Telecom (P) Limited (now Etisalat DB Telecom (P) Limited) to Vikata Engineering Pvt. Ltd. for purchase of telecom equipment. This loan was given to Vikata Engineering Pvt. Ltd. as it was agreed to between the parties that till the time, the dispute was resolved with Reliance Communications Ltd., this amount would be given to Vikata Engineering Pvt. Ltd. by the intervention of Sh. Anand Bhatt. On the basis of this ledger account, I cannot say that had this amount not been returned by Reliance Communications Ltd., it was possible or not to pay this amount to Vikata Engineering Pvt. Ltd....."

1392. In the end, I find that the funding of STPL by Reliance was within permissible limits. The prosecution case is that quick transfer of money indicates that it was aimed at creating networth of STPL. By way of of arguments at the bar, it endeavoured hard to prove so. But in the absence of evidence, plain arguments at the bar are not of much consequence. Prosecution should have led evidence on this point. Further, if there was violation of clause 8 by way of excessive funding

through preference shares or debt funding, the appropriate way for DoT was to amend its Guidelines. As per clause (v) of licence agreement, DoT is also fully empowered to amend the licence agreement in public interest. In such a situation, DoT suddenly cannot turn around and say that there has been violation of clause 8 by excessive debt funding. As the clause stands at the moment, there can be no violation of it by way of debt funding.

Whether STPL was an "Associate" of RCL/ RTL?

1393. It is the case of the prosecution that STPL, on the date it filed applications for thirteen UAS licences, that is, on 02.03.2007, was an "Associate" of Reliance ADA group/ Reliance Communications Limited/ Reliance Telecom Limited. Its case is that RCL was already having UAS licences in all the thirteen service areas in which STPL had applied. It is the case of the prosecution that TTPL, which was holding majority stake, that is, more than 90% in STPL, was also an "Associate" of Reliance ADA group. It is the case of the prosecution that day-to-day affairs of STPL and TTPL were being managed by the officials of Reliance ADA group, which included Sh. Hari Nair, Sh. Gautam Doshi and Sh. Surendra Pipara. The commercial decisions of the two companies were also being taken by the same officers. It is also the case of the prosecution that all inter-company transactions were also being conducted by the same persons. It is the case of the prosecution that once STPL was an "Associate" of RCL/ RTL, it was not eligible to apply for UAS licences.

1394. On the other hand, defence argued that STPL was an

independent company, controlled by DB group on the date of filing of applications, that is, on 02.03.2007. It is also the case of the defence that there is no definite meaning of word "Associate". It is also the case of the defence that no one knows as to when and at which stage a company would be deemed to be an "Associate" of another. It is the case of the defence that in such an uncertain situation, how can people be held responsible and criminally prosecuted for its violation?

Both parties have invited my attention to the relevant guidelines, deposition of witnesses and documents, including, AS-18.

Meaning of "Associate" and its Interpretation

1395. The word "Associate" is found used in clause 8 of UASL Guidelines dated 14.12.2005, which reads as under:

> "No single company/ legal person, either directly or through its associates, shall have substantial equity holding in more than one LICENSEE Company in the same service area for the Access Services namely; Basic, Cellular and Unified Access Service. 'Substantial equity' herein will mean 'an equity of 10% or more'. A promoter company/ Legal person cannot have stakes in more than one LICENSEE Company for the same service area. A certificate to this effect shall be provided by the applicant's company Secretary alongwith application."

1396. This clause is also known as "Substantial Equity Clause". The case of the prosecution is that STPL was in violation of this clause at the time of filing of applications for thirteen UAS licences as it was an 'Associate' of RCL/ RTL, an

existing licensee.

1397. It may be noted that in the charge sheet, no meaning, ingredient or interpretation of word "Associate" has been mentioned. The Guidelines dated 14.12.2005, 2/DB, also do not define or interpret the word anywhere.

1398. Prosecution examined PW 36 Sh. D. S. Mathur, who was Secretary (T) at the relevant time. It also examined PW 60 Sh. A. K. Srivastava, DDG (AS), who was head of the Licensing Branch, as AS branch is responsible for licensing. It also examined PW 92 Sh. P. K. Mittal, who was DDG (AS), when the Guidelines dated 14.12.2005 were issued. It also examined PW 110 Sh. Nitin Jain, who was Director (AS-I), at the relevant time. Thus, four most important officers of DoT have been examined. However, the prosecution did not put any question to these witnesses as to the meaning and interpretation of the word "Associate". Not a single question was put to PW 92 Sh. P. K. Mittal, who was head of the Licensing Branch, when the Guidelines dated 14.12.2005 were issued. Who could have explained the meaning of word "Associate"? Who could have explained as to how STPL violated this clause? Only the officers who were associated with the framing of Guidelines. But not a single question was put to them about its ingredients or parameters. Apart from the four senior officers referred to above, many other officers have also been examined by the prosecution, but no question was put to any witness from DoT about the meaning of word "Associate" and the way STPL violated it. So there is no material on record to show as to what

this word meant to DoT and how STPL qualified to be an "Associate" of RCL. There is also no material on record to show as to when DoT would consider a company to be in violation of this clause. Is it an abstract concept? If so, how can people be held guilty for its violation?

1399. The case of Sh. A. K. Srivastava is much more serious as this clause was inserted in the licence agreement in 2001 with the note of Sh. A. K. Srivastava dated 02.03.2001, Ex PW 60/DF-1. The relevant part of the note reads as under:

> "..... .....
> 2. To finalize the Tender Document and the NIT, a meeting was taken by the Chairman (TC) today (02.03.2001). Member (P), Member (F), Legal Advisor (T), DDG (VAS), DDG (LF) & DDG (BS) were present. Shri A. K. Duggal, Company Secretary, TCIL was special invitee in the meeting for providing certain clarifications. Following was decided:-
> (i) Substantial equity holding may be defined as equity of 10% or more. For the purpose of adding clarity with regard to ensuring competition and meaning of substantial equity, Para 1.3 (ii) / Section IV of Commercial Conditions will be modified as below:
>
> "No single company/legal person, either directly or through its associates, shall have substantial equity holding in more than one licensee company in the same service area for the same service. 'Substantial equity' herein will mean 'an equity of 10% or more'. A promoter company cannot have stakes in more than one licensee company for the same service area."
> ...."

Thus, Sh. A. K. Srivastava is expected to know the parameters of clause 8 and how can it be observed and violated, but he kept silent. When this clause was drafted, ICICI was also consulted and inputs were received from it. A draft for discussion was submitted by it which is available at 9/c of file D-397. While referring to this clause, ICICI wrote at page 110 as under:

> "It may be clarified whether different companies of the same group could legally form distinct companies and bid for the same circle. The definition of group companies would need to be included. DoT may reject multiple bids from the same group in its sole discretion in the interest of competition."

1400. This draft was considered in the meeting held on 09.02.2001, but this suggestion was not considered, though clause 1.3 was considered relating to application of MRTP Act. Furthermore, in clarifications issued by DoT in 1995, a page of which is annexed to letter dated 16.08.2011, Ex PW 81/DG, written by DoT to Law department, the following question was raised:

> "Can the companies under the same group, but having own independent management, bid through different joint ventures with different foreign partners for same/ different telecom circles?"

The department replied in the affirmative. Thus, the idea is that companies of the same group but with independent management may apply in the same service area for the same service. Thus, there are different views from the very beginning about this clause. Furthermore, in the same clarifications issued

vide clause 2.1 (iv), word "Associate" was used in the sense of holding/ subsidiary relationship.

1401. PW 153 SP Vivek Priyadarshi in his cross-examination dated 21.11.2003, pages 16 and 17, deposed about "substantial equity clause" as under:

> ".....I am not aware as to who drafted the UASL Guidelines. It might be so that they were drafted by Sh. P. K. Mittal, the then DDG. It is wrong to suggest that I did not deliberately seek the views of Sh. P. K. Mittal on the meaning and scope of these guidelines particularly pertaining to substantial equity clause. **Volunteered**: All concerned DoT officials, including P. K. Mittal, were examined on the meaning and scope of these guidelines during this investigation and other preliminary inquiries....."

Thus, he did not seek the opinion of officer who was responsible for drafting the guidelines dated 14.12.2005.

1402. Investigating Officers also did not depose anything about meaning of "Associate" in their examination-in-chief. When the word was used in the charge sheet, it was the duty of the investigating officer to clarify its meaning and to mention as to how the accused violated the clause, so that the accused becomes aware of definite case they were required to answer. An accused must know as to what rule has he violated and what are its ingredients/ constituents to answer the same. A criminal charge must be definite and certain. However, in the prosecution case no standard ingredients of the meaning of "Associate" have been mentioned. Thus, there are general allegations that STPL was an "Associate" of RCL, but it is nowhere mentioned as to how.

1403. PW 153 IO Sh. Vivek Priyadarshi in his cross-examination dated 22.11.2013, pages 6 to 9, deposed about word "Associate" as under:

> ".....Vide forwarding letter dated 11.07.2011, a report of MCA dated 23.03.2011 was also received in the CBI office on 12.07.2011 pertaining to Loop matter. This report was prepared by Sh. Henry Richard and the report is already Ex PW 70/DD-1. It is correct that in this report MCA, inter alia, concluded that "Moreover, the definition of "associates" in AS 18 and 23 are for limited purpose of disclosure and consolidation of accounts respectively and cannot be applied to clause 8 of DoT guidelines for the purpose of determining the meaning of "associates" used therein".
>
> **Court Ques**: In your charge sheet, you have used the word "associate" at several places. Did you use it as a general term or strictly as a term of Company Law?
>
> **Ans**: During investigation, I had examined the background and history of use of this word and found that this word was incorporated in the context to prevent compromise of competition. In 2001, when new UAS licences were issued after coming of NTP-1999, wherein the previous licencees were moved from fixed licence fee regime to revenue share regime, they were issued letters that conveyed that henceforth, they will work in a competitive environment. They were asked to ensure that no promoter shall hold any equity in two licencee companies in the same service area. They were also asked to keep the intention of compromise of competition mentioned in MRTP Act, then in force. At this time, the new licences were also given with a clause mentioned therein which was similar to the clause 8 of UASL guidelines. The word "associate" at that time was defined in the Company Act, amended in 2000. As the word "associate" was taken by DoT from the prevalent Company Law and MRTP Act

etc., the meaning of word "associate" was understood in the light of matters being processed at DoT and also the Company Law prevalent worldwide. This indicated that an associate is considered to be a company having links to another and it has been quantified by various statutes, a little below the control. This relationship has been explained by the word "significant influence" not only in Indian Company Law, but Accounting Standards or Company Law prevalent worldwide. The common threshold of voting power or shareholding beyond which a company is presumed to be an associate is 20%. During investigation, it revealed that in STPL, RTL had through RCL and other group companies provided not only the entire funds for equity through a complex and concealed structure, but also it had put in it directors to control its operations. In aforesaid background, the word "associate" has been used in the charge sheet.

It is correct that documents have been filed in this case even after filing of charge sheet. It is correct that the aforesaid report Ex PW 70/DD-1 pertaining to Loop matter has not been placed on the record of this case. It is wrong to suggest that I did not deliberately place this report on record as it would have falsified the prosecution case. It is further wrong to suggest that this report is contrary to the earlier report of Henry Richard dated 11.03.2011 and this is also one of the reasons for not placing this on the record of this case. I had seen Ex PW 81/DG containing clarification regarding the word "associate" issued by DoT in 1995, D-823. It is correct that letter dated 05/06.07.2011 was written by CBI to MCA and the letter is now Ex PW 153/DF-13 (CD-140). It is correct that in response to it MCA again wrote a letter dated 11.07.2011, now Ex PW 153/DF-14 (CD-144), pages 1 to 106. It is correct that CBI also wrote a letter dated 08.07.2011 to MCA, which is now Ex PW 153/DF-15 (CD-142). It is correct that in response to it, MCA again wrote a

letter dated 29.07.2011 and the same is now Ex PW 153/DF-16, pages 1 to 93 (CD-145), in which it was, inter alia, stated that the definition of word "associate" needs legal examination. However, all these four letters pertain to Loop investigation....."

Thus, the investigating officer is also not sure of its meaning and referred to various sources for its meaning, including Companies Act, MRTP Act, AS-18 etc.

1404. PW 153 in his further cross-examination dated 25.11.2013, page 2, deposed as under:

".....It is wrong to suggest that no DoT official was questioned about the meaning of word "associate" by me or by any assisting IO....."

This is contrary to record as no DoT officer clarified the meaning of word "Associate" nor is there any record showing that anyone from DoT had clarified its meaning to investigating officers.

PW 153 in his further cross-examination dated 25.11.2013, page 4, deposed as under:

".....It is wrong to suggest that I did not obtain any interpretation of the word "associate" from any official of DoT. It is wrong to suggest that I assigned my own imaginary interpretation to it....."

Thus, the investigating officer denied that he did not question any officer of DoT about meaning of "Associate". This means that he had questioned the officials of DoT, but did not name them nor is there any evidence on this point that he had questioned anyone.

In his re-examination by the learned Sr. PP dated 27.11.2013, page 16, PW 153 deposed as under:

> ".....**Ques**: Whether your reply relating to word "associate" is exhaustive?
> **Ans**: In my charge sheet, I had used the word "associate" as a general term and also in the background stated by me in my evidence on 22.11.2013....."

Thus, investigating officer also used the word "Associate" as a general term, apart from as used in Companies Act, MRTP Act, AS-18 etc.

A bare perusal of the evidence of PW 153 reveals that, in his understanding, there is no definite meaning of it and its meaning has to be understood by reading different Guidelines and enactments.

1405. Similarly, PW 150 Dy SP V. M. Mittal, in his cross-examination dated 23.10.2013, pages 10 to 12, deposed about the basis on which STPL is an "Associate" of RCL, as under:

> ".....My deposition to the effect that Giraffe Consultancy Services (P) Limited is an associate of Reliance Energy is based on a letter Ex PW 6/Q-12 and KYC report Ex PW 84/N attached with account opening form, already Ex PW 6/Q (D-390). The letter has been written by company secretary, but I cannot tell his name. I did not examine the related party transactions of these companies nor did I interrogate their auditors. I did not examine their ledger, vouchers etc. I do not remember if I had examined the author of the KYC report Ex PW 84/N, but I do remember that I had examined some bank officials on this document, though I do not remember their names.
> **Ques**: On what basis have you deposed in the Court

that Reliance Communications Limited had declared STPL as its associate?
Ans: I deposed so on the basis of letter dated 01.03.2007, already Ex PW 1/B (D-386).

It is wrong to suggest that it is not so declared in the documents and I am misreading the same in order to create a confusion. **Volunteered**: In letter Ex PW 1/B, the words "group company" have been used and to my understanding group company includes associate.

The use of associate is as per my understanding, though the word "associate" is not written in the document. It is wrong to suggest that I have deliberately used the word associate to bring the case within the ambit of UASL Guidelines. I do not know if the CBI had received any report from Ministry of Law and Justice.

I do not remember if I had examined the signatories to document Ex PW 84/O (D-387), but I do recall that I had examined some bank officials, though I cannot tell their names and dates when they were examined.

I had also seen KYC report Ex PW 84/M during investigation....."

Thus, Sh. V. M. Mittal considered the companies to be "Associate" of each other on the basis of some letters to bank. However, most of the letters are of period prior to 02.03.2007.

1406. In his further cross-examination dated 25.10.2013, pages 3 to 5, PW 150 deposed as under:

"....."It is correct that Swan Capital (P) Limited was incorporated in July 2006 and it remained a shelf company for sometime. It did not come to my notice during investigation that this company was made available to late Sh. Anand Bhatt in December 2006, as he wanted to apply for UAS licence. However, it is correct that this company made an application for UAS licence for J&K service area. I am broadly

acquainted with the meaning of the term "special purpose vehicle". It is correct that broadly its meaning is that it signifies a company meant for carrying out a specific purpose. It is wrong to suggest that Sh. Anand Bhatt used Swan Capital (P) Limited as an SPV for applying for UAS licence. **Volunteered**: As per my investigation this company was and remained a Reliance group company.

It is wrong to suggest that this was not a Reliance group company. It is wrong to suggest that Reliance Telecom Limited had less than 10% equity shares in STPL. **Volunteered**: Though the direct equity was less than 10%, but further equity was through associates.

Ques: Do you understand the meaning of the word "associate" as mentioned in clause 8 of UASL Guidelines?

Ans: It is a legal question and, as such, I find myself unable to answer the same.

It is wrong to suggest that there was no associate of RTL holding equity in STPL.

Court Ques: Do you understand the meaning of word "associate" in common parlance?

Ans: By this word, in common parlance, I mean as an investigator to be that the fund management of the two companies is being done by the same persons, directors are common, ultimate shareholders are common, place of work is also same, board meetings are held at the same place and day-to-day decisions are also taken by same persons. Moreover, in the instant case, for doing the work of a particular company, that is, for Swan Telecom (P) limited and TTPL, by the employees on the pay roll of other company, no payment was paid by these companies to them.

It is correct that in March 2007 the direct equity holding of RTL in STPL was less than 10%. It is correct that subscription to preference shares of STPL by RTL ensured that STPL had enough net worth to make it eligible to apply for UAS licences. It

is correct that the funds representing the investment by RTL into STPL were transferred from bank account of RTL to bank account of STPL. It is correct that TTPL directly held more than 90% of the equity shares in STPL. It is correct that the investment by TTPL in equity shares of STPL was not directly funded by RTL. **Volunteered**: The money came from Reliance ADA group, of which RTL is a part.

It is wrong to suggest that money did not come from Reliance ADA group.

It is wrong to suggest that as on 22.01.2007, since there was an alteration in shareholding as well as directors of STPL, the letter which was written originally stating the position of this company, that is, STPL, being an associate as on that day changed. **Volunteered**: The letter was written by Reliance Energy to the bank and this company did not intimate the bank regarding any subsequent change to the effect that the company had ceased to be its associate....."

This witness also first avoided to answer the question as to the meaning of word "Associate". Thereafter, he introduced the criteria of funding, common director, common workplace etc.

In his further cross-examination dated 25.10.2013, page 10, PW 150 deposed as under:

"....I did not see any clarification during investigation issued by DoT regarding the term "associate" issued in the year 1995. It is wrong to suggest that I did not investigate the meaning of this term deliberately, as ascribed by DoT, as I wanted to assign my own imaginary meaning to it. I did not study the practice and procedure of DoT regarding eligibility....."

Thus, this witness also has no clear understanding of

the meaning of word "Associate". How can he allege that the companies were "Associate" and thus violated clause 8.

1407. Let me take note of the deposition of 101 Sh. Hasit Shukla, Company Secretary, Reliance Communications Limited, as to how he understood the word "Associate" as used in the Guidelines. He, in his cross-examination dated 01.03.2013, page 7, deposed that STPL was not an "Associate" of RCL/ RTL in 2006-07, the relevant part of which is as under:

> ".....I have been shown D-449, wherein my attention has been invited to a document already Ex PW 101/G, and this is an annual report for 2006-07 of Reliance Telecom Limited. Apart from other things, it also contains a list of subsidiary/ associate companies of Reliance Telecom Limited, at page 57. In this list, Swan Telecom (P) Limited does not appear either as subsidiary or associate.
> **Court Ques**: You are a qualified company secretary with a rich experience in the field. Please explain the difference between a subsidiary company and an associate company?
> **Ans**: Subsidiary company means a company which is held by more than its 51% of paid up capital by another company and associate company means another company holding 20% or more but below 51% of the paid up capital of such company.
> Reliance Telecom Limited is a wholly owned subsidiary of RCom. Swan Telecom (P) limited was neither a subsidiary nor an associate of RCom....."

If his view is accepted then "Subsidiary" company would be out of scope of "Associate".

1408. PW 56 Dr. Rakesh Mehrotra in his cross-examination dated 13.07.2012, pages 2 and 3, deposed as under:

> ".....I am aware that some clarifications were

issued by the DoT in 1995 regarding meaning of word "Associate". This clarification is available at page 726 of file Ex PW. 56/DB and is now Ex PW. 56/DE. (objected to). Vol: this clarification talks about bidding and not licence....."

In this clarification, it appears that "Associate" company was used for a subsidiary company. PW 56 Dr. Rakesh Mehrotra in his further cross-examination dated 13.07.2012, page 4, deposed as under:

"....In my letter Ex PW.56/DG I clarified the word "Associate" as subsidiaries or holding company....."

1409. DW 26 Dr. Santokh Singh, the then LA (T), in his examination-in-chief dated 01.09.2013, page 4, deposed as under:

".....**Ques**: What is the interpretation of word "Associate", as mentioned in clause 8, in your understanding of it?
Ans: My understanding is same as mentioned in my earlier deposition, a copy of which has already been exhibited. As per my understanding, an "Associate", is only that entity which is either a holding or subsidiary of each other....."

He understood the word "Associate" in terms of holding/ subsidiary relationship.

1410. Thus, different person understand the meaning of word "Associate" in different manner. DoT officers have not deposed about their understanding of the word "Associate". In such a situation, when there are no definite parameters, how can it be said that STPL was an "Associate" of RCL? How can it be alleged that STPL violated clause 8 due to this relationship

with RCL?

1411. Furthermore, PW 70 Sh. Henry Richard, Registrar of Companies, also examined the documents relating to STPL, RTL/ RCL to find out as to whether STPL was an "Associate" of these companies. The relevant part of his examination-in-chief dated 12.10.2012, pages 1 to 3, is as under:

> ".....I have been shown D-416, which is a copy of report dated 11.03.2011 prepared by me. It bears my signature at point A, page 7, and is now Ex PW 70/A (objected to). This report was prepared by me in my office in Mumbai. This report was prepared subsequent to letter received from CBI to the Ministry of Corporate Affairs, wherein CBI had requested me to examine certain documents seized by them and kept in their office in Delhi. In this connection, I visited Delhi office of CBI and examined the documents made available to me and thereafter, I prepared this report based upon such documents made available to me. Subject matter of this report is to examine and comment as to whether M/s Etisalat DB Telecom (P) Limited, formerly known as Swan Telecom (P) Limited, is an associate of Reliance Telecom Limited/ Reliance Communication Limited or ADA Group Company.
> **Ques**: What kind of documents were made available to you by the IO?
> **Ans**: The documents made available to me in respect of Swan Telecom (P) Limited, Tiger Traders (P) Limited, Reliance Telecom Limited, Vikata Engineering Services (P) Limited and Giraffe Consultancy Services (P) Limited are as follows: (a) minutes books of board meeting of the abovesaid companies; (b) the applications submitted by the companies to the bank for opening of bank accounts; (c) bank statements; (d) certain vouchers relating to material financial transactions, inter se,; and (e) documents relating to employee details.

Ques: What did you do after these documents were made available to you by the IO?
Ans: I examined all the abovementioned documents to come to a conclusion that Swan Telecom (P) Limited, which had applied for UAS Licence, was an associate company of Reliance Telecom Limited/ Reliance Communication Limited and an ADA Group Company.

My detailed report Ex PW 70/A, pages 1 to 7, is correct one and was submitted by me to the Ministry of Corporate Affairs through the Regional Director, Mumbai. The photocopies of documents, pages 8 to 53, examined by me are attached with my report....."

This witness gave a new turn to the whole controversy. He arrived at a conclusion that STPL was an "Associate" of RTL/ RCL on an entirely different criteria, that is, criteria of bank statements, material financial transactions, employee details etc. This criteria is no where mentioned in the Guidelines dated 14.12.2005.

However, earlier on the basis of equity criteria he gave a contrary report, holding that STPL was not an "Associate" of RCL/ RTL and the relevant part of his cross-examination dated 15.10.2012, pages 2 to 4, reads as under:

".....In the report Ex PW 70/DC, I had observed that w.e.f 31.01.2006 Reliance Communication Limited or its subsidiary Reliance Telecom Limited had no equity shareholding or voting rights in Tiger Trustees (P) Limited, Swan Advisory Services (P) Limited and Swan Infonet Services (P) Limited, portion A to A. At portion B to B, I observed that Memorandum and Articles of Association filed by Swan Telecom (P) Limited or Tiger Trustees (P) Limited do not contain any provision which would

provide RCL/ RTL or any other person with any special rights/ privileges entitling them to control STPL or TTPL or composition of their board.

It is correct that as per my report as on 02.03.2007 Reliance Telecom Limited held only 9.90% of the total voting equity capital in Swan Telecom (P) Limited and also held preference shares to the extent of Rs. 992 crore without any voting rights.

It is correct that my four reports Ex PW 70/DC to DC-3 were prepared by me to the best of my ability and knowledge of law and without any favour to anyone or fear of anyone.

Ques: Did you prepare your report Ex PW 70/DC on the query of DoT as to whether Swan Telecom (P) Limited was acting as a front company of Reliance Telecom Limited while applying for UAS Licence?

Ans: That is correct.

Ques: Was it also enquired from you as to whether the application of Swan Telecom (P) Limited was against the letter and spirit of clause 8 of UASL Guidelines dated 14.12.2005?

Ans: That is correct.

Court Ques: What were your answers to the two questions noted above?

Ans: I explained in my report that the term "front company" is not defined in the Companies Act and the word "associate" appears only in AS 18 of the Accounting Standard Rules framed by the MCA pursuant to Section 211 of the Companies Act. In the last para I concluded that as per the available records in the office of ROC Mumbai filed by the company that RTL either directly or through its associates did not have equity holding of more than 10% in Swan Telecom (P) Limited and nothing could be found in the records in the office of ROC, Mumbai, that either Swan Telecom (P) Limited or Tiger Trustees (P) Limited or Swan Infonet Services (P) Limited or Swan Advisory Services (P) Limited are associates of RTL. I did not make any specific

comment on clause 8 of UASL Guidelines of DoT, but made a reference to the clause in my report……."

Thus, on the basis of equity criteria he found that the companies were not "Associate" of each other.

In his further cross-examination dated 15.10.2012, page 9, he deposed as under:

"……..It is correct that the main purpose of accounting standards issued by MCA is that the published financial statement of a company should give true and fair picture of its affairs. They are applicable across the spectrum irrespective of the industry. I cannot say if these accounting standards were drafted keeping in view UASL Guidelines.
Ques: Could you please tell this Court if AS-18 and AS-23 be applied to clause 8 of UASL Guidelines for the purpose of determining the meaning of "associate" used therein? (objected to by Ld. Sr. PP).
Ans: I do not remember. Confronted with portion A to A of Ex PW 70/DD-1, where it is so recorded that they cannot be used……."

Here, Sh. Henry Richard indirectly conceded that AS-18 cannot be used for interpretation of UAS Guidelines. In the end, no reliance can be placed on the deposition of Sh. Henry Richard.

1412. Prosecution endeavoured hard to make use of AS-18 for interpreting word "Associate". However, the Guidelines do not mention that for interpreting this word, AS-18 would be used. Even PW 70 Sh. Henry Richard when questioned, as referred to above, failed to clarify as to whether AS-18 could be used for determining the meaning of word "Associate" as referred in the Guidelines dated 14.12.2005. He had recorded in

his earlier report Ex PW 70/DD-1 that these Accounting Standards cannot be used for interpreting UASL Guidelines. Not only this, the question was objected to by the prosecution. If the case of the prosecution is that AS-18 may be used for interpreting the meaning of "Associate", then why did the prosecutor object to the question? It shows that prosecution does not know what its case is all about.

1413. Furthermore, use of AS-18 for the interpretation of clause 8 is not appropriate. Why? When multipoly was introduced in 1999 consequent to the migration package, licence terms and conditions were amended and a proviso was added to the licence agreement. This is clear from letter dated 29.01.2001, page 364 of file Ex PW 56/DD, which was written by DoT to Reliance Telecom Limited. Similar letters were written to all service providers. Clause (ix) of the letter contains measures for the enhancement of the competition and reads as under:

> "Notwithstanding anything approved under proviso described in (viii) above, the following shall always be complied with and shall never be violated:
> (a) The statutory prescription of any nature including but not limited to the provisions of the Monopolies and Restrictive Trade Practices Act 1969;
> (b) No single company/ entity shall have any equity in more than one licensee company in the same service are for the same service.
> (c) There shall be cap of 49% on foreign equity.
> (d) Management control of the licensee company shall remain in Indian hands."

However, as recorded in note dated 09.02.2001,

page 3/N (D-397, Ex PW 60/DF), it was decided that the words "including but not limited to the provisions of the Monopolies and Restrictive Trade Practices Act 1969" are redundant and would be deleted. This deletion indicates that the measures aimed at enhancing competition were to be read as standalone measures as contained in the DoT Guidelines or the licence agreements, without the help of other enactments. Moreover, Accounting Standards are meant only for accounting purposes and not for interpreting Guidelines issued by various departments, including DoT. If it is so, it must have been clearly mentioned in the Guidelines.

1414. In this regard, it is instructive to take note of the observations of Hon'ble Supreme Court in an authority reported as **J.K. Industries Limited and another Vs. Union of India, (2007) 13 SCC 673**, wherein meaning and purpose of Accounting Standards was explained in paragraphs 4 to 11, which read as under:

> "**4.** In its origin, Accounting Standards is a policy statement or document framed by the Institute. Accounting Standards establishes rules relating to recognition, measurement and disclosures thereby ensuring that all enterprises that follow them are comparable and that their financial statements are *true, fair* and *transparent*. Accounting Standards ("AS", for short) are based on a number of accounting principles. They seek to arrive at true accounting income. One such principle is the matching principle. The other is fair value principle. The aim of the Institute is to go for paradigm shift from matching to fair value principle.
>
> **5.** Today the revised Accounting Standards seek to

arrive at true accounting income. In the age of globalisation the attempt is to reconcile the accounts of Indian companies with their joint venture partners abroad. The aim is to harmonise Indian Accounting Standards with International Accounting Standards. With the object of bridging gap between IAS and IFRS, the Institute formulated new AS and introduced new concepts e.g. Deferred Tax Accounting (AS 22 impugned herein), Segment Reporting (AS 17), etc. *However, as a matter of prudence and necessary adjustment,* to arrive at real income, Accounting Standards require provision to be made for liabilities payable in future, provision to be made for contingencies, provision to be made for diminution, provision to reflect impairment and so on which have the effect of reducing incomes and were, therefore, not readily accepted by some enterprises and tax authorities.

6. The core of accountancy is book-keeping. The rules of book-keeping are clear. For example, the value of a fixed asset mentioned in a balance sheet is based on cost which may involve subjective estimation of the amount to be apportioned. Similarly, the quantum of depreciation is again an estimate, which can vary depending on the persons preparing the accounts as to when and at what stage he wants to record the depreciation/ accounting Standards are an attempt to overcome some of these deficiencies of accountancy. Accounting Standards involve codification of fundamental accounting rules, rules which explain and standardise the application of the fundamental rules to a variety of uncertain situations like retirement, contingencies, intangibles, consolidation, merger, etc.

7. Accounting Standards basically attempt to reduce the subjectivity and lay down rules so as to arrive at the best possible estimates. For example, net assets refer to the difference between total assets less

liabilities but the value attributable to each asset and each liability is often subjective. It depends on estimates. This is where the Accounting Standards help. They reduce the subjectivity. Therefore, Accounting Standards help to arrive at the best possible estimates. This estimation/ subjectivity is also on account of the conceptual difference between "accounting income" and "taxable income".

8. Accounting income is the real income. Tax laws lay down rules for valuation of inventories, fixed assets, depreciation, bad debts, etc. based on artificial rules and not on the basis of accounting estimates, which results in mismatch between accounting and taxable incomes. For example, a fixed rate of depreciation may, for some companies, result in computing lower than the actual income if the actual erosion in the value of the asset is lower than the depreciation calculated at the fixed rate and higher than actual income for others where assets erode faster. Accounting income is normally used as a relevant measure by most stakeholders. However, on account of artificial set of rules used in computation of taxable income one finds that accounting income differs from taxable income.

9. Looking to these problems, the evolution of Accounting Standards and their greater application is necessary as it results in reducing the need for tax laws to depend upon artificial rules. The object of Accounting Standards is, therefore, to standardise and to narrow down the options. The object behind the Accounting Standards is to evolve methods by which accounting income is determined, made more transparent and leave less and less room for subjective selection of methods and provide for more attention to the quality of estimates used in arriving at accounting income.

10. The main object sought to be achieved by

> Accounting Standards which is now made mandatory is to see that accounting income is adopted as taxable income *and not merely as the basis from which taxable income is to be computed*. Thus, if the rules by which inventories are to be valued are laid down in the Accounting Standards and are followed in the determination of accounting income, then tax laws do not need to lay down the rules and the tax authorities do not need to examine the computation of the value of inventories and its effect on computation of income. Similarly, if there is an accounting standard on depreciation which requires estimation of the useful life and prescribes the appropriate method for apportionment of cost of fixed assets over their useful life, it is unnecessary for tax laws to apply an artificial rule to decide the extent of allowance for depreciation.
>
> **11.** Finally, the adoption of Accounting Standards and of accounting income as "taxable income" would avoid distortion of accounting income which is real income."

Bare reading of the aforesaid observations make it clear that purpose of Accounting Standard is to arrive at the true income of a company by means of proper accounting. It cannot be said that purpose of these standards is to help in interpretation of guidelines issued under different Acts.

1415. It may be noted that till 14.12.2005, clause 8 was not part of the Guidelines issued by DoT for telecom licences. It used to be part of the licence agreement only. It was inserted in the Guidelines issued on 14.12.2005 only. Thus, it has to be interpreted on its own merit in the light of guidelines wherein it has been used. Why? With the passage of time, reference to other statutory prescriptions and enactments were deleted from

the clause as well as guidelines. Thus, it is not proper to use AS-18 for interpretation of this clause. In an authority reported as **M/s MSCO. (P) Limited Vs. Union of India and others, (1985) 1 SCC 51**, Hon'ble Supreme Court observed in para 4 as under:

> "It is hazardous to interpret a word in accordance with its definition in another statute or statutory instrument and more so when such statute or statutory instrument is not dealing with cognate subject."

Similarly, in an authority reported as **S. Mohan Lal Vs. R. Kondiah, (1979) 2 SCC 616**, dealing with the definition of word "business", Hon'ble Supreme Court observed in paragraph 3 as under:

> "The expression 'business' has not been defined in the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960. It is a common expression which is sometimes used by itself and sometimes in a collocation of words as in "business, trade or profession". It is a word of large and wide import, capable of a variety of meanings. It is needless to refer to the meanings given to that term in the various dictionaries except to say that everyone of them notices a large number of meanings of the word. In a broad sense it is taken to mean 'everything that occupies the time, attention and labour of men for the purpose of livelihood or profit'. In a narrow sense it is confined to commercial activity. It is obvious that the meaning of the word must be gleaned from the context in which it is used. Reference to the provisions of the Constitution or other statutes where the expression is used cannot be of any assistance in determining its meaning in Section 10(3)(a)(iii) of the Andhra Pradesh Buildings (Lease, Rent and Eviction)

Control Act, 1960. It is not a sound principle of construction to interpret expressions used in one Act with reference to their use and another Act; more so if the two Acts in which the same word is used are not cognate Acts. Neither the meaning, nor the definition of the term in one statute affords a guide to the construction of the same term in another statute and the sense in which the term has been understood in the several statutes does not necessarily throw any light on the manner in which the term should be understood generally. On the other hand it is a sound, and, indeed, a well-known principle of construction that meaning of words and expressions used in an Act must take their colour from the context in which they appear. Dr. Chitale very frankly and fairly conceded as much."

Thus, this authority lays down that the meaning of a word is to be gleaned from the context in which it has been used.

1416. I may also note that DoT was not sure of the meaning of word "Associate" at least till 16.08.2011, when it wrote letter, Ex PW 81/DG, to the Law Secretary for clarifying its meaning and this letter was replied to by the Law Secretary vide letter dated 30.08.2011, Ex A-29. The issue is not as to what opinion was given. The issue is that DoT was using such terminology in its Guidelines the meaning of which it itself did not know. Perhaps this was done deliberately with a view to change colour as per the situation. When Guidelines are gray and ill-defined, people cannot be blamed for their violation. Thus, there is textual ambiguity in the clause and one cannot say when it stands violated.

The end result is that there is no definite meaning of

the word "Associate" and everybody is interpreting it as per his own understanding, imagination and whims. The situation is further compounded by the fact that DoT officials were deliberately not questioned by the prosecution as to its meaning and ingredients when they were in the witness-box. However, at the bar, the learned Spl. PP endeavoured hard to assign it such a meaning with the help of AS-18 and other documents that accused can be held to be in violation of it. This is not a fair approach. The fact of the matter is that the term has no definite meaning. No one can say when one acquires character of "Associate" in the context of guidelines dated 14.12.2005.

1417. Not only this, the term "Associate" has been hassling the DoT since its origin as is clear from DoT file Sl. No. 125, bearing No. 20-231/2004/BS-III, of which only one page Ex DW 26(A-4)/Y has been exhibited, wherein an attempt was made to assign it a meaning but to no use. The department was also in a quandary about its meaning when it dealt with a dispute between Idea Cellular and TTSL. It is clear from note dated 10.03.2006, Ex PW 92/DD, in file Ex PW 56/DH (file Sl. No. 9, vol. III) recorded by Sh. P. K. Mittal, DDG (BS). The then Secretary Sh. J. S. Sarma, vide note dated 20.03.2006, observed that "Associate" has not been defined anywhere and DoT should avoid the use of such words. However, instead of course correction, the DoT let the matter languish and cause confusion. If there was serious regulatory deficit, the same was required to be filled up by appropriate administrative action. In an authority reported as **Rohitash Kumar and Others Vs. Om Prakash**

Sharma and Others, AIR 2013 SC 30, Hon'ble Supreme Court emphasized the importance of administrative interpretation and observed in paragraph 14 as under:

> "In view of the above, one may reach the conclusion that administrative interpretation may often provide the guidelines for interpreting a particular Rule or executive instruction, and the same may be accepted unless, or course, it is found to be in violation of the Rule itself."

Not only this, on dual technology permission being granted to Reliance Communications Limited, its licence was not amended for six service areas, in which its subsidiary RTL was already using GSM spectrum. A question was before the DoT as to whether the permission for in-principle approval granted to the company in these services areas may be withdrawn for this reason and the entry fee refunded. This question was dealt with in notes, Ex PW 110/C-3 dated 07.05.2008, Ex PW 42/DC-1 dated 01.10.2008, Ex PW 42/DD dated 04.11.2008 and Ex PW 60/S-2 dated 06.11.2007, all in file D-5. In these notes, Clause 1.4 (ii) of Licence Agreement, which is based on Clause 8 of UAS Guidelines, has been liberally referred to and for describing RTL, which is a subsidiary of RCL, different words have been used, like "Subsidiaries or Associates" having substantial equity, "Associate", "Subsidiary/ Associates", "Group Companies" etc. What does this word mean? The answer is that the department has no idea as to what does this word mean and it could mean anything and everything which the department wants it to mean. Officers can rope in anyone and can exclude anyone, as

per their own whims. People will start giving shape to their own idea, as is happening in the present case. Thus, it can mean many things and it can mean nothing. The term is so wide and open-ended that it could include any entity by citing any criteria like common equity, debt funding, sharing of personnel etc. It could lead to a situation where the governing rule would be "Do as you please". This clause was subjected to relentless rite of criticism at the bar to which I fully agree. In brief, Clause 8 is a huge quicksand and ill-suited to administrative fairness. It is ruinous of rule of law.

It is instructive to take note of the observation of Hon'ble Supreme Court in **State of Maharashtra Vs. Hansraj Depar Parle Oil Centre and Others, (1977) 2 SCC 216**, wherein paragraphs 10 and 11, dealing with word "Vanaspati", read as under:

> "**10.** The prosecution did not make any attempt to establish as to what is the true meaning and connotation of the expression 'vanaspati' and what kind of articles or goods are comprehended within the scope of that expression. The witnesses did not even say in their evidence, perfunctory as it is, that the word had acquired a popular meaning and was understood locally in a certain sense. Neither the Act of 1955 nor the Order of 1966 defines the expression 'vanaspati' and it was beside the point to say that 'vanaspati' is defined in the Bombay Sales Tax Act and the Prevention of Food Adulteration Rules 1965 to include hydrogenated oil. The purpose of the Sales Tax Act is to bring within the tax net as large a number of articles as possible, that of the Prevention of Food Adulteration Act and the Rules thereunder is to ensure that the health of the community is not endangered by adulterated or

spurious articles of food while that of the Essential Commodities Act with which we are concerned in the instant case is to ensure the availability of essential goods to the community at a proper price. This last Act was passed in order "to provide, in the interests of the general public, for the control of the production, supply and distribution of and trade and commerce in, certain commodities". Sub Inspector Kurdur is no expert for the purposes of this Act and we cannot, without more, accept the dogmatic assertion made by him in one of these cases that vanaspati and hydrogenated oil "mean the same thing". Hydrogenation is a specialised process and is described in Encyclopaedia Britannica (1951 ed., Vol. 11, p. 978) as "the treatment of a substance with hydrogen so that this combines directly with the substance treated. The term has, however, developed a more technical and restricted sense. It is now generally used to mean the treatment of an "unsaturated" organic compound with hydrogen, so as to convert it by direct addition to a "saturated" compound. The witness, excusably seems unaware of this scientific sidelight and greater the ignorance, greater the dogma. If the witness were right, it is difficult to understand why "Groundnut oil, Safflower oil, Sesame oil and Mustard seed oil" and "Coconut oil" find a separate and distinct place in Schedule I at items 5 and 6. Perhaps what the witness guessed, science may show to be true but that has to be shown, not guessed.

11. In *State of Bihar v. Bhagirath Sharma* a question arose whether motor car tyres were included within the meaning of the expression 'component parts and accessories of automobiles' used in a similar order issued in 1967 by the Bihar Government under the Essential Commodities Act. It was held by this Court that it was not enough that from a broad point of view the tyres and tubes of motor cars may be considered to be covered by the

particular expression. After considering and comparing the various items in the particular schedule it was held by this Court that motor car tyres were not comprehended within the expression. It is apposite for our purpose to call attention to what the Court said in that case, namely, that according to the fundamental principle of criminal jurisprudence which reflects fair play, a dealer must know with reasonable certainty and must have a fair warning as to what his obligation is and what act of commission or omission on his part would constitute a criminal offence. Bearing in mind this principle the State Government ought to have expressed its intention clearly and unambiguously by including hydrogenated oils within items 15 and 16 which refer to 'vanaspati'. If that were done, a type of predicament which arises in this case could easily have been avoided, and with profit to the community. We hope this lacuna in the Schedule will be rectified expeditiously."

This authority fully applies to the facts of instant case as far as interpretation of clause 8 is concerned.

In another authority reported as **State of Madhya Pradesh and Another Vs. Baldeo Prasad, AIR 1961 SC 293**, Hon'ble Supreme Court while dealing with the definition of word 'Goonda' observed in paragraph 9 as under:

"Incidentally it would also be relevant to point out that the definition of the word "goonda" affords no assistance in deciding which citizen can be put under that category. It is an inclusive definition and it does not indicate which tests have to be applied in deciding whether a person falls in the first part of the definition. Recourse to the dictionary meaning of the word would hardly be of any assistance in this matter. After all it must be borne in mind that the Act authorises the District Magistrate to deprive a

> citizen of his fundamental right under Art. 19(1)(d) and (e), and though the object of the Act and its purpose would undoubtedly attract the provisions of Art. 19(5) care must always be taken in passing such Acts that they provide sufficient safeguards against casual, capricious or even malacious exercise of the powers conferred by them. It is well-known that the relevant provisions of the Act are initially put in motion against a person at a lower level than the District Magistrate, and so it is alway necessary that sufficient safeguards should be provided by the Act to protect the fundamental rights of innocent citizens and to save them from unnecessary harassment. That is why we think the definition of the word "goonda" should have given necessary assistance to the District Magistrate in deciding whether a particular citizen falls under the category of goonda or not; that is another infirmity in the Act. As we have already pointed out S. 4-A suffers from the same infirmities as S. 4."

This authority also fully applies to the facts of the instant case as guidelines do not afford any guidance as to who would fall under this category.

1418. I may note that Clause 8 was subjected to criticism by Chairman, Competition Commission of India, also, who, on receipt of copy of TRAI Recommendations dated 28.08.2007, wrote a letter dated 12.10.2007, page 89/c (D-5, vol. II), to then Secretary (T) Sh. D. S. Mathur criticizing the Recommendations on Merger and Acquisition, which included clause 8 also. It was written in the letter that this would create an additional regime for Merger and Acquisition in telecom department. It was also stated that definition of combination include acquisition of control by shares, voting rights, assets

etc., and not mere acquisition of equity alone. Again he wrote a letter dated 01.01.2008 to Secretary (T) stating that this would create confusion in the industry. What does this mean? It means that meaning of clause 8 is not clear to anyone. DoT took no steps to rectify the situation.

1419. The end result is that this term has no definite meaning and I have no desire to define and interpret it as submitted by learned Spl. PP. He submitted that interpretation is the job of the Court. That is true. However, in this case, the only question is: Whether the view taken by the accused or others relating to meaning and applicability of clause 8 is reasonable one or not? Whether any prudent person would take such a view of clause 8 as has been taken by accused? The answer to this question is that the view taken by the accused was reasonable one as it only restricts equity investment beyond 10% or more and nothing else. People cannot be held guilty for violating a rule which has no definite meaning and suffers from the vice of vagueness. It must be kept in mind that clarity and certainty are essential attributes of law, which include rules and Guidelines also. To give a definite meaning by interpretation to such a vague clause and to hold the accused guilty for its violation would not be fair. Departmental glossary must be clear to own officers as well as its constituents. There can be no convenient interpretation which may suit a particular party. The interpretation has to be reasonable one. In an authority reported as **Avishek Goenka Vs. Union of India and another, AIR 2012 SC 2226**, Hon'ble Supreme Court while dealing with the

regulatory regime of DoT in consultation with TRAI observed in paragraph 18 as under:

> ".....It is a settled canon of law that in a regulatory regime, the terms and conditions imposed thereunder should be unambiguous and certain. It is expected that the authorities concerned would enforce the regulatory regime with exactitude....."

The conclusion of above discussion is that it cannot be said that STPL violated clause 8 for being an "Associate" of RCL, an existing licensee.

Time of Application of Clause 8

1420. It is the case of the prosecution that clause 8 is applicable on the date of application itself and a company should be compliant to clause 8 on this date itself. It is the case of the prosecution that STPL was not compliant to this clause on the date of application. Hence, it was ineligible on the very first date.

On the other hand, defence argued that DoT does not know as to when the clause 8 would become applicable and in the past subsequent compliance was also considered to be good enough. Not only this, compliance till the last correspondence was taken to be good. It is the case of defence that application of clause 8 was to be seen on the date of signing of licence agreement.

1421. It is logical that clause 8 should be applicable on the date of application itself. An applicant should be compliant of all conditions on the date of application itself. Moreover, clause 8

is part of guidelines and as such applicable on the date of application.

1422. However, the understanding of DoT appears to be entirely different. On account of lesser number of applications, the attitude of the DoT was quite accommodating and liberal. There was lot of regulatory forbearance. It should be kept in mind that rule alone does not matter. The attitude of the department is also important, more so when it proceeds to criminally prosecute people. Governance cannot be just a matter of rules and regulations. It also depends upon the tone set by the department and its culture in implementing the rules. A department is not composed of mere rules and regulations, but also of the people who man it and there attitude and culture.

Let me take note of the evidence in this regard.

1423. PW 60 Sh. A. K. Srivastava in his examination-in-chief dated 17.08.2012, page 17, deposed as under:

> ".....I did not deem it necessary to obtain inputs from the department of company affairs, as desired by Sh. B. B. Singh in his note dated 11.11.2007, Ex PW 60/L-2, as the substantial equity clause applies to a licencee company and not to an applicant company at that stage and, as such, his observation was not relevant....."

The attitude of Sh. A. K. Srivastava is clear towards the issue of violation of clause 8 by STPL. There should have been an instant enquiry. However, he was not only liberal but casual also.

1424. PW 60 Sh. A. K. Srivastava in his further examination-in-chief dated 22.08.2012, pages 17 and 18,

deposed about the time when clause 8 would be applicable as under:

> ".....I have been shown UASL Guidelines dated 14.12.2005, already Ex PW 2/DB (D-586).
> **Ques**: Please take a look on the aforesaid guidelines and explain to this Court as to at which stage the applicability of clause 8 of UASL Guidelines applies to an applicant company?
> **Ans**: The provisions of clause 8 of UASL Guidelines dated 14.12.2005 pertaining to substantial equity holding applies to a licencee company. However, a certificate to this effect shall be provided by the applicant's, company secretary alongwith application. While examining the prima facie eligibility of the applicant company, this certificate is also examined by DoT.
> **Court Ques**: You mean the requirement of this certificate comes at the post LOI stage?
> **Ans**: The requirement of compliance of substantial equity clause comes at the post LOI stage. However, alongwith application only a certificate to this effect by the company secretary is required to be furnished, that is, the compliance of this is checked after grant of LOI.
> **Ques**: As per the approval granted by the then MOC&IT Sh. A. Raja on 04.12.2007, the eligibility of the applicant company was to be seen on the date of application. Please tell this Court if the requirement of clause 8 was also to be seen on the date of application?
> **Ans**: The aforesaid order of the Minister regarding consideration of eligibility as on the date of application did not alter the provisions of UASL Guidelines dated 14.12.2005 and therefore, the applicability of the clause 8 remained as it stood then....."

Thus, Sh. A. K. Srivastava categorically deposed that requirement of certificate of clause 8 comes at post-LOI

stage.

The prosecution did not question the witness further and the impression given by the deposition of the witness is that requirement of clause 8 comes into play only at the time of compliance of LOI. It is to be kept in mind that Sh. A. K. Srivastava was head of the Licensing Branch. His words carry all the value. The impression given is that clause 8 does not apply on the date of application.

1425. PW 110 Sh. Nitin Jain in his cross-examination dated 01.04.2013, page 2, deposed as under:

> ".....**Ques**: I put it to you that compliance with substantial equity clause as on the date of application would mean a certificate in the prescribed format by the company secretary of an applicant company undertaking to comply with the substantial equity clause, upon being granted a licence?
> **Ans**: This is to be ensured on the date of compliance to LOI. This is taken again post issuance of LOIs as condition of LOI to be complied with....."

This witness also deposed that clause 8 applies at post-LOI stage.

1426. Similarly, PW 131 Sh. Sudhir Gupta is a member of Indian Engineering Service. He joined DoT in 1982 and was also Principal Advisor to TRAI. In his cross-examination dated 02.07.2013, pages 10 and 11, he deposed as under:

> ".....It is correct that I am well conversant with UASL Guidelines and licence agreement conditions. The language of clause 8 of UASL Guidelines and that of clause 1.4 (ii) of licencne agreement is identical except that in clause 8 of the UASL

> Guidelines an additional condition has been mentioned that "a certificate to this effect shall be provided by the applicant's company secretary alongwith application". My understanding is that clause 8 is applicable to a licencee only. I cannot say if compliance of certificate is to be seen only at the post-licence stage, as the licence is given by the DoT and not TRAI. I do not know if the opinion of law department is binding on all the Government departments, as TRAI is not a Government department. It is correct that certain clauses like clauses 9, 10, 13 mention applicant and other clauses mention licencees....."

It may be noted that in April 2007, Sh. Sudhir Gupta was Advisor (Mobile Network) in TRAI, (page 8, CD-16). On receipt of DoT reference dated 13.04.2007, Ex PW 131/E, page 3 (CD-16), Chairman (TRAI) recorded the following note dated 17.04.2007:

> "Please convene a meeting on 20/04 at 4 PM to broadly discuss the road map and time frame for work. Advisor (MN) will be the core resource person."

This note shows the importance of Sh. Sudhir Gupta in the scheme of things. His evidence deserves due consideration. Clause 8 was dealt with in detail in TRAI Recommendations dated 28.08.2007 from para 3.74 to 3.94. Clause 8 of the Guidelines is replica of clause 1.4 of the licence agreement. Para 3.80 states that clause 1.4 was included in the UASL and CMTS licences at a time when the telecom sector was at nascent stage. Thus, Sh. Sudhir Gupta is expected to know about the application of clause 8. It may be noted that Sh.

Sudhir Gupta was Advisor (MN) in TRAI, which is an expert body. Its importance as an expert body was highlighted by the Hon'ble Supreme Court in an authority reported as **Union of India and another Vs. Association of Unified Telecom Service Providers of India and others, AIR 2012 SC 1693**, wherein paragraph 32 reads as under:

> ".....The scheme of TRAI Act therefore is that the TRAI being an expert body discharges recommendatory functions under clause (a) of sub-section (1) of Section 11 of the TRAI Act and discharges regulatory and other functions under clauses (b), (c) and (d) of sub-section (1) of Section 11 of the TRAI Act. TRAI being an expert body, the recommendations of the TRAI under clause (a) of sub-section (1) of Section 11 of the TRAI Act have to be given due weightage by the Central Government but the recommendations of the TRAI are not binding on the Central Government....."

Thus, at least two witnesses, that is, Sh. A. K. Srivastava and Sh. Nitin Jain, from the prosecution, whose words count because of the positions they occupied, have deposed that compliance of clause 8 is to be seen at a later stage/ LOI stage. Sh. Sudhir Gupta also corroborated them.

1427. Not only this, one more witness PW 21 Sh. V. K. Budhiraja, who was at one time a senior officer in the DoT, being a member of Indian Telecom Service, in his cross-examination dated 17.02.2012, page 2, deposed as under:

> ".....I have more than 42 years of experience in the telecom sector. On account of this experience, I have knowledge of telecom policy, DoT guidelines, TRAI recommendations, UASL guidelines etc. After my

joining the STPL, I perused all documents pertaining to its application filed by it regarding UAS Licence with the DoT. After my joining STPL, I became fully aware of all correspondence between the company and the DoT. I am fully aware of clause 8 of UASL guidelines. Clause 8 is applicable only to licencee companies and not to the applicant companies (objected to by Ld. Sr. PP on the ground that witness is not an expert in the field). Being Chief Regulatory Officer of the company, I am fully aware of all the proceedings/ actions initiated by DoT against the company. It is correct that STPL was eligible on the dates of application, issue of LOI as well as grant of licence (objected to by Ld. Sr. PP for the same reason). STPL did not violate clause 8 of UASL Guidelines (objected to). I am aware of the opinion of Ministry of Law and Justice dated 30.08.2011. I have been shown this report, earlier marked as mark DC....."

According to these three witnesses, the application of clause 8 was to be seen at post-LOI stage and they were supported by an expert from TRAI.

1428. Furthermore, note dated 07.01.2008, Ex PW 42/DB (D-7), recorded by Sh. Nitin Jain shows the liberal attitude of DoT towards eligibility conditions. Para 13 of the note reads as under:

"While dealing with applications for grant of UAS licenses till March 2007, the following methodology was adopted. On receipt of an application for grant of UAS license, the same was examined according to a check list, which was based on eligibility criteria mentioned above. If some discrepancies were found or some information/ document were required for consideration of the case, the applicant company was asked to furnish the information/ document and/ or comply with the requirements of application

on more then one occasion till they complied with the eligibility conditions. In some cases, sufficient time were even allowed to the applicant company for obtaining statutory approvals viz. FIPB approval etc.

The processing of the subsequent applications in same service area was kept on hold till the requirement is met by the applicant company, who was first in the queue. In many cases, the applicant company met the eligibility criteria after the date of application, such cases were also considered for grant of UAS license. Thus (except the applications of M/s BSNL for Mumbai and Delhi and the application of M/s Aditya Birla Telecom Ltd. for Mumbai service, which were not eligible on account of substantial equity clause) none of the applications for grant of UASL license has been rejected till date on grounds of incomplete application or non-completion of requirements of application.

The sequence of granting LOI/ UAS license has been maintained till now according to date of respective application for a particular service area. (para 7 of extract note 20/N of F. No. 20-231/2004-BS.III (Vol. 4) may kindly be seen which is placed at **21/C**)

It is once again mentioned that as per the existing methodology, the eligibility of the applicant company has been considered till the last correspondence received from the licensee company before issue of LOI for signing of the license agreement. In some cases, the applicant company has also been permitted additional time to fulfill the requirement of LOI on their request beyond stipulated period mentioned in the LOI."

Thus, issue of eligibility as on date of application has never been an issue with DoT and a company could achieve eligibility till its last correspondence with DoT.

1429. What does this note say? It says that a company was

given opportunity to meet the eligibility conditions even after filing the applications. The note also says that eligibility of the applicant company was considered till the last correspondence. The note also says that many companies met the eligibility criteria after date of application and only one application of Aditya Birla Telecom Limited for Mumbai service area was rejected for being ineligible on account of substantial equity clause. It may be noted that the application dated 03.01.2006 of Aditya Birla Telecom Limited was processed in DoT file D-588, Ex PW 153/E. The processing of application started on 09.01.2006. The violation of clause 8 was taken note of by the DoT vide note dated 19.01.2006. The application was not rejected straightaway. Note dated 17.03.2006 recorded by Sh. P. K. Mittal reads that "with reference to complaint of Idea, Birla & Tata, the application cannot be processed as 10% common equity clause is not met with reference to the application of Idea, therefore, the application is proposed to be kept pending for one month at present". Some information was also sought by the department. The application was finally rejected vide order dated 15.11.2006. The point is that the application was not straightway rejected for being ineligible on the date of application itself, but was given time to rectify the deficiency.

1430. Similarly, Idea Cellular Limited filed an application dated 03.08.2005 for issue of UAS licence in Mumbai service area. This was processed in DoT file Ex PW 36/DQ (D-147 in case titled CBI Vs. Ravi Kant Ruia and others). Certain information was sought from the company on several dates, but

it did not reply and ultimately on 18.12.2005, Sh. P. K. Mittal recorded that the application may be cancelled. However, the applications were not cancelled and ultimately it was granted licence despite being ineligible. PW 36 Sh. D. S. Mathur in his cross-examination dated 19.04.2012, page 2, deposed about it as under:

> ".....I have been shown a certified copy of DoT file pertaining to the UAS Licence for IDEA cellular. The file is collectively Ex PW 36/DQ. On seeing this file, as per the note sheet dated 17.03.2006, this applicant was ineligible on the date of application for the reason mentioned in para 5 of the note sheet. The note sheet, 5/N, is now Ex PW 36/DQ-1. However, later on, on the defects being removed before the grant of LOI, the applicant was issued LOI and licence. In this file, my signature appears at point A at page 10/N....."

Thus, the company became eligible on removing the defects.

1431. Let me take note of cross-examination of Investigating Officer PW 153, dated 18.11.2013, pages 15 and 16, wherein he deposed as under:

> ".....It is correct that during investigation I came to know from the DoT files that a committee was constituted by the then Secretary (T) to look into the eligibility and other parameters of the applicants, who had applied for new UAS licences. I had studied the note dated 07.01.2008, already Ex PW 42/DB, recorded by Sh. Nitin Jain in file D-7, already Ex PW 36/B. It is mentioned in this note that earlier the eligibility of the applicants was considered till the last correspondence exchanged between the applicant and DoT. It is correct that in some cases, the applicant company has also been permitted

additional time to fulfill the requirements of LOI on their request beyond stipulated period mentioned in the LOI, as recorded in this note. These extensions were given under the policy of first-come first-served, as observed by DoT, wherein the processing of subsequent applications in the same service area was kept on hold till the requirement was met by the applicant company who was first in the queue. It is wrong to suggest that there was no authority with DoT to give such extensions. It is wrong to suggest that I did not deliberately investigate this issue....."

This witness also conceded that DoT was considering eligibility of applicants till the last correspondence. Thus, there was lot of regulatory deficit in the DoT. Companies were filing applications knowing fully that they were ineligible, but the DoT was overlooking this conduct on the pretext that company itself would be responsible if information provided was found false and licence may be cancelled and entry fee forfeited.

This view is further fortified by the case of Loop Telecom Limited, wherein there was deviation in the language of clause 8 certificate. What was the duty of DoT officers? Their duty was to ensure that the certificate as well as its language was as per the requirement of Guidelines, but instead of ensuring this, they proceeded to recommend grant of LOI at the risk of company. There was no risk of rejection of applications, what to talk of wrath of regulators. This attitude is being reflected from note dated 07.01.2008, Ex PW 60/J-90 (D-41), recorded by PW 75 Sh. Sukhbir Singh, para 7 of which reads as under:

"As such, the applications for grant of UAS licences in 21 service areas mentioned in para 1 above seems to be in order except that with regard to eligibility requirement for Substantial Equity, it has been observed that there is deviation in the language in the certificate submitted by the company. It is to mention that compliance to this substantial equity clause is also part of LOI."

In this note, grant of LOI to Loop Telecom Limited was recommended and the same was agreed to by all officers, including Sh. A. K. Srivastava and Sh. K. Sridhara, and the same was approved by Sh. A. Raja on 09.01.2008. Instead of ensuring compliance at this stage itself, the officers left the scope open for future complications and legal proceedings.

1432. It may be noted that as per document, Ex PW 110/DF-1, 51 UAS licences were granted before seeking the Recommendations of TRAI vide reference dated 13.04.2007. Out of these, 28 licences were signed in 2004, 22 licences were signed in 2006 and one in 2007. Applications for 38 of these licences were filed in 2003 and 2004. Five applications were filed in 2005, all before the guidelines dated 14.12.2005 were issued. Only eight applications were filed in 2006 after guidelines dated 14.12.2005 came into force. These facts indicate that after issuance of guidelines dated 14.12.2005, only eight applications were filed.

Clause 8 was introduced in the guidelines dated 14.12.2005 for the first time. Before the introduction of clause 8 in the guidelines dated 14.12.2005, the application of clause 8 was seen only at the time of signing of licence agreement, as it

was not part of earlier guidelines dated 11.11.2003. As such, the officers, who deposed that the application of clause 8 was to be seen at the time of signing of licence agreement have deposed correctly as per their understanding. However, after the introduction of the guidelines dated 14.12.2005, the application of clause 8 ought to have been seen on the date of application itself, but the attitude of the department continued to be liberal and the eligibility conditions continued to be complied with till the date of last correspondence. Thus, the department was acquiescing to the deficiencies in the applications and condoning them due to its accommodating and tolerant attitude towards violations. If this attitude of the DoT is to be followed, then it cannot be said that STPL was ineligible on the date LOIs were issued, because it had acquired eligibility, at least, as per the prosecution also, by 18.10.2007.

Not only this, the DoT was not sure as to on which date compliance to eligibility conditions shall be considered. In note dated 12.11.2007, Ex PW 36/G-2 (D-10), recorded by Sh. A. K. Srivastava, it was recorded by him that it was to be decided whether compliances shall be taken as on date of application or on any date till the issue of LOI. It may be noted that this note was replicated in all files. In file D-13 relating to processing of applications of Aska Projects Limited, this note is Ex PW 36/DL-7. What does this indicate? Department itself does not know as to when compliance to the eligibility conditions is to be considered. There is no material on record that this note was recorded by Sh. A. K. Srivastava on asking of any

conspirator. In such uncertain conditions, how can people be criminally prosecuted?

1433. If the DoT is not sure as to when application of eligibility conditions is to be seen and it continued to give opportunities to an applicant to acquire eligibility till the last correspondence till the grant of LOI, then an applicant cannot be held responsible for any deficiency. Certainly it cannot be criminally prosecuted for violating the guidelines.

1434. Accordingly, I find merit in the submission of the prosecution that application of clause 8 ought to have been seen on the date of application itself. However, if the department itself was liberal and was giving opportunity to the ineligible applicants to acquire eligibility by taking necessary steps, then applicant cannot be held responsible for that. DoT cannot take a sudden about-turn and blame the applicant. In such an uncertain situation criminal prosecution is totally unfair and unjustified.

Letter seeking Eligibility on the Date of Application: Destructive of Conspiracy

1435. It may be noted that note dated 02.11.2007, Ex PW 36/B-8 (D-7), was recorded by PW 110 Sh. Nitin Jain, proposing issuance of LOIs. In para 6 of the note, it was recorded that since the applications were very large in number, a comprehensive evaluation had not been done and shall be completed after taking detailed clarifications/ compliances/ documents from the applicants alongwith the LOI and the

response to LOI would be evaluated by a committee approved by the Secretary (T). A draft LOI, running from pages 85 to 96, at 13/c, was also placed. This note was approved by Sh. A. Raja. There is no material on record indicating that PW 110 Sh. Nitin Jain recorded this note on the asking of Sh. A. Raja. However, due to the objections of PW 36 Sh. D. S. Mathur, Secretary (T), vide his note Ex PW 36/B-9, a fresh note dated 07.11.2007, Ex PW 36/B-10, was recorded by PW 110 Sh. Nitin Jain, in which same thing was reiterated and it was recorded that complete compliance may be sought alongwith acceptance of LOI from applicant company. A draft LOI, Ex PW 42/A, pages 111 to 115, was also attached to the note and that was required to be vetted. This note was approved by Sh. A. Raja and it was meant for issuance of LOIs. However, objections continued to be raised and ultimately, Sh. A. Raja vide note dated 04.12.2007, Ex PW 36/B-13, ordered that LOI proforma as used in the past be used and also that duly signed copies of all documents submitted at the time of applying for UASL as per existing guidelines be obtained. Why this was needed? Perhaps it was required as many companies had submitted plain photocopies of documents with the applications. In note dated 08.11.2007, Ex PW 42/DQ, recorded for STPL in file D-10, it is mentioned that since the certificates enclosed were photocopies and not certified by the company secretary, it needed to be decided whether to accept the information contained therein for checking the application for eligibility criteria. Thus, there was requirement for signed copies.

1436. Accordingly, on 10.12.2007, PW 60 Sh. A. K. Srivastava vide note dated 10.12.2007, Ex PW 60/H-5, approved that letter, draft of which is Ex PW 60/H-7, page 19/c, be issued to all applicant companies asking for information contained in the letter. The letter, Ex PW 60/H-7, has an annexure, which contains details running into 25 items.

1437. As far as clause 8 is concerned, information about it was sought vide clause 22 of the aforesaid letter. In this, it was mentioned that a certificate shall be submitted by Company Secretary that the company was compliant to the substantial equity stipulation on the date of application and was also compliant on the date.

1438. The case of the prosecution is that STPL ought to have been compliant on the date of application. The case of the prosecution is that the aforesaid letter dated 10.12.2007 was written on the direction of Sh. A. Raja. If the aforesaid letter was written on the direction of Sh. A. Raja and the letter contained a provision that applicant company should be compliant on the date of application, then how can Sh. A. Raja become conspirator with STPL? When questioned about this, the reply of prosecution was that Sh. A. Raja always endeavoured hard to sound fair, but was never fair and this letter was just a gloss to look fair and law abiding.

1439. This letter indicates two things, that guidelines were re-written midway and the department itself was not sure as to on which date a particular clause is to be complied with by an applicant company. Clause 8 is there in the Guidelines dated

14.12.2005. It is logical that a company should be compliant on the date of application. In such a situation, where was the need for writing such a detailed letter containing as many as 25 new stipulations? This letter was referred to at the bar by the prosecution to emphasize that the applicant company ought to have been compliant with clause 8 on the date of application as well as subsequently at all stages. The letter spoils the case of the prosecution. If it was written on the asking of Sh. A. Raja, then Sh. A. Raja cannot be faulted as he was directing that the company should be compliant on the date of application. If it was not written as per his direction, it amounts to change of guidelines midway.

1440. In the end, I do not find any merit in the submission of the prosecution that issuance of letter dated 10.12.2007 to the companies reflects the criminal attitude of Sh. A. Raja.

Whether STPL was declared Eligible by Sh. Siddhartha Behura as a Result of Conspiracy

1441. It is the case of the prosecution that STPL was ineligible for UAS licences on the date of application itself, that is, 02.03.2007. It is the case of the prosecution that RCL was already having licences in all the thirteen service areas, where STPL had applied for licences. It is the case of the prosecution that stake of RCL through RTL was more than 10% in STPL, though on paper it was shown to be less than 10% and, as such, there was violation of clause 8 of UASL Guidelines dated 14.12.2005. It is the case of the prosecution that a complaint

was received from an Advocate in the DoT regarding violation of clause 8 by the company. It is the case of the prosecution that this complaint was taken on record on 11.11.2007, vide note Ex PW 60/L-2 and an enquiry was suggested by Sh. B. B. Singh, if needed, with inputs from Ministry of Corporate Affairs (MCA). It is further the case of the prosecution that from that date itself different officers were pointing out and referring to the ineligibility of STPL, but Sh. A. Raja and Sh. Siddhartha Behura, in conspiracy with other accused, ignored it and no enquiry was conducted about the allegations in the complaint. In this regard, note dated 11.11.2007, Ex PW 60/L-2, note dated 30.11.2007, Ex PW 60/L-9, recorded by PW 97 Sh. B. B. Singh, DDG (LF), note dated 26.11.2007, Ex PW 42/DQ-3, recorded by AO (LF-II), note dated 27.12.2007, Ex PW 60/L-14, note dated 08.01.2008, Ex PW 60/L-20, recorded by PW 81 Sh. Madan Chaurasia, SO (AS-I), note dated 08.01.2008, Ex PW 42/DQ-4, and note dated 09.01.2008, Ex PW 42/DQ-5, again recorded by AO (LF-II), all in file D-10, in which applications of STPL were processed, have been referred to in great detail. It is the case of the prosecution that despite all these notes, Sh. Siddhartha Behura on 09.01.2008 suddenly declared STPL to be eligible by recording note, Ex PW 60/L-22, stating that it fulfills the requisite criteria and LOI may be issued. It is the case of the prosecution that this act on the part of Sh. Siddhartha Behura was result of conspiracy, of which he had become a part since 01.01.2008, when he joined as Secretary (T). It is the case of the prosecution that this was done by him in conspiracy with

Sh. A. Raja, Sh. Shahid Balwa and others.

1442. On the other hand, it is the case of the defence that Sh. Siddhartha Behura had joined DoT on 01.01.2008 as Secretary (T) and in this short span of time there was no occasion for him to get involved in any conspiracy. It is the case of the defence that the note Ex PW 60/L-22 recorded by Sh. Siddhartha Behura declaring STPL to be eligible was a natural and logical outcome of the previous notes recorded by various officers. It is the case of the defence that in the note dated 08.01.2008, Ex PW 60/L-20, recorded by Sh. Madan Chaurasia, it was requested that file may be forwarded to LF branch to examine the eligibility conditions such as equity, substantial equity etc. and when the file reached LF branch, note Ex PW 42/DQ-4, was recorded by AO (LF-II) on the same date, in which no deficiency regarding eligibility was pointed out and the file was signed by all senior officers of that branch, including Director (LF-III) Sh. Shah Nawaz Alam, DDG (LF) Sh. B. B. Singh and Member (F) Ms. Manju Madhavan, all of which have been examined as witnesses for the prosecution and the file was marked to Member (T) PW 77 Sh. K. Sridhara, who marked the file to DDG (AS). It is the case of the defence that in AS branch, PW 110 Sh. Nitin Jain, Director (AS-I), recorded note dated 09.01.2008, Ex PW 60/L-21, proposing issue of LOIs to STPL. It is the case of the defence that he had specifically recorded that thirteen applications, which were received on 02.03.2007, were in order and may be considered for grant of LOIs. He had also proposed rejection of application for J&K

service area as object clause was not having telecom activity as part of it on the date of application, that is, on 23.01.2007. It is the case of the defence that he had also proposed that finance branch may again ensure that STPL was in compliance of eligibility conditions. It is the case of the defence that the file was signed by all officers of AS branch and when it reached Member (F) PW 86 Ms. Manju Madhavan, she did not sign the file and rather handed it over to the officers of finance/ LF branch. Again, AO (LF-II) recorded note dated 09.01.2008, Ex PW 42/DQ-5, in which it was recorded that STPL had furnished details of promoters of TTPL. It was also recorded that it did not furnish the details of TTPL on the date of application. It is the case of the defence that there is no record that details of TTPL were ever required by the DoT as on the date of application. It is also the case of the defence that the file was again signed by three senior officers of finance branch, including Director (LF-III), DDG (LF) and Member (F). It is the case of the defence that Member (F), who is head of the LF branch and is an officer of the rank of Special Secretary to Government of India, overruled the objection, if there was any in the note of AO (LF-II), Ex PW 42/DQ-5, by marking the file upward to Secretary (T) and MOC&IT. It is the case of the defence that had she seen any merit in the objection, she could have marked the file downward asking for further clarifications, but she marked the file upward. It is the case of the defence that in such a situation it was natural for Sh. Siddhartha Behura to presume that STPL was eligible and his note is just a summary of all previous notes.

It is the case of the defence that Ms. Manju Madhavan was examined as a witness, but she was not examined on this point. It is also the case of the defence that Sh. B. B. Singh, DDG (LF), had made unauthorized insertion in note dated 08.01.2008, Ex PW 42/DQ-4, recorded by AO (LF-II), which had not found any fault with the eligibility conditions of the company. It is the case of the defence that had Sh. B. B. Singh not made unauthorized insertion in this note, there would have been no problem. Not only this, it is the case of the defence that he had made unauthorized insertion in other notes also, including in note dated 22.11.2007, Ex PW 60/L-3, note dated 30.11.2007, Ex PW 60/L-9, and note dated 09.01.2008, Ex PW 42/DQ-5.

1443. Both parties have invited my attention in great detail to the various notes, documents on the file, guidelines for UAS licences and deposition of various witnesses for weeks together.

1444. Swan Capital (P) Limited, later on Swan Telecom (P) Limited (STPL), filed an application for UAS licence in J&K service area on 23.01.2007. Subsequently, on 02.03.2007, the company submitted thirteen more applications for UAS licences in Andhra Pradesh, Delhi, Gujarat, Haryana, Karnataka, Kerala, Maharashtra, Mumbai, Punjab, Rajasthan, Tamil Nadu, UP (East) and UP (West) service areas. On the same date it also filed two more applications for UAS licence in Assam and North-East service areas. Later on, on 07.03.2007, Cheetah Corporate Services (P) Limited, a sister concern of STPL, also submitted applications for UAS Licences in Assam and North-East service areas.

1445. To deal with these applications file D-10 was opened by DoT and first note dated 12.04.2007, Ex PW 60/L (D-10, 1/N), was recorded by PW 81 Sh. Madan Chaurasia, SO (AS-I). It was a routine note. On 08.11.2007, a fresh note dated 08.11.2007, Ex PW 42/DQ, was recorded by Sh. Madan Chaurasia, the relevant part of note reads as under:

> "..... .....
> x. Out of the total paid up share capital (Equity share and Preference share) of Rs.110,00,20,000 of M/s Swan Telecom Pvt. Limited, M/s Reliance Telecom Limited holds equity share of Rs.10,79,10,000 and Preference share of Rs.99,20,000. There by total paid up share capital held by M/s RTL in M/s Swan Telecom Pvt. Limited is of Rs.11,78,30,000 which is more than 10% of the total paid up share capital of the applicant company.
>
> xi. M/s RCL already holds CMTS licenses in 14 service areas, namely, Andhra Pradesh, Delhi Gujarat, Haryana, J&K, Karnataka, Kerala, Maharashtra, Mumbai, Punjab, Rajasthan, Tamil Nadu, Uttar Pradesh (East) & Uttar Pradesh (West) service areas.
>
> xii. M/s RCL is 100% owned by M/s RCL (59/C).
>
> xiii. M/s RCL already holds access services licences in all the above 14 service areas where M/s Swan Telecom Pvt. Limited has applied for grant of licences.
>
> xiv. Therefore, viewing the substantial equity clause, substantial stake of more than 10% of M/s RCL (through M/s RTL) in M/s Swan Telecom Pvt. Limited violates Clause 8 of UASL guidelines dated 14.12.2005.

…….
……."

1446. In due course, the file reached Sh. R. K. Pathak, Director (IP), who recorded note dated 10.12.2007, Ex PW 60/L-1, which reads as under:

> "The statement at 8(X) and 8(XIV) is not correct. Preference share are not counted for calculation of FDI and are treated as debt. Hence equity of M/s RTL would be 9.87% only. The appln is old, hence we may ask compliance of amended licence conditions which includes Press Note 3 (2007) and equity structure in terms of Press Note 3 (2007). LF may also pl see."

Thus, preference shares were not to be counted for calculation of FDI and were to be treated as debt.

Thereafter, note dated 11.11.2007, Ex PW 42/DQ-1, page 4/N, was recorded by PW 42 Director (LF-II) Sh. Shah Nawaz Alam, which reads as under:

> "Deficiencies have been listed on 3/N. However, whether preference shares can be included in the equity holding to disqualify as in clause 8 (XIV) on 3/N needs to be examined. Whether networth can include such item as listed in the details given by the company also need to be examined."

1447. The file was marked to DDG (LF) Sh. B. B. Singh, who recorded note dated 11.11.2007, Ex PW 60/L-2, about receipt of a complaint, which reads as under:

> "The wanting details / information may be called for. Moreover, as per discussion with DDG (AS), the department is in receipt of a communication from an Advocate of High Court who has brought out the

issue of cross holding of Tiger Traders Pvt. Ltd., promoter of Swan Telecom. The relevance of the issues raised need to be examined, if required with inputs from Department of Co. affairs. This is suggested to avoid awkward situation, if any, from arising in future. Copy of the communication is placed in file."

Thus, a complaint against STPL to the effect that it was not compliant to clause 8 on the date of application was taken on record and the need to get it examined, if possible with input from MCA, was emphasized. Sh. B. B. Singh, DDG (LF), marked the above note to DDG (AS) Sh. A. K. Srivastava.

1448. Thereafter, in due course, note dated 12.11.2007, Ex PW 36/G-1, was recorded by Sh. Nitin Jain, the relevant parts of which read as under:

".....
.....
2. As per existing practice for grant of new UAS licences, after preliminary examination of applications, as on the date of Applications, required clarifications/ compliances/ certificates were obtained from the company before issue of LoI so far. However, in certain cases the compliances have been considered at a date before issue of LoI, based on clarification sought and for seeking updated information.

2.1 However, as per para 6 on 6-7/N in file No. 20-100/2007-AS-I(Part-C), these required clarifications/ compliances/ certificates shall now be obtained along with compliance to LOI conditions which will be further examined. It is proposed that a clause be put in the draft LOI that the Government reserves the right to cancel/withdraw LoI(s) or licence agreement(s), if signed, in case it is noticed at a later

date that the applicant company was not eligible as per the criterion for grant of UAS licence. The applicant company shall be fully responsible for any eventuality arising out of non-compliance at any time. The non-refundable entry fee if deposited shall be forfeited and PBG, FBG may be encashed and forfeited also in such cases. Further, the company is required to submit a certificate of Company Secretary certifying that the company agrees that the LOI shall be deemed to be withdrawn/Licence agreement (if signed) shall be deemed to be terminated without assigning any reason and PBG, FBG shall be encashed and forfeited forthwith, in case of submission of false certificate or in the event of the violation of any stipulation of the LoI by the company.

.....

.....

4. The case was sent for further examination of LF and IP Wings. IP Cell at **4/N** has noted that the statement at 8(x) and 8(xiv) is not correct. Preference shares are not counted for calculation of FDI and are treated at debt. Hence equity of M/s RTL would be 9.87% only. The application is old, hence we may ask compliance of amended licence conditions which includes Press Note 3 (2007) and equity structure in terms Press Note 3(2007). LF may also please seen. At **4/N**, the Dir(LF-III) has noted that "deficiency have been listed on 3/N. However, whether preference shares can be included in the equity holding disqualify as in clause 8(xiv) on 3/N needs to be examined. Whether networth can include such items as listed in the details given by the company also needs to be examined. DDG(LF) has noted that the waiting details/information may be called for. Moreover, as per discussion with DDG(AS), the department is in receipt of a communication from an advocate of High Court who has brought out the issue of cross holdings of Tiger Trades Pvt. Ltd., promoters of Swan Telecom. The

relevance of the issues raised need to be examined, if required with inputs from Department of Company Affairs. This is suggested to avoid awkward situation, if any, from arising in future, copy of the communication is placed in file.

5. It is separately mentioned at **59/C** that M/s Reliance Telecom Ltd. (RTL) is 100% owned by M/s Reliance Communication Ltd. (RCL). It has been brought to the notice of this office that there is cross holding of equity among the shareholders of M/s Swan Capital Pvt. Ltd. (now Swan Telecom Pvt. Ltd.) and it has been alleged that the substantial equity clause may be compromised. **The company is to clarify**.

6. The above observations may kindly be seen and the matter for issue of LoI(s), in order of priority in each service area as indicated in the list at **117/c**, is to be decided.

7. 14 UASL application of M/s Swan Telecom Pvt. Ltd. (Formerly M/s Swan Capital Pvt. Ltd.) for Andhra Pradesh, Gujarat, Haryana, Jammu & Kashmir, Karnataka, Kerala, Maharashtra, Punjab, Rajasthan, Tamil Nadu, Uttar Pradesh (East), Uttar Pradesh (West), Delhi and Mumbai service areas are for perusal, consideration and necessary orders please."

A perusal of the note reveals that Sh. Nitin Jain, Director (AS-I), who was responsible for processing of applications, did not make any observation of his own and just reproduced the previous observations and marked the file to DDG (AS) for perusal, consideration and necessary orders. He did not put up any proposal for enquiry as suggested by DDG (LF) as he was Director (AS-I) responsible for processing of

applications and issue of licences. He was the most important person in the chain of officers.

1449. DDG (AS) PW 60 Sh. A. K. Srivastava recorded his own note of the same date, Ex PW 36/G-2, which reads as under:

> "**Note on page 2/N onwards and checklist on 117/c may kindly be seen.**
>
> As per discussions with Secretary (T) & Hon'ble MOC&IT, LOIs are to be issued simultaneously to prima-facie eligible applications who have submitted their applications upto 25.09.2007. Proposal contained in **para 5, 6 & 7** above may kindly be seen. Necessary clarifications / compliances shall be obtained as compliance to LoI conditions. It is to be decided that the compliances shall be taken as on date of application or any date till the date of issue of LOI **(Kindly refer para 2 on pre-page).**
>
> 'X' on pre-page will be suitably included in the LOI.
>
> LOI draft shall be separately vetted by Finance Branch and Legal Advisor. The vetted draft LoI shall be used for issue of LoIs after the approval of the competent authority."

In this note, PW 60 Sh. A. K. Srivastava proposed that as per discussion with Secretary (T) and MOC&IT, LOIs were to be issued to prima facie applicants, whose applications were received up to 25.09.2007. He next proposed that clarifications, about observations made in paras 5, 6 and 7, shall be obtained as compliance of LOI. He further put a question whether compliances were to be taken on the date of application or on the date of LOI, indicating that department was not sure about it till this date. In a sense he ignored the

complaint.

1450. After recording this note, he marked the file to Member (T), Member (S), Member (F), Secretary (T) and Hon'ble MOC&IT. What does it mean? It means that he had marked the file up to the highest authority recommending issue of LOIs. This is also clear from the line recorded in his note, which reads "'X' on pre-page will be suitably included in the LOI." What is 'X' on pre-page? 'X' on pre-page is para 5, which for ready reference reads as under:

> "5. It is separately mentioned at **59/C** that M/s Reliance Telecom Ltd. (RTL) is 100% owned by M/s Reliance Communication Ltd. (RCL). It has been brought to the notice of this office that there is cross holding of equity among the shareholders of M/s Swan Capital Pvt. Ltd. (now Swan Telecom Pvt. Ltd.) and it has been alleged that the substantial equity clause may be compromised. **The company is to clarify**."

This means that Sh. A. K. Srivastava desired that violation of clause 8 would be seen at the post-LOI stage. As noted above, he also deposed on these lines.

1451. Sh. Nitin Jain did not make any observation of his own regarding violation of clause 8 by the company, but it appears that he wanted the company to clarify it. However, Sh. A. K. Srivastava disregarded it and indicated that the clarification would be sought through the LOI itself. Thus, Sh. A. K. Srivastava was willing to go to the extent that LOI be issued to the company at this stage itself disregarding all objections. Had the file reached upward up to the Minister, the approval for

issuance of LOI would have been issued on that day itself and only thing remaining to be done was vetting of LOI alone. This is clear from file D-7 also in which approval for LOI was granted by Sh. A. Raja on 07.11.2007 and only vetting of LOI was pending, as is clear from note, Ex PW 60/H-2, recorded by Sh. A. K. Srivatava withdrawing the file from LF cell and again marking it to that cell on 14.11.2007.

When the note of Sh. A. K. Srivastava, Ex PW 36/G-2, reached Member (T), he also agreed to this proposal. However, when the file reached Member (F) Ms. Manju Madhavan, she, instead of marking the file upward to Secretary (T), marked it downward to Advisor (F) and DDG (LF).

1452. In due course, the file reached AO (LF-II), who recorded note dated 21.11.2007, Ex PW 60/L-7, in which he, inter alia, mentioned that LOI be granted in the then existing legally vetted format only after eligibility conditions were met and the application was complete in all respects. Thereafter, file reached Director (LF-III) Sh. Shah Nawaz Alam, who also recorded note Ex PW 42/DQ-2, indicating that shareholding pattern and the shareholders of STPL needed to be verified. The file reached PW 99 Sh. B. B. Singh, Director (LF), who recorded note dated 22.11.2007, Ex PW 60/L-8, which reads as under:

> "Aforesaid notes refer. It is suggested that the LOI may be placed after obtaining necessary verification/clarification including the ones raised on 3/N. For favour of orders please."

He marked the file to Advisor (F), Member (F) and Secretary (T). It may be noted that the words "It is suggested"

and “including the ones raised on 3/N” are later insertion. By this date the question of examination and enquiry was totally lost and the matter settled to clarifications from the company. When the file reached Member (F), she wrote “please discuss”. After discussion, this file again reached Sh. B. B. Singh, who again recorded note dated 30.11.2007, Ex PW 60/L-9, which reads as under:

> “The matter was discussed with M(F). In the instant case, the concern about the violation/ compromise of substantial equity clause has already been raised (Para 5 of 6/N).
>
> Further it is also observed that initial equity holding pattern of Swan Telecom Pvt. Ltd. as on 3.5.06 was as follows:

(a)	Powarsrfer Interactive (India) Private Ltd.	4999 shares i.e. 49.99% of holding
(b)	Reliance Energy Management services Pvt. Ltd.	5000 shares i.e. 50% of holding

> Subsequently on 1.3.07 it was modified on following lines:

(a)	Tiger Traders Pvt. Ltd. located at Reliance Energy Centre	90.1%
(b)	Reliance Telecom Ltd.	9.9%

> Reliance Telecom also holds all preference shares values at Rs.99.2 lacs.
>
> To know that swan Telecom is compliant to the clause 8 of UASL guidelines (substantial equity clause) it would be necessary to know the share holders of Tiger Traders Pvt. Ltd. and its parent Cos., if any. This is in addition to points raised earlier.
>
> For favour of orders please.”

After recording this note, he marked the file to

Member (F) and Secretary (T). It may be noted that the words "this is in addition to the points raised earlier" are later insertion. Member (F) recorded her note that "A must be examined by AS branch in addition to other issues". Here, 'A' refers to last para of above note of Sh. B. B. Singh, wherein he recorded that to know that STPL was compliant to clause 8, it was necessary to know the shareholders of TTPL and its parent company.

1453. Thereafter, clarifications were sought by the DoT from the company vide letter dated 10.12.2007, Ex PW 21/DB, and the same were furnished by the company vide letter dated 12.12.2007, Ex PW 21/DC. The exhibition of letter was objected to by learned Sr. PP. I do not find any reason for this objection. The response of the company was examined in the DoT by various officers and thereafter, note dated 17.12.2007, Ex PW 60/L-12, was recorded by Sh. Madan Chaurasia, SO (AS-I). He took all the events on record and in the end, recorded that "LF/ IP branch may be requested to further examine the case with respect to eligibility conditions such as networth, equity, substantial equity and FDI/ foreign collaboration." The relevant parts of his note read as under:

> "..... .....
> 6. Vide letter dated 7.12.2007, the company has intimated regarding change in shareholding pattern of the company (126/c).
>
> 7. As mention in para 5 of 6/N, vide letter dated 8.11.2007 (118/c), i.e. before the recent change in the equity structure of the company, it was brought

to the notice of this office that there is cross holding of equity among the shareholders of M/s Swan Telecom Pvt. Ltd. and **it was alleged that the substantial equity clause may be compromised (118/c)**.

8. The applications were examined vide notes on **1-11/N** the same may kindly be perused please. Vide 'A' on 10/N, DDG(LF) desired to know the share holders M/s Tiger Traders Pvt. Ltd. and its parent company. However, based on the decision in F. No. 20-63/2006-AS-I (122/**c**) and F. No. 20-100/2007-AS-I (Part 'C') (123/**c**) **and in view of change of shareholding of the company (126/c)**, the company , vide our letter dated 10.12.2007 (125/c), was asked to submit clarifications/ information/ supporting documents. Vide letter dated 13.12.2007 (128/c), the company has submitted the requisite clarifications/information/supporting documents.

9. Grant of LoIs shall be considered in the order of priority as per the list at 117/c in each service area after the applicant company is found eligible for grant of UASL as per the eligibility condition.

10. Accordingly, a preliminary check has been carried out by DIR(V AS-II)/ADG(VAS-I) and has enclosed a check list at 129/c. Some of the important observations have been made as below.
(i) Name & designation of the person who has signed the documents has not been mentioned at all places, wherever signed. Certificate of true copy not mentioned on relevant places.
(ii) The company has intimated that CEO/ CFO/ CSO/ CTO have not been appointed as yet.
(iii) Form 32 for all Directors has not been submitted.
(iv) The company has mentioned that Business Plan was submitted along with applications.
(v) The company has mentioned that document

was submitted along with application(s), however, certified copy not enclosed with reply dated 12.12.2007.
(vi) Most of the documents have been shown dated 13.12.2007 whereas forwarding letter is dated 12.12.2007.

11. Service area wise list of pending UASL applications (alongwith date of application) is placed at **117/c** may kindly be perused for existing policy of first-come-first-serve basis in each service area.

12. We may request LF/IP Wings to further examine the case w.r.t. to eligibility conditions such as Networth, Equity, Substantial Equity and FDI/Foreign Collaboration."

1454. Up to this stage, it is clear that both LF branch and AS branch are tossing around the matter to each other without deciding anything and there was no outside interference by any conspirator. There is nothing to distract from the ordinariness of the notes recorded by officers. The notes do not suggest any slowing down or speeding up or manipulation of the file by anyone, including the accused.

1455. The file thereafter was marked upward and was seen and signed by many officers up to Member (T). When the file reached Member (F), she also signed the file, but marked it downward to Advisor (F) and ultimately file reached AO (LF-II), who recorded note dated 26.12.2007, Ex PW 42/DQ-3, which reads as under:

"In continuation to notes on pre-pages following has been observed:

1. Paid up equity of **M/s Swan Telecom Pvt. Ltd.** as on date of application i.e. 23.01.2007 and as on 13.12.2007 was Rs.109.01 crores against the required paid up equity of Rs.103.00 crores for 14 (Fourteen) Service Areas (P-20 of 128/c).

2. Networth of **M/s Swan Telecom Pvt. Ltd.**, and its promoters as on date of application i.e. 23.01.2007 was 1100.28 crores and as on 13.12.2007 was Rs.1104.318 crores against the required networth of Rs.1030.00 crores for all 14 (Fourteen) Service Areas (P-20 & 21 of 128/c).

3. FDI is 9.90 which within 49% for which no FIPB approval is required.

Further it is also mentioned that initially equity holding pattern of M/s Swan Telecom Pvt. Ltd. as on 03.05.2006 was as under:

1. M/s Powarsrfer Interactive (India) Pvt. Ltd.
   4999 Shares 49.99% of holding
2. M/s Reliance Energy Management Services Private Ltd.
   5000 Shares 50.00% of holding

Subsequently it was modified on following lines:

1. M/s Tigers Traders Pvt. Ltd.	90.10% of holding
2. M/s Reliance Telecom Ltd.	9.90% of holding

Now as per details submitted on 12.12.2007 the 9.9% ownership of M/s Reliance Telecom Ltd. has been transferred to Delphi Investment Ltd. Thus the holding pattern has been modified by replacing M/s Reliance Telecom Ltd. with M/s Delphi Investment Ltd. a foreign company.

4. The Share Holding pattern of Tiger Traders Pvt. Ltd. and its parent companies has not been provided in response to our notings at 10/N.

> 5. M/s Swan Telecom Pvt. Ltd. was not having Telecom Services in its object clause of the M & A of A when the company submitted its documents along with application on 23.01.2007 and 02.03.2007. Telecom Services have been inserted in the object clauses by Special Resolution at the Extraordinary General Meeting held on 07.02.2007, which has been approved by the ROC on 15.02.2007."

This note talked only about shareholding pattern of TTPL and its parent companies not being provided, as per noting, Ex PW 60/L-9. It is not mentioned if the shareholding pattern was desired on the date of application or as on date.

1456. In due course, the file reached DDG (LF) Sh. B. B. Singh, who recorded note dated 17.12.2007, Ex PW 60/L-14, which reads as under:

> "In this case the details of shareholders of Tiger Traders Pvt. Ltd. were required to be furnished (10/N). However, the same have not been given.
>
> Moreover, as on date of application Telecom was not in the object clause of in M&A of A of the Co. Hence the eligibility is not established."

This note also did not talk if the shareholding pattern was required on the date of application or as on date. Not only this, the two notes of LF branch, referred to above, also did not talk of any enquiry.

1457. Thereafter, it was desired vide note dated 02.01.2008 that certain clarifications may be obtained from the company. This was approved by Sh. A. K. Srivastava on 04.01.2008 at 16/N. Accordingly, vide letter dated 04.01.2008, Ex PW 60/L-18 (131/c), signed by PW 88 Sh. R. K. Gupta,

certain details, including details of shareholders/ promoters of TTPL were sought. The relevant part of letter reads as under:

> "Details of shareholders/ promoters of Tiger Trustees (P) Limited alongwith their stakes may be provided so as to substantiate the source of Rs. 1070 crore."

It is to be noted that it is not mentioned in the letter as to on which date shareholding pattern of TTPL was required.

1458. The company replied to the letter on 07.01.2008 vide reply Ex PW 60/L-19 (132/c), giving the names of the shareholders of TTPL, indicating unsecured loans given by DBIPL, shareholders contribution, details of preference shareholders and networth of STPL. This fact was noted by Sh. Madan Chaurasia in his note dated 08.01.2008, Ex PW 60/L-20. He also recorded that the file may be forwarded to LF branch for examining eligibility conditions, including substantial equity. The relevant part of his note reads as under:

> ".....
> .....
> 6. Accordingly, a preliminary check was carried out by DIR (VAS-II)/ADG(V AS-I) and has enclosed a check list at 129/c. Accordingly, LF/IP Wings were requested vide our notes on 13/N to further examine the case w.r.t. to eligibility conditions such as Networth, Equity, Substantial Equity and FDI/Foreign Collaboration, etc.
>
> 7. The matter has been examined in detail by LF branch on 4-5/N, 9-10/N, 13-15/N. As per notes on 15/N, the company was asked vide our letter dated 04.01.08 for certain clarification by 07.01.08 (131/c). It was desired, at 16/N, that the file will be resubmitted to LF cell with reply of the applicant

company later.

8. The company, vide its letter dated 04.01.08 (132/c), has submitted the requisite clarification. We may forward the file to LF branch to examine and ascertain the fulfillment of eligibility conditions such as Networth, Equity, Substantial Equity and FDI/Foreign Collaboration, etc. in view of their notes as mentioned in para 7 above taking into consideration the reply of the company placed at 132/c please."

He also did not propose anything, but simply asked the LF branch to examine eligibility conditions. He marked the file to ADG (AS-I), Director (AS-I), DDG (AS), Member (T) and Member (F). All officers saw the file and when the file reached Member (F), she marked the file to DDG (LF). In LF branch, AO (LF-II) recorded note dated 08.01.2008, Ex PW 42/DQ-4, which reads as under:

"The case was earlier examined by us on 14/N to 15/N. AS branch has asked for clarifications vide 131/C and there reply dated 04.01.2008 on 132/C our observations are as follows:

Regarding the ownership of M/s Tiger Trustees Pvt. Ltd. it has been intimated that the said company is owned by M/s Dynamix Balwas Infrastructure Pvt. Ltd., M/s Sidharth Consultancy Services Pvt. Ltd. and Mr. Shyam Malpani jointly with Sidharth Consultancy Services Pvt. Ltd. with share holding of 99.80%, 0.19998% and 0.00002% respectively.

However, the details of Tiger Trustees i.e. promoters on the date of application have not been furnished.

In their original application M/s Swan Telecom Pvt. Ltd. had indicated that 90.10% of the paid up equity capital of 109.01 crores was owned by M/s

Tiger Traders Pvt. Ltd. and 9.90% of the paid up equity capital was held by M/s Reliance Telecom Ltd. There were 99.20 lakhs preference shares of face value Re.1/- each owned by M/s Reliance Telecom Ltd.

In their clarification dated 13.12.2007 it was indicated that 90.10% of paid equity capital of the company was owned by M/s Tiger Trustees Pvt. Ltd and 9.90% of the paid up equity capital was owned by M/s Delphi Investments Pvt. Ltd. Thus 9.90% of the equity share capital of M/s Reliance Telecom Ltd. was transferred to M/s Delphi Investment Pvt. Ltd. Here it may be observed that there is change in holding pattern as intimated by the company in its clarification.

In the recent clarification dated 04.01.2008 it is stated that the 99.20 Lakh Preference Shares of M/s Swan Telecom Pvt. Ltd. with face value of Re.1/- each have been transferred to M/s Dynamix Balwas Infrastructure Pvt. Ltd. These preference shares have a premium of Rs.999/- per preference share and were earlier held by Reliance Telecom Ltd. This contributes substantially to the Networth of the company.

The Networth of M/s Swan Telecom Pvt. Ltd. with equity share capital of 109.01 crores, preference share capital of 0.992 crores, share premium (on preference shares) of Rs.991.008 crores and a profit of Rs.3.308 crores is indicated as Rs.1104.318 crores."

In this note, he took note of recent clarifications submitted by the company.

1459. On recording this note, he marked the file to Director (LF-III), DDG (LF), Advisor (F) and Member (F).

It may be noted that the sentence "However, the details of Tiger Trustees i.e. promoters on the date of

application have not been furnished." is a later addition by Sh. B. B. Singh. This sentence is at the root of controversy.

1460. It may also be noted that in the letter dated 04.01.2008, Ex PW 60/L-18, no information was sought by the DoT officials about details of shareholders of TTPL on the date of application for UAS licence, that is, 02.03.2007. Accordingly, company furnished the information only as on date 04.01.2008. It is thus clear that no information was sought from the company about the shareholding of STPL/ TTPL as on date of application.

1461. In the note dated 08.01.2008 recorded by AO (LF-II) and agreed to by Director (LF-III) PW 42 Sh. Shah Nawaz Alam, DDG (LF) PW 97 Sh. B. B. Singh and Member (F) PW 86 Manju Madhavan, no objection was taken by the LF branch as to eligibility of STPL. The file was marked by Member (F) to Member (T) PW 77 Sh. K. Sridhara, who marked the file to DDG (AS). It means that LF branch agreed to the issuance of LOIs.

1462. Taking that there was no objection as to eligibility of STPL by the LF branch, Sh. Nitin Jain recorded note dated 09.01.2008, Ex PW 60/L-21, recommending issuance of LOIs. The relevant part of the note reads as under:

> "..... .....
> 7. The matter has been examined in detail by LF branch on 4-5/N, 9-10/N, 13-15/N & 18/N.
>
> The Finance branch has observed on 18/N that *"M/s Swan Telecom Pvt. Ltd. has indicated that 90.10% of the paid up equity capital of 109.01 crores was owned by M/s Tiger Traders Pvt. Ltd. and 9.90% of the paid up equity capital was held by M/s Reliance*

Telecom Ltd. There were 99.20 Lakhs preference shares of face value Re.1/- each owned by M/s Reliance Telecom Ltd."

It was also observed by finance branch that ***"The networth of M/s Swan Telecom Pvt. Ltd. with equity share capital of (Rs.) 109.01 Crores,*** *preference share capital of (Rs.) .992 crores, share premium (on preference shares) of Rs.991.008 crores and a profit of Rs. 3.308 crores* ***is indicated as Rs. 1104.318 crores****."* Other observations also may kindly be seen at 18/N.

However, finance branch has not expressed and decided that the company meets the eligibility criterion for paid up equity capital, networth and substantial equity as on date of application. As the finance branch (LF) was requested to examine and ascertain the fulfillment of eligibility conditions vide para 8 of 17/N, the above observation of finance branch could be construed that the company meets the eligibility criterion as nothing otherwise has been observed. Finance branch may confirm please.

7.1 The service areawise priority list of the applications mentioned above for issue of LOIs and grant of UAS licences is as per list placed at 117/C.

8. As already mentioned in para 5 of 14/N and the remarks of DDG (AS) on 15/N, the object clause of M&AA of the company was amended to include telecom activity as part of object clause on 07-02-2007 only. Hence the application dated 23-1-2007 for J&K service area does not have telecom activity/business in the object clause as on date of application. However other 13 applications submitted on 02-03-2007 as in para 2 above are compliant to object clause in MAA as on date of application.

9. The following is also submitted for consideration please.

(i) In file No. 20-100/2007-AS-I (Part-C), it has been decided by Hon'ble MOC&IT on 2.11.2007 that LOIs may be issued to the applicants (applications) received upto 25.09.2007. Subsequently on 4.12.2007, Hon'ble MOC&IT desired that this decision should be implemented. It was also decided that "for the purpose of LOI proforma as issued in the past may be used for LOIs in these cases also."

(ii) As per para 8 above, one application for J&K service area is not compliant in respect of object clause, however, 13 applications which were received on 02-03-2007 i.e. before 25.09.2007 are in order and may be considered for grant of LOIs for UASL for Andhra Pradesh, Delhi, Gujarat, Haryana, Karnataka, Kerala, Maharashtra, Mumbai, Punjab, Rajasthan, Tamilnadu, Uttar Pradesh (East) & Uttar Pradesh (West) service areas. Accordingly, draft LOIs for the above said service areas has been attempted and placed at DFA/33/C to 145/C for perusal. It is to mention that the case file for policy regarding grant of LOI in the present cases has already been submitted for decision in a separate file No. 20-100/2007-AS-I (Part-C). LOIs may be issued pursuant to appropriate decision in this regard.

(iii) As per the observation made in para 7 above ad on 18/N, finance branch is also to ensure that the above proposal for grant of LOIs in 13 service areas is in order w.r.t. eligibility criterion for paid up equity capital, networth and substantial equity before approval of draft LOIs proposed.

(iv) Shri R.K. Gupta, ADG (AS-I) may be authorized to sign and issue LOIs for & on behalf of President of India."

This noting by Sh. Nitin Jain is to the effect that the noting of the finance branch would be construed that the company met eligibility criteria as nothing otherwise had been observed. It also fortifies the conclusion that the objection to the

effect that the details of TTPL, that is, promoters on the date of application, had not been furnished, was a later addition and was not there when Sh. Nitin Jain recorded his note dated 09.01.2008. Had it been there, Sh. Nitin Jain might have taken note of it.

1463. On recording the note, he marked the file to Director (VAS-II), Director (AS-III), Director (AS-IV), DDG (AS), Member (T), Member (F), Secretary (T) and Hon'ble MOC&IT. As noted above, Sh. Nitin Jain recorded that the thirteen applications were in order, LOIs may be issued and also requested that Sh. R. K. Gupta may be authorized to sign the LOIs for and on behalf of President of India. The point to be noted is that the file was marked up to the highest competent authority, that is, MOC&IT. It means that from the point of view of Sh. Nitin Jain, the company was eligible for issuance of LOIs. However, he had put a caveat that LF branch was to ensure that the above proposal was in order with respect to eligibility criteria of paid up equity, networth and substantial equity. The file was signed by all officials but when it reached Member (F) Ms. Manju Madhavan, she did not sign the note as there are no signatures of her below it. It appears that she orally asked LF branch to put up a note. Accordingly, AO (LF-II) recorded a note dated 09.01.2008, Ex PW 42/DQ-5, which reads as under:

> "Notes on 20/N of AS Branch refer
>
> The case was earlier examined by us on 18/N. Based on the available records it is observed that M/s Swan Telecom Pvt. Ltd. have equity share capital of Rs.109.01 crores and Networth of Rs.1100.28 crores as on date of application as

certified by their Company Secretary. This should be sufficient for the 13 (Thirteen) Service Areas. They have furnished the details of their promoters i.e. M/s Tiger Trustees Pvt. Ltd. (Formerly Tiger Traders Pvt. Ltd.). It was observed that the details of M/s Tiger Traders Pvt. Ltd. one of the promoters of M/s Swan Telecom Pvt. Ltd. as on date of application is not submitted.

It may be mentioned that there were allegation of non compliance of substantial equity clause. We have no means to verify that. AS Branch may like to take care of it."

It may be noted that the sentence "AS Branch may like to take care of it." is a later addition by Sh. B. B. Singh.

1464. On recording the note, the file was marked to Director (LF-III), DDG (LF), Advisor (F) and Member (F). All officers signed the note, except Advisor (F), who was on tour.

1465. It is to be noted that AO (LF-II) had recorded that details of TTPL, one of the promoters of STPL, as on date of application had not been submitted. However, it was recorded at a highly belated stage. Despite this, when the file reached Member (F) Ms. Manju Madhavan, she did not mark the file downward for seeking further clarifications and instead marked it upward to Secretary (T) and MOC&IT. When the file reached Secretary (T) Sh. Siddhartha Behura, he recorded note dated 09.01.2008, Ex PW 60/L-22, which reads as under:

"They fulfill the requisite conditions. LOI may be issued. For approval."

This note is being read against Sh. Siddhartha Behura by the prosecution to make him a conspirator.

On recording this note, he marked the file to Sh. A. Raja, who approved the same on 09.01.2008 itself.

1466. Now the question is as to why DDG (LF), who is head of the licensing branch, marked the file to Member (F), instead of marking it to DDG (AS) for getting the objection examined or removed? Further question is as to why Member (F) marked the file upward to Secretary (T) and MOC&IT when there was objection recorded by the AO (LF-II) and seen by Director (LF-III) and DDG (LF)? She is an officer of the rank of Special Secretary to the Government of India and is expected to know the procedure. It appears that in her wisdom, she did not think it fit to get the matter further examined as was done by her on 15.11.2007, while dealing with the notes Ex PW 36/DG-1 and 36/DG-2, in which issue of LOIs was also proposed and the file was marked to Secretary (T) as well as MOC&IT. Here, she had marked the file downward to Advisor (F) and DDG (LF) instead of marking upward. It is clear that on 09.01.2008 she overruled the objection but did not record it in so many words and indicated it just by marking the file upwards.

1467. It is to be kept in mind that she had marked the file to the Secretary (T) and the MOC&IT herself in her own pen. The question is: When a file is to be marked to the Minister? Whether a Minister is himself/ herself expected to deal with the objections recorded by any of the juniors or a file should reach him/ her complete in all respects, free of objections? In this regard, it is instructive to take note of examination-in-chief dated 10.04.2012, page 2, of PW 36 Sh. D. S. Mathur, wherein

he deposed that file is put to the Minister only when it is found to be in order by all sections of the department and his deposition reads as under:

> ".....Before issuance of LOI, an application received is registered with date and time mentioned in the register as well as on the application. Then the applications are taken up for processing in chronological order under first-come first-served order. Then different sections of telecom department examines the application from their point of view and if the application is found in order by all the different sections of the telecom department, then it is put up to the Minister through the Secretary, DoT, for approval to issue LOI....."

In his cross-examination, dated 18.04.2012, pages 4 and 5, PW 36 Sh. D. S. Mathur, Secretary (T) deposed as under:

> ".....It is correct that every note pertaining to spectrum in respect of these matters is initiated by WPC wing. The matter of issuance of UAS Licences is handled by several cells of DoT. I do not remember if Access Service cell is mainly responsible for this. Each cell has different functions. Notings/ recommendations relating to a particular matter pertaining to a particular cell are initiated in that cell alone. Thereafter, the notings/ recommendations are scrutinized by the head of that cell. It is not correct that the matter is then everytime put up to the Secretary, who puts it to the Minister in turn for his decision. WPC cell takes final decision as far as start up spectrum is concerned. For allocation of additional spectrum, the file is routed through Secretary (T) for final decision of the Minister. The inputs in the notings recorded by the head of the department are put up to the Secretary and if taken correct, the same are put up before the Minister. The officers of the concerned department are expected to ensure that the inputs recorded in

the noting are correct and in accordance with the policy. The Minister has the power to approve, amend or reject the recommendations/ notings put up to him, being the final authority to take a decision. Such decisions taken by the Minister has to be implemented....."

The gist of his deposition is that the file should reach the Minister only when it is in accordance with the policy and procedure of the department and is free of all objections.

1468. PW 57 Sh. R. J. S. Kushvaha in his examination-in-chief dated 18.07.2012, page 7, has deposed as to when a file is to be put to the Minister as under:

"....In case of application, which is complete in all respects and is fit to be allotted spectrum, these applications are processed and case is submitted for approval of competent authorities. After the necessary approvals, the frequency allotment letter is sent to the applicant licencee....."

1469. PW 81 Sh. Madan Chaurasia, SO (AS-I), has deposed in his examination-in-chief dated 22.11.2012, page 2, as under:

".....On receipt of an application for UAS Licence in CR Section, the same is sent to the AS-I cell by diarizing the same. Initially, the application is processed in the AS-I cell. The application is processed as per a check list issued as per UASL Guidelines. If there is any deficiency in the application, the same is taken on record and clarification/ deficient document is sought from the applicant, as per the prevailing practice. When the application is found to be entirely in order, after removal of all deficiencies, if any, a note is prepared and the application is put up for LOI to the next senior....."

Similarly, PW 91 Sh. R. P. Aggarwal, Wireless Adviser, deposed in his examination-in-chief dated 12.12.2012, page 2 as under:

> ".....Normally, Deputy Wireless Advisor puts up the proposal for assignment/ allocation of frequencies. Thereafter, the file goes to Joint Wireless Advisor and then it comes to Wireless Advisor. Thereafter, the file comes to Wireless Advisor, who also peruses the file and if found correct, it is sent to Member (T), Secretary (T) and Minister (C) for approval.
>
> For allocation of additional spectrum as well as for start up spectrum, the competent authority is Minister (C)....."

1470. PW 60 Sh. A. K. Srivastava deposed in his examination-in-chief dated 31.07.2012, pages 4 and 5, as under:

> ".....When I re-joined my department on 31.05.2007, Sh. A. Raja was Minister, MOC&IT. He remained MOC&IT till November 2010. During this period, I used to occasionally interact with him. I can identify Sh. A. Raja and he is present in the Court. The Cabinet Minister is the final authority in DoT for approval of policy matters of AS cell. The proposals are normally initiated by the section, that is, Section officer level, ADG level and Director level. The file is then seen by DDG and thereafter, is submitted for decision through proper channel, that is, through Member (Technology) and Secretary (DoT), to MOC&IT. During my tenure, I had seen the writing and signature of Sh. A. Raja, the then MOC&IT, and I can identify the same....."

1471. Thus, it is clear that a file is to be marked to the Minister only when it is complete in all respects. This is to be

always kept in mind that Minister is at the helms of affair of a Government department. His duty is to lay down the policy and to get it executed through the Secretariat. The Secretariat, headed by Secretary, is to assist the Minister in the formulation and execution of policy. Before any action is taken, Secretariat is expected to carry out comprehensive and detailed scrutiny of the issue. If need be, it can take the help of other Ministries. An issue should be discussed threadbare before it is placed before the Minister for decision, because he is not a technical person.

1472. It is clear that no information was sought from the company as to the promoters of TTPL as on the date of application either in the letter dated 10.12.2007, Ex PW 21/DB or in letter dated 04.01.2008, Ex PW 60/L-18. Item 7 of Annexure, Ex PW 110/B-1, to letter dated 10.12.2007, Ex PW 21/DB, deals with details of promoters of the company as certified by the company secretary. Nowhere is it mentioned that company is required to give details of promoter's promoter also, that too on the date of application. Only details sought are of promoters of the applicant company. At the cost of repetition, I may add that item 7 of Annexure to letter dated 10.12.2007, Ex PW 110/B-1, requires only details of the promoters of the applicant company and that details included only names of the promoter(s). There is no column asking for name of the promoter's promoter. Same is the case with Item 11 (b) where names of the shareholders/ promoters of the company have been asked for. However, clause 13 of the same annexure also ask for equity structure of all companies, which have direct or

indirect equity in the applicant company. However, this clause also does not specify as to how many generations of the companies are to be referred to, that is, promoters, promoter's promoters and further to which generation. Moreover, this letter had been written when the processing was underway and amounts to change of Guidelines midway and, as such, is unfair to the applicants. The wrongdoing of a company is to be assessed as per the Guidelines dated 14.12.2005 only and not by subsequent directions issued after filing of application.

1473. It is useful to take note of deposition of PW 60 Sh. A. K. Srivastava who in his examination-in-chief dated 17.08.2012, pages 18 and 19, deposed as under:

> ".....In the meanwhile, Swan Telecom (P) Limited wrote a letter dated 07.12.2007 to the DoT, which was received on 10.12.2007 and is now available at pages 196 to 198 and is already Ex PW 21/DA. It bears my initials at point A. Through this letter, the company communicated to the DoT its revised shareholding pattern and that pattern was attached with the letter as annexure A and is now Ex PW 60/L-11.
>
> I have been shown office copy of DoT letter dated 10.12.2007 written to M/s Swan Telecom (P) Limited seeking additional information/ clarifications as Annexure. The letter is already Ex PW 21/DB. In response to this letter, Swan Telecom (P) Limited sent its letter dated 12.12.2007, which was received in DoT on 13.12.2007 under the signature of Managing Director Shahid Balwa. The letter is already Ex PW 21/C, pages 199 to 388....."

PW 60 does not say that any information was sought as on date of application, but just proved the letter. He is silent

on such a vital issue.

1474. The problem of the prosecution is further compounded by the fact that when caught on the wrong foot, Sh. B. B. Singh made unauthorized insertions in note Ex PW 42/DQ-4, to the effect that details of promoters of TTPL as on date of application have not been furnished. In order to save the situation, PW 97 Sh. B. B. Singh made unauthorized insertions. In his examination-in-chief dated 16.01.2013, page 14, he deposed as under:

> ".....In the note Ex PW 60/L-9, it was not recorded by me that equity structure of Tiger Traders (P) Limited was required as on the date of application. Again in my note dated 27.12.2007, Ex PW 60/L-14, I did not record that equity structure was required as on the date of application. For the first time I recorded/ inserted this in note Ex PW 42/DQ-4, points B to B....."

However, PW 60 Sh. A. K. Srivastava in his examination-in-chief dated 21.08.2012, pages 7 to 9, deposed as under:

> ".....**Ques**: Why did AS branch not examine the observations of AO (LF-II) as recorded by him in his note dated 08.01.2008, Ex PW 42/DQ-4, page 18/N, to the effect that details of shareholding pattern of Tiger Traders (P) Limited as on the date of application were not obtained?
> **Ans**: This information was not sought by the LF branch till 04.01.2008. However, this query is reflected for the first time in the note on page 18/N, Ex PW 42/DQ-4, dated 08.01.2008, wherein Sh. B. B. Singh inserted in his hand "however, the details of Tiger Traders (P) Limited, that is, promoters, as on date of application have not been furnished".

This note was examined by Director (AS-I) Sh. Nitin Jain. However, I am not sure if this handwritten insertion was there or not when Sh. Nitin Jain recorded his note as he has not taken cognizance of this portion in his note Ex PW 60/L-21.

I have also been shown note dated 09.01.2008 of AO (LF-II), already Ex PW 42/DQ-5, at page 21/N of this file. In this note also there is an insertion at points A to A to the effect that "AS branch may like to take care of it" referring to the aforesaid query. This insertion was also done by Sh. B. B. Singh in his hand and I recognize his handwriting.

Court Ques: Even if this was brought to your notice belatedly by Sh. B. B. Singh, was it not your duty to seek the desired information from the company?

Ans: The note of LF branch dated 08.01.2008 in which insertion was made by Sh. B. B. Singh in the note of AO (LF-II) in his hand, this issue of shareholding pattern of Tiger Traders (P) Limited as on the date of application was raised for the first time and never before this while examining the file on several occasions by the LF branch. This note was processed by Sh. Nitin Jain in his note dated 09.01.2008 where he has taken extract of important portion of LF cell note, but he has not taken cognizance of the aforesaid handwritten insertion of Sh. B. B. Singh. Therefore, it is quite probable that as on the date when the file was examined by Sh. Nitin Jain, the insertion could not have been there as it being an important aspect must not have missed attention of director (AS-I) Sh. Nitin Jain and myself. Thereafter, the file did not return to me before final approval and it came to me on 10.01.2008, after its approval by MOC&IT Sh. A. Raja on 09.01.2008....."

Thus, Sh. A. K. Srivastava deposed that belated insertions of Sh. B. B. Singh led to the present situation.

1475. PW 110 Sh. Nitin Jain, Director (AS-I), in his cross-examination dated 22.03.2013, pages 15 to 17, deposed as under:

> ".....It is correct that case of Swan Telecom(P) Limited was referred to finance branch for examination of eligibility regarding substantial equity, paid up equity and net worth. Note dated 08.01.2008, already Ex PW 42/DQ-4 in file D-10, Ex PW 36/G, by the LF branch did not record that STPL did not meet the eligibility criteria.
> **Ques**: Based on this note, you recorded in your note dated 09.01.2008, already Ex PW 60/L-21, that 13 applications of Swan, which were received on 02.03.2007, that is, before 25.09.2007, were in order and may be considered for grant of LOIs for 13 service areas. Is this correct?
> **Ans**: I recorded so subject to confirmation by the finance branch.
>
> It is correct that based on my note Ex PW 60/L-21, I also prepared draft LOIs for 13 service areas to be issued to Swan Telecom (P) Limited, which LOIs are now Ex PW 110/DH-1 to DH-13, pages 133/C to 145/C (D-10). In view of my note Ex PW 60/L-21, the file was again sent to finance branch. Finance branch recorded a note dated 09.01.2008, already Ex PW 42/DQ-5, page 21/N. This note was recorded by AO (LF-II) and the file went up to Member (Finance). The Member (Finance) marked the file to MOC&IT through Secretary (T). in this note, finance branch did not record that STPL did not meet the eligibility criteria.
> **Volunteered**: The LF branch mentioned that they had no means to verify it.
> .....
> .....
>
> I did not record anywhere in this file that Swan Telecom Pvt. Ltd. did not meet the eligibility criteria till the file was marked to Minister through Secretary (T) on 09.01.2008 except in para 7 of my

note, Ex PW.60/L-21 to the effect that Finance Branch may confirm. It is wrong to suggest that I made a false statement to the effect that till 09.01.2008 the issue of eligibility of Swan Telecom Pvt. Ltd. was not settled. It is wrong to suggest that I made such a statement on the asking of CBI……."

1476. Sh. Nitin Jain categorically deposed that he had recommended issue of LOIs, subject to confirmation by the finance branch. He also deposed that when the file reached finance branch, AO recorded note dated 09.01.2008, Ex PW 42/DQ-5. The note was seen and initialed by DDG (LF) as well as Member (F) and Member (F) marked the file upward to MOC&IT through Secretary (T), without taking any objection that the company did not meet the eligibility criteria. Thus, this witness was categorical that this time finance branch had no objection.

As such, the company cannot be faulted for not providing the relevant information.

1477. Not only this, PW 86 Ms. Manju Madhavan, who was a very important witness on this point, was not questioned on this. The answer is obvious. Her examination would have gone against the prosecution as it was she who overruled the last note dated 09.01.2008, Ex PW 42/DQ-5, of AO (LF-II) and marked the file upward for approval of the Minister.

1478. Furthermore, it may be noted that there is absolutely no material on record that Sh. A. Raja or any other conspirator interfered in the processing of files, including file D-5 in which TRAI Recommendations were processed, file D-7, in which

policy decisions were taken and the file is known as UAS Licensing Policy, file D-10 in which applications of STPL were processed or file D-13 and other files in which applications of Unitech group of companies were processed. The files were processed by the officials at their own pleasure in slow and meandering pace. The files were being tossed around from one branch to another. There is absolutely no material on record that any of the conspirator asked any officer to process any file early or belatedly or in a particular manner. The processing of files ran on their own cold logic and tortuous schedule without any extraneous intervention. Everybody was squandering responsibility and was passing the buck by marking the file to others on one pretext or the other. In this regard, it is useful to take note of evidence of PW 60 Sh. A. K. Srivastava, wherein in his cross-examination dated 12.09.2012, page 6, he deposed as under:

> ".....It is correct that in October 2007, I had called a meeting of all directors of AS division in which I emphasized on them the need of processing of UASL applications on priority basis. Again said, may be October or November 2007. It is correct that in that meeting the need for time bound processing of applications was also emphasized....."

Thus, the officers processed the files in routine as their ordinary official work.

1479. What is the case of the prosecution? The case is that TTPL and STPL were Reliance companies on the date of applications and that TTPL did not supply the detail of its promoters as on date of application and this issue was ignored

by Sh. Siddhartha Behura and Sh. A. Raja in conspiracy with Sh. Shahid Balwa and other accused. However, there is no material on the file indicating any conspiracy. It may be noted that Sh. B. B. Singh had desired the details of shareholders of TTPL and its parent companies for the first time vide his note dated 30.11.2007, Ex PW 60/L-9. Again, AO (LF-II) vide his note dated 26.12.2007, Ex PW 42/DQ-3, recorded that shareholding pattern of TTPL and its parent companies had not been provided. This fact was again noted by Sh. B. B. Singh in his note dated 27.12.2007, Ex PW 60/L-14. Thereafter, clarifications were sought from the company and vide note dated 08.01.2008, Ex PW 60/L-20, it was recorded that company had submitted requisite clarifications through its letter dated 04.01.2008. When the file reached LF branch again and AO (LF-II) recorded note dated 08.01.2008, Ex PW 42/DQ-4, it was taken on record that TTPL had intimated that the company was owned by Dynamix Balwa Infrastructure Limited and Siddhartha Consultancy Services (P) Limited. It is in this note that unauthorized insertion was made by Sh. B. B. Singh and the question of details of TTPL as on date of application not being supplied was raised. It appears that this insertion was done on 09.01.2008 as this line was also added in the note dated 09.01.2008 recorded by AO (LF-II), Ex PW 42/DQ-5, that is, details of TTPL had not been submitted as on the date of application. To save his skin, he made the insertion in the previous note dated 08.01.2008, Ex PW 42/DQ-4, also, as this was being done on the last moment, as no such details were

sought earlier from the company. Since this was done at the last moment, Member (F) perhaps deliberately ignored the objection and marked the file upward to Secretary (T) and MOC&IT, as it was too late. In this process, Sh. Siddhartha Behura was right to presume that the company was eligible.

1480. In the instant case, Ms. Manju Madhavan appeared in the witness box as PW 86, but she was not examined by the prosecution on the point as to why she marked the file to the Secretary (T) and Minister, if it was suffering from any deficiency. Not a single question was put to her by the prosecution. She was an important witness and could have clarified her views on this. She was duty bound to ensure that file was problem free before it landed on the table of the Minister. There should have been no problem avoidance. However, she passed the buck to Sh. Siddhartha Behura making him to bear the burden of recording that company met the eligibility criteria. The only fault of Sh. Siddhartha Behura is that he recorded in clear words what Ms. Manju Madhavan cleverly avoided. He stated in his examination under Section 313 CrPC that his note is simply a summary of recommendations of AS division which were scrutinized by Member (F) also and she marked the file to Secretary (T) and MOC&IT. His explanation appears to be reasonable. The perusal of the above material reveals that no enquiry was suggested by any officer and they were just tossing the file around here and there and in the end, LF branch dropped all objections by marking the file to Secretary (T) and upward to the Minister.

Not only this, prosecution is trying to make out a case by mere arguments and not by leading evidence. What prevented the prosecution from putting relevant questions to the witness when she was in the witness box? Instead of doing this, the prosecution is trying to make out a case by arguments and arguments alone across the bar.

1481. In view of the above detailed discussion, I do not find any merit in the submission of the prosecution that Sh. Siddhartha Behura declared STPL eligible as he was in conspiracy with other accused.

1482. Even otherwise, clause 8 is aimed at preventing monopolies. A company can always divest its equity and become compliant to the clause anytime after filing of the application also. As already noted above, the DoT was quite indulgent about the deficiencies in the applications. Once the equity of Reliance was divested, STPL became compliant.

Why did STPL file Applications for UAS Licences?

1483. It is the case of the prosecution that both STPL and TTPL, which was holding 90.1% equity in STPL, belonged to Reliance ADA Group. It is the case of the prosecution that both the companies were "Associate" of Reliance Communications Limited/ RTL, which were already having UAS licences in all telecom circles. It is the case of the prosecution that RCL was operating on CDMA technology in thirteen service areas. It is further the case of the prosecution that these two companies, that is, STPL and TTPL, had no business history. It is further the

case of the prosecution that in order to indirectly acquire GSM technology, RCL activated these two companies for the purpose of applying for UAS licences in thirteen service areas, where it had no GSM spectrum, though the company had already applied for permission for dual technology. It is the case of the prosecution that STPL was used by Reliance Group for filing applications for UAS licences in thirteen service areas to acquire GSM spectrum where RCL was operating on CDMA technology. It is the case of the prosecution that this was done under a strategy to acquire dual technology by indirect means, without being seen to be in violation of Clause 8 of UASL Guidelines.

1484. Defence has disputed it submitting that the companies belonged to DB Group on the date of applications. It is the case of defence that there is no evidence in support of contention of prosecution.

1485. Now the question is: Whether there is any evidence on record in support of the case of the prosecution that the applications were filed in thirteen service areas by STPL just to secure GSM spectrum for Reliance group companies, that is, RCL? Whether this argument is based on some evidence or is a pure speculation?

It may be noted that in six service areas, RTL, a subsidiary of RCL, was already operating on GSM standard, as is clear from note, Ex PW 60/S-2 (D-5) dated 06.11.2008, recorded by Sh. A. K. Srivastava.

1486. It may also be noted that the applications for STPL were filed by PW 2 Sh. A. N. Sethuraman. He, in his

examination-in-chief itself, dated 14.11.2011, page 26, deposed that he was on payroll of Reliance ADA Group, but signed and filed the applications on the asking of Sh. Anand Bhatt. Prosecution did not challenge this version by questioning him that the applications were filed for or on behalf of RCL/ Reliance ADA Group. Similarly, PW 101 Sh. Hasit Shukla, Company Secretary of RCL was examined by the prosecution in detail and was questioned about STPL as well as TTPL also on 26.02.2013. However, no question was put to him as to under what circumstances these applications were filed. Sh. Hasit Shukla was Company Secretary for RCL and was occupying a highly responsible position of Company Secretary and was expected to know the true facts, but no question was put to him. Similarly, Sh. Ramesh Shenoy, Company Secretary of Reliance Infrastructure Limited, was also examined as PW 139 and he was also examined by the prosecution about STPL and TTPL, but no question was put to him in this regard.

1487. Some other witnesses were also examined by the prosecution from Reliance ADA Group, but I could not find any evidence on record in their deposition that the purpose of filing of applications by STPL was to secure GSM spectrum for Reliance Group in service areas where its company RCL was operating on CDMA standard. When RCL had already applied for dual technology spectrum as early as 2006 itself, as the UAS licence was technology neutral, there was no reason for Reliance Group to resort to this subterfuge of filing applications through STPL for obtaining GSM spectrum. If it were so, there

is no evidence, direct or circumstantial, on record to support this view.

1488. Not only this, PW 101 Sh. Hasit Shukla in his cross-examination dated 01.03.2013, page 8, deposed that the minority investment in STPL was mainly for enhancement of tower business. Other witnesses have also spoken on this line. As already noted, PW 2 Sh. A. N. Sethuraman deposed that equity investment of Reliance ADA Group was within permissible limits and investment through other financial instruments, like preference shares was not prohibited. Now there are two versions. Prosecution version is that STPL was activated by the Reliance ADA Group to secure GSM spectrum in service areas where it was operating on CDMA standard. The other version is that the company stood transferred to DB Group and the minority investment was for adding synergy to the business and enhancement of tower business. There is no evidence in support of the prosecution version and the submission is purely speculative and conjectural. On the other hand, the defence version appears to be reasonable one for the reason that Reliance ADA Group had already applied for alternative technology and the investment made was well within the permissible limits for enhancement of tower limits. It is a known fact that tower sharing minimizes duplication of investment, economizes cost of operations and maintenance leading to profitability. A question keeps wafting in mind as to why would Reliance ADA group activate a company for acquiring dual technology for the acquisition of which it had

already filed an application? Prosecution has no answer on the basis of evidence on record. In the end, considering the material on record, I do not find any merit in the version of the prosecution that the company was activated by Reliance ADA Group to secure GSM spectrum in thirteen service areas where it was operating on CDMA standard.

Lifting the Corporate Veil

1489. It is the case of the prosecution that STPL was, in fact, a company of Reliance ADA group and it was owned and controlled by this group. It is the case of the prosecution that in order to obtain GSM spectrum, Reliance ADA group filed applications for licences in thirteen service areas and for that it used STPL as a tool. It is the case of the prosecution that corporate veil is required to be lifted in order to find out as to who was actually behind STPL in filing the applications.

1490. On the other hand, defence argued that on the date of filing of applications, STPL was a company of DB group and, as such, there is no concealment of the actual owners of STPL. It is the case of the defence that when the reality is as clear as daylight, where is the question of lifting the corporate veil.

1491. Let me take note of law on this point.

Dealing with the question of lifting the corporate veil, Hon'ble Supreme Court in an authority reported as **Western Coalfields Limited Vs. Special Area Development Authority, Korba and Another, (1982) 1 SCC 125**, observed in paragraph 23 as under:

> ".....In *Pennington's Company Law*, 4th edn., pp. 50-51, it is stated that there are only two decided cases where the court has disregarded the separate legal entity of a company and that was done because the company was formed or used to facilitate the evasion of legal obligations. The learned Author, after referring to English and American decisions, has summed up the position in the words of an American Judge, Sanborn, J. to the effect that as a general rule, a corporation will be looked upon as a legal entity and an exception can be made "when the notion of legal entity is used to defeat public convenience, justify wrong, protect fraud, or defend crime", in which case, "the law will regard the corporation as an association of persons". In cases such as those before us, there is no scope for applying the doctrine of lifting the veil in order to have regard to the realities of the situation....."

This authority clearly lays down that corporate veil can be lifted only when public convenience is being defeated or a wrong is being justified or fraud is sought to be protected or crime is being defended.

1492. In another authority reported as **DDA Vs. Skipper Constructions Company (P) Limited and another, (1996) 4 SCC 622**, Hon'ble Supreme Court while dealing with the question of lifting corporate veil, observed in paragraph 28 as under:

> "The concept of corporate entity was evolved to encourage and promote trade and commerce but not to commit illegalities or to defraud people. Where, therefore, the corporate character is employed for the purpose of committing illegality or for defrauding others, the court would ignore the corporate character and will look at the reality behind the corporate veil so as to enable it to pass

> appropriate orders to do justice between the parties concerned. The fact that Tejwant Singh and members of his family have created several corporate bodies does not prevent this Court from treating all of them as one entity belonging to and controlled by Tejwant Singh and family if it is found that these corporate bodies are merely cloaks behind which lurks Tejwant Singh and/ or members of his family *and* that the device of incorporation was really a ploy adopted for committing illegalities and/ or to defraud people."

Thus, this authority lays down that corporate veil can be lifted if the device of incorporation was being used for committing illegalities or to defraud people.

1493. Similarly, in an authority reported as **Commissioner of Central Excise, New Dehi Vs. Modi Alkalies and Chemicals Limited, (2004) 7 SCC 569**, Hon'ble Supreme Court observed in paragraph 8 as under:

> "Whether there is interdependence and whether another unit is, in fact, a dummy has to be adjudicated on the facts of each case. There cannot be any generalisation or rule of universal application. Two basic features which prima facie show interdependence are pervasive financial control and management control....."

Thus, this authority lays down that whether one company is dummy for another is to be determined on the basis of evidence led on record by the parties. It is the case of prosecution that STPL was a dummy of Reliance Group.

1494. Furthermore, in an authority reported as **Balwant Rai Saluja Vs. Air India Limited, (2014) 9 SCC 407**, Hon'ble Supreme Court observed in paragraphs 71 and 74 as under:

"**71.** In recent times, the law has been crystallised around the six principles formulated by Munby, J. in *Ben Hashem v. Ali Shayif*. The six principles, as found at paras 159-64 of the case are as follows:

> *(i)* Ownership and control of a company were not enough to justify piercing the corporate veil;
>
> *(ii)* The court cannot pierce the corporate veil, even in the absence of third party interests in the company, merely because it is thought to be necessary in the interests of justice;
>
> *(iii)* The corporate veil can be pierced only if there is some impropriety;
>
> *(iv)* The impropriety in question must be linked to the use of the company structure to avoid or conceal liability;
>
> *(v)* To justify piercing the corporate veil, there must be both control of the company by the wrongdoer(s) and impropriety, that is use or misuse of the company by them as a device or facade to conceal their wrongdoing; and
>
> *(vi)* The company may be a "facade" even though it was not originally incorporated with any deceptive intent, provided that it is being used for the purpose of deception at the time of the relevant transactions. The court would, however, pierce the corporate veil only so far as it was necessary in order to provide a remedy for the particular wrong which those controlling the company had done.

74. Thus, on relying upon the aforesaid decisions, the doctrine of piercing the veil allows the court to disregard the separate legal personality of a company and impose liability upon the persons exercising real control over the said company. However, this principle has been and should be applied in a restrictive manner, that is, only in scenarios wherein it is evident that the company was a mere camouflage or sham deliberately created by

> the persons exercising control over the said company for the purpose of avoiding liability. The intent of piercing the veil must be such that would seek to remedy a wrong done by the persons controlling the company. The applications would thus depend upon the peculiar facts and circumstances of each case."

This authority also lays down that corporate veil can be lifted only in case of impropriety by a company with a view to avoid legal liability. The authority lays down that the principle of lifting the corporate veil should be applied in a restrictive manner, as it is an exception to the principle that a company is a legal entity separate and distinct from its shareholders. This authority also lays down that corporate veil cannot be lifted merely because of ownership and control of a company or for the reason that it is in public interest. This authority also lays down that application of principle of lifting the corporate veil would depend upon facts and circumstances of each case.

1495. In an another authority reported as **Vodafone International Holdings BV Vs. Union of India and Another, (2012) 6 SCC 613**, dealing with the concept of lifting the veil, Hon'ble Supreme Court observed in paragraph 277 as under:

> "Lifting the corporate veil doctrine is readily applied in the cases coming within the Company Law, Law of Contract, Law of Taxation. Once the transaction is shown to be fraudulent, sham, circuitous or a device designed to defeat the interest of the shareholders, investors, parties to the contract and also for tax evasion, the Court can always lift the corporate veil and examine the substance of the transaction."

This authority lays down that if a transaction is shown to be fraudulent or sham or circuitous, corporate veil can be lifted. How a transaction would be shown to be fraudulent, sham or circuitous? The answer is that a transaction would be shown to be fraudulent, sham or circuitous only with the help of evidence.

Thus, the perusal of the law extracted above in detail reveals that whether corporate veil is to be lifted or not to be lifted depends upon the evidence led on record. In the instant case, evidence has already been extracted in detail. There is no evidence on the record that on the date of filing of applications STPL belonged to Reliance ADA group. Rather the evidence is to the effect that DB group was in control of the company on the date of filing of applications. Hence, there is no merit in the submission of the prosecution that in the instant case corporate veil is required to be lifted to determine the real force behind STPL on the date of filing of applications.

Conspiracy with and Eligibility of Unitech Group of Companies

1496. It is the case of the prosecution that Sh. Sanjay Chandra, Director, Unitech Limited, and eight Unitech group of companies, later on merged into Unitech Wireless (Tamil Nadu) (P) Limited, were also in conspiracy with Sh. A. Raja, Sh. Siddhartha Behura, Sh. R. K. Chandolia and others, in order to procure UAS licences in all 22 service areas, despite knowing that the Unitech group of companies were ineligible as telecom

activity was not part of their object clause on the date of application. It is the case of the prosecution that despite knowing the ineligibility, these companies applied for UAS licences as Sh. Sanjay Chandra was in conspiracy with the public servants and others and also succeeded in getting the same included in the consideration zone for award of UAS licences. It is also the case of the prosecution that Sh. Sanjay Chandra and Unitech group companies cheated DoT by making it (DoT) to issue licences to ineligible companies, despite knowing that telecom activity was not part of the object clause and this fact was concealed from DoT by Sh. Sanjay Chandra and the Unitech group companies. It is the case of prosecution that the reason of ineligibility is the conditional registration by ROC of resolution passed by Unitech group companies for amending their object clause.

1497. On the other hand, the case of the defence is that Sh. Sanjay Chandra and Unitech group companies were not part of any conspiracy. These applications were filed because there was slow down in the real estate business in which Unitech Limited is engaged and of which the eight companies are subsidiaries. It is the case of the defence that all applications were filed in the ordinary course of business and were processed by the DoT in the same manner. It is the case of the defence that proper resolutions were passed for amendment of object clause of each company and the same were filed with the ROC also and the ROC had taken the same on record. It is the case of the defence that there is no question of any cheating as all

formalities were duly complied with.

1498. Both parties have invited my attention to the deposition of various witnesses and the documents on record in great detail for days together.

While dealing with the question of origin of conspiracy, it has already been held that there is no material on record to indicate that Sh. Sanjay Chandra was known to Sh. A. Raja. Similarly, while dealing with the question of cut-off date fixed vide note dated 24.09.2007, Ex PW 36/E-1, the theory of enquiry by Sh. R. K. Chandolia about applications of Unitech, has already been rejected. There is no evidence on record that Sh. Sanjay Chandra was in conspiracy with any of the accused.

1499. Now the only question left is about cheating of DoT by Sh. Sanjay Chandra and Unitech group companies by inducing it to grant licences to ineligible companies. The question is: Whether the evidence led on record reveals any wrongdoing/ cheating by Unitech group companies and officials concerned connected with these companies, including Sh. Sanjay Chandra?

1500. Let me take note of the deposition of four witnesses, who were involved in filing the applications for Unitech group companies.

1501. PW 85 Sh. Ajay Chandra, one of the directors of Unitech Limited, in his examination-in-chief dated 03.12.2012, pages 1 to 3, deposed as under:

> ".....I am aware of the fact that eight subsidiaries of Unitech Limited were granted UAS Licences in 2007-08. Board of all eight subsidiaries took

independent decisions to apply for UAS Licences. It was noted in the board meeting of Unitech Limited that eight of its subsidiaries had decided to apply for UAS Licences.

…….

……

I have been shown certified copy of the board resolution of Unitech Limited dated 21.09.2007 wherein the aforesaid fact was noted by the board. The same is now Ex PW 85/A, running into six pages.

I was not involved in telecom business. My brother and myself were involved in separate parts of real estate business. Once the business of telecom commenced, which was possible only after grant of UAS Licence, my brother Sh. Sanjay Chandra started looking after that with the professional management teams of those subsidiary companies. The money required for obtaining the licence was sourced from Unitech Limited. I became a non-executive director in the eight subsidiary companies in February 2009. Sh. Sanjay Chandra was also non-executive director in the companies during the same period. I do not recollect as to when the eight subsidiary companies were incorporated, but they were incorporated a few months before applying for licences. There were different directors in the eight subsidiaries before we both joined as non-executive director and I am unable to recall their names now.

I have been shown minutes of board meetings of Unitech Wireless (Tamil Nadu) (P) Limited (formerly known as Unitech Builders and Estates (P) Limited) (D-560). These are board minutes of this company and are now collectively Ex PW 85/B. I have been shown minutes of board meeting of this company held on 06.02.2009 and as per these minutes, both of us were appointed additional directors in this company on this date. The minutes are now Ex PW 85/B-1.

…….

.....
I have been shown board resolution dated 12.08.2007, wherein authorized signatories for operating bank accounts were appointed and they are Sh. Sanjay Chandra, Sh. A. S. Johar and Sh. Naveen Jain, wherein jointly any two were required to sign. The resolution is now Ex PW 85/B-3. Similar resolutions were passed pertaining to remaining seven subsidiary companies also....."

1502. Sh. Ajay Chandra did not state anything against Sh. Sanjay Chandra. However, this witness referred to board minutes dated 12.08.2007 of Unitech Builders & Estates (P) Limited (D-560), later on Unitech Wireless (Tamil Nadu) (P) Limited. In this meeting, the company had altered the object clause of the Memorandum of Association of the company to incorporate therein provision of UAS and other services relating to telecom business. The relevant part of clause 18 of the minutes reads as under:

"**18. ALTERATION OF OBJECTS CLAUSE OF THE MEMORANDUM OF ASSOCIATION OF THE COMPANY**

The Chairman informed that the Company has been incorporated to carry on the real estate business. However, considering the anticipations of slow down in the real estate sector, the Chairman proposed to enter into a venture of providing Unified Access Services and/or other services relating to telecom business so as to take the advantages of continuous rapid growth in India's telephone service business and future growth potential therein. The Board was informed that the existing objects of the Company did not permit to undertake such activities. Therefore, it was required to alter the object clause of the Memorandum of Association of the Company

by replacing the objects of Telecom business in place of Real Estate business activities. The matter was discussed in detail and the following resolution was passed:

"RESOLVED THAT pursuant to provisions of Section 17 and other applicable provisions, if any, of the Companies Act, 1956 and subject to approval of members in General Meeting, the Object Clause of the Memorandum of Association of the Company be and is hereby altered by deleting the existing sub-clause 1 of the main Object Clause III(A) of the Memorandum of Association of the company substituting in its place the following new sub-clause nos. 1 and 2:

1. To promote & establish companies, funds, associations or partnerships for providing telecom networks and to run and maintain telecom services like basic/ fixed line services, cellular/ mobile services, paging, videotext, voice mail and data systems, private switching network services, transmission network of all types, computer networks i.e. local area network, wide area network, Electronic Mail, Intelligent network. Multimedia communication systems or the combinations thereof and for execution of undertakings, Works, projects or enterprises in the Telecom Industry whether of a private or public character or any joint venture with any government or other authority in India or elsewhere and to acquire and dispose of shares/ securities in such companies, and funds and interest in such associations or partnerships.

2. To carry on business of manufacturers, merchants, dealers, distributors, importers, exporters, buyers, sellers, agents and stockists, and to market, hire, lease, rent out, assemble, alter, install, service, design, research and improve, develop, exchange, maintain, repair, refurnish, store

and otherwise deal in any manner in all types of telephone exchanges, telephone instruments – whether corded, cordless, mobile or of any other kind tele-terminals, fax machines, telegraphs, recording instruments and dialing barring devices, wireless sets and other wireless communication devices like radio pagers, cellular phones, satellite phones etc. telecom switching equipments of all kinds telecom transmission equipments of all kinds, test equipments, instruments, apparatus, appliances and accessories and equipment and machinery for the manufacturer thereof and to provide technical services in respect thereof or relating thereto."

1503. In pursuance to the aforesaid resolution, a fresh resolution was also passed in the board meeting on 20.09.2007 for alteration of object clause to the effect that company shall comply with all the provisions of licence agreement, which resolution reads as under:

"**3. ALTERATION OF OBJECTS CLAUSE OF THE MEMORANDUM OF ASSOCIATION OF THE COMPANY**

The Chairman informed that pursuant to the approval of the Board of Directors in its meeting held on 12th August, 2007 for venturing into telecom business, the Company is planning to file an application with the Department of Telecommunication (DOT), Govt. of India for obtaining Telecom Licence. The Board was informed that as per Guidelines for Telecom Licence, a suitable clause regarding compliance of Licence Agreement(s) with Telecom Authorities should be contained in the main object clause of the Memorandum of Association of the Company. Hence, it is required to alter the object clause of the Memorandum of Association of the Company by addition of new sub clause 3 in the main object

clause of the Memorandum of Association of the Company. The matter was discussed in detail and the following resolution was passed:

"RESOLVED THAT pursuant to provisions of Section 17 and other applicable provisions, if any, of the Companies Act, 1956 and subject to approval of Shareholders in General Meeting, the Object Clause of the Memorandum of Association of the Company be and is hereby altered by addition of the following sub-clause 3 after the existing sub-clause 2 of the main Object Clause III(A) of the Memorandum of Association of the Company:

3. The Company in pursuit of the aforesaid objectives shall comply with all the applicable provisions of the License Agreement(s) with any authorities, institutions or bodies, and the appropriate laws, guidelines, rules and regulations (including any statutory modification(s) or re-enactment thereof for the time being in force), and any violation thereof shall automatically lead to the Company being unable to carry on its business in this regard."

In board meeting dated 01.10.2007, it was proposed to change the name of the company. The resolution reads as under:

"**3. CHANGE OF NAME OF THE COMPANY**

The Board was informed that the Company altered the main object Clause of the Memorandum of Association by replacing the existing object of Real Estate Business activities with the objects of Telecommunication Business activities. The Registrar of Companies, NCT of Delhi & Haryana issued a Certificate u/s 18 of the Companies Act, 1956 for registration of Resolution altering the object Clause of the Memorandum of Association of the Company

subject to change of name of the Company (a copy of the Certificate was placed before the Board). The Board discussed the matter and decided to make an application in Form 1A with the ROC for availability of new name of the Company. In this connection, the following resolution was passed:

"RESOLVED THAT pursuant to provisions of Section 21 of the Companies Act, 1956 and subject to the approval of members of the company & also subject to the approval of the Central Govt., the name of the company be changed from 'Unitech Builders & Estates Private Limited' to 'Unitech Telecom Projects Private Limited' or any other similar name as may be made available by the Registrar of Companies.

RESOLVED FURTHER THAT Mr. Sanjay Kaul, Mr. Harish Asnani and Mr. R. K. Sharma, Directors & Mr. Deepak Jain, Authorised Signatory, be & are hereby authorised, jointly and/or severally, on behalf of the Company to sign & submit application for name availability (Form 1A), name change application (Form 1B), Special Resolution (Form 23) & other related papers with the Registrar of Companies."

The board in its meeting dated 10.10.2007 took on record that the company had applied on 24.09.2007 to DoT for a UAS licence in Tamil Nadu service area.

1504. It may be noted that Unitech Wireless (Tamil Nadu) (P) Limited had passed board resolution on 12.08.2007 for entering the telecom field and the object clause of the company was altered to make provision for telecom service. Thereafter, in the board meeting dated 20.09.2007, the company altered the object clause to make provision for compliance with the licence agreement to be signed with the DoT. In board meeting held on

01.10.2007, the company proposed to change the name of the company and noted it specifically that the ROC had issued a certificate under Section 18 of the Companies Act for registration of resolution altering the object clause of memorandum of association subject to change of name of the company. The prosecution did not challenge the authenticity of these minutes. In the evidence of PW 85 Sh. Ajay Chandra and in minutes, referred to above, there is no indication of any wrongdoing. Similar resolutions were passed for all other companies. No director/ board member or anyone who was present in the meetings was examined as a witness by the prosecution.

1505. Not only this, these resolutions also disprove the conspiracy theory propounded by the prosecution between Sh. Sanjay Chandra, Unitech group companies and Sh. A. Raja and others. Why? The instant case is based on one fundamental fact that after receipt of TRAI Recommendations there was sudden spurt in the receipt of applications for UAS licences and to check it a cut-off date was to be fixed. While fixing this cut-off date on 24.09.2007, Sh. A. Raja, in conspiracy with Sh. Sanjay Chandra, ensured that the applications of Unitech group companies were received on that day itself before the cut-off date was announced. Thus, the prosecution has made out a case as if the company had decided to venture into telecom field after receipt of TRAI Recommendations. The fact of the matter is that TRAI Recommendations were received in DoT on 29.08.2007. The company had already decided on 12.08.2007 to venture into

telecom field. On that day, nobody knew what the TRAI Recommendations would be. Similarly, the processing of TRAI Recommendations started on 12.09.2007 in DoT file D-5. Nobody knew which recommendation would be accepted by the DoT. In such a situation there is no question of Sh. A. Raja assuring Sh. Sanjay Chandra of a UAS licence in conspiracy with him. As already noted, there is no evidence that the resolution dated 12.08.2007 was also an outcome of conspiracy.

1506. Sh. Ajay Chandra deposed that similar resolutions were passed by other companies also. In the end, the fact is that company decided to enter the telecom field much before the receipt of TRAI Recommendations and for the reason that there was a slow down in the real estate business and there was rapid growth in the telecom business. There is no bar on a real estate company entering telecom sector after amending its object clause. Hence, there is no merit in the submission of prosecution that companies decided to enter the telecom field after TRAI Recommendations.

1507. The next witness is PW 104 Sh. Gaurav Jain, AGM (Legal & Compliance), who is a qualified company secretary and was connected with the preparation of the applications for UAS licences filed by eight Unitech group companies, that is, Aska Projects Limited, Nahan Properties (P) Limited, Unitech Builders & Estate (P) Limited, Unitech Infrastructure (P) Limited, Azare Properties Limited, Adonis Projects (P) Limited, Hudson Properties Limited and Volga Properties (P) Limited. He proved the applications and other documents filed by the eight

companies and processed in DoT files D-13, D-15, D-17, D-19, D-21, D-23, D-25 and D-27. In his long deposition, he also did not say anything indicating that these companies or any official including Sh. Sanjay Chandra connected with them deliberately did anything wrong, or withheld any information.

In his cross-examination dated 06.03.2013, page 23, he deposed as under:

> ".....As per my understanding as a qualified and experienced company secretary, the alteration in the object clause in memorandum of association becomes effective from the date of shareholders resolution....."

As per this witness, the applications were filed bonafide.

1508. PW 133 Ms. Kiran Sharma, a practicing company secretary, issued various certificates, including the certificate that object clause of companies contain telecom as one of the objects. The relevant part of her deposition in examination-in-chief, dated 10.07.2013, pages 6 and 7, is as under:

> ".....All the aforesaid certificates were issued by me on the basis of board minutes, annual or extra ordinary, as the case may be, general meeting minutes, register of members, DoT Guidelines for UAS licence and in few cases, financial statement of promoter companies and company representation made to me and other relevant statutory record.
>
> I had issued the certificates certifying that the object clause of the companies contain "telecom" as one of their objects on the basis of the aforesaid record. At the time of issuing these certificates I had not seen documents Ex PW 22/A-1 to A-7 (D-570 to 576), shown to me today in the Court. However,

while issuing these certificates, I had seen the board minutes, which were duly approved by the shareholder's meeting, in which the objects clause was altered. I do not recall if the company/ companies had told me about the documents Ex PW 22/A-1 to A-7 at the time of issuance of object clause certificate by me. The aforesaid records were made available to me by the respective company through Sh. Gaurav Jain, Sh. Ravi Aiyar, Sh. Nitin Bansal and other staff. I had seen the aforesaid record of the companies at the registered office of the companies and at Taj Mahal Hotel, as the Unitech group had a business center there.....”

She deposed that she had seen the board minutes approving change of object clause.

1509. The relevant part of her cross-examination dated 10.07.2013, pages 8 and 9, reads as under:

“.....It is correct that I am practicing as an independent company secretary since 1999. It is correct that during my practice I had also worked for companies like Rajdoot Paints, Indcap Financial Limited etc.

While working for eight Unitech group of companies, I worked as an independently practicing company secretary and was never their employee. All forms 23 were certified by me before being uploaded on the MCA website. On looking at certificates Ex PW 22/A-1 to A-7, I find that they are certificates issued by ROC under Section 18 (1) (A) of the Companies Act.

It is correct that a certificate of alteration is issued by ROC under Section 18 (1) (A) of the Companies Act on the basis of documents submitted to it by the company as required by this Section.

Ques: I put it to you that once documents as required by the Section are submitted to the ROC and are found to be in order, ROC has no option but

to register the same?
Ans: My understanding is that if documents are complete, ROC would register the same.

As I was involved in the certification of documents, my understanding is that all documents required by Section 18 (1)(A) of Companies Act were complete, when submitted to ROC, regarding the object clause. It is correct that I had seen the certificates issued by the ROC on the website of MCA. At that time, I did not notice any insertion in these certificates regarding name change....."

This witness is a practicing company secretary and had issued necessary certificates, including certificates regarding object clause. She did not depose a word that she was asked by anyone to do anything wrong or to issue a false certificate. Rather, she had seen the certificates issued by the ROC on its website. She could not recall if she had seen the certificates Ex PW 22/A-1 to A-7, in which amendment to object clause was accepted by ROC, subject to change of name of company. Her understanding was that once resolution approving change of name was filed with the ROC, it would register the same. It is a reasonable view of the law which can be bona fide taken by a professional. The issue is not whether it is legal or not. Issue is whether it is a reasonable view? Moreover, the ROC displayed the unconditional registration on its website.

1510. PW 37 is Sh Mohit Gupta, who was working as an Executive with Unitech Limited and deposited the applications on 24.09.2007, deposed in his examination-in-chief dated 25.04.2012, page 1, as under:

".....I was associated with telecom business of the

company in September 2007. At that time, Mr. Ram Kishan Sharma, Vice President of the company, Sh. Ravi Aiyar, Legal and Company Secretary, and Mr. Nitin Bansal, AGM, were also associated with telecom business of the company. When I was associated with the telecom business, my job was to carry out the relevant documentation, like preparation of the applications and attachments to be annexed therewith. The applications of the company were deposited in the DoT office. After deposit the applications, I used to visit DoT for follow up action on the applications....."

This witness also did not say a word that he was asked to do anything wrong by anyone.

1511. PW 103 Sh. Kaushal Nagpal, DGM (Finance & Accounts), Unitech Limited, was not connected with the preparation and submission of applications. He was connected with the preparation of bank drafts for submission to the DoT in October 2007.

1512. PW 95 Sh. Anil Rustgi, who joined as company secretary, Unitech Wireless (Tamil Nadu) (P) Limited, in July 2009, only handed over the documents to the IO, including the certificates of registration of the special resolution confirming alteration of the object clause of the seven companies, Ex PW 22/A-1 to A-7.

The deposition of aforesaid witnesses indicate that there was no deliberate wrongdoing by anyone connected with the Unitech group companies. No witness deposed that there was any intention to cheat DoT.

1513. No official of DoT, who have been examined as

witness, including Sh. N. M. Manickam, Director (AS-IV), Sh. B. B. Singh, DDG (LF), Sh. A. K. Srivastava, DDG (AS), Sh. Nitin Jain, Director (AS-I), Sh. Madan Chaurasia, Section Officer and Sh. D. S. Mathur, Secretary (T), have deposed that they were asked to do anything wrong with the processing of applications for Unitech group companies. The applications have been processed in the concerned files, that is, D-13, D-15, D-17, D-19, D-21, D-23, D-25 and D-27, in ordinary course of business.

The case of the prosecution is that Unitech group companies deliberately suppressed from DoT that the special resolutions confirming alteration of the object clause of the seven companies, Ex PW 22/A-1 to A-7, were registered by ROC "subject to change of name of company". It is the case of the prosecution that without change of the name of the company, the object clause remained unamended and thus, telecom activity was not part of the object clause of the company on the date of application. It is the case of the prosecution that DoT was misled by the accused into processing the applications and issuing the licences. It is the case of the prosecution that in the note dated 07.01.2008, Ex PW 60/K-68, it was specifically recorded by Sh. N. M. Manickam, Director (AS-IV), that the applicant company was having telecom activity as part of its Memorandum of Association and, as such, met the eligibility requirement. The case of the prosecution is that the company suppressed the conditional registration of alteration of object clause from the DoT. It is the case of the prosecution that certificates of conditional registration, Ex PW 22/A-1 to A-7,

were seized by CBI, when the same were handed over to the CBI by PW 95 Sh. Anil Rustogi in the office of Unitech group companies. It is the case of the prosecution that since these conditional registration certificates were recovered from the office of the company, it is clear that the Unitech group companies knew that the registration was conditional and these companies were not entitled to carry on the business of telecom. It is the case of the prosecution that for this reason the companies were ineligible on the date of application, but this was ignored by Sh. A. Raja and Sh. Siddhartha Behura due to conspiracy and consequently DoT stood cheated.

1514. On the other hand, the case of the defence is that the company had done whatever was required to be done and the special resolution(s) for alteration of object clause of each company was filed with the ROC. It is the case of the defence that, as such, ROC was bound to register it without putting any condition. Furthermore, the company was not bound by the condition as this condition was an afterthought. It is also the case of the defence that clean registration of resolutions by ROC was and is still available on its website. As such, each company was fully entitled to presume that the special resolution for alteration of object clause had been duly registered. It is the case of the defence that accused was not aware of any condition attached by ROC on the date of filing of applications for UAS licences. It is the case of the defence that once special resolution is passed, the object clause stands amended and registration by ROC is only a formality.

1515. In rebuttal, case of the prosecution is that the company knew that the registration of special resolution for alteration of the object clause of the companies was conditional and, as such, it was not entitled to carry on telecom business. Its case that company and Sh. Sanjay Chandra had the knowledge of the condition is based on the documents, Ex PW 22/A-1 to A-7 handed over to CBI by PW 95 Sh. Anil Rustgi.

1516. As per D-71, Ex PW 60/E, the special resolution for amendment of object clause of Unitech Infrastructure (P) Limited was passed on 19.09.2007 and was filed with ROC on 20.09.2007 and was registered on 05.10.2007 vide Ex PW 22/A-6. The special resolution of Unitech Builders & Estate (P) Limited was passed on 14.09.2007 and was filed with the ROC on 20.09.2007 and was registered on the same date, vide Ex PW 22/A-1. The special resolution of Azare Properties (P) Limited was passed on 18.09.2007 and was filed with the ROC on 20.09.2007 and was registered on 09.10.2007. The special resolution of Hudson Properties (P) Limited was passed on 19.09.2007 and was filed with the ROC on 20.09.2007 and was registered on the same date, vide Ex PW 22/A-2. The special resolution of Nahan Properties (P) Limited was passed on 19.09.2007 and was filed with the ROC on 20.09.2007 and was registered on the same date, vide Ex PW 22/A-5. The special resolution of Adonis Projects (P) Limited was passed on 19.09.2007 and was filed with the ROC on 19.09.2007 and was registered on the same date, vide Ex PW 22/A-4. The special resolution of Aska Projects (P) Limited was passed on

19.09.2007 and was filed with the ROC on 20.09.2007 and was registered on the same date, vide Ex PW 22/A-7. The special resolution of Volga Properties (P) Limited was passed on 19.09.2007 and was filed with the ROC on 20.09.2007 and was registered on the same date, vide Ex PW 22/A-3. Thus, resolutions for amendment of object clause were filed with ROC before filing the applications.

1517. It may be noted that special resolutions for all companies for amendment of the object clause were passed and the same were filed with the ROC on 20.09.2007. The applications for UAS licences were filed on 24.09.2007 by these companies. PW 105 Sh. Gaurav Jain, who is a qualified company secretary, and was connected with the preparation and filing of applications, believed that the alteration of the object clause in memorandum of association, becomes effective from the date of shareholder's resolution. This witness was not confronted by the prosecution with the conditional registration certificates, Ex PW 22/A-1 to A-7, that whether he knew about the conditional registration and, as such, should not have proceeded with the filing of applications. Similarly, PW 133 Ms. Kiran Sharma, Company Secretary, who had issued the necessary certificates, conceded that she had seen the certificates issued by the ROC on the website of MCA and she did not notice the insertions in the certificates. Her deposition is correct on this point as there is no insertion in the certificates as available on MCA website, copies of which are Ex PW 22/DA-1 to DA-7. She was also not confronted by the prosecution with

conditional certificates, Ex PW 22/A-1 to A-7, that on the date of issuing the certificates, she knew about it. Thus, they had every right to presume that resolutions have been registered by ROC.

1518. The prosecution is endeavouring hard to attribute the knowledge of the conditional registration to the accused persons on the basis of recovery of conditional certificates, Ex PW 22/A-1 to A-7, from the office of the company. However, there is no evidence on record as to when these copies were obtained by the company or sent by ROC to the company. In this regard, cross-examination, page 11, of PW 83 Ms. S. Meenakshi, Deputy Registrar of Companies, is relevant, which reads as under:

> ".....Once documents are filed online with the ROC by a company, a technical scrutiny is done by ROC and if any deficiency is found, it communicates with the company....."

1519. The idea is that ROC sends a communication to the company. When did the ROC send the communication about conditional registration to the companies or when did the companies become aware of conditional registration through certificates Ex PW 22/A-1 to A-7? The question is: When did these conditional registration certificates come in the possession of Unitech group companies? Whether they knew it before filing of applications.

1520. Accused have taken the plea in their statement under Section 313 CrPC that they were not aware of these conditional registration certificates. Moreover, there is no

evidence on record as to which official had obtained these copies and who was responsible for their suppression. There is no evidence that Sh. Sanjay Chandra was responsible for their suppression from the company secretary who issued the certificates and Sh. Gaurav Jain who prepared the applications.

1521. There is no material on record that Unitech group companies had obtained the copies of conditional registration before the filing of applications for UAS licences and thereafter, deliberately suppressed the same from the DoT, leading it to issue licences to these companies. Moreover, ROC website continued showing clean registration of the special resolutions passed by the companies regarding amendment of object clause. Hence, it cannot be readily inferred that the Unitech group companies or Sh. Sanjay Chandra intended to cheat DoT, more so, when there is no evidence in this regard on the record.

Furthermore, both parties argued in detail as to whether a company can presume that once it has passed a special resolution for amending its object clause, the same would be registered by the ROC. The case of the prosecution is that without registration by ROC or even conditional registration, the special resolution carries no meaning. On the other hand, defence argued that once special resolution is passed, object clause of the company stand amended and registration by ROC is a formality. Both parties have invited my attention to the relevant law. Since there is no evidence on record of any intention to cheat either by Sh. Sanjay Chandra or by the companies, the issue has become purely academic.

However, it would be of interest to know as to how the DoT proceeded in such a situation. This would become clear from the illustrative cases discussed below.

Illustrative Cases: Whether Helpful to the Prosecution?

1522. It is the case of the prosecution that applications of STPL, Cheetah Corporate Services (P) Limited and Parsvnath Developers (P) Limited were rejected by DoT on the ground that these companies were not eligible for want of object clause not containing telecom activity as business of the company on the date of applications. It is the case of the prosecution that the applications of Unitech group companies also deserved to be rejected as the same were ineligible on the date of applications as telecom was not part of the object clause of the companies. It is the case of the prosecution that this fortifies the fact that Unitech group companies had suppressed critical facts from DoT.

On the contrary, defence has refuted it on the ground that the facts relating to Unitech group companies and that of these three companies are quite different and, as such, there can be no comparison with these cases.

Let me take note of the relevant facts relating to the three companies.

Case of Swan Capital (P) Limited/ Swan Telecom (P) Limited

1523. As per note dated 12.04.2007, Ex PW 60/L (D-10), STPL had filed application for UAS licence for Jammu and Kashmir service area on 23.01.2007. On this date,

telecommunication was not part of its object clause. As per note dated 26.12.2007, Ex PW 42/DR-3, recorded by AO (LF-II), telecom services were inserted in the object clause by the company by special resolution passed in the extra ordinary general meeting held on 07.02.2007, and the same was approved by ROC on 15.02.2007. It is thus clear that on the date of application, provision of telecom services was not part of the object clause of the company and the special resolution for insertion of telecom services in the object clause was passed subsequent to the filing of the application. It may be noted that special resolution was passed after filing of the application. Accordingly, vide note dated 09.01.2008, 20/N (D-10), the company was rightly held to be not compliant in respect of the object clause as far as Jammu and Kashmir service area was concerned. Hence, this case does not help the cause of the prosecution.

Case of Cheetah Corporate Services (P) Limited

1524. As per file CD-42, Ex PW 52/DD, Cheetah Corporate Services (P) Limited had filed two applications, both dated 07.03.2007 seeking UAS licences for Assam and North-East service area. The applications were processed in the ordinary course of business. However, later on it was found that provision of telecom services was not part of its object clause. As per note dated 27.12.2007, telecom service was inserted in its object clause by special resolution passed in the extra-ordinary general meeting held on 29.03.2007 and was approved

by ROC on 04.04.2007. The company was held to be ineligible and the applications were rejected. However, it is to be noted that applications for UASL were filed on 07.03.2007 and the special resolution for amendment of the object clause was passed on 29.03.2007 by the company and the same was approved by ROC on 04.04.2007. Hence, this case also does not help the prosecution as the special resolution for amending the object clause was passed on 29.03.2007 after filing the applications on 07.03.2007.

Case of Parsvnath Developers Limited

1525. As per note dated 08.11.2007, Ex PW 60/H-30, recorded by Sh. Madan Chaurasia, Parsvnath Developers Limited filed 22 applications dated 24.08.2007 seeking UAS licences in as many service areas. However, telecom related activities were not part of its object clause as per memorandum and articles of association. As per note dated 24.12.2007, Ex PW 60/H-40, object clause was amended by special resolution passed on 08.12.2007 to incorporate provisioning of telecom service activity and the same was taken on record by the ROC on 10.12.2007. The file was processed on various dates from 1/N to 11/N and the company was held to be ineligible considering that on the date of application telecom was not part of the object clause and all its applications were rejected vide order dated 09.01.2008. In this case also it is clear that special resolution amending the object clause of the company was passed subsequent to the filing of applications for UASL on

24.08.2007. Hence, this case also does not help the prosecution.

Case of Allianz

1526. Allianz Infratech (P) Limited had filed applications for six UAS licences on 03.09.2007 and for sixteen UAS licences on 06.09.2007 and these were processed vide note dated 08.11.2007, Ex PW 42/DL (D-31), recorded by Sh. Sukhbir Singh, Director (AS-III). It was noted in para 3D that telecom related activities were not mentioned in the Memorandum and Articles of Association of the company. As per note dated 09.01.2008, Ex PW 60/H-92, recorded by Sh. Sukhbir Singh, Director (AS-III), it was noted in para 5 (iii) that telecom related activities were not mentioned in the memorandum and articles of association of the company submitted with the applications. It was also noted that vide letter dated 13.12.2007, it was intimated that the company had passed special resolution on 01.09.2007 for altering the provisions of its memorandum of association with respect to its object clause and the same was taken on record by the ROC on 26.10.2007 and issued certificate Ex PW 34/DB. The company was held to be eligible and certain clarifications on other issues were sought from the company and two LOIs were approved to be issued to it on 15.07.2008.

This indicates that what is important is passing of resolution by the company for amending of its object clause.

1527. In the case of Unitech group companies, the special resolutions were passed before or on 20.09.2007 and were filed

with the ROC on 20.09.2007 before the filing of applications for UASL on 24.09.2007. The same were approved by the ROC subsequently. As noted above in the case of Allianz, the special resolution was passed on 01.09.2007 and was approved by ROC on 26.10.2007 and this application was held to be eligible by DoT. By the same analogy, the special resolutions were passed and filed with the ROC on 20.09.2007 by Unitech group companies and the same were approved conditionally in September-October and finally later on when the companies changed their names, but the approval would relate back to the date of special resolution.

Even otherwise, Unitech group companies were private companies. Amendment of object clause in a private company is not such a serious thing as money of ordinary investor is not involved.

In the end, I do not find any merit in the submission of the prosecution that any critical information was concealed by Unitech group companies from DoT leading it to issue UAS licences to these companies.

1528. From the above discussion, it is clear that prosecution has failed to prove its case that STPL and Unitech group companies were granted UAS licences, despite being ineligible, due to the conspiracy between Sh. A. Raja, Sh. Siddhartha Behura and Sh. R. K. Chandolia, the three public servants and Sh. Shahid Balwa & Sh. Vinod Goenka and Sh. Sanjay Chandra, directors of the two accused companies.

V. Issue relating to Non-Revision of Entry Fee: Role of A. Raja

Whether revision of entry fee, by auction or otherwise, recommended by TRAI in 2003?

1529. It is the case of the prosecution that TRAI in its Recommendations dated 27.10.2003 had recommended bidding for introduction of new licences/ UAS licences. My attention has been specifically invited to paragraph 7.39 of these Recommendations. It is the case of the prosecution that in 2008 also, UAS licences ought to have been granted by bidding process. It is the case of the prosecution that even Hon'ble Prime Minister had asked Sh. A. Raja to consider bidding, wherever legally feasible.

On the other hand, defence has disputed it submitting that these Recommendations were not meant for UAS licences.

1530. It may be noted that NTP-99 had categorized the access service providers as cellular mobile service providers and fixed service providers. Both category of service providers were required to pay entry fee. The relevant part of para 3.1.1 of NTP-99 dealing with mobile service providers, relating to entry fee, reads as under:

> ".....CMSP operators would be required to pay a one time entry fee. The basis for determining the entry fee and the basis for selection of additional operators would be recommended by the TRAI. Apart from the one time entry fee, CMSP operators would also be required to pay licence fee based on a revenue share. It is proposed that the appropriate

level of entry fee and percentage of revenue share arrangement for different service areas would be recommended by TRAI in a time-bound manner, keeping in view the objectives of the New Telecom Policy."

Paragraph 3.1.2 of NTP-99 deals with fixed service providers and the relevant paragraphs relating to entry fee by fixed service providers and WLL service providers read as under:

".....The FSP licencees would be required to pay a one time entry fee. All FSP licencees shall pay licence fee in the form of a revenue share. It is proposed that the appropriate level of entry fee and percentage of revenue share and basis for selection of new operators for different service areas of operation would be recommended by TRAI in a time-bound manner, keeping in view the objectives of the New Telecom Policy....."

.....The WLL frequency shall be awarded to the FSPs requiring the same, based on the payment of an additional one time fee over and above the FSP entry fee. The basis for determining the entry fee and the basis for assigning WLL frequency shall be recommended by the TRAI. All FSP operators utilising WLL shall pay a licence fee in the form of a revenue share for spectrum utilization. This percentage of revenue share shall be over and above the percentage payable for the FSP licence. It is proposed that the appropriate level of entry fee and percentage of revenue share for WLL for different service areas of operation will be recommended by TRAI in a time-bound manner, keeping in view the objectives of the New Telecom Policy."

Thus, mobile service providers and fixed service providers, including WLL service providers, were required to

pay one time entry fee, which was to be determined as per the Recommendations of TRAI. However, later on, these access service providers were merged into one category of licence, that is, Unified Access Service Providers. Unified Access Service licensing regime was recommended by TRAI through its Recommendations dated 27.10.2003, Ex PW 36/DC.

These Recommendations were accepted by the Government of India vide Cabinet decision dated 31.10.2003, and was conveyed to DoT vide letter dated 03.11.2003, Ex PW 11/DC, page 77/c (D-591), which note is also available as Ex PW 11/DB at 75/c. After acceptance of the Recommendations, the scope of NTP-99 was enhanced and guidelines dated 11.11.2003, Ex PW 11/DE, were issued vide approval of the Minister, available at page 23/N (D-591).

The relevant note recorded by Sh. A. S. Verma, Director (VAS-III), dated 10.11.2003, page 22/N, reads as under:

> "**Subject:- To chart the course to a Universal Licence.**
>
> The subject matter was covered as one of the Terms of Reference' of the Group of Ministers on Telecom Matters constituted under Cabinet Secretariat letter dated 10.9.2003.
>
> 2. The GoM took note of the exercise that had already been initiated by Telecom Regulatory Authority of India (TRAI) in regard to Unified Licensing Regime in the Telecom Sector. TRAI submitted its recommendations to the Government on this matter on 27.10.2003. TRAI recommended that the present system of licensing in the Telecom

Sector should be replaced by Unified Licensing/Automatic Authorization Regime. The Unified Licensing/Automatic Authorization Regime has been recommended to be achieved in a two-stage process with the Unified Access Regime for basic and cellular services in the first phase to be implemented immediately. This is to be followed by a process of consultation to define the guidelines and rules for achieving a fully Unified Licensing/Authorization Regime. TRAI had recommended that it will enter into a consultation process so that the replacement of the existing licensing regime by a Unified Licensing Regime gets initiated within 6 months.

3. The recommendations of TRAI on the above issue were accepted by the GoM in toto and were, inter-alia, included for the Cabinet Note of DoT dated 31.10.2003 submitted for consideration of the Cabinet. The Cabinet has also approved the recommendations of GoM, thereby the recommendations of TRAI.

4. As such, the Cabinet has approved the following course of action:-
Unification of licenses to be done in two stages.
(a) Unified access regime for basic and cellular services in the first phase immediately;
(b) Unified authorization regime encompassing all telecom service in the second phase.
4.1 Accordingly, the draft guidelines for Unified Access (Basic & Cellular) Services licence have been worked out. This licence will be named as Unified Access Services Licence.

5. It was also noted that NTP-99 recognises access service providers as a distinct class. For the purpose of licensing, this has been sub-divided into cellular, fixed and cable service providers.
For bringing into effect the regime of Unified

Access Service for basic and cellular service licenses and Unified Licensing comprising all telecom services, it would be necessary to enhance the scope of NTP-99 to include these as distinct categories of licenses as part of NTP-99.

5.1 Accordingly, enhancing the scope of New Telecom Policy (NTP-99) to provide categories of Unified License for Telecom Services and Unified Access Services License, was also approved by the Cabinet.

6. The draft of the Addendum to NTP-99 and draft guidelines of Unified Access Services Licence were attempted. These drafts were vetted by Legal Advisor (Conveyancing) vide P. 21/N ante. Subsequently, further meetings have taken place at the highest level and also with the Government advocates. These drafts were further amended in view of the said consultations. The modified drafts may, therefore once again be seen by Legal Advisor and thereafter, approved for putting up on the website."

1531. In view of the above, the scope of NTP-99 was enhanced and an addendum dated 11.11.2003, Ex PW 11/DD, was issued, relevant parts of which read as under:

"SUB: Addendum to the New Telecom Policy – 1999 (NTP-99)

…….
…….
given the recommendations of TRAI in this regard; Government, in the public interest in general and consumer interest in particular and for the proper conduct of telegraphs and telecommunications services, has decided that there shall also be the following categories of licences for telecommunication services:

(i) Unified Licence for Telecommunication Services permitting Licensee to provide all telecommunication/ telegraph services covering various geographical areas using any technology;

(ii) Licence for Unified Access (Basic and Cellular) Services permitting Licensee to provide Basic and /or Cellular Services using any technology in a defined service area."

On the same day, Guidelines dated 11.11.2003, Ex PW 11/DE, were issued. Thus, UAS Licensing regime came into force with effect from 11.11.2003.

1532. It is the case of the prosecution that TRAI in para 7.39 of the aforesaid Recommendations dated 27.10.2003 had recommended multi-stage bidding for introduction of additional operators, but it was deliberately not followed by Sh. A. Raja. On the other hand, the case of the defence is that this paragraph is not applicable to UAS licences and was applicable to CMSP licences existing at that time. Let me take note of para 7.39, which reads as under:

"7.39 As brought out in Para-7.37 above, the induction of additional mobile service providers in various service areas can be considered if there is adequate availability of spectrum. As the existing players have to improve the efficiency of utilisation of spectrum and if Government ensures availability of additional spectrum then in the existing Licensing Regime, they may introduce additional players through a multi-stage bidding process as was followed for 4th cellular operator."

1533. Now the question is: Whether this paragraph is applicable to Cellular Mobile Service Providers (CMSP)

operating at that time or to UAS Licences recommended to be introduced in future? Perusal of para 7.39 of TRAI Recommendations dated 27.10.2003 reveals that it is conditioned by paragraph 7.37, which reads as under:

> "7.37 On the issue of introducing more competition, the TRAI has always been in favour of open and healthy competition. In its recommendations on the introduction of the 5th and 6th Cellular Mobile license, the TRAI opined that
>
> > "Induction of additional mobile service providers in various service areas can be considered if there is adequate availability of spectrum for the existing service providers as well as for the new players, if permitted."
>
> Taking cognisance of spectrum availability, the TRAI is in favour of introducing more competition. However, we feel that it in lieu of more cellular operators, it would be more appropriate to have competition in a Unified Licensing framework which will be initiated after six months."

Paragraph 7.37 talks about introduction of 5th and 6th Cellular Mobile licences only if adequate availability of spectrum is there. Paragraph 7.39 also talks about induction of additional mobile service providers if there is adequate availability of spectrum, as was recommended in TRAI Recommendations dated 20.02.2003. If both paragraphs are read together, it becomes clear that they refer to CMSPs because as per NTP-99, CMSPs were to be introduced only if there was adequate availability of spectrum. Paragraph 7.39 speaks about additional spectrum being made available by improving

efficiency in spectrum utilization and also additional spectrum being made available by the Government. Only then, additional players can be introduced through a multistage bidding process in the existing licensing regime. Existing licensing regime refers to pre-UASL regime, that is, CMSP regime operating before 11.11.2003, and not UASL regime, which was to be introduced in future. The intent behind paragraph 7.39 was that if the UASL regime recommended by TRAI was not accepted by the Government, then additional operators can be introduced in the existing licensing regime also by multistage bidding as was done for the Fourth cellular operator in 2001.

1534. However, the Government accepted the Recommendations immediately on 31.10.2003, so there was no occasion for implementing the recommendation contained in para 7.39. Moreover, para 7.37 of the Recommendations itself says that it would be appropriate to have competition in unified licensing framework, which would be introduced after about six months, but the Government introduced the unified access regime immediately and the Recommendations in para 7.39 became otiose.

1535. If paragraph 7.39 relating to bidding was applicable to UASL, then why did the guidelines dated 11.11.2003 made it open for new licences to be issued on continuous basis at any time? It was so understood by the department also vide note dated 21.11.2003, Ex PW 36/DE-1, and approved by the then Minister on 24.11.2003. The relevant part of the note, Ex PW 36/DE-1, reads as under:

"As regards the point raised about grant of new licences on first-come-first-served basis, the announced guidelines have made it open for new licences to be issued on continuous basis at any time....."

If process of bidding was applicable to UAS licences introduced with effect from 11.11.2003, the DoT would not have started issuing licences on continuous basis. It may be noted that since then the licences have been issued by DoT on continuous basis only.

1536. It may also be noted that in paragraph 7.37, TRAI itself recorded that in lieu of more cellular operators, it would be appropriate to have competition in a unified licensing framework, which will be initiated after six months. Similarly, in paragraph 7.39, paragraph 7.37 is also referred. This paragraph, that is, para 7.39, also talks of "additional mobile service providers", that is, both refer to CMTS licensees. The whole idea is that if Unified Licensing regime is not implemented within six months and Unified Access regime is also not taken up immediately, as the migration process from CMSPs to UASL as recommended by TRAI may take some time, which may require Cabinet approval also, then the existing system would continue and during this transition/ intermittent phase, Government may issue additional licences in the existing regime through multistage bidding as was followed for Fourth cellular operator in 2001 and this can be done if there was adequate availability of spectrum. Thus, this condition was not for unified access licences. If it were so, the then Minister would

not have contemplated the role of first-come first-served procedure, ignoring the Recommendations on bidding. It was an alternative to the unified regime suggested by TRAI till the introduction of UASL regime was accepted by the Government. "Existing Licensing Regime" means the regime existing on the date of Recommendations and not future/ prospective regime of UAS licences. The existing licensing regime related to CMSPs under which, for introduction of additional players, availability of adequate spectrum was essential. This is clear from the following paragraphs, that is, 7.8 and 7.35, of Recommendations dated 27.10.2003:

> "7.8 In the Unified Access Licensing Regime, the service providers may offer basic and/ or cellular services using any technology. Existing BSOs may offer full mobility in the circle under the Unified Access Licensing Regime. Existing CMSPs could offer limited mobility facility at appropriate tariffs through concepts such as home zone operations, etc. For migration BSOs, they would be required to continue the limited mobility service for such class of consumers, who so desire.
>
> 7.35 The technology neutral stance of the present licencing policy shall continue. Service Providers shall also be free to use any media (e.g. telephone wire, telegraph wire, TV cable, electricity wire, wireless) to provide telecom services."

These paragraphs indicate that a UAS licence can be operated by electricity wire, wireless, telephone wire etc. and were free to offer Basic and/ or Cellular services and the availability of spectrum may not be exactly essential for UAS licences. The licensee may commission wireline services

awaiting spectrum or use spectrum which was not scarce.

1537. The intent behind para 7.39 is also clear from the cross-examination of PW 62 Sh. A. S. Verma dated 19.09.2012, pages 12 and 13, which is as under:

> ".....Some recommendations were received by TRAI in 2003. I do not remember if the same were received in the month of October 2003, as I did not handle the issue. I do not remember if I had examined these recommendations. Again said, I had examined the recommendations of TRAI received in 2003, but got confused with the recommendations of 2007.
>
> I have been shown TRAI recommendations dated 27.10.2003 (D-595), already Ex PW 36/DC, and as per para 7.39 the TRAI had recommended for induction of additional cellular mobile service providers through a multi stage bidding process as was followed for fourth cellular operators.
>
> **Volunteered**: But this recommendation has to be read as a whole as at that time there was no UAS Licence when this recommendation was made.
>
> This recommendation was accepted by the DoT for grant of UAS licence and the UAS licences were issued at the price discovered in 2001, as per the recommendations of TRAI. The grant of licence was approved by the then MOC&IT....."

The gist of evidence is that recommendation of multi-stage bidding was applicable to pre-UASL stage.

1538. It is also interesting to take note of the fact that before Recommendations of 27.10.2003 were suo motu issued by TRAI, vide reference dated 14.10.2003 (16/c, CD-4), DoT had sought Recommendations from TRAI for opening up of cellular service sector for further competition, on entry fee, and Recommendation on change of existing guidelines for allocation

of spectrum to existing and new operators. In response to this, TRAI sent its Recommendations dated 04.11.2003 (18/c, CD-4), also Ex PW 131/C-1 (CD-13), in which TRAI recommended about entry fee that bidding is not a preferred approach and referred to its Recommendations dated 27.10.2003. It also recommended that it would be better to have competition in the UASL regime. It must be kept in mind that letter dated 04.11.2003, Ex PW 131/C-1, is subsequent to the Recommendations dated 27.10.2003, wherein TRAI categorically recorded that it does not envisage bidding as a preferred approach. In such a situation, it cannot be said that earlier Recommendations of 27.10.2003 regarding bidding would hold good.

It is thus, amply clear that para 7.39 of TRAI Recommendations dated 27.10.2003 do not relate to grant of UASL by bidding.

From the above, it is clear that TRAI did not recommend auction under the UAS licensing regime in its Recommendations dated 27.10.2003.

Not only this, in para 7.33, the Authority itself observed as under:

> "The Authority is not in favour of high spectrum pricing, since such a regime will make the services more expensive and desired growth will not take place in the telecommunications."

It is clear that the Authority was not in favour of high spectrum pricing as that would make services expensive.

1539. Similarly, at page 31 of TRAI Recommendations

dated 27.10.2003, there is a summary of Recommendations, which talks about introduction of Unified Licensing regime for which there should be nominal entry fee. The summary reads as under:

> "**Summary of Recommendations**
>
> In the interest of consumers of the telecom sector and to promote and ensure orderly growth of the telecom sector, the Authority recommends that the country should migrate to "Unified Licensing" Regime for all telecom services. As a preparatory step, Unified Access License will be implemented for access services in each circle. Finally, within six months Unified Access Licensing through an Authorisation process for all services and all geographical areas should be initiated. Service providers will be free to offer all services in all geographical areas through automatic licensing/ authorisation subject to notifying the Regulatory Authority and compliance with published guidelines. The guidelines will be published by the Government/ Regulator to include various terms & conditions of authorisation, e.g., nominal entry fee, Universal Service Obligation (USO), security conditions, etc. Service providers who need spectrum for their services will approach Government of India separately. The guidelines for spectrum allocation which would cover the methodology for spectrum pricing, will also be notified by the Government. Service providers would be given choice to migrate to the new regime or maintain the present position.
>
> The present licensing regime may not be flexible enough to accommodate changes. To achieve very high growth in the Telecom Sector in a competitive and fast technological development era, the new unified regime will create a litigation free environment because all service providers will be in a position to offer all types of services in all service

areas depending upon service provider's choice. As a preparatory step, Unified Access License will be implemented for access services in each circle. Finally, within six months Unified Access Licensing through an Authorisation process for all services and all geographical areas should be initiated."

This summary talks of only nominal entry fee and not an entry fee determined by a market mechanism like auction or bidding. The summary clearly says that service providers who needs spectrum would approach government separately. This also indicates that every service provider may not need spectrum, though subsequent events showed that every service provider needed spectrum as the Authority noted in para 2.39 of its Recommendations dated 28.08.2007 that main growth was in wireless segment.

1540. It is thus, clear that TRAI nowhere recommended auction for introducing UASL regime. In the end, the Recommendations dated 27.10.2003 are of no help to the prosecution as far as auction of UAS licences or revision of entry fee is concerned. Accordingly, I do not find any merit in the submission that auction was not resorted to for issue of licences in 2008 for mala fide reasons.

1541. Not only this, TRAI in its Recommendations dated 14.11.2003, clearly stated that entry fee for the new Unified Licence would be the entry fee of the Fourth cellular operator and in service areas where there was no Fourth cellular operator, the entry fee of the existing BSO, fixed by the Government, based on TRAI Recommendations, would be the

entry fee. It may be noted that guidelines for UAS licences were issued on 11.11.2003. Immediately thereafter, TTSL applied for eight UAS licences on 12.11.2003 and Bharti applied for six UAS licences on 17.11.2003. These applications were processed in file D-592. During processing, vide note dated 21.11.2003, Ex PW 36/DE-1, a question arose as to what should be the entry fee of West Bengal service area, where there was no Fourth cellular operator. Accordingly, a clarification was sought from TRAI vide letter dated 21.11.2003, 21/c (D-592). The issue of licence for West Bengal service area to TTSL and Bharti Cellular Limited was processed in part file of D-592, which is D-38 of case titled CBI Vs. Dayanidhi Maran and others. In note dated 10.12.2003, the clarification sought and received are referred to at 1/c and 2/c, that is, TRAI had given its clarifications on 04.12.2003. In this clarification also, TRAI referred to its Recommendations dated 27.10.2003 and clarified that entry fee of a new UASL for West Bengal service area shall be the entry fee paid by the Fourth cellular operator, that is, one crore. This also shows that in the Recommendations dated 27.10.2003, TRAI nowhere referred to bidding or revision of entry fee for a new UAS licence.

1542. However, confusion remained in the mind of some persons as to whether para 7.39, as referred to above, remained valid even after introduction of UASL or not. This is clear from letter dated 07.12.2007, written by Sh. Nripendra Misra, the then Chairman (TRAI), to Sh. D. S. Mathur, the then Secretary (T), available in file D-5, Vol. II, Ex PW 36/A-1, page 98, which

reads as under:

> ".....The Standing Committee on Information technology had called the Authority for a briefing on "Allocation of spectrum for existing services and introduction of 3G service" on 6.12.2007. During the examination, Shri Rajeev Chandrasekhar, Hon'ble Member of Rajya Sabha, observed that TRAI, in its recommendation on "Unified Licensing Regime" dated 27th October 2003, had opined that introduction of additional access service providers may be done through a multi stage bidding process as was followed for the fourth cellular operator (para 7.39). According to him, the recommendations remain valid for any licensing decision by DoT. He wanted TRAI to further throw light on the matter....."

However, I could not lay my hand on any document where this issue was clarified by DoT to the effect that the Recommendations as contained in para 7.39 regarding multi-stage bidding were applicable to every decision by the DoT. In the end, I could not lay my hand on any document that auction was ever recommended by TRAI for 2G Spectrum in its Recommendations dated 27.10.2003 or were understood by anyone in this manner.

Whether revision of entry fee, by auction or otherwise, recommended by TRAI in 2007?

1543. It is the case of the prosecution that due to tremendous growth in telecom sector, letter of Finance Secretary questioning the grant of licences at the price discovered in 2001, note dated 30.11.2007 of Ms. Manju Madhvan, Member (F), relating to need of revision of entry fee, letter dated 02.11.2007

of Prime Minister to A. Raja asking him to consider auction, wherever legally permissible, or revision of entry fee, which was benchmarked on 2001 auction figures, recommendation of Law Ministry regarding the matter being referred to EGoM, Recommendations of TRAI in para 2.73 dated 28.08.2007 and other relevant factors, it was incumbent upon Sh. A. Raja to revise the entry fee. It is further submitted that the entry fee was neither revised nor indexed as Sh. A. Raja was in conspiracy with the two accused companies and their directors, that is, Shahid Usman Balwa & Vinod Goenka and Sanjay Chandra. It is the case of the prosecution that it also amounts to misuse of official position by public servants. It is the case of the prosecution that despite being asked by the Prime Minister to revise the entry fee, Sh. A. Raja did not revise it and also avoided making reference to revision of entry fee in his letter dated 02.11.2007 to the Prime Minister.

On the other hand, the defence has refuted the arguments submitting that TRAI nowhere recommended revision or indexation of entry fee. It is the case of the defence that as per Cabinet Note dated 31.10.2003, entry fee was to be fixed by DoT as per the Recommendations of TRAI. It is the case of the defence that Sh. A. Raja had stated in the letter dated 02.11.2007, Ex PW 7/B, that auction of spectrum was not recommended by TRAI. It is case of defence that TRAI is an expert body and DoT has to act as per its Recommendations.

1544. The first question is: Whether the question of entry fee or pricing of 2G spectrum was considered by the TRAI or not

in its Recommendations dated 28.08.2007?

1545. In its consultation paper dated 12.06.2007, Ex PW 131/E-2, in para 4.17, the Authority raised "Issues for consideration". In paragraph 4.17, questions 1 and 2 read as under:

> "Q1. In view of the fact that in the present licensing regime, the initial spectrum allocation is based on the technology chosen by the licensee (CDMA or TDMA) and subsequently for both these technologies there is a separate growth path based on the subscriber numbers, please indicate whether a licensee using one technology should be assigned additional spectrum meant for the other technology under the same license?
>
> Q2. In case the licensee is permitted, then how and at what price, the licensee can be allotted additional spectrum suitable for the chosen alternate technology;"

This consultation paper itself shows that price at which cross-over technology was to be allotted was considered by the TRAI in detail. Thus, the question of entry fee was also an issue before the TRAI, though in an indirect manner as it was considering it in reference to cross-over technology/ dual technology. The TRAI had to grapple with the issue as to at what price/ fee alternative technology was to be permitted to an existing licensee. The TRAI did discuss the issue threadbare and arrived at a conclusion that alternative technology was to be permitted at a fee prescribed for a new UAS licence.

1546. Let me take note of relevant paragraphs of TRAI recommendations dated 28.08.2007, Ex PW 2/DD.

TRAI Recommendations dated 28.08.2007

1547. DoT had sought TRAI Recommendations on 13.04.2007 on six issues. However, it had not sought any recommendation on the issue of spectrum allocation or pricing.

1548. In Chapter 1 dealing with "Introduction", the Authority noted various issues being faced by the telecom industry and in para 1.10 observed as under:

> "1.10 While acknowledging the aspirations of both the subscriber as well as the Service Provider, the Authority has to also take into account the legacy of the policy and regulatory environment which has existed and been in operation to date. While framing these recommendations the Authority has endeavored to maintain the sensitive balance between the conflicting demands with the main aim of maximizing consumer interest and facilitating growth in the sector."

Thus, the Authority was fully conscious that there were conflicting demands and it had to maintain balance between them.

1549. The TRAI considered the issue of pricing of spectrum on its own in Chapter 2 from paragraphs 2.63 to 2.83 and made some observations and recommendations.

1550. In this regard, the relevant paragraphs are extracted in detail, as under:

> "2.39 The Authority is conscious of the fact that DoT has not asked for any specific recommendation on the issue of spectrum allocation or pricing. However, as noted earlier also, Spectrum is a scarce resource and is the most vital raw material to offer

mobile services. Main growth is happening in wireless segment and future growth will also be wireless centric. Having come to the conclusion that there should not be any limit to the number of access providers, the Authority is of the opinion that in order to have an actual free market, there is an urgent need to have a predictable and transparent road map for any new entrant wishing to enter the sector. There is a need to have a simple licensing regime and a transparent and efficient spectrum management system; otherwise the free market will only be a myth.

2.40 The present spectrum allocation criteria, pricing methodology and the management system suffer from a member of deficiencies and therefore **the Authority recommends that this whole issue is not to be dealt in piecemeal but should be taken up as a long-term policy issue**. There is an urgent need to address the issues linked with the spectrum efficiency and its management. In the subsequent paragraphs, following issues are being discussed:

- Measures to increase the spectrum efficiency
- Spectrum allocation criteria
- Efficient pricing of spectrum
- Need for improving the spectrum management

Thus, the Authority was conscious that pricing of spectrum was an issue before it. It is clear from the following paragraphs also.

Spectrum Pricing and Usage Charges

2.63 Spectrum is at the heart of all types of telecom services. The importance of Spectrum as a scarce resource is globally recognized. It is a finite resource and an essential input for the knowledge-driven economy. It also plays an important role in increasing competitiveness and growth of the telecom sector in the country. 'Spectrum pricing'

therefore, needs to be set in a manner that encourages the most optimum use of this resource, taking into consideration both its availability and its growing demand. Pricing of spectrum should therefore provide incentive for efficient utilization and discourage creation of self-perpetuating shortages.

2.64 The underlying concept of spectrum pricing is that fees should be based on the amount of spectrum used and on the value of spectrum to its users. A market price is a fair payment criterion for the use of scarce resources. It is therefore, reasonable to adopt the same for pricing of spectrum. However, a balance has to be struck, so that an efficient organization is not unduly disadvantaged. In this, both pricing as well as allocation principles have an important role to play. An efficient use of spectrum would in turn have a direct impact on GDP and the resulting increase in competition thereby benefitting consumers through declining tariffs. Proper pricing and allocation principles would also encourage investment in more spectrally efficient technologies.

2.65 At the core of all aspects that form the basis for reference of the Government to TRAI lie the issues relating to spectrum allocation and its pricing. Spectrum allocation criteria have already been covered elsewhere in this chapter. Turning to the pricing aspects of spectrum, the following questions are relevant: -

a) Should the existing licensees who have acquired spectrum beyond the contracted limit of 6.2 MHz (upto 10 MHz.) pay any additional spectrum fee / charge over and above, what is payable as of now ? If yes, how much should that be and what is the basis of imposing additional charge / fee for spectrum on these licensees. If not, what is the basis for such a dispensation?

b) What should be the pricing policy of spectrum in the 800, 900 & 1800 MHz. bands with respect to licensees who may be allotted additional spectrum beyond 10 MHz.? What is the basis of such a policy being recommended?

c) What should be the pricing policy of spectrum in the 800, 900 & 1800 MHz. bands with respect to a new entrant who may be issued a license in future with an initial allotment of 4.4 MHz/2.5 MHz. in these bands? What is the basis of such a policy recommendation?

d) Should the approach to price the spectrum in bands other than 800, 900 & 1800 MHz. be different from the one being recommended for 800, 900 & 1800 MHz. bands and if so, what is that approach and what is the basis of such an approach?

2.66 Answers to questions raised above would serve the basis for addressing the currently relevant issues and also to tackle certain medium to long term issues that are likely to arise in future. In addressing these issues, the Authority has kept the following objectives in view:-

a. To promote the efficient use of scarce resource of radio spectrum
b. Reflecting market value of spectrum in the wake of scarcity, to ensure its efficient utilization
c. Increasing rural and semi-urban roll-out
d. To facilitate access to radio spectrum particularly to innovative technologies and services, and
e. To afford opportunity for equal competition.

2.67 Radio spectrum is a finite natural resource. Its efficient utilization should therefore acquire prime importance in the matter of its allocation and pricing. In general, the role of pricing in a market is to guide the users in making decisions to use the resource more efficiently. It, therefore, follows that

the approach to pricing should reflect the scarcity besides incentivising efficiency in use.

2.68 Existing licensing framework imposes the following levies/fees on a UASL/CMTS licensee seeking to provide access services inter alia using wireless technologies:-

a) Entry fee for acquiring a license
b) License fee as a percentage of Adjusted Gross Revenue paid on a quarterly basis
c) Spectrum usage charges as a percentage of Adjusted Gross Revenue paid on a quarterly basis

2.69 The Entry fee for acquiring a UASL license enables the licensee to become eligible for spectrum allocation in certain specified bands without any additional fee for acquisition of spectrum which means that allocation of spectrum follows the grant of license subject however to availability of spectrum. *There is only one direct cost to the operator for spectrum i.e. spectrum charge in the form of royalty*. Besides this, the Government collects license fee as a percentage of Adjusted Gross Revenue of the operators.....

2.70 Economic growth in general and the growth in wireless services in particular have led to buoyancy in the revenue to Government from the access services using wireless technologies. Needless to say, the bands assigned so far for the purpose of providing access service are 800, 900 and 1800 MHz.

2.71 Spectrum pricing aims to ensure that the value of the spectrum is reflected in the fees that licensees pay for its access. There are generally three ways in which this is done:

- **Administrative Incentive Pricing** which

attempts to calculate the value of the spectrum by assessing the cost associated either with the user employing an alternative solution, or its opportunity cost foregone by denying access to an alternative user.

- **Beauty Parades or Comparative Selection** which fixes the price of the spectrum to ensure optimum utilization by awarding spectrum to the user(s) who score highest against a group of pre-set criteria (such as rural coverage or the fulfillment of roll-out obligation).
- **Spectrum Auction is** fully market-based technique whereby spectrum is awarded to the highest bidder (or some combination of highest priced bids).

2.72 In each case, the aim is to change spectrum users' behavior towards the use of the spectrum, to ensure that the maximum (social, economic or technical) benefit is accrued. However, in the present context, none of these above techniques of spectrum pricing are being considered for reasons stated in the ensuing paragraphs.

2.73 The allocation of spectrum is after the payment of entry fee and grant of license. The entry fee as it exists today is, in fact, a result of the price discovered through a markets based mechanism applicable for the grant of license to the 4th cellular operator. In today's dynamism and unprecedented growth of telecom sector, the entry fee determined then is also not the realistic price for obtaining a license. Perhaps, it needs to be reassessed through a market mechanism. On the other hand spectrum usage charge is in the form of a royalty which is linked to the revenue earned by the operators and to that extent it captures the economic value of the spectrum that is used. Some stakeholders have viewed the charges/fee as a hybrid model of extracting economic rent for the acquisition and also

meet the criterion of efficiency in the utilization of this scarce resource. The Authority in the context of 800, 900 and 1800 MHz is conscious of the legacy i.e. prevailing practice and the overriding consideration of level playing field. Though the dual charge in present form does not reflect the present value of spectrum it needed to be continued for treating already specified bands for 2G services i.e. 800, 900 and 1800 MHz. It is in this background that the Authority is not recommending the standard options pricing of spectrum, however, it has elsewhere in the recommendation made a strong case for adopting auction procedure in the allocation of all other spectrum bands except 800, 900 and 1800 MHz.

2.78 As far as a new entrant is concerned, the question arises whether there is any need for change in the pricing methodology for allocation of spectrum in the 800, 900 and 1800 MHz bands. Keeping in view the objective of growth, affordability, penetration of wireless services in semi-urban and rural areas, the Authority is not in favour of changing the spectrum fee regime for a new entrant. Opportunity for equal competition has always been one of the prime principles of the Authority in suggesting a regulatory framework in telecom services. Any differential treatment to a new entrant vis-a-vis incumbents in the wireless sector will go against the principle of level playing field. This is specific and restricted to 2G bands only i.e. 800, 900 and 1800 MHz. This approach assumes more significance particularly in the context where subscriber acquisition cost for a new entrant is likely to be much higher than for the incumbent wireless operators.

2.79 In the case of spectrum in bands other than 800, 900 and 1800 MHz i.e. bands that are yet to be allocated, the Authority examined various possible

approaches for pricing and has come to the conclusion that it would be appropriate in future for a market based price discovery systems. In response to the consultation paper, a number of stakeholders have also strongly recommended that the allocation of spectrum should be immediately de-linked from the license and the future allocation should be based on auction. The Authority in its recommendation on "Allocation and pricing of spectrum for 3G and broadband wireless access services" has also favored auction methodology for allocation of spectrum for 3G and BWA services. **It is therefore recommended that in future all spectrum excluding the spectrum in 800, 900 and 1800 bands should be auctioned so as to ensure efficient utilization of this scarce resource.** In the 2G bands (800 MHz/900 MHz/1800 MHz), the allocation through auction may not be possible as the service providers were allocated spectrum at different times of their license and the amount of spectrum with them varies from 2X4.4 MHz to 2X10 MHz for GSM technology and 2X2.5 MHz to 2X5 MHz in CDMA technology. Therefore, to decide the cut off after which the spectrum is auctioned will be difficult and might raise the issue of level playing field."

1551. A bare perusal of the aforesaid paragraphs would reveal that TRAI had considered the issue of spectrum pricing including entry fee in great detail and after a careful analysis did not recommend any change in the pricing formula of 2G spectrum, that is, 800, 900 and 1800 MHz bands for a new entrant. The aforesaid paragraphs are self-explanatory and need no explanation. In paragraphs 2.71 and 2.72, it considered auction as technique for pricing 2G spectrum but ruled it out for the reasons mentioned in paragraphs 2.73, 2.78 and 2.79. It

may be noted that 4.4 + 4.4 MHz spectrum was conflated/ bundled with UAS licence.

1552. Not only this, as noted in the consultation paper, Ex PW 131/E-2, extracted above, while dealing with the issue of dual technology, the issue of entry fee was again considered by the Authority in paragraphs 4.25 and 4.27, which read as under:

> "4.25 As per the existing licensing regime, there are three sets of financial contribution made by the licensees to the national exchequer. The applicant company first gets the license on payment of a specified entry fee. The licensee makes an annual payment based on certain percentage of Adjusted Gross Revenue (AGR) towards license fees. Thirdly, the licensee also pays for usage of spectrum in the form of spectrum usage charges which are presently linked with AGR on the basis of quantum of spectrum allocated.....
>
> 4.27 In fact as per the addendum to the NTP 99 issued by DoT on 11.11.2003, the UAS Licensee can provide basic and/or cellular services using any technology in a defined service area. In the interest of transparency, it may perhaps be appropriate if the existing licensees are permitted to use other technologies on a payment of specified amount. **Therefore, the Authority recommends that a licensee using one technology may be permitted on request, usage of alternative technology and thus allocation of dual spectrum. However, such a licensee must pay the same amount of fee which has been paid by existing licensees using the alternative technology or which would be paid by a new licensee going to use that technology**. An argument will be made that how can there be two rounds of entry fee. It is legally tenable to charge additional fee for allocation of dual set of spectrum. This would also pass the test of

level playing field. As per clause 43.5 (iv) of UAS License, the licensor has right to modify and/or amend the procedure of spectrum allocation. This could be incorporated through an amendment in the same license. Also it has to be ensured that condition of roll out obligation applicable in the case of a specific technology would become applicable for the licensee who has adopted the technology. This would cover issues such as roll out obligation and spectrum charges. However, the growth path will be vertical and all criteria would be made applicable as has been prescribed in other cases."

Thus, a dual technology applicant was to pay the same fee which was paid by an existing licensee.

1553. In contrast to entry fee, in which it recommended no change, the Authority considered revision of spectrum charges in paragraphs 2.80 to 2.83, which read as under:

"2.80 The spectrum charges are currently on revenue share basis starting from 2% of AGR for spectrum up to 2X4.4 MHz and 2X5 MHz for GSM and CDMA respectively. The fourth Cellular license issued in 2001, stipulated that any additional bandwidth if allotted subject to availability and justification shall attract additional License fee as revenue share (typically 1% additional revenue share if Bandwidth allocated is up to 6.2 MHz + 6.2 MHz in place of 4.4 MHz + 4.4 MHz). The above spectrum charge was subject to review by WPC wing from time to time.

2.81 The WPC wing of DoT, has over a period of time through its various orders communicated allocation and rates for additional blocks of spectrum.

The Table 7 below gives the current spectrum charge for the various blocks of spectrum

GSM						
Spectrum Blocks	**2x4.4 MHz**	**2x6.2 MHz**	**2x8 MHz**	**2x10 MHz**	**2x12.4 MHz**	**2x15 MHz**
Chargesas a % of AGR	2%	3%	4%	4%	5%	6%

CDMA					
Spectrum Blocks	**Up to 2x5 MHz**	**2x6.25 MHz**	**2x10 MHz**	**2x12.5 MHz**	**2x15 MHz**
Chargesas a % of AGR	2%	3%	4%	5%	6%

Table 7: Spectrum charges

2.82 The Authority noted that in the last few years the market capitalization of listed telecom companies has increased manifold and their operating margins are also going up in line with the world's competitive telecom markets/ operators. The Authority also noted that the share of the listed telecom companies in the total market capitalization (S&P CNX Nifty Index) was more than 13% for the period 01-Aug-2006 to 31-July-2007. The Authority further noted that the EBITDA Margin[15] of listed telecom companies is more than 1.75 times in comparison to listed IT companies. In the wake of growing demand of spectrum and its limited availability, the Authority has revisited the existing spectrum charges to reflect a reasonable market value of allocated spectrum.

2.83 Keeping in view the scarcity of the spectrum, there is a need to deploy spectral efficient technologies, if necessary through capital infusion, and to curtail the hoarding of spectrum. Tightening the norms for spectrum allocation, linking it with roll out obligations and a marginal rate revision; it is felt, would make the service providers look for technical solutions and effective utilization of this very scarce resource. The Authority in its recommendations on "Allocation and Pricing of

Spectrum for 3G and broadband wireless access services" had recommended an additional 1% of the operator's total AGR. After examining various options for rationalizing the spectrum charges, **the Authority, recommends adoption of Revenue share spectrum charges as given in table 8 below**:

Spectrum	Current	Proposed
Upto 2x4.4 MHz	2%	No Change
Upto 2x6.2 MHz/2x5 MHz	3%	No Change
Upto 2x8 MHz	4%	No Change
Upto 2x10 MHz	4%	5.00%
Upto 2x12.5 MHz	5%	6.00%
Upto 2x15 MHz	6%	7.00%
Beyond 2x15 MHz	-	8.00%

Table 8: Revised Spectrum Charges"

Thus, the Authority consciously did not recommend any revision of entry fee, though it recommended revision of spectrum charges.

1554. Not only this, a summary of the Recommendations was prepared by TRAI itself which is contained in Chapter 6 of its Recommendations dated 28.08.2007. The summary contained in this Chapter, runs into 34 paragraphs, and it was this summary which was examined by DoT for implementing the Recommendations. It may be noted that in these 34 paragraphs, there is no mention of revision of entry fee. Now the question is: Whether TRAI recommended revision of entry fee at all? There is no evidence in support of this as the following paragraphs would show.

Processing of Recommendations in DoT

1555. The Recommendations of TRAI were examined by a committee consisting of officers of DoT and the same were placed before the Telecom Commission, which also approved the same on 10.10.2007 and this was conveyed to the AS branch vide Ex PW 36/A-13 (34/c). Accordingly, note dated 11.10.2007, Ex PW 36/A-14 (D-5, 7-18/N), was recorded regarding the TRAI Recommendations and approval thereof by the Telecom Commission. The same was agreed to by DDG (AS) PW 60 Sh. A. K. Srivastava, Member (T) PW 77 Sh. K. Sridhara and Secretary (T) PW 36 Sh. D. S. Mathur. The Recommendations were approved by Sh. A. Raja on 17.10.2007 at 19/N.

1556. PW 60 Sh. A. K. Srivastava in his cross-examination dated 12.09.2012, pages 3 and 4, deposed on the aforesaid point as under:

> ".....It is correct that an office order dated 15.10.2007 already Ex PW 36/DK-9, file D-7, already Ex PW 36/B, page 109, was issued for processing UASL applications and thereunder a committee was constituted which were to process the applications in the manner mentioned in this order. After scrutiny of an application for UAS licence, the same is put up before Member (T) accompanied by the feedback of the processing officers and Member (T) marks the same to Secretary (T). **Volunteered**: Occasionally an application may be marked to Member (F) before being marked to Secretary (T).
>
> It is correct that thereafter the application is submitted to Minister, MOC&IT, who is the competent authority to grant the approval....."

Thus, deposition shows that TRAI Recommendations

were duly examined by DoT.

Revision of Entry Fee: View of TRAI

Let me take note of the evidence on record.

1557. DoT had not asked for any Recommendation on the issue of spectrum pricing. However, TRAI had made Recommendations on its own on the issue of pricing. In this regard, PW 11 Sh. Nripendra Misra in his cross-examination dated 19.03.2012, page 12, deposed regarding suo motu Recommendations as under:

> ".....In TRAI 2007 recommendations, suo motu observations and recommendations have been made on issues which were asked in the DoT reference of 13.04.2007. Care was also taken that suo motu recommendations may not be made in matters where it was mandatory to seek recommendations from TRAI. Recommendations suo motu have been made in matters which have a direct bearing on the issues raised in the DoT reference Ex PW 11/A dated 13.04.2007. The suo motu recommendations made in 28.08.2007 recommendations are on the issues raised by DoT in accordance with the TRAI Act. There is no legal bar in making suo motu recommendations on subjects other than on which mandatory recommendations are required to be sought....."

This deposition is to be read in reference to para 2.39 of TRAI Recommendations, already referred to above, which talks about DoT not asking any Recommendation about pricing of spectrum.

1558. He further deposed regarding revision of entry fee in his cross-examination dated 19.03.2012, pages 14 and 15, as

under:

> ".....I have been shown letter dated 26.05.2008 Ex PW 11/W, written by the authority to the Secretary, DoT, which, inter alia, covered letter of Sh. Laljan Basha. This letter was issued under the approval of the authority and was signed by Sr. Research Officer Sh. D. K. Sharma. At page 2, reply was given about the issue relating to reducing the threshold limit of new entrants as under:
>
> "DoT to respond for being the subject matter falling within their purview. However, keeping in view the objective of growth, affordability, penetration of wireless services in semi-urban and rural areas and principle of level playing field and opportunity for equal competition between the incumbents and new entrants, the Authority recommended the same entry fee as was taken from the fourth cellular operator for grant of CMSP/ UAS licence in the year 2001....."

The aforesaid evidence itself reveals that the Authority had recommended the same entry fee as was taken from the Fourth cellular and that too suo motu.

1559. However, TRAI in its letter dated 27.12.2007, Ex PW 131/G-4, page 231, written to PMO, changed its stance, part of which reads as under:

> "..... ..... On the issue of timing and methodology for induction of new service provider, the Authority in its recommendation on "Unified Licensing Regime" dated 27.10.2003, had reiterated its earlier recommendation that induction of additional mobile service providers in various service areas can be considered if there is an adequate availability of spectrum for the existing service provider as well as for new players. It further recommended that

additional players may be introduced through a multistage bidding process as was followed for 4th cellular operator. In its recent recommendations of August 2007, the Authority has not touched on this subject and its earlier position remains unaltered.

Authority is conscious of the fact that one of the major reasons for the present position is because the spectrum is bundled alongwith the access license. Therefore in order to ensure that its value is appreciated properly by the stakeholders, it is necessary to delink the spectrum from the access license. In its earlier recommendation on Unified Licensing Regime of 27th October 2003 and 13th January 2005, it has recommended the same. However, this recommendation has not been accepted by the DoT. In the recent recommendation also TRAI has again reiterated delinking of spectrum from the license. However, DoT in its communication to TRAI has again not accepted this recommendation.

The Authority is aware that spectrum is scarce and valuable resource and therefore in the present recommendation, it has suggested additional measures which are outlined in para 'a' above.

c) In the said recommendation of August 2007, the Authority has also acknowledged the fact that presently, the entry fee for a new operator is a result of price discovered through a market based mechanism applicable for the grant of license to the 4th cellular operator. In today's dynamic and unprecedented growth of telecom sector, the entry fee determined then is not the realistic price for obtaining a license. It needs to be reassessed through a market mechanism.

…….
……."

1560. I have already noted in detail that the facts contained in the first para regarding multi-stage bidding is not

applicable to the UAS licence. The aforesaid para (c) has also been quoted partially. It is based on para 2.73 of TRAI Recommendations dated 28.08.2007 and has already been taken note of. The end result is TRAI did not recommend any change in entry fee. It only made an observation about reassessment of entry fee as the letter also points out that in the Recommendations of August 2007, the Authority had not touched on the subject of multi-stage bidding for entry of additional operators and its earlier position remains unaltered.

1561. PW 11 Sh. Nripendra Misra in his further cross-examination dated 21.03.2012, page 10, deposed as under:

> ".....I have been shown TRAI recommendations dated 28.08.2007 Ex PW 2/DD, para 2.73, wherein facts pertaining to it are mentioned. The para clarifies that the spectrum usage charge in the form of a royalty captures to that extent the economic value of the spectrum used. It is correct that cost of operation is high to a new entrant than to an old entrant. It is correct that the concept of level playing field has been the prime concern of the authority in suggesting regulatory framework for telecom services....."

PW 11 in his further cross-examination dated 22.03.2012, pages 10 to 12, deposed on revision of entry fee as under:

> ".....I have been shown TRAI recommendations dated 28.08.2007, already Ex PW 2/DD (D-596).
> **Ques**: As per this paragraph (2.78) the authority was not in favour of changing the spectrum fee regime for the new entrant. What was the existing regime in which the authority did not recommend any change?

Ans: This para 2.78 has to be read with para 2.73 because the spectrum is coupled with licence. There is a suggestion in para 2.73 that the entry fee of the licence should be determined by market mechanism. It is for this reason that a separate mechanism for determining market price of spectrum in 800, 900 and 1800 MHz band was not suggested for new entrants. This also captures the principle of level playing field.

The discovery of entry fee as determined in 2001 for fourth cellular operator was approximately 1650 crores. This is the entry fee for licence. The recommendation (is) to redetermine this entry fee through market mechanism. Therefore, any revision through market mechanism of 800, 900 and 1800 MHz band was not suggested. The spectrum price not being determined separately was suggested for status quo.

Ques: Entry fee as mentioned in para 2.73 "as it existed today", as mentioned in this paragraph. What was the figure of the fee implied in the words "as it existed today"?

Ans: It was approximately Rs. 1650 crores which was recommended for re-determination.

I cannot say if this was the amount paid by the licencees in January 2008 as the licences were issued by the DoT.

Regarding spectrum usage charges, recommendations have been made in the recommendations Ex PW 2/DD dated 28.08.2007. It is correct that for a new entrant, entry fee and spectrum usage charges are relevant.

Ques: Whether these two together constitute spectrum pricing?

Ans: The spectrum usage charge is the pricing of the efficiency of usage of spectrum. The entry fee of licence, since it is bundled with spectrum, would reflect the price of spectrum.

It is wrong to suggest that the recommendations in paras 2.73 and 2.78 are

contradictory to each other. During my tenure as Chairman, TRAI, the issue of lowering entry fee for new entrant in the present structuring was not considered at all. The recommendations of 2007 did not consider keeping the same entry fee for the new entrants and this is mentioned in para 2.73.
Ques: Please point out from para 2.73 where it is so mentioned?
Ans: Para 2.73 mentions "in today's dynamism and unprecedented growth of telecom sector, the entry fee determined then is also not the realistic price for obtaining a licence. Perhaps it needs to reassessed through a market mechanism".
Ques: This paragraph further states that "the present value of spectrum needed to be continued for already specified band of 2G services, that is, 800, 900 and 1800 MHz". Isn't this statement contradictory to the first part of this paragraph?
Ans: No sir. Because it refers to the auction procedure for spectrum.

It is wrong to suggest that I am contradictory in deposition before this Court on TRAI recommendations 2007. It is wrong to suggest that TRAI recommended that entry fee for 800, 900 and 1800 MHz spectrum needed to be continued in view of the level playing consideration....."

Thus, Sh. Nripendra Misra endeavoured to explain that TRAI had recommended revision of entry fee in para 2.73.

However, in cross-examination dated 22.03.2012, page 13, PW 11 Sh. Nripendra Misra deposed as under:

".....**Ques**: I put it to you that your testimony regarding entry fee is contradictory to page 2 portion A to A of Ex PW 11/W. What do you have to say?
Ans: This is the response of TRAI regarding the determination of threshold level reduction to new entrants. It is in this context the matter has been clarified and the recommendation in para 2.73 refers

to determination by market mechanism. There is no contradiction……."

1562. However, the above material indicates that TRAI had not recommended any change in the entry fee despite the matter being considered by it suo motu. However, the learned Spl. PP in his written arguments dated 17.03.2017, note IX, page 10, wrote that TRAI recommended no auction of spectrum, but recommended revision of entry fee through market mechanism as it captured the price of spectrum. However, as noted above, TRAI wrote in its letter dated 27.12.2007, Ex PW 131/G-4, that its position on multi-stage bidding remains unaltered. The prosecution submitted that TRAI did not recommend auction, but recommended only revision of entry fee, whereas TRAI itself says that its position on multistage bidding for entry of additional operators, as recommended in its Recommendations dated 27.10.2003, remains unaltered. These two positions cannot be reconciled. The conclusion is that there is no material on record to show that the TRAI recommended revision of entry fee. Even if the version of Sh. Nripendra Misra is accepted that revision of entry fee was recommended, there is no material on record that anyone understood these Recommendations in this manner. There is absolutely no evidence, oral or documentary, that anyone understood that TRAI had recommended revision of entry fee.

1563. In file D-5 (vol. II), there is a letter dated 12.10.2007 (page 89/c), written by Chairman, Competition Commission of India, to Sh. D. S. Mathur, the then Secretary

(T), wherein he also mentioned that TRAI had recommended allocation of spectrum by auction outside 800, 900 and 1800 MHz bands only. He also wrote that such a decision should be guided by market principles unless this is not considered feasible for specific reasons. What does this mean? It means that there is no one who understood that TRAI recommended allocation of initial/ start-up 2G spectrum by auction despite the efforts by TRAI to ensure that its Recommendations are understood with due linkages.

1564. Furthermore, when a news item dated 08.11.2007 appeared in the Economic Times regarding Grabbing of Precious Spectrum, a letter dated 08.11.2007, Ex PW 36/DL (D-6), was sent to the editor under the signature of Sh. A. K. Srivastava with the approval of Sh. D. S. Mathur. In this letter, it is categorically recorded that DoT never suggested bidding for 2G Spectrum. The end result is that there is absolutely no material on record indicating that anyone suggested or recommended auction of start-up 2G spectrum.

Let me examine as to how the DoT viewed/ understood the Recommendations.

Examination of TRAI Recommendations: View of DoT on TRAI Recommendations

1565. On receipt of TRAI Recommendations, the same were examined by DoT in file D-5. A committee was constituted in which DDG (LF), an officer of LF/ finance branch, was also a member. PW 60 Sh. A. K. Srivastava, DDG (AS), in his

examination-in-chief dated 31.07.2012, pages 8 to 11, deposed as to how the Recommendations were processed and put up to the Telecom Commission, as under:

> ".....I have been again shown D-5 vol. I, already Ex PW 36/A-3. Therein at page 47 is a forwarding letter, sent by TRAI to the then Secretary DoT Sh. D. S. Mathur. The same is already Ex PW 11/C. Through this letter, the TRAI had sent its recommendations dated 28.08.2007 to DoT on 29.08.2007. These recommendations were taken on record of the DoT at page 4/N. This note was put up by Sh. R. K. Gupta, the then ADG (AS-I). The note of Sh. R. K. Gupta was put up to Director Sh. Nitin Jain and thereafter, the note was put up to me. Signature of Sh. R. K. Gupta is at point A and that of Sh. Nitin Jain at point B. I identify both the signatures. It also bears my signature at point C. The note sheet is already Ex PW 36/A-5. The proposal was that on receipt of recommendations of TRAI, comments of concerned sections of DoT may be obtained and I had approved the proposal and accordingly, letters were sent to the concerned sections of the DoT. The office copy of the letter are available at page 71. The same is now Ex PW 60/B. A proposal was initiated by Sh. Nitin Jain, Director, vide note sheet dated 20.09.2007, submitting that a committee may be constituted for processing of TRAI recommendations pertaining to chapters 2 and 4 under the chairmanship of Member (T). I identify his signature at point C. The note sheet is already Ex PW 36/A-6. This proposal was put up to DDG (AS), that is, myself, and I marked the same to Member (T). Finally, the proposal was approved by Secretary (T) Sh. D. S. Mathur. My signature appears at point D and that of Sh. K. Sridhara, Member (T), at point E. Thereafter, committee was constituted and its first meeting was held on 22.09.2007 vide endorsement at point B on Ex PW 36/A-6.
>
> I have been shown page 6/N of the note sheet.

Sh. Nitin Jain, Director, put up a note dated 10.10.2007. I identify his signature at point A and the note is now Ex PW 60/B-1. Vide this note, it was recorded that recommendations of the committee have been received on chapters 2 and 4 of TRAI recommendations and internal inputs of concerned sections of the DoT have also been obtained and based thereon a note was prepared for consideration of Telecom Commission. The report of the committee is available at page 140 and the same is already Ex PW 36/A-8 and its forwarding letter is already Ex PW 36/A-7. The committee consisted of Member (T) Sh. K. Sridhara, who was chairman of the committee, Sh. Vijay Madan, ED (C-DOT), Sh. R. N. Padukone, Sr. DDG (TEC), Sh. R. J. S. Kushvaha, JWA (L), WPC, Sh. B. B. Singh, DDG (LF), DoT, and myself, all members. I identify signatures of Sh. K. Sridhara at point A, Sh. Vijay Madan at point D, Sh. R. N. Padukone at point E, Sh. R. J. S. Kushvaha at point C, Sh. B. B. Singh at point F and myself at point B. The report of the committee is Ex PW 36/A-8, pages 131 to 139, which contains relevant TRAI recommendations and final view of the committee. This also bears the signatures of chairman and all members on each page.

I have been shown comments on TRAI recommendations in respect of chapter No. 3 and 5, which were prepared in my section based on the inputs received from concerned sections. The same is already Ex PW 36/A-9, pages 141 to 147, and bears signature of Sh. Nitin Jain at point A and of myself at point B on each page. I have been shown page 168, already Ex PW 36/A-10. This is a note for consideration of Telecom Commission. It bears my signature at point A. It has two annexures, that is, annexure I is the report of the committee and annexure II is the note on the internal inputs of the department. This was note sent to the office of Telecom Commission situated in Sanchar Bhawan....."

This deposition shows that the TRAI Recommendations were examined in great detail by DoT.

1566. In his further examination-in-chief dated 01.08.2012, page 1, PW 60 deposed about constitution of Telecom Commission and role of Member (F), as under:

> ".....Telecom Commission is a policy making body related to telecom issues in DoT to help Minister, MOC&IT, to take policy decisions. The telecom commission consists of eight members, four are full-time members, who are in DoT, and remaining four are part-time members from other Ministries/ departments. It is the discretion of Chairman of Telecom Commission to hold its meetings, which may be attended by full telecom commission, that is, all eight members, or internal telecom commission, that is, consisting of all full-time members. Secretary (DoT) is chairman of Telecom Commission. Full-time members are Member (Finance), Member (Services) and Member (Technology) and Member (Production). However, Member (technology) holds dual charge, that is, Member (technology) and Member (production). Member (Finance) holds the office in dual capacity, that is, he reports to Secretary (T) as well as to Finance Secretary related to financial matters.
>
> In 2007, Sh. D. S. Mathur, the then Secretary (DoT) was Chairman, Telecom Commission. The other members were Sh. G. S. Grover, Member (services), Ms. Manju Madhavan, Member (finance) and Sh. K. Sridhara, Member (technology)....."

Thus, Member (F) is a responsible officer of the rank of ex-officio Secretary and in case of financial matter she reports to Finance Secretary and in case of need, she also has access to the Finance Minister. It was her primary duty to look after the

interest of revenue in all matters dealt with in the DoT.

Role of Member (F)

1567. PW 11 Sh. Nripendra Misra, in his cross-examination dated 15.03.2012, pages 7 and 8, deposed about role of Member (F), as under:

> ".....Whenever any recommendation is received from TRAI by DoT, it is processed in the Department of Telecom and where necessary, the findings of DoT is put up before Telecom Commission. Finally, the Minister's order are obtained. Member (Finance) who is a representative from Ministry of Finance, participates both in functional Telecom Commission and full Telecom Commission meetings. The agenda of the meeting is circulated to the Members of the Telecom Commission well in advance. The Member, Finance, gets enough time to examine the proposals and he examines the same on files also....."

PW 11 Sh. Nripendra Misra, former Secretary (DoT) and later on Chairman (TRAI), deposed on 20.03.2012, page 10, regarding designation of Member (F), as under:

> ".....Member (Finance) is a representative of Finance Ministry and is of rank of Special Secretary....."

He further deposed on 21.03.2012, page 10, as under:

> ".....It is correct that in financial matters the consent of Member (Finance) is necessary unless recorded otherwise....."

Member (F) is an officer of the rank of ex-officio Secretary to the Government of India. She did not raise any

question regarding revision of entry fee during processing of TRAI Recommendations by DoT.

1568. PW 36 Sh. D. S. Mathur, the then Secretary (T), in his examination-in-chief dated 09.04.2012, page 2, deposed as to how TRAI Recommendations are processed in DoT as under:

> ".....TRAI is a body that make recommendations to the DoT on various matters pertaining to telephone services. The recommendations that are received in the DoT are generally first examined by committee of the department. Then committee recommendations alongwith the recommendations of TRAI are put up to the Telecom Commission. The Telecom Commission examines each recommendation and also takes into account the recommendations made by the examining committee of the department and thereafter, proposes certain line of action which are then put up to the Minister of the Department and on the basis of that a final decision is taken on these recommendations....."

1569. PW 36 Sh. D. S. Mathur in his examination-in-chief dated 09.04.2012 deposed as to how TRAI Recommendations were processed and how after approval by the Telecom Commission, a note dated 11.10.2007, Ex PW 36/A-14, recorded by Sh. Nitin Jain, was put up to Sh. A. Raja and how order was passed by Sh. A. Raja permitting dual technology to the pending applicants and the entry fee which was to be charged from them, and the deposition on this point, pages 8 to 11, reads as under:

> ".....The Minister in the last paragraph of his order said that pending request of existing UASL operators for use of dual/ alternate wireless access technology should be considered and they should be

asked to pay the required fee. Allocation of spectrum in alternate technology should be considered from the date of such request to WPC subject to payment of required fee. This order is dated 17.10.2007. The signature of Mr. A. Raja, the then Minister, MOC&IT, is at point A and the order is now Ex PW 36/A-15. The order of the Minister was communicated to me, both in the capacity of Secretary, DoT, as well as Chairman, Telecom Commission. I had "seen" the order on 18.10.2007. My signature is at point B on Ex PW 36/A-15.

The issue of dual technology pertained to the licencees to whom licences were issued before 18.10.2007. The licencees were asked to clarify the technology on which they liked to run their services and thereafter, they would be confined to that particular technology alone. When the TRAI made recommendation and the Government accepted it, it was open to any licencee to obtain permission to run to the services on the alternative technology also. It would mean that a person using GSM technology was permitted to use CDMA technology as well and vice versa. The TRAI had recommended that any UAS licencee may be permitted to apply for alternative technology and the Government accepted the same subject to the payment of licence fee. The licence fee would be the same as paid by any new UAS Licencee for that technology. Entry fee is the fee that one has to pay for getting a licence. The entry fee was determined in 2001 and it continued at the same level till 2007. In 2005, Government had issued guidelines reiterating the same rate of entry fee.

On 18.10.2007, as far as I remember, three applicants had applied for use of dual technology, that is, Reliance, Shyam and HFCL. I have been shown page 20/N (D-5 vol. I), whereby a process note was started by Sh. Nitin Jain, Director (AS-I), for issuance of in principle approval for dual technology to the aforesaid three companies. The

three companies had prayed for GSM technology for the circles mentioned in the note sheet. The note is now Ex PW 36/A-16. The note sheet was accompanied by draft letters. The file moved through Sh. A. K. Srivastava DDG (AS), Legal Advisor Sh. Santok Singh, Member (T) Sh. K. Sridhara and finally the file came to me. I recorded a note to the effect that this matter was discussed and it may be processed as per the procedure being proposed separately. My signature appears at point A. I recorded this note as it was a new beginning in the department and a procedure had to be clearly laid down. This I had told the then Minister also and I accordingly recorded the note. My note is encircled red at point B. After recording my note, I marked the file to the Minister.

I have been shown page 21/N of the same file, wherein the Minister observed that whatever was discussed was not correctly recorded by me and he also said that allocation of spectrum for dual technology, the date of payment of required fee should determine the seniority. Then he ordered that necessary orders may be issued. The order of the Minister is dated 18.10.2007 and is now Ex PW 36/A-17. The signature of the then Minister is at point A, which I identify. The file was "seen" by me on the same date and my signature in token thereof is at point B....."

Here, Sh. D. S. Mahur deposed that Minister accorded approval to the use of dual technology at the same price which was determined in 2001 and the Government had issued Guidelines reiterating the same rate of entry fee. Sh. D. S. Mathur agreed with the proposal that dual technology applicants be charged the same entry fee as was being charged from the new applicants and raised no objections. However, he had raised objections only about priority to dual technology

applicants in the matter of allocation of spectrum and no objection was there about entry fee. However, later on, he changed his stand.

1570. Sh. D. S. Mathur in his examination-in-chief dated 10.04.2012, pages 2 to 6, deposed about role of Member (F), objections of Finance Secretary, reply thereof by DoT in consultation with Member (F) and subsequent action of Ministry of Finance, as under:

> ".....There is a post of Member (Finance) in the DoT, who is also Member (Finance) of Telecom Commission. This Member is posted by the Ministry of Finance. Member (Finance) is responsible for all matters relating to finance. The application for UAS Licences is also examined by the finance section, besides other sections. Finance section of DoT is headed by Member (Finance). I have been shown pages 9/N to 12/N in Ex PW 36/B (D-7), which is Ex PW 36/B-10. As per this note, LOIs were decided to be issued. The modalities to be followed are mentioned in paragraph 5 of this note.
>
> I have been shown note 18/N of file Ex PW 36/B (D-7). This note was written by Ms. Manju Madhvan, Member (Finance) in DoT at that time, on 30.11.2007. In this note, she has mentioned a communication received from the Finance Ministry to the effect that the rates proposed to be charged in 2007 were of the year 2001. She suggested in the note that the matter may be examined in depth before further steps are taken in this regard. This note was put up before me as I was Secretary, DoT, and I agreed with this note on the same date and I marked the note on the same date to the then Minister, MOC&IT, Sh. A. Raja.
>
> On this note, Sh. A. Raja, the then Minister, MOC&IT, passed an order on 04.12.2007. He expressed his displeasure on this note. The note of

Ms. Manju Madhvan is available at page 18/N and is now Ex PW 36/B-11. I identify her signature at point A. My signature in token of having seen the note and marking the file to the Minister is at point B and are now Ex PW 36/B-12. The note of Sh. A. Raja is available at pages 18/N to 20/N and is now Ex PW 36/B-13. His signature appears at point A and I identify the same. After the Minister passed the aforesaid order, the file came to me on the same date and I passed it down to Member (Finance), Ms. Manju Madhvan. My signature is at point B and that of Ms. Manju Madhvan is at point C on Ex PW 36/B-13 (page 20/N). After I marked this file to Ms. Manju Madhvan, Member (Finance), this file never came up to me till my superannuation on 31.12.2007.

I have been shown file of DoT, D-9, dealing with dual technology spectrum, reference Ministry of Finance. The same is collectively Ex PW 36/C. Pages 1/N to 5/N are note sheet part and pages 1/C to 74/C are correspondence. In this file, I have been shown a letter dated 22.11.2007, page 74/C, and this letter has been addressed to me by Sh. D. Subbarao, the then Finance Secretary, Government of India. In this letter, Sh. D. Subbarao has written that the rates of 2001 were being applied in 2007. This letter was put up to me and is now Ex PW 36/C-1. This letter was dealt with in the department as is clear from the note sheet part of the file, that is, 1/N to 3/N. The note was initiated by Sh. Nitin Jain, Director (AS-I), on 27.11.2007. He had recorded in the note that Government had taken a conscious decision not to bring changes in existing policy and not to invite bids for entry fee. After recording the note, Sh. Nitin Jain marked the file to Sh. A. K. Srivastava, DDG (AS). He marked the file to Member (T), who was out of station and the file was put up to me. I wrote on the file that Member (Finance) may see the draft, which was put up with the note of Sh. Nitin Jain, and revise the draft, that is, draft of

the letter to be sent in response to the letter of Sh. D. Subbarao. I marked the file to Member (Finance). The note of Sh. Nitin Jain is Ex PW 36/C-2 and my note is Ex PW 36/C-3. I have seen the draft and find the same to be the same which was put up to me. The draft is now Ex PW 36/C-4 on page 53. The changes in this draft were made by me in my hand.

I have been shown office copy of letter dated 29.11.2007 addressed to Sh. D. Subbarao, the then Finance Secretary, Government of India. This letter was sent under my signature. The letter is now Ex PW 36/C-5 and bears my signature at point A. Through this letter it was conveyed to the then Finance Secretary that no changes were proposed in the enter fee and the existing policy.

After I marked the file to Ms. Manju Madhvan, she discussed the matter with me and the file again came to me. The finalized draft of the letter to be sent to the Finance Secretary, already Ex PW 36/C-4, was put up to the Minister by me to apprise him of the contents of the draft. I had recorded in my note that para 3 of the letter of Sh. D. Subbarao, Ex PW 36/C-1, may be seen by the Minister as this para related to entry fee. The Minister signed the file and it again came back to me and the letter Ex PW 36/C-5 was sent to the Finance Secretary. My note is Ex PW 36/C-6, dated 28.11.2007. The signature of the Minister appears at point A, which I identify. My signature also appears at point B on this note.

I have been shown letter dated 12.12.2007, written by Shyamla Shukla, Director (Infra), Ministry of Finance, Department of Economic Affairs, Government of India. Through this letter, the Ministry of Finance demanded certain documents alongwith a copy of the letter written by me to Sh. D Subbarao, that is, Ex PW 36/C-5, in response to his letter, Ex PW 36/C-1. The said letter is now Ex PW 36/C-7. This letter was processed in the department as is clear from note sheet page 4/N of this file. The note was initiated by Sh. R. K. Gupta, ADG (AS-I),

on 12.12.2007. Sh. R. K. Gupta proposed that the required copies may be sent to the department of Economic Affairs and also put up a draft of forwarding letter to be sent to that department. He marked the file to Sh. Nitin Jain, Director (AS-I), who marked the file to Sh. A. K. Srivastava, DDG (AS). He proposed that matter may be seen by Member (T) and Secretary, DoT, before the letter alongwith documents was issued to the department of Economic Affairs. Member (T) signed the file and I also signed the same and I marked the file to DDG (AS) and the letter was later issued. The note sheet is now Ex PW 36/C-8 and my signature appears at point A. An office copy of the letter, which was sent to the department of Economic Affairs in response to letter Ex PW 36/C-7, is available at page 1 and the same is now Ex PW 36/C-9. I cannot identify signature on this letter....."

In this deposition, Sh. D. S. Mathur explained the role of Member (F) in the DoT. He also explained as to how letter was received in the DoT from Finance Secretary regarding issue of dual technology licence at prices discovered in 2001 and how it was dealt with by DoT in consultation with Member (F) and a reply was sent on 29.11.2007. He also deposed that after the letter of Finance Secretary dated 22.11.2007 was replied to, Ministry of Finance asked for certain documents and the same were duly supplied.

He has also deposed as to how at a subsequent stage, Member (F) raised the issue again on 30.11.2007 and what was the response of Sh. A. Raja. He has just proved the documents and had not said anything specifically about revision of entry fee. He deposed that Member (F) had asked that the

issue of entry be examined in depth and he agreed with the same. However, he did not depose anything specifically as to why he agreed with Member (F). He has not explained as to why he agreed with Member (F) despite a reply having already been sent to Finance Secretary by him in consultation with Member (F). There is no deposition as to why they considered it necessary to examine the issue of entry fee in department at such a late stage.

PW 36 Sh. D. S. Mathur in his examination-in-chief dated 10.04.2012, page 15, deposed regarding revision of entry fee as under:

> ".....I have been shown TRAI recommendations dated 28.08.2007, D-596, already Ex PW 2/DD. My attention has been drawn to paragraph 2.73 of these recommendations. This paragraph does not constitute recommendations of TRAI and, as such, it was not deliberated upon in the Telecom Commission, but the issue that was raised here was of very great importance and, therefore, in October 2007 all the available members of the telecom commission and myself alongwith supporting officers of DoT had a meeting with the then Minister Sh. A. Raja and we had mentioned that there were several alternatives to sanction applications for new UAS Licences. The alternatives suggested included one of the alternatives of auctioning the spectrum or bidding for the new licence. After this meeting, the then Member (Finance) Ms. Manju Madhvan, drew up a note containing all these details and put up the same to me. I sent that note as an independent note towards the end of October 2007 to the then Minister Sh. A. Raja for his orders. While I was in the department as Secretary, DoT, and till my retirement, this note did not come back to me with any orders of the Minister....."

Thus, Sh. D. S. Mathur has contradicted Sh. Nripendra Misra about revision of entry fee being suggested by TRAI in para 2.73, but to blame others he introduced an independent note, which is not part of record. No Court can take notice of anything which is not part of the judicial record.

1571. PW 36 Sh. D. S. Mathur in his cross-examination dated 11.04.2012, pages 8 and 9, deposed as under:

> ".....As per the resolution constituting the commission, the Member (Finance) is to exercise the powers of the Government of India in financial matters concerning the DoT except to the extent the powers have been conferred on the DoT itself and this is mentioned in para 6. The quorum for holding meeting of the Commission is three full time members. In case of difference of opinion amongst the members of the commission, the decision of the chairman shall be final. In case the Member (Finance) has any difference of opinion with other members of the commission on any financial matter, he has an access to the Finance Minister....."

1572. PW 36 Sh. D. S. Mathur in his cross-examination dated 12.04.2012, page 7, deposed as to how a committee was constituted to study the Recommendations as under:

> ".....On receipt of TRAI recommendations in the department on 29.08.2007, they were entrusted to a committee for examination. It is correct that these recommendations were studied in the department in two parts. Chapters 2 and 4 of the recommendations were studied by the committee headed by Member (T) and chapters 3 and 5 by another committee headed by DDG (AS). The formation of these two committees was approved by me on 20.09.2007 vide Ex PW 36/A-6. On looking at recommendations

dated 28.08.2007 already Ex PW 2/DD, the summary of recommendations is contained in chapter 6 and analysis and recommendations are contained chapters 2, 3, 4 and 5....."

1573. PW 36 Sh. D. S. Mathur in his cross-examination dated 12.04.2012, pages 7 and 8, deposed on auction, revision of entry fee and availability of spectrum as under:

"....."It is correct that in para 6.7, page 137, TRAI recommended auction of all spectrum excluding 800, 900 and 1800 MHz bands in future to ensure efficient utilization of this scarce resource. Paragraph 2.73 of chapter 2 is referable to para 6.7. It is correct that 2G Spectrum of 800, 900 and 1800 MHz band was not recommended to be auctioned by TRAI in view of the legacy and for ensuring level playing field. It is correct that NTP-1999 also talks about level playing field as one of the objectives. It is correct that paragraph 2.32 of recommendations Ex PW 2/DD talks about operators who may not need spectrum. In the same paragraph TRAI recognizes that there may be some operators who need spectrum and spectrum of that band may not be in short supply in chapter 2, while discussing capping of service providers. Paragraph 2.63, page 39, of Ex PW 2/DD says that spectrum pricing should be such that it provides incentive for efficient utilization and discourage creation of self-perpetuating shortages. It is correct that UAS Licence is technology neutral licence. It is also correct that once an operator gets a licence, he applies to the WPC wing for spectrum of a particular type....."

In this deposition, Sh. D. S. Mathur deposes that auction was not recommended by TRAI.

1574. PW 36 Sh. D. S. Mathur in his cross-examination dated 16.04.2012, page 5, deposed regarding approval by

Telecom Commission as under:

> ".....In file Ex PW 36/A-3, D-5 vol. I, the note dated 11.10.2007, already Ex PW 36/A-14, was agreed to by me on the same date and note was for the approval by the Minister of the recommendations of Telecom Commission. It is correct that there was no dissenting note in the recommendations of the Commission. It is correct that Telecom Commission was not under any pressure or coercion to accept or reject the recommendations of TRAI....."

Here, Sh. D. S. Mathur deposed that when the TRAI Recommendations were approved by the Telecom Commission, Member (F) did not put a dissenting note.

1575. PW 36 Sh. D. S. Mathur, in his cross-examination dated 17.04.2012, pages 7 to 10, deposed about presentation in Cabinet Secretariat, letter of Finance Secretary and objections of Member (F), as under:

> ".....I have been shown file D-363, already Ex PW 36/DH, wherein on page 393, there is a letter dated 20.11.2007, written by Sh. R. J. S. Kushwaha, the then Joint Wireless Advisor, with the copies endorsed to the then Principal Secretary to the Hon'ble PM, myself and others. The letter is now Ex PW 36/DM. This letter encloses with it a copy of presentation to be made to the Cabinet Secretariat on 20.11.2007. The copy of the presentation is now Ex PW 36/DM-1, pages 394 to 406.
>
> I have been shown file D-9, already Ex PW 36/C, wherein on page 74, there is a letter written by the Finance Secretary to me. The letter is already Ex PW 36/C-1. This letter also refers to the presentation made on 20.11.2007 before the Cabinet Secretary. The letter says the presentation was made by me, but it might have been made by any member of my team in my presence. This letter of the

Finance Secretary was processed in our department for sending a reply to him. For sending reply to the Finance Secretary, Sh. Nitin Jain recorded a note Ex PW 36/C-2 in this file itself and also prepared a draft reply. This note sets out the policy of the Government on the issue of entry fee. As per file D-363 vol. I, already Ex PW 36/DH-5, page 56, the then Finance Secretary had a telephonic discussion with me, as recorded by him on this page and as per recording here, I told the Finance Secretary that reply to his letter is pending approval by Minister (Telecom). The note is now Ex PW 36/DM-2. After reading this, I do remember that Finance Secretary had spoken to me.

The reply was sent to the Finance Secretary on 29.11.2007 vide Ex PW 36/C-5 in file Ex PW 36/C. In the light of letter of Finance Secretary, Ms. Manju Madhvan, Member (Finance) recorded a note in file Ex PW 36/B on 30.11.2007 and that note is already Ex PW 36/B-11. Ms. Manju Madhavan had seen the draft of the letter sent to Finance Secretary. I cannot say if she had also seen the note of Sh. Nitin Jain already Ex PW 36/C-2, file D-9, Ex PW 36/C. I have been shown my noting Ex PW 36/C-3 and this noting was recorded by me in reference to the draft reply put up by Nitin Jain, to be sent to the Finance Secretary and not in reference to his note Ex PW 36/C-2. This note was about the draft only and the draft was to be revised. The draft reply had to be consistent with the policy of the DoT at that time. It is true that Member (Finance) in the DoT is a member of Telecom Commission also and she was also one of the members of the commission at the time when the TRAI recommendations were considered and approved. As per file Ex PW 36/B, pages 18/N to 20/N, already Ex PW 36/B-13, the Minister directed on 04.12.2007 that the approvals regarding LOIs should be implemented. The file was received by me on the same date and I marked it downwards. It is wrong to suggest that I endorsed

the decision of the Minister. I can neither admit nor deny that wherever I wanted any issue to be reopened, I recorded so in the note. It is correct that in this case I did not record anything regarding reopening the issue. It is correct that in the same file on pages 7/N and 8/N, vide my note already Ex PW 36/B-9, I recorded regarding reopening the issue mentioned therein. However, regarding the note already Ex PW 36/B-13, I did not reopen the issue. Volunteered: I did not record anything to reopen the issue as a comprehensive note had already been put up by Member, Finance, Ex PW 36/B-11, with which I had agreed, and the Minister overruled this note and there was no need to reopen the issue again....."

This deposition shows in detail as to how the objections of Ministry of Finance were dealt with in detail and the role of Member (F) and Secretary (T) in that process. It shows as to how Member (F) agreed to the reply sent to the Finance Secretary and later on raised the issue of entry fee.

1576. PW 36 in his further cross-examination dated 18.04.2012, pages 5 and 6, deposed about constitution of committee as under:

".....I have been shown note dated 07.11.2007 of Sh. Nitin Jain, already Ex PW 36/B-10 (D-7), wherein at para 5 sub-para ii, there is a reference to constitution of committee already approved by Secretary (T). I do not remember if this committee was constituted by me or was in existence from before. My signature at point A, page 12/N, does not indicate that the committee was constituted with my approval. It is mentioned in letter Ex PW 36/DK-9 dated 15.10.2007 that different cells have been allocated responsibility for processing of applications.

I am not sure if DDG (AS) is of the rank of Joint Secretary to Government of India. I have been shown file D-7, already Ex PW 36/B, wherein there is a note, already Ex PW 36/B-8, at pages 6/N and 7/N. In the left margin opposite para 4, at point X, it is noted that WPC file for availability of spectrum is also attached with it. The note is dated 02.11.2007. After the order regarding issuance of LOIs was passed on 02.11.2007, the WPC file was de-linked on 07.11.2007 as mentioned at point X……."

The deposition shows how Sh. D. S. Mathur is pleading ignorance about important issues.

PW 36 further deposed in his cross-examination dated 19.04.2012, page 1, as under:

"……..My letter to the Finance Secretary, Ex PW 36/C-5 (D-9, already Ex PW 36/C), was in accordance with the policy then being followed by the department……."

Here, Sh. D. S. Mathur defends his letter to the Finance Secretary.

1577. PW 36 in his further cross-examination dated 19.04.2012, pages 11 and 12, regarding objection of Ms. Manju Madhvan, deposed as under:

"……..I have been shown DoT file already Ex PW 36/C (D-9). The reply to the Finance Secretary vide letter Ex PW 36/C-5 was sent after a detailed draft reply was prepared in the department and the draft reply is already Ex PW 36/C-4. This reply was also discussed with Member (Finance), Ms. Manju Madhvan, and she also agreed to it. She did not record any dissenting note. The letter mentioned in the note of Ms. Manju Madhvan, Ex PW 36/B-11, had already been replied to by the time this note was approved. **Volunteered**: When the reply was sent to

Sh. D. Subbarao, the then Finance Secretary, it contained the policy and position of the department at that time. However, the note of Ms. Manju Madhvan was a suggestion for further line of action in the department.

As administrative head of the department, I could have called any file and could have made any noting thereon....."

Here, Sh. D. S. Mathur deposed that the reply was discussed with Member (F). However, by volunteering, Sh. D. S. Mathur has tried to give new interpretation to the whole issue.

1578. As per evidence of PW 36 dated 20.04.2012, page 5, in response to a letter dated 19.11.2007, Ex PW 36/DQ-21, received from CVC, a reply dated 18.12.2007, Ex PW 36/DN-1, was sent under the signature of Sh. D. S. Mathur. An annexure to this letter contains details of the entire policy and procedure followed by DoT. Portion X to X of this annexure, which is part of para 6 (vii)(iii) reads as under:

".....Accordingly, the Government has taken a conscious decision not to bring changes in the existing policy and **not to** invite bids for entry fee for grant of UAS licenses as all the pending applications are in terms of existing UASL guidelines. Selling/ auction of 2G spectrum is not envisaged under telecom access services licences, nor has it been recommended by TRAI....."

Thus, the stand of DoT was that consciously no change in the policy was done for issue of WPC licences and bidding/ auction was neither provided in the licence agreement nor the same was recommended by TRAI.

1579. PW 36 Sh. D. S. Mathur in his further cross-

examination dated 20.04.2012, page 6, deposed about vetting of LOI, as under:

> ".....I have been shown file D-7, already Ex PW 36/B, wherein at pages 15/N to 17/N, there a note of Sh. Shah Nawaz Alam, Director (LF-3), dated 23.11.2007, preceding the note of Ms. Manju Madhvan dated 30.11.2007 and my signature at point B. The note of Sh. Shah Nawaz Alam is now Ex PW 36/DQ-22. Through this note, draft LOI was referred for vetting to the LF branch. In this note, he has also recommended that LOI be granted in the existing legally vetted format only, as mentioned at points A to A. This view is of LF branch. This matter was not further sent to AS branch. The draft LOI forwarded by LF branch was not finalized at this stage. In his note Ex PW 36/B-13, the then Minister Sh. A. Raja recorded at points A to A that for this purpose LOI proforma as issued in the past may be used for LOIs in these cases also. The file came to me and I marked the file downwards vide my signature at point B, page 20/N....."

1580. PW 36 Sh. D. S. Mathur in his further cross-examination dated 20.04.2012, page 6, deposed as to how a Parliamentary question about auction of spectrum was replied to as under:

> ".....Ms. Manju Madhvan was Member (Finance) when TRAI recommendation dated 28.08.2007 were received. Reply to Parliamentary questions is approved by the Minister of the department. I do not remember if reply to unstarred question is approved by the Secretary of the department. In file already Ex PW 36/DN, reply to an unstarred question 1810 was sent during my tenure to the effect that Government does not propose to auction the spectrum taking into account the TRAI recommendations. The question and reply are collectively Ex PW 36/DQ-23, at page

8....."

1581. PW 36 Sh. D. S. Mathur in his further cross-examination dated 20.04.2012, page 7, deposed as to how the file was called back by Ministry of Law & Justice to give its opinion as under:

> ".....I have been shown DoT file D-7, already Ex PW 36/B, wherein vide note Ex PW 36/DK-16, the file was sent back by the Joint Secretary of Ministry of Law and Justice to the DoT for the reason mentioned therein. As per the noting of Sh. A. K. Srivastava at point A, the file was called back by the Joint Secretary, Law, on the same day. It is not clear from the file whether the information sought by the Ministry of Law and Justice was provided by the DoT or not. The signature of Sh. K. Sridhara, Member (T), bears the date of 01.11.2007 and below it there is endorsement with signature of Sh. A. K. Srivastava, which bears the date of 31.10.2007....."

It may be noted that Ministry of Law & Justice in the first instance had declined to give any opinion citing lack of clarity in the reference but later on called the file back and gave an entirely different opinion.

1582. In his cross-examination dated 24.04.2012, pages 3 and 4, PW 36 Sh. D. S. Mathur deposed about auction as under:

> ".....In its recommendations dated 28.08.2007, TRAI had recommended that spectrum in 800, 900 and 1800 MHz band should not be auctioned....."

Thus, Sh. D. S. Mathur conceded that TRAI had not recommended auction of 2G spectrum band.

1583. PW 36 in his cross-examination dated 24.04.2012, pages 4 to 6, deposed about reply to the Finance Secretary as under:

> ".....I have been shown DoT file D-9, already Ex PW 36/C, wherein on page 74, there is a letter of the then Finance Secretary addressed to me, already Ex PW 36/C-1. It is correct that this letter pertains to cross-over licences for GSM operations. It is also correct that the fee mentioned in it relates three CDMA operators who were given cross-over licence. I have also been shown note dated 27.11.2007 of Sh. Nitin Jain, Director (AS-I), already Ex PW 36/C-2. The subject of the note is mentioned in the first two lines and this note relates to letter dated 22.11.2007 of the Finance Secretary. This note justifies non-revision of entry fee for various reasons mentioned therein, including the fact that 51 new UAS Licences have already been issued on the existing entry fee. I have been shown my reply dated 29.11.2007, Ex PW 36/C-5, sent to the then Finance Secretary. My reply contains the then stand and policy of the DoT.
>
> I have been shown DoT file D-7, Ex PW 36/B, wherein there is a note of Ms. Manju Madhavan, already Ex PW 36/B-11. It is correct that this note was contrary to existing policy as this note proposed to amend the existing policy. It is wrong to suggest that this note of Ms. Manju Madhavan was at the behest of old operators. **Volunteered**: The note of Ms. Manju Madhavan itself speaks that it was initiated on the receipt of communication from the then Finance Secretary.
>
> It is wrong to suggest that note of Ms. Manju Madhavan was misplaced as the communication of Finance Secretary spoke of cross-over licences. It is wrong to suggest that there was nothing wrong with the existing policy. It is wrong to suggest that Ms. Manju Madhavan and myself raised unnecessary controversy about revision of entry fee. I followed

the existing policy during my tenure as Secretary, DoT.

I do not remember if I had told the IO about the note of Ms. Manju Madhavan recorded at the end of October 2007, which I forwarded to the Minister, confronted with Ex PW 36/DO, dated 16.12.2010 wherein it is so recorded at point A to A. I had told the IO that I have a copy of that note and I can provide a copy of the same. I could not do it at that time and I can do it now. This was an important note and in order to keep my memory fresh, I retained a copy of it with myself. I am aware that all civil servants are governed by CCS Conduct Rules. It is wrong to suggest that retaining copy of such a note contravenes CCS Conduct Rules. It is correct that Ms. Manju Madhavan does not mention about this note as well as the reply sent to the then Finance Secretary in her note dated 30.11.2007 already Ex PW 36/B-11. I do not remember if the issue of revision of entry fee was discussed in any meeting of telecom commission. It is wrong to suggest that no such note was prepared by Ms. Manju Madhavan. **Volunteered**: I can produce a copy of the note, if so directed by this Court……."

In this deposition, Sh. D. S. Mathur is not only evasive, but contradictory also, as he started finding fault with the then existing policy.

1584. The evidence of Sh. D. S. Mathur has been quoted extensively above. If the same is read collectively, it is clear that he is not sticking to any point and changes his opinion with the change of question. He has justified his reply to the Finance Secretary regarding non-revision of entry fee and at the same time tried to resile from it. He first wrote a letter to the Finance Secretary justifying non-revision of entry fee and thereafter, also

agreed with the note of Member (F) regarding the need for revision of entry fee without citing any good reason. Once these two officers had justified non-revision of entry fee to the Finance Secretary, there was no reason for them to rake up the issue again without citing any good reasons. The most unfortunate part is that Member (F) cited the same letter of Finance Secretary for raking up the issue, a reply to which had been sent with her consultation. This shows the obstructive attitude of the two officers. The end result is that Sh. D. S. Mathur is not a reliable witness and is capable of saying and doing anything. Thus, his testimony deserves to be discarded in toto. He is unworthy of reliance.

1585. PW 42 Sh. Shah Nawaz Alam, Director (LF-III), in his cross-examination dated 28.05.2012, page 5, deposed about examination of TRAI Recommendations in LF Branch/ Finance Branch as under:

> ".....I do not know if TRAI recommendations were sent by AS division to LF division for its comments but it is so recorded in the comments of Sh. Nitin Jain available at page 6/N. I do not recall if I examined TRAI recommendations or not dated 28.08.2007. I do not recall if LF division examined the TRAI recommendations and gave no objection. I have been shown file D-6, Ex PW 36/E, and I am not acquainted with this file. Sh. H. R. Arora was accounts officer in the LF branch....."

Thus, this witness from Finance branch has completely disowned examination of TRAI Recommendations by Finance/ LF branch, which is entirely contrary to record. No reliance can be placed on such testimony.

1586. However, PW 97 Sh. B. B. Singh, DDG (LF/ Finance Branch), [Ex PW 36/A-6 (D-5)] was a member of the committee constituted to examine the TRAI Recommendations and there is no record that he made any observation on the revision or non-revision of entry fee. In his long deposition, he is totally silent on this point.

1587. PW 60 Sh. A. K. Srivastava in his cross-examination dated 14.09.2012, page 4, deposed as under:

> ".....Whether a policy matter is to be brought before Telecom Commission or not is the prerogative of the Chairman of the Telecom Commission. It is correct that on certain occasions Telecom Commission differed from the recommendations of TRAI. MOC&IT can overrule the decision taken by the Telecom Commission, as he is the final authority for the department. MOC&IT modified the order of Telecom Commission dated 10.10.2007 on certain points. There was no agenda for entry fee revision by the Telecom Commission in its meeting dated 07.12.2007 and accordingly, it was not discussed as per the minutes of the meeting dated 13.12.2007, already Ex PW 36/DP-1....."

This witness deposed that there was no agenda before Telecom Commission for revision of entry fee. However, entry fee was an issue before the Commission as the dual technology spectrum was to be allocated at the same entry fee, which was being charged for a UAS licence. Moreover, in the matter of finance, the views of Member (F) were to prevail and, as such, she was at liberty to ask for revision of entry fee at least for dual technology.

1588. PW 61 Sh. G. S. Grover, Member (Services), Telecom

Commission, deposed in his cross-examination dated 05.09.2012, page 3, as under:

> ".....I had attended the meeting of telecom commission held on 07.12.2007. As per the minutes of the meeting, already Ex PW 36/DP-1, Sh. D. Subbarao and Ms. Manju Madhavan were also present in the meeting. Whatever was discussed in the meeting have been minuted in the minutes Ex PW 36/DP-1....."

Thus, Finance Secretary had attended at least one meeting of Telecom Commission after his letter dated 22.11.2007 and its reply dated 29.11.2007 by DoT. If he felt so strongly about the revision of entry fee, he, being custodian of finances of the country, could have raised the issue.

1589. PW 60 Sh. A. K. Srivastava in his examination-in-chief dated 17.08.2012, pages 6 to 8, deposed about reply to Finance Secretary and action of Finance Ministry on receipt of reply, as under:

> ".....I have been shown DoT file D-9, already Ex PW 36/C, and this file was opened in the AS cell of DoT in the official course of business after receiving a reference from Ministry of Finance, inter alia, regarding cross-over technology approvals given to three CDMA operators. I have been shown pages 1/N to 3/N, wherein there is a note of Sh. Nitin Jain, Director (AS-I) dated 27.11.2007. Signature of Sh. Nitin Jain is at point C, which I identify and the note is already Ex PW 36/C-2. This note was put up to me on the same day and I marked the file to Secretary (T). This note was put up to deal with the letter dated 22.11.2007 written by the then Finance Secretary Dr. D. Subba Rao to the then Secretary (T) Sh. D. S. Mathur, already Ex PW 36/C-1, wherein he had expressed his concern, inter alia, on the rates of

2001 being followed in 2007 and had also asked the DoT to revert to him about the concern expressed by him in this letter. Sh. Nitin Jain recorded in detail the facts and circumstances relating to the issues raised by the Finance Secretary in his aforesaid letter dated 22.11.2007 and endeavored to address the issues raised in the letter. I went through the note and agreed with it. My signature is at point D. I marked the file to Secretary (T) Sh. D. S. Mathur. His note dated 27.11.2007 alongwith his signature is already Ex PW 36/C-3. Sh. Nitin Jain had also put up a draft reply to be sent to the Finance Secretary and I had also agreed with this draft reply. However, that draft reply is not on the file. A reply was sent by DoT to the Finance Secretary vide letter dated 29.11.2007, office copy of which is already Ex PW 36/C-5. The draft of this letter was prepared in the office of Secretary (T).

Thereafter, Ministry of Finance sent another letter dated 12.12.2007, already Ex PW 36/C-7, under the signature of Shyamla Shukla, Director (Infra), to the DoT asking for certain documents, as mentioned therein. This letter was processed in this file at page 4/N. Sh. R. K. Gupta, ADG (AS-I), put up a note alongwith draft reply on 12.12.2007. The note is already Ex PW 36/C-8. I identify signature of Sh. R. K. Gupta at point B. This file was put up to me through Director (AS-I) on 12.12.2007. I marked the file to Member (T), who in turn marked the file to Secretary (T). My endorsement alongwith signature is now Ex PW 60/K-142. Secretary (T) approved the proposal of sending a reply to the aforesaid letter to the Minister of Finance. The reply was sent vide letter dated 13.12.2007, office copy of which is already Ex PW 36/C-9, under the signature of Sh. R. K. Gupta, ADG (AS-I). I identify his signature at point A on the office copy of this letter....."

This deposition shows that the letter of Finance Secretary was duly replied to and how after receipt of reply, the

Finance Ministry had required certain documents, that is, Cabinet Note dated 31.10.2003, decision of the Cabinet on the note and copy of DO letter sent by Secretary (T) to Finance Secretary, and that too were supplied vide letter dated 13.12.2007, Ex PW 36/C-9. However, this witness has very cleverly avoided to mention the consultation with Member (F) in sending the reply. It may be noted that Member (F) was duly consulted and the file was specifically marked to her by the Secretary (T) by recording that "Member (F) may see and advise". What is the issue in this case? The main issue is that Finance Branch/ Finance Ministry was bypassed. But this is not the case. An officer of the rank of Special Secretary to Government of India, who was a representative of Finance Ministry in DoT, was consulted, but the witness suppressed the same. This shows the attitude of prosecution towards the Court proceedings. The controversy is that views of Member (F) regarding revision of entry fee were ignored by Sh. A. Raja. However, the witness concealed past concurrence of Member (F) to non-revision of entry fee.

1590. PW 110 Sh. Nitin Jain in his cross-examination dated 22.03.2013, pages 10 and 11, deposed as under:

> ".....It is correct that letter dated 22.11.2007, already Ex PW 36/C-1, which is available at page 74, in the aforesaid file was written by the then Finance Secretary to the Secretary (T). It is correct that in order to respond to this letter of finance secretary, a detailed note dated 27.11.2007, already Ex PW 36/C-2 was recorded by me. It is correct that in this note I had defended the decision of Government of India in not inviting bid in grant of

UAS licences. **Volunteered**: TRAI also did not propose bidding process.

This note was agreed to by Sh. A. K. Srivastava also on the same date and Secretary (T) marked the note to Member (Finance) for examination and advice. Member (Finance) thereafter, sent the file back by recording "discussed". Thereafter, the file went to the Minister, who approved the note vide his signature at point A on page 3/N. Thereafter, Secretary (T) wrote a letter dated 29.11.2007, already Ex PW 36/C-5, page 52, in response to the aforesaid letter of Finance Secretary....."

This deposition shows that TRAI did not recommend bidding. It also shows the role of Ms. Manju Madhavan, Member (F), in the reply to Finance Secretary during which she was duly consulted and also agreed to the reply.

1591. DW 26 Sh. Santokh Singh, LA (T), deposed that Ms. Manju Madhvan, Member (F), had attended the meeting of Full Telecom Commission on 10.10.2007, vide minutes contained in CD-137(A), Ex PW 36/DP. In this meeting, he was also present. He deposed that in that meeting, she did not raise any issue. It is in this meeting that TRAI Recommendations were taken up for consideration and approval.

1592. DW 1 Sh. A. Raja in his examination-in-chief dated 02.07.2014, pages 11 to 13, deposed about letter of Finance Secretary about revision of entry fee as under:

".....In the year 2007, I came across correspondence between Secretary (T) and Secretary (Finance) regarding entry fee. Secretary (Finance) wrote a letter to the Secretary (T) that the entry fee, which was fixed in the year 2001, had to be revised or indexed. The letter was received by the

department and it was processed in the files of the department and it was put up to me probably on 28.11.2007, where the Cabinet decision of 2003, provisions of NTP-1999 and the recommendation of TRAI were mentioned and reply was sent accordingly with my approval. Thereafter, during a Cabinet meeting, I discussed with Minister (Finance) in this regard and he acknowledged that he went through the documents, which were not earlier available in the Ministry of Finance. I explained that it was consistent policy of the TRAI from 2005 onwards. The entry fee has been maintained at its base rate of 2001 to maintain level playing field, which is the prime element contemplated in NTP-1999 and also explained that though the entry fee is fixed, there is another component other than entry fee in the name of licence fee in terms of AGR as inbuilt and inherent indexation. Minister of Finance accepted the policy of the Government and he wanted to discuss other avenues to explore the possibilities of getting more revenue from the telecom operators since they were earning profits. I suggested that there was no contractual obligation on the part of the Government to allot spectrum beyond 6.2 MHz as per the licence agreement or otherwise and the operators were enjoying up to 10 MHz without any upfront charges for spectrum used by them. He wanted to discuss further in this regard and I shared this with the Hon'ble Prime Minister also in another meeting and it was decided that both the Ministries had to work in this direction. Accordingly, meetings took place between the Ministry of Finance and DoT where Finance Minister and myself attended and prepared a note probably in the month of July 2008. Then the note was handed over to the Hon'ble Prime Minister in triangular meeting of Hon'ble Prime Minister, Finance Minister and myself, where it was decided that spectrum beyond 6.2 MHz must be charged. Thus, I apprised the Finance Minister of everything

regarding entry fee and AGR, before issuance of licences and also after issuance of licences and, as such, there was no disagreement between the two Ministries.

Ques: Would you please tell as to how many meetings took place between the PMO, Ministry of Finance and DoT before issuance of LOIs on 10.01.2008?

Ans: Before this, I had met the Finance Minister and Hon'ble Prime Minister once or twice and apprised them of the events in the DoT. Officer level meetings also took place between the three offices.

After our reply dated 29.11.2007 to the Finance Secretary, no objection, whatsoever, was raised by the Ministry of Finance regarding entry fee....."

This deposition shows that issues raised by Finance Secretary were duly considered by DoT and after reply to letter, Finance Ministry did not raise any objection. He also deposed that same entry fee was maintained due to consideration of level-playing field.

1593. DW 1 Sh. A. Raja in his cross-examination dated 22.07.2014, pages 11 to 13, deposed about revision of entry fee and spectrum pricing as under:

"....**Ques**: Letter dated 22.11.2007, Ex PW 36/C-1, was received from Secretary (F) in the DoT and the same was replied to by Secretary (T) vide letter dated 29.11.2007, Ex PW 85/DB. I put it to you that despite this reply, Ministry of Finance was still having objection on spectrum pricing and it was on the agenda of full Telecom Commission?

Ans: The letter, which was sent by the Secretary (F) to the Secretary (T), related to the entry fee, for which the reply was sent by the Secretary (T) to the effect that entry fee need not be changed in the

context of Cabinet decision 2003, UASL Guidelines and TRAI recommendations 2007. With regard to spectrum price, as I said in my examination-in-chief earlier, I only suggested to the Hon'ble Finance Minister and the Hon'ble Prime Minister that other avenue can be opened to explore the revenue generation for the Government by revising the spectrum pricing formula. Accordingly, I only gave a note to the department that spectrum pricing should be discussed at length in the Telecom Commission and on the basis of my note only, the Telecom Commission was convened in the first week of January 2008. Therefore, the entry fee and the spectrum pricing are two different things as defined in the Cabinet decision 2003, where the former had to be based on the TRAI recommendations and the later had to be discussed with the Finance Ministry. Therefore, the question of Ministry of Finance still having objection does not arise.

The meeting of Telecom Commission was scheduled in first week of January, may be 09.01.2008.

Ques: I put it to you that this meeting of Telecom Commission was deferred at your instance to 15.01.2008, so that the LOIs could be issued on 10.01.2008 before any decision could be taken by the Commission on spectrum pricing?

Ans: Having directed the secretary (T) to convene the meeting of Telecom Commission on my own accord to discuss the spectrum pricing formula at length at the earliest, there was no reason for me to get the meeting of Telecom Commission adjourned. Moreover, the spectrum pricing has nothing to do with issuance of LOIs whatsoever. In the memo of Telecom Commission itself, it is mentioned that MOC&IT wanted the meeting of the commission convened at the earliest to discuss about the spectrum pricing.

Ques: I put it to you that no condition was put in the LOIs that spectrum price may be revised, at your

instance?
Ans: The licences were issued under the UASL Guidelines, where spectrum pricing can be revised at any point of time by the licensor. As I put it earlier, issuance of LOIs is not at all connected with spectrum pricing which can be revised by the Government at any time. Therefore, this suggestion is incorrect and speculative....."

He further deposed in his cross-examination on 23.07.2014, pages 1 and 2, as under:

".....**Ques**: I put it to you that Ministry of Finance was insisting on charging 4.4 MHz initial spectrum also and this issue was not settled before the issuance of LOIs?
Ans: It is incorrect. When the letter dated 22.11.2007 written by the Finance Secretary was replied by the Secretary (T) on 29.11.2007, both prior to and subsequent to the letter, discussions were held between the Finance Minister and myself over the issues of entry fee, issuance of LOIs and other related issues. During this meeting, the legal position on entry fee and the spectrum pricing were discussed in detail. I explained that the concept of "level playing field" is contemplated in the National Telecom Policy, 1999, which is based on the subscriber acquisition cost between the new operators and the incumbent operators, whereas the spectrum pricing was being done for the purpose of effective, optimal and rational usage of spectrum, which is also mentioned in the NTP-99, which were not known to the Hon'ble Finance Minister and the Finance Ministry also. The Finance Minister accepted the position after going through the documents of Cabinet decision of 2003, NTP-99, UASL Guidelines 2005 and the TRAI recommendations 2007. Since the licence includes start-up spectrum on demand, the position of not charging it separately was accepted by the Ministry.

It is wrong to suggest that the Finance Ministry did not agree to not charging the initial spectrum separately. It is further wrong to suggest that I went ahead with the issuance of LOIs ignoring the objections of the Finance Ministry. It is further wrong to suggest that this issue remained alive even after the issuance of LOIs. **Volunteered**: The decisions taken in this regard were duly reflected in the files. Subsequent proceedings after licences were issued also clearly bear out that there was no issue which remained unsettled. Finance Minister and myself agreed to charge the spectrum only beyond 6.2 MHz and the formula was designed in the DoT and conveyed to the Finance Ministry through the Secretary (T) Sidharath Behura.

Ques: Was the aforesaid position conveyed to the Ministry of Finance through letter dated 08.02.2008, Ex PW 78/N?

Ans: Must be through this letter.

It is wrong to suggest that DoT agreed to charge spectrum beyond 4.4 MHz also. It is wrong to suggest that the issue of spectrum pricing was unsettled and it was still alive. I have been shown my letter dated 18.12.2010, addressed to the IO. The same is correct and is now Ex DW 1(A-1)/PX. On seeing this letter, I recall that I was initially called for interrogation in December 2010……."

In his further cross-examination dated 23.07.2014, page 7, DW 1 deposed as under:

"…….Had I accepted the note Ex PW 36/A-19 of the then Secretary (T) Sh. D. S. Mathur, TTSL and TTML would not have got in-principle approval for dual technology……"

The deposition of Sh. A. Raja is in accordance with the official record.

1594. Thus, perusal of evidence of the officials of DoT

shows that on consideration of TRAI Recommendations, their view regarding entry fee was that no revision of entry fee was recommended.

Their appreciation of Recommendations was not correct one, though subsequently Sh. D. S. Mathur tried to back out from this. There is absolutely no material on record that anyone in DoT understood that TRAI had recommended revision of entry fee.

Objection of Ministry of Finance relating to Revision of Entry Fee:

1595. The then Finance Secretary PW 78 Sh. D. Subba Rao wrote a letter dated 22.11.2007, Ex PW 36/C-1 (D-9), to the then Secretary (T) PW 36 Sh. D. S. Mathur, enquiring as to how three CDMA operators were given cross-over licence for GSM operations at a fee of Rs. 1600 crore discovered in 2001. The relevant parts of the letter reads as under:

> "..... .....
> 1. During the presentation on the Spectrum Policy to the Cabinet Secretary on 20 November 2007, you had mentioned, among other things, that: (i) three CDMA operators were given crossover licence for GSM operations; (ii) the fee for this licence was determined at Rs. 1600 crore (for all India operations with pro-rata determination for less than all India operations); and (iii) that one of the licensee has already paid the licence fee.
> 2. The purpose of this letter is to confirm if proper procedure has been followed with regard to financial diligence. In particular, it is not clear how the rate of Rs. 1600 crore, determined as far back as

in 2001, has been applied for a licence given in 2007 without any indexation, let alone current valuation. Moreover, in view of the financial implications, the Ministry of Finance should have been consulted in the matter before you had finalized the decision.

3. I request you to kindly review the matter and revert to us as early as possible with responses to the above issues. Meanwhile, all further action to implement the above licences may please be stayed. Will you also kindly send us copies of the letters of permission given and the date?

…….
……."

1596. This letter was duly processed in the DoT in file D-9, Ex PW 36/C, and it is instructive to take a look on the note dated 27.11.2007, Ex PW 36/C-2, recorded by Sh. Nitin Jain, which reads as under:

"PUC is a D.O. No.10709/FS/2007 dated 22.11.2007 from Finance Secretary regarding cross over technology approvals given to three CDMA operators.

2. A brief chronology of Licensing of CMTS/ UAS is as given below:

(i) The Licensing of Cellular Services was initially done in phases. In first phase, two Cellular Mobile Telephone Services (CMTS) Licences were awarded in November 1994 in each of the four Metro cities of Delhi, Mumbai, Kolkata and Chennai based on Beauty Parade and Licence fee was predetermined.

In the second phase, the two CMTS Licences were awarded in December 1995 in 18 Telecom Circles Licence Service Areas based on a bidding process (bids were for licence fee spread over 10 years licence period, this didn't include spectrum charges). In addition, right of the government was reserved to operate the services as third operator.

(ii) The NTP-99 regime (effective from April 1999)

of revenue share introduced multipoly. The existing operators were migrated to Revenue Sharing Regime w.e.f. 1.8.1999. MTNL and BSNL were also given CMTS Licences in 1999-2000. The licences were issued to 4th cellular operator in 2002 based on bidding for entry fee. The annual licence fee as revenue share and spectrum charges were payable separately.

(iii) As per the Cabinet decision dated 31.10.2003, the recommendations of Group of Ministers (GoM) on Telecom matters chaired by the then Hon.ble Finance Minister, inter-alia, on issues as quoted below was approved:

Para 2.4.6 (i) of Cabinet note:

"The scope of NTP-99 may be enhanced to provide for licensing of Unified Access Services for basic and cellular licence services and unified Licensing comprising all telecom services. Department of Telecommunications may be authorised to issue necessary addendum to NTP-99 to this effect."

Para 2.4.6 (ii) of Cabinet note:

"The recommendations of TRAI with regard to implementation of the Unified Access Licensing Regime for basic and cellular services may be accepted.

DoT may be authorised to finalise the details of implementation with the approval of the Minister of Communications & IT in this regard including the calculation of the entry fee depending on the date of payment based on the principle given by TRAI in its recommendations."

Para 2.4.6 (vi) of Cabinet note:

"If new services are introduced as a result of technological advancement, which require additional spectrum over and above the spectrum already allotted/ contracted, allocation of such spectrum will be considered on payment of additional fee or

charges; these will be determined as per guidelines to be evolved in consultation with TRAI."

(iv) It is mentioned that TRAI in it's recommendation dated 27th October 2003 on Unified Licensing has, inter-alia, recommended as below:

- In Unified Licensing regime, the service providers may offer basic and/or cellular services using any technology.
- The existing entry fee of the fourth Cellular Operator would be the entry fee in the new Unified Access Licensing Regime. BSOs would pay the difference of the fourth CMSP's existing entry fee and the entry fee paid by them. It may be recalled that, even in the past, entry to cellular and basic services has been on fixed fee basis, e.g., for metros in the case of cellular and for the second BSO.
- The guidelines will be published by the Government/ Regulator to include various terms & conditions of authorisation, e.g., nominal entry fee, Universal Service Obligation (USO), security conditions, etc. Service providers who need spectrum for their services will approach Government of India separately. The guidelines for spectrum allocation which would cover the methodology for spectrum pricing, will also be notified by the Government. Service providers would be given choice to migrate to the new regime or maintain the present position.

(v) Based on the cabinet decision, an addendum to NTP-99 was notified on 11-11-2003. (copy at **2/c**) .

(vi) **The present guidelines of UAS Licensing, broadly, stipulates that:**

(a) Licences shall be issued without any restriction on the number of entrants for provision of Unified Access Services in a Service Area.

(b) Entry Fee and Licence fee

The entry fee varies from 1 Crore to 233 Crores depending on service area. The Licence fee payable is 10%, 8% & 6% of Adjusted Gross Revenue (AGR) of the service provider for Category 'A/ Metro', Category 'B' and Category 'C' Service Areas

respectively w.e.f. Ist April, 2004. The details are placed at **3/c**.

(c) Spectrum Allotment and Spectrum Charges

The spectrum charges are levied separately. For wireless operations in subscriber access network, the frequencies shall be assigned by WPC wing of the Department of Telecom from the frequency bands earmarked in the applicable National Frequency Allocation Plan and in coordination with various users.

Initially a cumulative maximum of upto 4.4 MHz + 4.4 MHz shall be allocated in the case of TDMA based systems @ 200 KHz per carrier or 30 KHz per carrier or a maximum of 2.5 MHz + 2.5 MHz shall be allocated in the case of CDMA based systems @ 1.25 MHz per carrier, on case by cast basis subject to availability.

The detailed UAS guidelines dt. 14-12-2005 are placed at **4/c**.

(vii) TRAI in it's recommendation dated 28th August 2007 on Review of license terms and conditions and capping of number of access providers has, inter-aia, recommended as below:

- In future all spectrum excluding the spectrum in 800, 900 and 1800 bands should be auctioned so as to ensure efficient utilization of this scarce resource.
- A licensee using one technology may be permitted on request, usage of alternative technology and thus allocation of dual spectrum. However, such a licensee must pay the same amount of fee which has been paid by existing licensees using the alternative technology or which would be paid by a new licensee going to use that technology.

(viii) In the present recommendation of TRAI dated 28-8-2007 has not recommended any changes in entry fee/ annual license fee. It is mentioned that what is being paid up front is entry fee and not the annual license fee or spectrum charges.

(ix) The TRAI's recommendations were accepted by

the Government on 17th October 2007 and in-principle approvals were given on 18th October 2007 to M/s. Reliance Communications Ltd., M/s. HFCL and M/s. Shyam Telelink to use GSM technology under the existing UAS license subject to payment of prescribed fee(equal to entry fee for new UASL in the service area). M/s. Reliance paid Rs.1651.5701 crores on 19.10.2007. Therefore, the policy has been implemented in a transparent manner and there has been no change in existing policy. It is worth mentioning that after the announcement of UASL guidelines in 2003, about 51 new UAS licenses have already been issued and the upfront entry fee as per existing stipulation has been paid by them.

3. The Government has taken a conscious decision not to bring changes in the existing policy and not to invite bids for entry fee for grant of UAS licenses as all the pending applications are in terms of existing UASL guidelines. If such changes are made at this stage then there may be litigations. Moreover, the cost of offering the service, if increased may consequently lead to increased tariff and low tele-density, thereby defeating the government objective of achieving 500 million telephone connections by 2010.

4. Accordingly a draft reply has been attempted and DFA is placed at **5/c.**"

1597. This note is required to be read minutely and carefully. It correctly captures the entire development of the mobile telephony. The note states that the DoT had taken a conscious decision to not to invite bids for entry fee. This note was written by Sh. Nitin Jain as per his understanding of the policy of the department.

On recording this note, PW 110 Sh. Nitin Jain, Director (AS-I), marked it to DDG (AS) PW 60 Sh. A. K.

Srivastava, who, in turn, marked it to Secretary (T) PW 36 Sh. D. S. Mathur. On that day, Member (T) Sh. K. Sridhara was not available.

PW 36 Sh. D. S. Mathur marked the file to Member (F) PW 86 Ms. Manju Madhvan by recording a note dated 27.11.2007, Ex PW 36/C-3, which reads as under:

> "May please see and advise".

Member (F) PW 86 Ms. Manju Madhvan recorded "Discussed" and thereafter, marked the file again to Secretary (T) PW 36 Sh. D. S. Mathur. He again recorded note dated 28.11.2007, Ex PW 36/C-6, which reads as under:

> "The draft reply may be seen. It is placed below. Orders on para 3 of PUC may also be given."

1598. On recording this note, PW 36 Sh. D. S. Mathur marked the file to Sh. A. Raja, who approved the same by appending his signature and accordingly, reply dated 29.11.2007, Ex PW 36/C-5, was sent to the Finance Secretary. There is no evidence that any pressure was put on any official by Sh. A. Raja. All officers, including Member (F), agreed to non-revision of entry fee and thereafter reply was sent. The relevant part of reply reads as under:

> "Kindly refer to your D. O. letter No. 10709/FS/2007 dated 22nd November, 2007 on use of dual technology.
>
> As per Cabinet decision dated 31st October, 2003 accepting then recommendations of Group of Ministers (GoM) on Telecom matters, headed by the then Hon'ble Finance Minister, it was inter-alia

decided that "The recommendations of TRAI with regard to implementation of the Unified Access Licensing Regime for basic and cellular services may be accepted. DoT may be authorised to finalise the details of implementation with the approval of the Minister of Communications & IT in this regard including the calculation of the entry fee depending on the date of payment based on principle given by TRAI in its recommendations." In terms of this Cabinet decision, the amendment to NTP 99 was issued on 11th November, 2003 declaring inter-alia that for telecommunication services the licence for Unified Access (Basic and Cellular) services permitting licensees to provide Basic and/ or Cellular Service using any technology in a service area shall be issued.

The entry fee was finalized for UAS regime in 2003 based on the decision of the Cabinet. It was decided to keep the entry fee for the UAS licence the same as the entry fee of the fourth cellular operator, which was based on a bidding process in 2001.

The dual technology licences were issued based on TRAI recommendations of August, 2007. TRAI, in its recommendations dated 28th August, 2007, has not recommended any changes in entry fee/ annual license fee and hence no changes were considered in the existing policy."

1599. This letter also captured the issues correctly. It is clear from the reply that the view of DoT was that revision of entry fee was not recommended by TRAI and it was a conscious decision to not to revise the entry fee. It may be noted that after the reply, Ministry of Finance vide letter dated 12.12.2007, Ex PW 36/C-7, asked the DoT to submit certain documents and these documents were sent by DoT vide letter dated 13.12.2007, Ex PW 36/C-9 (D-9). Thereafter, there is no

correspondence on the record between the two Ministries. It is clear from the record that the queries raised by the Finance Secretary was deliberately allowed to lapse by the Finance Ministry.

1600. It may be noted that in file D-7 vide note dated 07.11.2007, Ex PW 36/B-10, approval was accorded by Sh. A. Raja for processing of applications for grant of UAS licences. Apart from this, a copy of draft LOI, Ex PW 42/A, was also approved for legal vetting. However, in a note dated 08.11.2007, Ex PW 60/H-1, recorded by Sh. A. K. Srivastava, it is mentioned that LA (T) had opined that the matter be referred to Law Ministry. Sh. A. K. Srivastava closed this issue by recording that this issue would be discussed within the Ministry and marked the file to LF Cell for vetting. However, on 12.11.2007, vide note Ex PW 60/H-2, the file was withdrawn from LF Cell also. The file was marked to LF Cell again on 14.11.2007 vide note, Ex PW 60/H-3, recorded by Sh. A. K. Srivastava. When this file reached finance branch, that is, LF Branch, for vetting of LOI, Director (LF-III) PW 42 Sh. Shah Nawaz Alam recorded a note dated 23.11.2007, Ex PW 36/DQ-22. The note reads as under:

> "Notes of As Branch on pre-pages, seeking vetting of Draft LOI refer. In this regard following comments are offered:
> 1. LOIs are issued in case the applicants are eligible for grant of license (11/N). We have examined about 22 files relating to application for UASL license and most of the applications have been found wanting in one respect or another. In such a situation desirability of issuing LOI conveying the

approval on behalf of the President of India for award of license needs to be considered afresh from all angles specially the legal angle. The current proposal is to issue LOI along with an annexure seeking compliance/ clarifications which will have direct bearing on the eligibility of the applicant and date of his eligibility. LOIs issued in the past never had such an annexure.

2. If the LOI is to be given while the eligibility is not yet clear or necessary clarifications are yet to be received, it is likely that there may be some applicants that get LOI but are not found eligible later. Since the Entry Fee is non-refundable and the PBG, FBG is proposed to be encahsed if the applicant is found to be ineligible later (as per para 9 of the draft LOI), it is important to apprise the applicant clearly of such an eventuality by including suitable para/clause in the LOI. The applicants should also be informed of their deficiency in very clear terms to enable them to determine their own eligibility before making any financial commitments.

For this purpose, it is proposed that a clause on following lines may be added to the LOI after suitably modifying the para 9 of draft LOI:

(a) The Entry Fee is non-refundable. In case it is found that the applicant is not eligible for the UAS license, the paid Entry Fee shall be forfeited and the submitted PBG and FBG shall be encashed and forfeited. In case the applicant is found to be ineligible on the date of application, and subsequently (but before the signing of license) achieves compliance with the LOI/UAS License conditions, the date of priority will be the date on which he becomes eligible. The applicant must accept this date or withdraw his application.

Withdrawal of application shall result in forfeiture of the paid entry fee and encashment and forfeiture of the submitted PBG and FBG.

(b) The authorized signatory, empowered by

Power of Attorney from the company approved by Board Resolution, shall provide a certificate accepting the conditions of (a) above. This certificate shall be countersigned by the Company Secretary of the company.

3. The para no. 3 in LOI making the payment of Entry Fee a the priority date has been deleted. However, it would be appropriate to clarify as to what the priority date would be. It appears logical to keep the date of application as fate of priority provided the applicant is able to establish that he is eligible as on the date of application and is also eligible when the LOI is being issued. It is suggested that this should be clarified to the applicants by inserting a suitable para in the LOI for the sake of clarity especially in view of the large number of applications received.

4. Similarly, the effective date of the License should be the date of signing of license as per usual practice.

5. In para 5 of the Draft LOI it has been clarified that the payment of entry fee shall not confer right on the licensee for the allocation of radio spectrum which shall be allotted as per existing policy/guidelines as amended from time to time subject to availability. In this regard it is pointed out that the present occasion is unique in the sense that a large number of applications are being processed simultaneously and it would be appropriate for all concerned to know the likelihood of allotment of spectrum to them. NTP 1999 already stipulates that 'availability of adequate frequency spectrum is essential' (9/N) particularly in these days when it is the wireless services that are the order of the day and these services cannot be provided without spectrum. Hence, it would be appropriate that the prospective licensees know the approximate time

within which they will get spectrum. In any case for spectrum allocation also, the date of priority should also be the same as the date of his application provided he is found eligible on the date of application and he deposits the Entry Fee and complies to the LOI within the stipulated time.

6. In case the applicant has not provided all the documents to prove compliance with LOI/ License conditions, it is suggested that the applicant should be apprised of all discrepancies/ deficiencies specific to his application. These discrepancies/ deficiencies should be communicated as an annexure to the LOI.

7. The position of equity and networth should be furnished as on the date of the application and as on 30.09.2007 (the date of last quarterly results) since the applicant is required to be eligible and also maintain it, particularly the networth position. As per guidelines, position with regard to direct and indirect foreign investment and FIPB clearance wherever required should also be furnished as on the date of the application and as obtaining currently. The networth certificate of the Company and its promoters should be given by statutory auditors of the Company and countersigned by the Company Secretary. Para 10, 11, 12, 13, 14 and 15 of the annexure to LOI are required to be modified accordingly.

8. In para 30, the first line is suggested to read "*In case the applicant Company does not have any information to furnish against any of the above since it does not relate to it. Either 'Nil' , 'No' or 'Not applicable', as the case may be, should be mentioned. Putting dash or blank shall be treated as incomplete compliance.*"

9. We would recommend that LOI be granted in the existing legally vetted format only after all the

eligibility conditions are met and the application is complete in all respects."

It may be noted that PW 42 Sh. Shah Nawaz Alam, Director (LF-III), did not propose any revision of entry fee in this detailed note, though he had considered the issue of forfeiture of entry fee in case of an ineligible applicant and also who withdrew its application.

1601. On recording this note, he (PW 42) marked the note to PW 97 Sh. B. B. Singh, DDG (LF), who agreed to the note and without making any observation of his own, marked it to Member (F) PW 86 Ms. Manju Madhvan. She recorded note dated 30.11.2007, Ex PW 36/B-11, which reads as under:

"Comments of Finance from 15/N to 17/M may be considered. In this connection it is points out that we are in receipt of a communication dated 22.11.2007 (PUC 17/C) from the Department of Economic Affairs wherein they have expressed concern that we are offering the rate obtained in 2001 as entry fee even in 2007, without any indexation. Current valuation. They want to be consulted in the matter. Though the communication is in the context of crossover license and a reply has been sent it is equally applicable in the present context.

The entry fee for UAS license is based on the rates/ amounts obtained in the tender for award of fourth cellular license which was initiated in 2001.

In 2003 when TRAI came out with recommendations for UAS license it recommended those rates of IV license as entry fee for reward of UAS license. Since then these rates have been adopted as entry fee for award of UAS license.

Since the rates have not been revised and the Finance Secretary has raised the issue, I am of the view that this issue should be examined in depth

before any further steps are taken in this matter. Para 3 of the PUC (17/C) may also be considered."

In this note, she suddenly and belatedly recalled that entry fee had not been revised since 2001. She also cleverly tried to skirt around the reply to Finance Secretary.

1602. It may be noted that the TRAI Recommendations were received on 29.08.2007 in the DoT. First, comments of various divisions, including LF/ Finance division, were invited. There is no record that LF/ Finance branch asked for revision of entry fee in its initial comments. Thereafter, a committee was constituted to examine the TRAI Recommendations in which DDG (LF), an officer of the rank of Joint Secretary, was a Member, as a representative of finance branch. There is no material on record that he suggested any change in the entry fee. Thereafter, the matter went to Telecom Commission, in which Ms. Manju Madhvan herself was Member (Finance). She was in the rank of Special Secretary to Government of India and represented the Finance Ministry in DoT and Telecom Commission. When the Recommendations were considered by the Telecom Commission on 10.10.2007, she did not raise any objection and the Recommendations were unanimously approved by the Commission. Furthermore, as noted above, when the Finance Secretary raised the issue of cross-over technology being granted at a price discovered in 2001, the issue of entry fee was also discussed in the note dated 27.11.2007 of Sh. Nitin Jain, as extracted above and it was clearly recorded that TRAI had not recommended any change in

the entry fee. Secretary (T) PW 36 Sh. D. S. Mathur had specifically asked for her advice before sending reply to the Finance Ministry and at this stage also she did not raise any objection. This is for the first time that she raised this issue of revision of entry fee.

1603. On recording this note, she marked the file to Secretary (T), PW 36 Sh. D. S. Mathur, who readily agreed with the note and marked the file to MOC&IT Sh. A. Raja, who recorded note dated 04.12.2007, Ex PW 36/B-12, which reads as under:

> "I have perused the notes of L/F Division on page 15/N and Member (F) on 18/N.
>
> It appears from the noting in para (5), on page 16 and the concerned officers have neither up-to-date knowledge of UASL guidelines nor have bothered to carefully go through file (page 4 to 12). The suggestion on the date of priority for allotment of spectrum is clearly defined in the WPC guidelines. Since these suggestions are not factually correct and as such they should be ignored.
>
> These type of continuous confusions observed on the file whoever be the officer concerned do not show any legitimacy and integrity but only their vested interests.
>
> The matter of entry fee has been deliberated in the Dept. several times in the light of various guidelines issued by the department and recommendation of TRAI. And accordingly decision was taken that entry fee need not be revised. On the above lines Sec (T) has also replied to the Fiance Sec's letter dtd 22.11.2007. Member (F) should have checked the facts with Sec (T), before putting up the note on the file.
>
> Accordingly, the approvals on pg 7/N regarding issue of LOIs should be implemented. For

this purpose the LOI proforma as issued in the past may be used for LOIs in these cases also.

However, separate letter seeking duly signed copies of all the documents submitted at the time of applying for UASL as per existing guidelines may be obtained."

1604. It is also to be noted that the processing of applications was being delayed by officers despite approval of the Minister, on the pretext of vetting of LOI and about a month was lost from 07.11.2007 to 04.12.2007. The approval was given by the Minister first on 02.11.2007. However, there was objection from Sh. D. S. Mathur and the same was considered and the approval was again accorded on 07.11.2007.

1605. On the basis of letter dated 22.11.2007, Ex PW 36/C-1, of Finance Secretary PW 78 Sh. D. Subba Rao and note, Ex PW 36/B-11, of Member (F) PW 86 Ms. Manju Madhavan, both extracted above, it is being argued by the prosecution that Sh. A. Raja did not revise the entry fee despite being asked by Finance Secretary and being specifically pointed out by Member (F). It is argued that instead of doing the rightful thing of revising the entry fee, Sh. A. Raja upbraided and condemned the DoT officers for raising this issue. It has been argued with great emphasis that there was a tremendous growth in the telecom industry since 2001 and the entry fee needed to be compulsorily revised, more so, when the Finance Ministry was insisting upon it. It is repeatedly pointed out that even the suggestion from the then Hon'ble Prime Minister regarding the revision of entry fee was disregarded. The mass of evidence has

been read repeatedly at the bar to emphasize that there were suggestions from the various quarters for revising the entry fee but to no avail as Sh. A. Raja was bent upon issuing licences to the two conspiring companies at the low rates discovered in 2001, by misusing his powers as a public servant.

1606. On the contrary, the case of the defence is that the issue was duly considered in the DoT several times and there was no suggestion from any quarter for revising the entry fee. It is also the case of the defence that the letter of the Finance Secretary was duly considered vide note Ex PW 36/C-2, to which Member (F) PW 86 Ms. Manju Madhvan also agreed in writing. Not only this, her advice was specifically sought as to how to reply the letter of the Finance Secretary, but instead of providing any input regarding revision of entry fee or anything else at that time, which was the relevant time to raise the issue, she kept mum and later on raised unnecessary objections/ controversy for reasons best known to her. It is also the case of the defence that after the receipt of reply of DoT, Finance Ministry did not raise any questions regarding the revision of entry fee and the issue was closed as there is no material on record that the Ministry of Finance persisted with the objections regarding the entry fee to be charged from the new licensees.

Let me take note of the evidence on this point.

1607. Evidence of PW 36 Sh. D. S. Mathur, PW 60 Sh. A. K. Srivastava and PW 110 Sh. Nitin Jain has already been taken note of in which they justified the reply to Finance Secretary.

1608. PW 86 Ms. Manju Madhvan, Member (F) of Telecom

Commission and an officer of the rank of Special Secretary to Government of India, representing Ministry of Finance in MOC&IT, deposed in her examination-in-chief dated 03.12.2012, pages 1 and 2, as under:

> ".....I have been shown DoT file D-7, Ex PW 36/B, which is a file of DoT. In this file, there is a note dated 30.11.2007, page 18/N, which was recorded by me, and is already Ex PW 36/B-11. It bears my signature at point A.
> **Ques**: Would you please tell this Court as to what led you to record this note?
> **Ans**: Secretary (Finance) had written a note to Secretary (T) on 22.11.2007 and this has been referred to by me in my note. The note itself contains the background in which it was recorded.
> Through this note, I desired that the issue of revision of entry fee may be considered in depth before any further step is taken. After recording this note, I marked it to Secretary (T). After the note was recorded by me, the file again came to me in its downward movement on 05.12.2007. My signature to this effect is at point C, page 20/N. When the file came to me during downward movement, I had read the note Ex PW 36/B-13 dated 04.12.2007, recorded by the then Minister Sh. A. Raja. Thereafter, I never raised the issue of entry fee again....."

A bare perusal of her statement reveals that it is short and cryptic one. It is bereft of any details. It is premised on the letter of Finance Secretary which had already been replied to after due consideration and for the reply of which her advice was specifically sought. Thus, the basis of her objection is knocked out because the letter of Finance Secretary had already been replied to. Furthermore, she admits in her examination-in-chief itself that the file came to her during its

downward movement also and she read the note, Ex PW 36/B-13, of Sh. A. Raja and also appended her signature at point C but did not raise the issue again. It may be noted that she could have raised the issue again and even had access to Finance Minister, if she was so serious about it. It is the case of the prosecution that revision of entry fee was a matter with financial implications and views of Member (F) must have been considered by Sh. A. Raja as she represented the Finance Ministry in the DoT. However, Sh. A. Raja recorded that the issue of entry fee had been considered several times in the department. In such a situation, if she was overruled and she had genuinely recorded the note regarding revision of entry fee, she must have exercised her power given to her under the Constitution of Telecom Commission, Ex PW 11/DM-22, whereunder, as per Rule 5(b), she had access to the Finance Minister. There is no material on record to show that she availed herself of this opportunity of approaching the Finance Minister. Moreover, the note was put up at a highly belated stage, as already noted above, that finance/ LF branch was duly consulted during the consideration and approval of TRAI Recommendations. This shows that she ultimately did not find any merit in her own suggestion, as when being pointed out by Sh. A. Raja that this matter had already been considered several times, she did not raise the issue again. Her silence shows futility of her objection.

1609. An argument was raised by the learned Spl. PP that there is no material on record to indicate that the issue of entry

fee was considered several times in the department and the note of Sh. A. Raja is a false one and he upbraided the officers for no reason at all. It has already been pointed out in earlier part of judgment that on receipt of TRAI Recommendations, the comments of each branch, including LF branch, were called for and thereafter, a committee was constituted in which DDG (LF) PW 97 Sh. B. B. Singh, an officer of the rank of Joint Secretary, was also a Member and the committee gave its report. Thereafter, the matter went to Telecom Commission, where Member (F) PW 86 Ms. Manju Madhavan was herself a representative of Finance Ministry, but raised no objection. She is an officer of the rank of Special/ Ex-officio Secretary to the Government of India and is expected to be responsible one. She was expected to know the TRAI Recommendations, a copy of which was supplied to her. PW 36 Sh. D. S. Mathur, the then Secretary (T), in his examination-in-chief dated 09.04.2012, pages 6 and 7, deposed that a copy of TRAI Recommendations was supplied to each member of Telecom Commission and the relevant part reads as under:

> ".....For consideration of recommendations of TRAI, a copy of the recommendations of TRAI is supplied to each member of the telecom commission. A summary of TRAI recommendations is also made in the DoT and supplied to each member. The summary of the comments of the aforesaid two committees were also circulated to each member of the commission. Each recommendation of TRAI is taken up in the commission and the comments given by two committees are considered. If needed, further clarifications are sought from the officers in

attendance at the commission. Each member of the commission expresses his/ her views and then a final decision is taken on each recommendation. I have been shown letter dated 10.10.2007 whereby extracts of the minutes of the meeting of telecom commission held on 10.10.2007 were forwarded to DDG (AS) by the Section Officer of telecom commission. The same is now Ex PW 36/A-13, pages 171 and 172……."

Thus, a copy of TRAI Recommendations dated 28.08.2007, summary of TRAI Recommendations and a summary of the comments of the two committees constituted to examine the TRAI Recommendations were supplied to Ms. Manju Madhavan also. Not only this, Sh. B. B. Singh, an officer of the rank of Joint Secretary to the Government of India, was a member of the committee constituted for examining the TRAI Recommendations and was representative of Finance Ministry. Thus, this was the right forum for Ms. Manju Madhavan to raise the issue of entry fee, but she kept mum.

1610. Thereafter, the issue of entry fee was considered at the time of replying to the letter of Finance Secretary. In this way, Sh. A. Raja was right in recording that the matter of entry fee had been considered several times in the department.

1611. It is interesting to take note of cross-examination of PW 86 Ms. Manju Madhavan dated 03.12.2012, pages 2 and 3, which reads as under:

"…….I have been shown DoT file D-9, already Ex PW 36/C, wherein there is a note dated 27.11.2007, already Ex PW 36/C-2, recorded by Sh. Nitin Jain, Director (AS-I), and after recording his note, in the course of official business the file also came to me. It

is correct that this note was recorded after receipt of letter dated 22.11.2007, already Ex PW 36/C-1, from Secretary (Finance). In this note, Sh. Nitin Jain had also placed a draft reply, already Ex PW 36/C-4, to be sent to Secretary (Finance) and when the file reached Secretary (T), he marked the file to me by recording "may pl. see and advise". After the file came to me, I recorded "discussed" at point E and my note is now Ex PW 86/DA and my signature appears at point F. It is correct that thereafter, final reply dated 29.11.2007, now Ex PW 86/DB, was sent to Secretary (Finance). Thereafter, the file also came to me during its downward movement and my initials in this regard are at point G. It is correct that when this reply was sent, I did not record any difference of opinion.

It is correct that there were five members in the Telecom Commission. It is correct that my parent Ministry was Ministry of Finance and I was on deputation to the post of Member (Finance) and was whole time member of Telecom Commission. It is correct that TRAI recommendations were received in DoT on 29.08.2007. I think it was the recommendation of TRAI that spectrum in the bands of 800, 900 and 1800 MHz may not be auctioned due to legacy and level playing field. It is correct that Telecom Commission in its meeting dated 10.10.2007 approved this recommendation and there was no dissent from anyone including myself....."

1612. Her cross-examination itself shows that she was involved in replying to the letter of Finance Secretary and also in the consideration of TRAI Recommendations by Telecom Commission as Member (F). She also admitted that it was the recommendation of TRAI that spectrum in the band of 800, 900 and 1800 MHz may not be auctioned due to legacy and level

playing field. She admitted that she did not record any dissent in the Telecom Commission. In a sense, she conceded the entire case of defence. In view of this, her note dated 30.11.2007, Ex PW 36/B-11, regarding revision of entry fee is of no relevance.

1613. Furthermore, she has nowhere explained as to what led her to record the objection at this belated stage. Not only this, she did not exercise the option of reporting the matter to the Finance Minister, perhaps rightly as she knew that the issue of revision of entry fee had already been dealt with in the letter dated 29.11.2007, Ex PW 78/C, sent by DoT to Finance Ministry. Furthermore, when the last notes dated 07.01.2008, Ex PW 42/DB, recorded by Sh. Nitin Jain and note Ex PW 60/L-23, recorded by Sh. A. K. Srivastava for issue of LOIs, reached Sh. B. B. Singh on the same day, he took no objection regarding entry fee and recorded note Ex PW 42/DC about networth of a company only. This note was also signed by Ms. Manju Madhavan on the same day. This means that the Finance/ LF branch ultimately agreed that there was no need to revise the entry fee, otherwise they would have stood with their earlier objections and reported the matter to Finance Ministry.

1614. The then Finance Secretary PW 78 Sh. D. Subba Rao in his examination-in-chief dated 19.11.2012, pages 1 to 4, deposed about his letter and its reply by DoT, as under:

> ".....I have been shown a letter dated 22.11.2007, already Ex PW 36/C-1, and this letter was written by me as Finance Secretary to the then Secretary (DoT). It bears my signature at point A. This original letter is available in file D-9, already Ex PW 36/C, page 74. The office copy of this letter is available in

file D-363 and is now Ex PW 78/A and it also bears my signature at point A.

Ques: Would you please tell this Court as to what led you to write this letter to the then Secretary (DoT)?

Ans: There was a presentation by the Secretary (DoT) in the Cabinet Secretariat on 20.11.2007 on the general issues of spectrum policy and pricing. There were several issues discussed there. During the meeting, Secretary (DoT) indicated that: (1) three CDMA operators were given cross-over licences for GSM operations; (2) the fee for this licence was determined at Rs. 1600 crore (for all India operations with pro rata determination for less than all India operations) and (3) that one of the licencees has already paid the licence fee. I wrote this letter to confirm if proper procedure was followed with regard to due financial diligence. I also questioned as to how the rate of Rs. 1600 crore determined as far back as 2001 could be applied for licence given in 2007 without any indexation, let alone current valuation.

Prior to the presentation in the Cabinet Secretariat by the DoT, a note was circulated by Cabinet Secretariat to the concerned departments including Department of Economic Affairs. I have been shown a copy of that note in file Ex PW 36/DH (D-363) and the same is now Ex PW 78/B.

Secretary (DoT) replied to my letter dated 22.11.2007 vide his letter dated 29.11.2007 and the said reply is available in file D-363 at page 407 and is now Ex PW 78/C. On the face of this letter, I recorded a note in my hand at point X and the said note is now Ex PW 78/D. The signature of the then Secretary (DoT), Sh. D. S. Mathur, appears at point A and that of mine at point B.

I have been shown note sheet part of file D-363, and I identify the same as belonging to Ministry of Finance and part of that file.

I have been shown DoT file D-9, already Ex

PW 36/C, and in this file there is a letter dated 12.12.2007 written by Ms. Shymla Shukla, Director (Infra), in Department of Economic Affairs, and the same is already Ex PW 36/C-7. I know that this letter was written by her and I identify this letter as written by her.

Ques: You wrote the aforesaid letter dated 22.11.2007, already Ex PW 36/C-1, to the Secretary (DoT), and the Secretary (DoT) replied to the same vide his letter dated 29.11.2007, already Ex PW 78/C. Would you please tell this Court as to what action was taken by Ministry of Finance on receipt of this letter?

Ans: A note was moved by Director (infra) Ms. Shymla Shukla dated 17.12.2007. However, this note did not reach me as Finance Secretary. I recall, however, that a comprehensive note was put up to the Finance Minister in early January 2008 in connection with the meeting of the Telecom Commission scheduled for 09.01.2008. On the basis of that note, the Finance Minister sent a note to the Hon'ble Prime Minister dated, according to my recall, 15.01.2008.

In file D-363, already Ex PW 36/DH, there is a comprehensive note prepared by Department of Economic Affairs, dated 11.02.2008, and in this note all the issues were discussed in detail. The note is now Ex PW 78/E, pages 448 to 455 (objected to)....."

1615. The gist of his examination-in-chief is that in the light of presentation by DoT in Cabinet Secretariat on 20.11.2007, he wrote letter dated 22.11.2007 to the Secretary (T) and the letter was replied to on 29.11.2007. Thereafter, another letter was written by Director (Infra) to DoT on 12.12.2007. It may be noted that this letter was also replied to by DoT on 13.12.2007. It may also be noted that the Finance

Secretary wrote letter dated 22.11.2007 to Secretary (T), when presentation, Ex PW 36/DM-1, was made by DoT on 20.11.2007. It may be noted that this presentation was on "Spectrum allocation policy". However, the Finance Secretary wrote letter relating to grant of dual technology spectrum on entry fee discovered in 2001. This presentation nowhere dealt with entry fee, but dealt only with spectrum use and allocation issues. The point is that if one issue is being discussed by senior officers, as per the agenda, then other related issues can also be raised. That is why, Finance Secretary wrote letter relating to entry fee while the issue in the meeting was spectrum allocation policy. In brief, if one issue is being discussed in a meeting, other related issue can also be raised by any officer attending the meeting.

1616. He further deposed in his examination-in-chief on 19.11.2012, pages 7 and 8, as under:

> ".....On the pricing of spectrum, the Finance Minister's view was that the Ministry must insist in-principle on pricing of spectrum (beyond 4.4 MHz) all the details can be worked out after the auction of the previous spectrum. My note is now Ex PW 78/L. My signature appears at point A....."

He has deposed about view of Finance Ministry to auction spectrum beyond 4.4+4.4 MHz. The instant case relates to initial spectrum of 4.4+4.4 MHz and not spectrum beyond it.

1617. In his cross-examination dated 19.11.2012, pages 8 and 9, he deposed as under:

> ".....After writing my letter dated 22.11.2007 to the Secretary (DoT) and before receiving his reply

dated 29.11.2007, I had telephonic discussion with the Secretary (DoT) and this fact has been recorded by me on 27.11.2007 in Ex PW 36/DM-2, page 56/N in file Ex PW 36/DH-5 (D-363). It is correct that the then Minister of Finance asked for putting up reply of Secretary (DoT) before him, if reply had been received by then and this fact is recorded at point A and is now Ex PW 78/DA by the Minister himself in his hand. After recording my note Ex PW 36/DM-2, I had marked the file to the Minister of Finance and in that process, he recorded his note.

I put up the reply dated 29.11.2007 received from Secretary (DoT) to the Finance Minister and that reply is already Ex PW 78/C. On the reply being put up to the Minister, he himself made a note in his handwriting dated 30.11.2007 and that note is now Ex PW 78/DB....."

Thus, he discussed the matter telephonically with Secretary (T) and also placed the reply of Secretary (T) before Finance Minister.

1618. He further deposed in his cross-examination, pages 12 and 13, as under:

".....I cannot recall if I had discussed the spectrum pricing issue with the Secretary (DoT) after 29.11.2007 till 09.01.2008. It is wrong to suggest that I am deliberately withholding the fact of such discussion. **Volunteered**: I am unable to recall this as so many discussions took place when I was Finance Secretary.

It is correct that all of my discussions with the Secretary (DoT), both personally and telephonically, have not been recorded, because most of the times discussions were inconclusive. It is correct that when the letter dated 29.11.2007, already Ex PW 78/C, was put up to the Minister, he asked me to examine the issues as noted by him in his note Ex PW 78/DB. As per the direction of the Minister, the department

must have examined the issues.
Ques: Did you revert back to the DoT after receipt of letter dated 29.11.2007?
Ans: We did not revert back to the DoT after the aforesaid letter. But the issue was examined in the department as is indicated by the note of Ms. Shymla Shukla, now Ex PW 78/DE. I say this after seeing the file Ex PW 36/DH-5……..”

Thus, after receipt of reply dated 29.11.2007 from Secretary (T), the Finance Ministry did not revert back to DoT, except seeking certain documents vide letter dated 12.12.2007.

1619. PW 78 Sh. D. Subba Rao in his further cross-examination, pages 14 and 15, deposed about issue being considered since 2005 as under:

“……..As per note dated 03.09.2005 of Sh. Ashok Chawla, the then Additional Secretary, four options were discussed and the note is now Ex PW 78/DG, pages 22/N to 24/N. On looking at pages 148 and 149, I find that a letter was sent to the DoT clarifying the position and the office copy of the letter is now Ex PW 78/DH, which is dated 21.12.2005. From this, it is seen that one of the comments in para 4 was that auction may not be appropriate and hybrid option is most appropriate. I was not specifically aware of this position when I wrote the letter dated 22.11.2007. Whenever an officer takes charge as Finance Secretary he apprises himself of all previous developments, but on account of quantum of work to get into details. I am not sure if these things were in my knowledge, that would have made a difference in my stand. It is correct that I had directed Ms. Shymla Shukla to go into the two articles appearing in “Economic Times”, as is mentioned in the note dated 22.11.2007, now Ex PW 78/DJ. As per this note, two officers of DoT namely Sh. P. K. Garg and Sh. A. K. Srivastava were called by

the Director, as they were technical persons. This note was marked to Additional Secretary, who, in turn, marked it to me and I also recorded a note dated 27.11.2007, which is now Ex PW 78/DK.

The letter dated 22.11.2007 to the DoT was written by me on my own without being processed in the departmental file. The issues raised in letter Ex PW 78/DH were not revisited by the Ministry of Finance in a specific sense at the time of writing this letter....."

Thus, the Finance Secretary conceded that the issue was being considered since 2005 and at one stage it was felt by Finance Ministry that auction may not be appropriate. He also conceded that he was not aware of the view of Finance Ministry that auction may not be appropriate, when he wrote the letter dated 22.11.2007.

PW 78 in his further cross-examination, page 16, deposed about having attended the meeting of Telecom Commission on 07.12.2007 as under:

".....It is correct that a meeting of Telecom Commission was called on 07.12.2007 and I was invited to attend the meeting. By that time, the reply of DoT had already been received vide letter dated 29.11.2007. I do not recall if I attended this meeting or not. It is possible that somebody from the Ministry of Finance might have attended the meeting. I do not seem to have instructed the officials of Ministry of Finance to raise the issue, as mentioned in my letter dated 22.11.2007....."

Though the witness is unable to recall having attended the meeting of 07.12.2007, but DW 26 Sh. Santokh Singh deposed that this meeting was attended by Sh. D. Subba

Rao also. Thus, Sh. D. Subba Rao could have raised the issue of non-revision of entry fee in this meeting if he felt so strongly about it as he had raised the issue of entry fee vide his letter dated 22.11.2007 after having attended a meeting on 20.11.2007 in Cabinet Secretariat on spectrum allocation policy. This shows that Sh. D. Subba Rao was not barred or prevented from raising the issue of entry fee in the meeting of Telecom Commission held on 07.12.2007.

1620. PW 78 Sh. D. Subba Rao in his further cross-examination, pages 18 to 20, deposed about the view of Finance Ministry from time to time, as under:

> ".....As I see from the file, the issues of entry fee and spectrum pricing were matter of constant discussion between DoT and Department of Economic Affairs between 2003 to 2008. The view of Ministry of Finance changed over from time to time about these issues. I cannot recall if the Budget Division and the Infrastructure Cell, both in the Department of Economic Affairs, took divergent views on these issues. It is correct that as per note dated 28.05.2005, Sh. Pradeep K. Dey, Joint Secretary, showed his disagreement with the proposition of infrastructure branch. His note is now Ex PW 78/DN, pages 10/N to 12/N in file Ex PW 36/DH-5. In the same file, there is a note of Smt. Preeti Madan dated 08.08.2005 and the same is now Ex PW 78/DO. There is another note of Sh. Pradeep K. Dey dated 12.08.2005 and the same is now Ex PW 78/DP. This is an official file.
>
> As per file Ex PW 36/DH-5, note sheet dated 13.03.2007, the GoM was constituted on 23.02.2006 for the issues referred to in note sheet 38/N. I am not aware if the GoM had not met even once when I took charge as Finance Secretary. As per the note dated 20.03.2007 of Ms. Shymla Shukla, it is

indicated that the GoM has not met so far, page 40/N. To my knowledge this GoM never met during my tenure as Finance Secretary. I have been shown note already Ex PW 78/E, though I do not remember if I had seen it, but I must have seen it. As per para 7 of the note, it does not deal with the need, if any, to revise the entry fee or the licence fee. This note outlines the issues pending for discussion as mentioned in para 33. This note indicates the problems in auction route as mentioned in para 18. This note also highlights that TRAI had also advised against auction in its report dated 28.08.2007.

Member (Finance) is a permanent member of Telecom Commission. Even when Finance Secretary or his representative does not attend a meeting of Telecom Commission, he watches the financial interest of the Government. I do not know if Member (Finance) attended a meeting of Telecom Commission held on 10.10.2007. I am not aware if meetings of full Telecom Commission were held on 27.09.2007 and 07.12.2007. However, I am aware that a meeting of full Telecom Commission was held on 15.01.2008.

I have been shown a note dated 17.04.2008 prepared by Ministry of Finance and the same is now Ex PW 78/DP-1, pages 545 to 548 in file Ex PW 36/DH. As per this note, it was prepared in response to the note of DoT dated 08.02.2008 and subsequent discussions.

It is correct that while determining policy, Government has to make a balance between welfare maximization and revenue maximization. In this case if there was a sacrifice of some revenue, it cannot be said that Government suffered a loss....."

In this deposition, he deposed as to how view of Finance Ministry changed from time to time. He also deposed about role of Member (F) and deposed that in the absence of Finance Secretary or representative of Finance Ministry, he

watches the interest of Finance Ministry. He also conceded that TRAI had advised against auction in its Recommendations dated 28.08.2007.

1621. A bare perusal of the detailed deposition of PW 78 Sh. D. Subba Rao, the then Finance Secretary, reveals that the Finance Ministry was insisting on pricing of spectrum beyond 4.4 + 4.4 MHz. It must always be kept in mind that the instant case deals with allocation of initial spectrum of 4.4 + 4.4 MHz and not beyond that. There is not even a scrap of evidence in the detailed statement of the Finance Secretary that the Finance Ministry was asking for revision of price of initial spectrum/ entry fee. Furthermore, he admitted that after the reply of DoT, the Finance Ministry did not revert to the DoT on the issue of revision of entry fee. He also admitted that Ms. Shyamala Shukla, Director (Infra), had written a letter dated 12.12.2007, Ex PW 36/C-7 (D-9), asking for Cabinet note dated 31.10.2003, decision of Cabinet and copy of the letter of Finance Secretary. It was duly supplied to her by DoT vide note dated 13.12.2007, Ex PW 36/C-9, with the permission of Secretary (T). There is no material on record that thereafter Finance Ministry reverted to the DoT asking for further information. This matches with the testimony of Sh. A. Raja in his examination-in-chief dated 02.07.2014, wherein he deposed that on receipt of these documents by Finance Ministry, when he discussed the matter with Finance Minister, he accepted the version of DoT.

1622. PW 78 Sh. D. Subba Rao also admitted that Member (F) is a permanent member of Telecom Commission and even

when Finance Secretary or his representative does not attend a meeting of Telecom Commission, Member (F) watches the financial interest of the Government. He also admitted that note dated 11.02.2008, Ex PW 78/E (D-363), page 448, indicated the problem in auction route of spectrum and also highlighted that TRAI had also advised against auction in its report dated 28.08.2007. Para 18 of the note clearly recorded that in its August 2007 report (para 2.79), TRAI too advised against auctioning of spectrum on the ground that it would trigger issues of level playing field.

1623. It may be noted that Finance Ministry did not revert to the DoT, what to talk of persisting with its objection of non-revision of entry fee. This was despite the fact that reply of DoT, Ex PW 78/C, was brought to the notice of the then Finance Minister Sh. P. Chidambaram on 30.11.2007 and his specifically asking the Ministry vide his note Ex PW 78/DB to examine the two issues carefully, that is, the issuance of UAS licence at an entry fee discovered in 2001 and TRAI not recommending revision of entry fee in its Recommendations dated 28.08.2007.

1624. From the above discussion, it is clear that Ministry of Finance was not very enthusiastic about its objections regarding pricing of initial spectrum/ revision of entry fee. Moreover, Finance Secretary admitted that after receipt of reply of DoT they did not pursue the objections seriously. If the Finance Ministry had been serious and Sh. A. Raja was not heeding to its query for revision of entry fee, the matter must have been reported to the Cabinet Secretariat or PMO. However, there is

no material on record in this regard. Accordingly, the argument of the prosecution that the Ministry of Finance and Member (F) had objected to the non-revision of entry fee and that was not heeded by Sh. A. Raja is without merit. The deposition of Sh. D. Subba Rao is of no use to the prosecution as he took an objective view of things and as such there is nothing incriminating therein.

This view is further fortified by the cross-examination of Investigating Officer PW 153 Sh. Vivek Priyadarshi, who in his cross-examination dated 18.11.2013, pages 12 and 13, deposed about the action of Ministry of Finance on receipt of reply of Secretary (T) as under:

> ".....It is correct that letter Ex PW 78/A of Ministry of Finance was replied to by DoT vide letter Ex PW 78/C. It is correct that it came to my notice from letter Ex PW 78/C that it was put to the Finance Minister and he asked the Ministry officials to examine the portion marked on the margin by him namely NTP-99, UASL Guidelines, Cabinet decision of 2003 and TRAI recommendations of 2007. It is correct that vide letter Ex PW 78/DD, DoT provided certain documents to Ministry of Finance, as desired by them. It is correct that after this, there is no further communication from the Ministry of Finance to DoT asking for revision of entry fee. **Volunteered**: There are certain notes which show that this issue was still being discussed by the Ministry of Finance with the DoT....."

It is thus clear that Ministry of Finance did not pursue the matter further and the note of Member (F) was absolutely uncalled for. Thus, the letter of Finance Secretary does not advance the case of prosecution.

Whether Issue of Entry Fee considered by DoT?

1625. As already noted above, it has been the case of the prosecution that the issue of entry fee was never considered in the DoT and the finance branch had no occasion to offer its views on it. Let me consider the same in detail to clarify the position.

The TRAI Recommendations dated 28.08.2007, Ex PW 2/DD, were received in the DoT on 29.08.2007. These Recommendations were processed in file D-5, Ex PW 36/A-3, and the first note dated 12.09.2007, Ex PW 36/A-5, was recorded by ADG (AS-I) PW 88 Sh. R. K. Gupta, which reads as under:

> "**Subject: TRAI's recommendations on "Review of license terms & conditions and capping of number of access providers".**
>
> '**PUC**' at **6/c** is a letter no. 101-19/2007-MN dated 29th August, 2007 from Chairman, TRAI enclosing their recommendations on "Review of license terms & conditions and capping of number of access providers". In this connection it may be mentioned that DOT, vide its letter dated 13th April, 2007 **(2/c)** had sought recommendations of TRAI on review of various terms and conditions in the access provider licence including the issue of limiting the number of access providers in each service area. TRAI has accordingly submitted its recommendations in the matter.
>
> 2. As the recommendations made by TRAI relates to various issues dealt in by different divisions of DOT, we may in the first instance, seek their comments on the recommendations. Accordingly,

draft letter is placed below at **11/c** for kind consideration and approval please."

A perusal of this note indicates that on receipt of the TRAI Recommendations, comments of various divisions of DoT were sought by the AS division, that is, the licensing branch. In terms of the aforesaid note, letter dated 12.09.2007 was issued to all divisions, including Finance/ LF branch. However, these comments are not on Court record. It may be noted that TRAI Recommendations were sought on review of licence terms and conditions. This was a comprehensive subject and included entry fee also.

1626. On receipt of the comments of various divisions, including LF, a note dated 20.09.2007, Ex PW 36/A-6, was recorded by Director (AS-I) PW 110 Sh. Nitin Jain, which reads as under:

"**Subject: TRAI's recommendations on "Review of license terms & conditions and capping of number of access providers".**

'**PUC**' at **6/c** is a letter no. 101-19/2007-MN dated 29th August, 2007 from Chairman, TRAI enclosing their recommendations on "Review of license terms & conditions and capping of number of access providers". In this connection it may be mentioned that DOT, vide its letter dated 13th April, 2007 **(2/c)** had sought recommendations of TRAI on review of various terms and conditions in the access provider licence including the issue of limiting the number of access providers in each service area. TRAI has accordingly submitted its recommendations in the matter.

2. As the recommendations made by TRAI relates to various issues dealt in by different divisions of DOT, comments of Wireless Advisor / Sr. DDG (TEC) / JS(T) / DDG (DS) / DDG (CS) / DDG (LF) / DDG (WPF) / DDG (Security) have been sought on the recommendations vide our letter dated 12.09.2007 **(12/c)** within 7 days.

3. The matter was discussed with DDG (AS). It is proposed that chapter-2 and 4 of TRAI's recommendation alongwith comments of various divisions on these chapters may be examined by a committee consisting of the following members:

Member (T)	:	Chairman
ED (C-DOT)	:	Member
Sr. DDG (TEC)	:	Member
JWA (L), WPC	:	Member
DDG (LF), DoT	:	Member (As a representative of Finance Branch)
DDG (AS)	:	Member & Convener

The committee may finalise its recommendation by 3rd October 2007.

Submitted for kind approval pl."

The constitution of the committee was approved by Secretary (T) PW 36 Sh. D. S. Mathur.

1627. The committee submitted its report, Ex PW 36/A-8, vide note Ex PW 36/A-7 (28/c). Apart from that, Chapters 3 and 5 of TRAI Recommendations were examined by PW 60 Sh. A. K. Srivastava and PW 110 Sh. Nitin Jain and their report is Ex PW 36/A-9. On receipt of the report, note dated 10.10.2007, Ex PW 60/B-1, was recorded by PW 110 Sh. Nitin Jain indicating preparation of note, Ex PW 36/A-10, for consideration of TRAI

Recommendations and also consideration of report of the committee by the Telecom Commission, which note reads as under:

> "In order to examine the TRAI's recommendations on "Review of license terms & conditions and capping of number of access providers" it was decided that chapter 2 & 4 of TRAI's recommendations shall be examined by a Committee constituted vide letter No. 20-100/2007-AS-I dated 21.09.2007 under the Chairmanship of Member (T) with following members.
>
> | | | |
> |---|---|---|
> | Member (T) | : | Chairman |
> | ED (C-DOT) | : | Member |
> | Sr. DDG (TEC) | : | Member |
> | JWA (L), WPC | : | Member |
> | DDG (LF), DoT | : | Member (As a representative of Finance Branch) |
> | DDG (AS) | : | Member & Convener |
>
> The committee has submitted it's report which is placed below at 28/c.
>
> The TRAI's recommendations were sent to for comments on 12th September 2007 to Wireless Advisor, Sr. DDG (TEC), JS (T), DDG (DS), DDG (CS), DDG (LF), DDG (WPF) and DDG (Security). The comments have been compiled based on these inputs and a report on TRAI's recommendations Chapter 3 & 5 has been prepared by DDG (AS) which is placed at 29/c.
>
> The note for the consideration of Telecom commission is placed at (DFA) 30/c.
>
> DFA at 30/c is submitted for kind consideration."

The note indicates that two teams examined the TRAI Recommendations.

1628. The Recommendations of TRAI as examined and recommended by the committee were placed before the Telecom Commission and were approved by it in its meeting dated 10.10.2007 and conveyed to the DoT vide note, Ex PW 36/A-13 with its enclosures, Ex PW 60/B-2.

1629. The case of the prosecution is that Sh. A. Raja did not revise the entry fee despite the objections of Finance Ministry as well as Member (F). However, perusal of the aforesaid record reveals that on receipt of TRAI Recommendations, a copy of the same was sent for the comments of various divisions including LF division, which is finance division of DoT. Thereafter, a committee was constituted for examining the TRAI Recommendations in which DDG (LF), who is a representative of finance branch, was also a Member. In Chapter 2, as extracted above, TRAI had specifically recommended no change in the pricing of 2G spectrum band, that is, 800, 900 and 1800 MHz. However, there is no evidence on record that finance branch raised any objection. Thereafter, the report was considered by the Telecom Commission in which Member (F), who is an officer of the rank of Special Secretary to the Government of India, was representing the Ministry of Finance. There is no evidence on record that she raised any objection about anything including entry fee or pricing of spectrum. It was for her to raise the issue if the entry fee or the pricing of spectrum was required to be reconsidered or revised. Hence, Finance Branch/ LF Branch had three occasions to suggest revision of entry fee, that is, when their comments were

sought on TRAI Recommendations, during examination of Recommendations by committee constituted by Secretary and during the meeting of Telecom Commission, in which TRAI Recommendations were approved. However, they did not avail the opportunity.

Thereafter, issue of revision of entry fee was considered again when the letter of Finance Secretary was replied to. This has already been noted in detail. Accordingly, there was enough consideration of the issue of entry fee in DoT or at least enough opportunity to the Finance Branch to raise the issue.

1630. It may be noted that prosecution also argued that in view of changed circumstances since 2001 when the licences were granted to Fourth cellular by auction, the price was required to be rediscovered. However, as noted above, TRAI had considered all aspects of the telecom sector in its Recommendations, as extracted above, and arrived at a considered view that entry fee/ price of spectrum of 2G was not required to be revised. Accordingly, the plea of changed circumstances does not hold good.

Para 2.73 of the TRAI Recommendations was also read out of context to argue that in view of unprecedented growth of telecom sector, TRAI had recommended re-determination of entry fee. However, if the entire paragraph is read in context, it is clear that as far as initial spectrum for 2G is concerned, it did not recommend any change. I could not lay my hand on any deposition by any witness who deposed that

TRAI recommended revision of entry fee for 2G spectrum. Not a single witness supported this view, except Sh. Nripendra Misra. However, his view is not supported by the contents of the Recommendations.

1631. It has also been argued that vide letter dated 02.11.2007, Ex PW 82/C, Hon'ble Prime Minister had also asked Sh. A. Raja to consider introduction of transparent methodology of auction of spectrum, wherever legally and technically feasible and also revision of entry fee which was benchmarked on old spectrum auction figures. It is argued that even this suggestion of the Hon'ble PM was not considered properly by Sh. A. Raja. However, the said letter was replied to by Sh. A. Raja on the same day vide letter Ex PW 7/B, in which it was recorded that it would be unfair, discriminatory, arbitrary and capricious to auction the spectrum to new applicants as it will not give them level playing field. It is the case of the prosecution that even this reply smacks off conspiratorial tone as revision of entry fee was ignored. However, I find that this reply regarding auction of 2G spectrum is in line with TRAI Recommendations as initial spectrum of 4.4+4.4 MHz is bundled with UAS licence and in a sense represents price of spectrum.

In the last, the case of the prosecution regarding revision of entry fee is found in the cross-examination dated 25.11.2013, page 19, of Investigating Officer PW 153 Sh. Vivek Priyadarshi, which is as under:

> ".....It is wrong to suggest that to maintain a

balance between the incumbent operators and the new players, level-playing field was the most important factor, both for fixing the entry fee and the allotment of spectrum. **Volunteered**: Even for proper level-playing field, the prices of 2001-03 should have been indexed properly to the level of 2008 for which the suitable indexing parameter found during investigation was change in AGR per MHz, as agreed upon by DoT and Ministry of Finance....."

1632. As already noted above, even up to 04.12.2003, when DoT had sought clarifications about entry fee for West Bengal service area, the opinion of TRAI, which is an expert body, was that entry fee for a new UASL would be the fee discovered for the Fourth cellular operator in 2001. DoT had sought TRAI Recommendations vide reference dated 13.04.2007, Ex PW 11/A, in file D-5 and it gave its Recommendations on 28.08.2007. A question may arise: How much financial circumstances had changed from 04.12.2003 to 13.04.2007, a period of about three years and a few months, warranting revision of entry fee? An impression is being created by referring the time period from 2001 to 2008, to indicate that a period of about seven years had elapsed since the last revision and so entry fee ought to have been revised or indexed. The fact of the matter is that instead of seven years, a period only of three years and a few months had elapsed when the last Recommendations came on 04.12.2003. In 2001 nobody had offered a bid for West Bengal service area and even in December 2003 TRAI recommended entry fee of Rs. One crore for this service area.

1633. It may also be noted that from 2003 to 2007, only 51 licences were issued in 22 service areas across the country. This small number of licences itself is a comment against non-revision of entry fee. It may be noted that there are 22 service areas for telecom services in the country. It may also be noted that a separate telecom licence is required for each service area. It is also on record that only 51 licences were issued in all the service areas, that is, roughly two licences per service area since the introduction of UAS licence in 2003. If such miniscule number of licences were issued from 2003 to 2007 at an entry fee, which was considered to be too low, the enhanced entry fee would have further reduced the number of licence seekers. This miniscule number of licences itself indicate that, whatever may be the view of a section of people relating to revision of entry fee, even the then existing entry fee discovered in 2001 was a constraining factor for new entrants. In any case, all these factors were duly considered by TRAI in its Recommendations dated 28.08.2007, wherein it did not recommend revision of entry fee. If it recommended revision of entry fee, nobody understood it in that sense. There is no material on record to indicate any insistent assertion or objective analysis by anyone for the need of revision of entry fee. It is all general talk. There is no evidence on record that telecom companies were rolling in or wallowing into wealth warranting revision of entry fee. Even TRAI Recommendations dated 27.10.2003 recommended nominal entry fee only.

Thus, there is no material on record indicating that

TRAI had recommended revision of entry fee for 2G spectrum. There is enough material on record to show that it was the conscious decision of DoT to not to revise the entry fee.

Accordingly, I do not find any merit in the submission of prosecution that the revision of entry fee was not resorted to due to conspiratorial reasons to help the two accused companies to obtain spectrum at as low a price as was discovered in 2001. There is no merit in the submission of prosecution that it amounted to abuse of power by Sh. A. Raja.

VI. Issue relating to transaction of Rs. 200 crore: Whether illegal gratification or loan? Role of A. Raja, Shahid Balwa, Vinod Goenka, Asif Balwa, Rajiv Agarwal, Karim Morani, Sharad Kumar and Kanimozhi Karunanithi

1634. It is the case of the prosecution that STPL was issued LOIs for thirteen service areas on 10.01.2008 and consequent to that licence agreements were signed for Mumbai and Delhi service areas on 27.02.2008 and for remaining eleven service areas on 03.03.2008. It is further the case of the prosecution that spectrum was approved to be allocated to STPL by Sh. A. Raja on 26.08.2008 for Delhi service area. It is further the case of the prosecution that spectrum for remaining service areas was also approved to be allocated to STPL on various dates in 2008.

It is the case of the prosecution that on allocation of spectrum, STPL issued additional equity to M/s Etisalat Mauritius Limited for Rs. 3228 crore and to M/s Genex Exim

Ventures (P) Limited for Rs. 381 crore on 17.12.2008. It is the case of the prosecution that on receipt of this money, Sh. Shahid Balwa and Sh. Vinod Goenka, both directors of STPL, paid illegal gratification of Rs. 200 crore to Sh. A. Raja, which was accepted by Kalaignar TV (P) Limited, as a reward for grant of licences and allocation of spectrum to STPL by Sh. A. Raja, in conspiracy with other accused, viz., Ms. Kanimozhi Karunanithi and Sh. Sharad Kumar. It is the case of the prosecution that the aforesaid amount of Rs. 200 crore was routed through Dynamix Realty, a partnership firm of DB group, which transferred the money to Kusegaon Fruits and Vegetables (P) Limited, a company in which Sh. Asif Balwa and Sh. Rajiv Agarwal were and still are directors. It is the case of the prosecution that this company further transferred the amount to Cineyug Films (P) Limited, in which Sh. Karim Morani was and still is one of the directors and this company ultimately transferred the money to Kalaignar TV (P) Limited, in which Ms. Kanimozhi Karunanithi was one of the directors and Sh. Sharad Kumar was also and still is a director. It is the case of the prosecution that this circuitous route was adopted to conceal the real nature of the transaction.

<u>Transfer of Money from Dynamix Realty to Kusegaon Fruits and Vegetables (P) Limited</u>

It is the case of the prosecution that Dynamix Realty transferred the amount of Rs. 209.25 crore to Kusegaon Fruits and Vegetables (P) Limited through banking channels by means

of cheques in the following manner:

D. No.	Date of Cheque	Exhibit	Amount
678	23.12.2008	PW 93/E	10 Crore
702	12.01.2009	PW 93/E-2	2.5 Crore
701	14.01.2009	PW 93/E-4	25 Lac
679	15.01.2009	PW 93/E-6	2 Crore
696	27.01.2009	PW 93/E-8	25 Lac
752	27.01.2009	PW 93/E-10	8 Crore
753	28.01.2009	PW 93/E-12	1.5 Crore
699	11.02.2009	PW 93/E-14	2 Crore
680	20.03.2009	PW 93/E-16	5 Crore
698	06.04.2009	PW 93/E-18	1.5 Crore
681	07.04.2009	PW 93/E-20	25 Crore
700	22.06.2009	PW 93/E-22	1 Crore
682	08.07.2009 15.07.2009	PW 93/E-24 & 25	80+20 = 100 Crore
697	15.07.2009	PW 93/E-27	25 Lac
683	10.08.2009	PW 93/E-29	50 Crore
			209.25

Transfer of Money from Kusegaon Fruits and Vegetables (P) Limited to Cineyug Films (P) Limited

It is the case of the prosecution that Kusegaon Fruits and Vegetables (P) Limited transferred an amount of Rs. 200 crore to Cineyug Films (P) Limited through banking channels by means of cheques in the following manner:

D. No.	Date of Cheque	Exhibit	Amount
673	23.12.2008	PW 93/H-1	10 Crore
674	15.01.2009	PW 93/H-4	2 Crore
675	27.01.2009	PW 93/H-7	8 Crore
676	20.03.2009	PW 93/H-14	5 Crore
677	07.04.2009	PW 93/H-21	25 Crore
704	15.07.2009	PW 93/H-28	100 Crore
705	10.08.2009	PW 93/H-30	50 Crore

	TOTAL		**200 Crore**

It is also the case of the prosecution that Kusegaon Fruits and Vegetables (P) Limited also transferred an amount of Rs. 6.25 crore to Cineyug Films (P) Limited, purportedly for acquisition 49% of its equity, as under:

D. No.	Date of Cheque	Exhibit	Amount
753	28.01.2009	PW 93/E-12	1.5 Crore
699	11.02.2009	PW 93/E-14	2 Crore
698	06.04.2009	PW 93/E-18	1.5 Crore
700	22.06.2009	PW 93/E-22	1 Crore
697	15.07.2009	PW 93/E-27	25 Lac
		TOTAL	**6.25 Crore**

Transfer of Money from Cineyug Films (P) Limited to Kalaignar TV (P) Limited

It is also the case of the prosecution that Cineyug Films (P) Limited transferred an amount of Rs. 200 crore to Kalaignar TV (P) Limited through banking channels by means of cheques in the following manner:

D. No.	Date of Cheque	Exhibit	Amount
733	23.12.2008	PW 90/J-1	10 Crore
734	28.01.2009	PW 90/K-2	10 Crore
735	20.03.2009	PW 90/L-1	5 Crore
730	06.04.2009	PW 90/J-2	25 Crore
706	15.07.2009	PW 93/M	100 Crore
707	08.08.2009	PW 93/M-2	50 Crore
		Total	**200 Crore**

It is the case of the prosecution that in this manner Dynamix Realty, a partnership firm of DB group of companies, which group also owned STPL, paid Rs. 200 crore as illegal

gratification to Kalaignar TV (P) Limited, which is controlled by DMK and in which Ms. Kanimozhi Karunanithi was a director and Sh. Sharad Kumar was also/ is a director. It is the case of the prosecution that various documents like Share Subscription and Shareholder's agreement dated 27.01.2010 between Cineyug Films (P) Limited and Kusegaon Fruits and Vegetables (P) Limited, Share Subscription and Shareholder's agreement dated 19.12.2008 between Cineyug Films (P) Limited and Kalaignar TV (P) Limited, ICD agreements etc., were executed later on to show the transaction of Rs. 200 crore as bona fide one, though it was a transaction for payment of illegal gratification.

Return of Money

1635. It is the case of the prosecution that later on when the instant case was registered and Sh. A. Raja was summoned for examination by CBI on 24.12.2010, Kalaignar TV (P) Limited started refunding the aforesaid amount of Rs. 200 crore to Cineyug Films (P) Limited and refunded the same in the following manner:

D. No.	Date of Cheque	Exhibit	Amount
749	24.12.2010	PW 105/F-8	10 Crore
	27.12.2010	PW 105/F-10	20 Crore
	03.01.2011	PW 105/F-22	10 Crore
	05.01.2011	PW 105/F-20	10 Crore
	11.01.2011	PW 105/F-18	10 Crore
	24.01.2011	PW 105/F-16	65 Crore
	29.01.2011	PW 105/F-14	25 Crore
	02.02.2011 03.02.2011	PW 105/F-24 & 26	25+25=50 Crore

		TOTAL	**200 Crore**

It is also the case of the prosecution that Cineyug Films (P) Limited also paid back the aforesaid amount of Rs. 200 crore to Kusegaon Fruits and Vegetables (P) Limited in the following manner:

D. No.	Date of Cheque	Exhibit	Amount
731	24.12.2010	PW 90/J-3	10 Crore
732	27.12.2010	PW 90/J-4	20 Crore
736	03.01.2011	PW 90/M-1	10 Crore
737	05.01.2011	PW 90/N-1	10 Crore
738	11.01.2011	PW 90/O-1	10 Crore
739	24.01.2011	PW 90/P-1	65 Crore
740	29.01.2011	PW 90/Q-1	25 Crore
741	03.02.2011	PW 90/R-1	50 Crore
	TOTAL		**200 Crore**

It is also the case of the prosecution that Kusegaon Fruits and Vegetables (P) Limited also returned the aforesaid amount of Rs. 200 crore with interest @ 7.5% p.a. to Dynamix Realty as under:

D. No.	Date of Cheque	Exhibit	Amount
684	20.12.2010	PW 93/K-1	12 Crore
692	29.12.2010	PW 93/K-3	10 Crore
695	29.12.2010	PW 93/K-5	20 Crore
694	31.12.2010	PW 93/K-7	7.95 Crore
689	07.01.2011	PW 93/K-9	7.95 Crore
685	07.01.2011	PW 93/K-11	12.06 Crore
693	17.01.2011	PW 93/K-13	10 Crore
691	24.01.2011	PW 93/K-15	65 Crore
690	01.02.2011	PW 93/K-17	25 Crore
687	03.02.2011	PW 93/K-19	50 Crore
688	11.02.2011	PW 93/K-21	1.35 Crore

686	28.02.2011	PW 93/K-23	2.24 Crore
		TOTAL	**223.55**

1636. It is also the case of the prosecution that this amount was not properly reflected in the balance sheets of the companies. It is the case of the prosecution that these transactions were not genuine business transactions, but were illegal gratification paid in lieu of UAS licences and valuable spectrum, approved to be allocated by Sh. A. Raja.

1637. It is the case of the prosecution that the refund occurred immediately on Sh. A. Raja being summoned for examination by CBI and this fact is indicative that the transfer of the amount, both ways, is related to 2G Spectrum case. It is the case of the prosecution that no formal agreement was executed between Dynamix Realty and Kusegaon Fruits and Vegetables (P) Limited relating to transfer of money. It is also the case of the prosecution that Subscription and Shareholder's Agreement dated 27.01.2010 between Cineyug Films (P) Limited and Kusegaon Fruits and Vegetables (P) Limited was an afterthought. It is also the case of the prosecution that original Share Subscription and Shareholder's Agreement dated 19.12.2008 executed between Cineyug Films (P) Limited and Kalaignar TV (P) Limited was not produced. It is also the case of the prosecution that Rs. 175 crore was transferred to Kalaignar TV (P) Limited despite condition precedent mentioned in the aforesaid agreement not being complied with. It is also the case of the prosecution that this agreement was not even on stamp paper.

1638. It is also the case of the prosecution that no collateral securities were taken when the money was transferred from one company to another. It is also the case of the prosecution that return of money by Kalaignar TV (P) Limited, on Sh. A. Raja being summoned by CBI, indicates its sudden reaction pointing to dubious nature of transactions. It is also the case of the prosecution that these companies have claimed that this was a loan transaction, but the rate of interest was below the market rate. It is the case of the prosecution that the aforesaid entities were working against their object clause also by transferring the money from one entity to another. It is also the case of the prosecution that not only this, these entities also paid interest to each other to show the transaction as genuine one and to conceal the real nature of transaction. It is the case of the prosecution that the aforesaid transactions were not bona fide business transactions but were meant for transfer of illegal gratification to Kalaignar TV (P) Limited for the favours shown by Sh. A. Raja.

1639. The case of the prosecution regarding transfer of money to Kalaignar TV (P) Limited and its return is contained in the examination-in-chief of PW 151 Dy SP Sh. S. K. Sinha dated 31.10.2013, page 1, which reads as under:

> ".....Investigation revealed that during the period from December 2008 to August 2009, M/s Dynamix Realty (a partnership firm) transferred a sum of Rs. 209.25 crore to M/s Kusegaon Fruits and Vegetables (P) Limited, which, in turn, transferred a sum of Rs. 206.25 crore to M/s Cineyug Films (P) Limited. M/s Cineyug Films (P) Limited transferred a sum of Rs.

200 crore to M/s Kalaignar TV (P) Limited, Chennai, during the same period. Investigation further revealed that these transactions are sham and dubious ones.

Investigation further revealed that during the period from December 2010 to February 2011, M/s Kalaignar TV (P) Limited, Chennai, repaid the said amount of Rs. 200 crore and the interest accrued thereon to M/s Cineyug Media and Entertainment (P) Limited (formerly Cineyug Films (P) Limited). M/s Cineyug Media and Entertainment (P) Limited also transferred a sum of Rs. 200 crore and the interest accrued thereon to Kusegaon Realty (P) Limited (formerly Kusegaon Fruits and Vegetables (P) Limited). M/s Kusegaon Realty (P) Limited transferred the amount alongwith the interest accrued thereon to M/s Dynamix Realty during the same period. These transactions too are sham and dubious ones....."

1640. It is also the case of the prosecution that if the aforesaid transfer of amount is taken to be a genuine transaction of loan from one entity to another, even then the rate of interest was too low. It is the case of the prosecution that since the loan was given by an entity of DB group to Kalaignar TV (P) Limited at the instance of Sh. A. Raja for the favours shown by him to DB group in the matter of grant of UAS licences to STPL, it amounted to obtaining valuable thing by Sh. A. Raja for a consideration known to be inadequate.

1641. On the other hand, the case of the defence is that the transfer of money from one entity to another had nothing to do with the grant of UAS licences and allocation of spectrum by Sh. A. Raja to STPL. It is the case of the defence that LOIs were issued on 10.01.2008 and licence agreements were signed with

STPL on 27.02.2008 for two service areas and on 03.03.2008 for remaining service areas and spectrum for Delhi service area was also approved to be allocated on 26.08.2008. It is the case of the defence that the transfer of money started on 23.12.2008, that is, after a gap of four months. It is the case of the defence that in the light of these facts, it cannot be said that the transfer of money was in anyway related to allocation of spectrum by Sh. A. Raja.

1642. It is also the case of the defence that the aforesaid transactions were purely commercial in nature and the money was transferred from Dynamix Realty to Kusegaon Fruits and Vegetables (P) Limited as an unsecured loan with interest rate of 7.5% per annum. It is the case of the defence that this amount was further transferred to Cineyug Films (P) Limited as Kusegaon Fruits and Vegetables (P) Limited wanted to buy 49% equity of that firm for an amount of Rs. 6.25 crore and also wanted to earn some interest arbitrage and Rs. 200 crore was transferred for buying 8% optionally convertible redeemable debentures. It is also the case of the defence that Cineyug Films (P) Limited wanted to buy equity in Kalaignar TV (P) Limited, and for that the aforesaid amount was transferred and when the deal fell through, the amount was returned. It is the case of the defence that there is no illegality in the aforesaid transactions. It is the case of the defence that there is absolutely no material on record to connect the transaction with Sh. A. Raja. It is the case of the defence that entire case is based on speculations and remote possibilities.

1643. Both parties have invited my attention to the mass of documents and evidence on record for close to a month.

Let me now take note of the evidence on record.

Transfer of Money from Dynamix Realty to Kusegaon Fruits and Vegetables (P) Limited

Introduction of Dynamix Realty

1644. PW 111 Sh. Pramod Kumar Goenka in his examination-in-chief dated 02.04.2013, page 3, deposed about Dynamix Realty being a partnership firm as under:

> ".....Dynamix Realty is a partnership firm, in which Conwood Constructions and Developers (P) Limited and Eversmile Construction Co. (P) Limited are one per cent partners. The remaining share, that is, 99% of the partnership firm is held by DB Realty Limited. I was initially a director in DB Realty Limited....."

In his further examination-in-chief dated 02.04.2013, page 11, he deposed about partnership deed creating Dynamix Realty as under:

> ".....I have been shown original partnership deed of Dynamix Realty. It is a genuine document and is now Ex PW 111/L (D-745). I have also been shown Deed of Admission of Dynamix Realty (D-746). The same is also a genuine document and is now Ex PW 111/M. I have been shown shareholders register of DB Realty Limited. This is also a genuine document and is also Ex PW 111/N (D-793)....."

About the partners, that is, Conwood Construction & Developers (P) Limited and Eversmile Constructions Company (P) Limited, he deposed in his examination-in-chief, dated

02.04.2013, pages 2 and 3 as under:

> ".....Conwood Constructions and Developers (P) Limited is an old company, which was incorporated by my father. I do not know the year of incorporation of this company even by approximation. This company is engaged in construction business. I am a director in this company since long, that is, for the last about twenty years. The decisions of the company are taken by the board, of which I am also a member. I reside out of India, so whenever I am in India, I used to attend its board meetings. I remain out of India on an average for twenty days in a month and this applies to whole of the year. My elder brother Sh. Vinod Goenka is also a director and, as such, a member of the board. I do not know if Sh. Rajiv Agarwal holds any position in the company.
>
> Eversmile Construction Co. (P) Limited was incorporated about twenty years ago by my father. I am a director in this company also. My brother Sh. Vinod Goenka is also a director in the company. My brother Sh. Vinod Goenka and myself are directors in this company for more than ten years. I also used to attend its board meetings, whenever I was in India. The decisions in the company are taken by the board, of which I am also a member.
>
> The day-to-day decisions in Conwood Constructions and Developers (P) Limited and Eversmile Construction Co. (P) Limited are/ have been taken by my sister Ms. Sunita Goenka. She takes these decisions as she is a director in both the companies and, as such, a member of the boards of the two companies....."

As per his further deposition, pages 5 and 6, Sh. Rajiv Agarwal is also a director in both companies.

1645. About third partner DB Realty Limited, in his examination-in-chief dated 02.04.2013, page 3, PW 111

deposed as under:

> ".....I was a director in this company from 2007 and resigned in 2009. The board of the company is large one in which my elder brother Vinod Goenka is also a director/ member. Shahid Usman Balwa is also a director in the company. I initially attended board meetings of this company. The board of directors of the company invited me for being a member of the company. I was an independent director. I was having some shares of DB Realty Limited and, as such, I was known to the members of the board....."

Decision making by the Three Companies

1646. In his examination-in-chief dated 02.04.2013, pages 3 and 4, PW 111 deposed about decision-making in the three companies as under:

> ".....The financial decisions of the two companies, that is, Conwood Constructions and Developers (P) Limited and Eversmile Construction Co. (P) Limited, used to be taken by the board and the decisions used to have my consent also. As long as I remained director of DB Realty Limited, the same practice was followed in that company also. In case I was present in a board meeting, the decision would be taken with my consent. In case of my being abroad, my consent would be obtained telephonically. Any member of the board would call me for obtaining my consent....."

In cross-examination by learned Sr. PP he denied the suggestion that in Conwood Construction & Developers (P) Limited and Eversmile Constructions Company (P) Limited, Sh. Vinod Goenka was the decision making authority.

Introduction of Kusegaon Fruits and Vegetables (P) Limited: Its

Incorporation and Transfer

1647. PW 111 Sh. Pramod Kumar Goenka in his examination-in-chief dated 02.04.2013, pages 1 and 2, deposed about its incorporation as under:

> ".....Kusegaon Fruits and Vegetables (P) Limited was incorporated by me in the year around 2002. Initially my father and myself were members of this company. The registered address of the company was Conwood House, Goregaon (East), Mumbai-63. It was a shelf company. It was not running any business. The company was planned to carry on agriculture business.
>
> Presently, the company is with Rajiv Agarwal and Asif Balwa. This company was transferred to them by us in year around 2007. Both of us sold our shares to them. It was transferred to Rajiv Agarwal and Asif Balwa as we were not conducting any business through this company. They directly conveyed their desire to me for transferring this company to them and I agreed and transferred the company to them.
>
> Sh. Vinod Goenka is my elder brother. He had no role in the transfer of this company to Rajiv Agarwal and Asif Balwa. The shares were sold by us, that is, my father and myself, to them at book value, which I do not remember now. The shares of my father and myself were transferred equally to Rajiv Agarwal and Asif Balwa. The sale price of the shares was transferred to our bank accounts by the purchasers on the date of transfer of the company....."

In his further examination-in-chief at page 4, PW 111 deposed as under:

> ".....I have been shown register of members of Kusegaon Fruits and Vegetables (P) Limited, D-800, already Ex PW 89/D. It is a genuine register of

members of the company. As per this register, this company was incorporated on 01.12.2006, with 1000 shares of Rs. 100 each, out of which 500 shares were held by me and 500 shares by my father Sh. K. M. Goenka. As per this register, this company was transferred to Rajiv Agarwal and Asif Balwa on 19.07.2008. My father Sh. K. M. Goenka and myself remained directors in this company till 14.07.2008. As per this register, Sh. Asif Balwa and Sh. Rajiv Agarwal became directors of this company on 13.06.2008. Sh. Atul Pancholi and Sh. Mohamed Ashraf Nagani became directors of this company on 19.07.2008....."

1648. In his cross-examination by the defence dated 03.04.2013, pages 1 and 2, PW 111 deposed about incorporation and sale of Kusegaon Fruits and Vegetables (P) Limited, as under:

".....It is correct that Kusegaon Fruits and Vegetables (P) Limited was one such shelf company created by us in the year 2006. It is correct that object clause of such companies can be changed by passing a special resolution and in case a business opportunity arises, the object clause is accordingly changed to exploit the business opportunity. It is correct that I had sold three four companies to Rajiv Agarwal and Asif Balwa in 2008 in addition to Kusegaon Fruits and Vegetables (P) Limited. These companies include Avanti Agro Farms (P) Limited, Sahyadri Horticulture (P) Limited, Sahyadri Grapes and Plantation (P) Limited, Sahyadri Organic Farms (P) Limited and Yash Fruit Trading and Packaging (P) Limited. It is correct that for purchasing these companies, Asif Balwa and Rajiv Agarwal directly came to me. The sale of these companies, including Kusegaon Fruits and Vegetables (P) Limited, was a usual business transaction and there was no illegality involved in this....."

In cross-examination by learned Sr. PP, he denied the suggestion that Kusegaon Fruits and Vegetables (P) Limited was purchased by Sh. Vinod Goenka.

1649. PW 76 Sh. Faiyaz Ahmed, Assistant Manager (Accounts), Neelkamal Realtors (P) Limited, a company of DB group, in his cross-examination dated 07.11.2012, page 6, deposed as under:

> ".....It is correct that Asif Balwa and Rajiv Agarwal, apart from having a role in DB group, were also having their own separate business. They run their company independent of DB group....."

1650. PW 111 Sh. Pramod Kumar Goenka deposed both in his examination-in-chief as well as cross-examination that Kusegaon Fruits and Vegetables (P) Limited is a company of Sh. Asif Balwa and Sh. Rajiv Agarwal. The prosecution did not challenge this version of the witness. The witness was cross-examined by the learned Sr. PP in which he did not question the transfer of the company to Sh. Asif Balwa and Sh. Rajiv Agarwal but questioned only to the extent that the transfer of the company was on the asking of Sh. Vinod Goenka, which the witness denied. It is thus clear that Dynamix Realty is a partnership firm of DB Realty Limited, Conwood Construction & Developers (P) Limited and Eversmile Constructions Company (P) Limited. Kusegaon Fruits and Vegetables (P) Limited is a company of Sh. Asif Balwa and Sh. Rajiv Agarwal. There is no contrary evidence on record.

Transfer of Money

1651. Regarding transfer of Rs. 209.25 crore from Dynamix Realty to Kusegaon Fruits and Vegetables (P) Limited, PW 111 Sh. Pramod Kumar Goenka identified the signatures of Sh. Asif Balwa and Sh. Rajiv Agarwal on cheques and deposed in his examination-in-chief, pages 7 and 8, as under:

> ".....Cheques Ex PW 93/E, E-6, E-16, E-20, E-24, E-25, E-29, E-8, E-27, E-18, E-14, E-22, E-4 and E-2 were issued by Dynamix Realty. All these cheques, except cheques Ex PW 93/E-8 and E-4, bear signature of Sh. Rajiv Agarwal at point A and that of Sh. Asif Balwa at point B, which I identify. Cheque Ex PW 93/E-8 bears the signature of Sh. Asif Balwa at point A. Cheque Ex PW 93/E-4 bears the signature of Sh. Asif Balwa at point A....."

In his further examination-in-chief at page 8, PW 111 deposed as under:

> ".....I have also been shown cheques Ex PW 93/E-10 and E-12, both of which have been issued by Dynamix Realty and both have been signed by Sh. Rajiv Agarwal and Asif Balwa at points A and B respectively....."

In his further examination-in-chief, pages 10 and 11, he deposed as under:

> ".....**Ques**: Do you know about any resolution passed by Conwood Constructions and Developers (P) Limited or by Eversmile Construction Co. (P) Limited for the transfer of the aforesaid amount?
> **Ans**: I do not know anything about it.
> **Ques**: Conwood Constructions and Developers (P) Limited and Eversmile Construction Co. (P) Limited were/ are partners of Dynamix Realty. Did these two companies authorize anyone to participate in the

affairs of Dynamix Realty?
Ans: No.

My sister Ms. Sunita Bali (Goenka) participate in the business of Dynamix Realty on behalf of the two companies, being whole time director in the two companies. However, she was not participating in the day-to-day affairs of Dynamix Realty. I do not know who was doing it on behalf of the company……."

As per this witness, when the money was transferred from Dynamix Realty to Kusegaon Fruits and Vegetables (P) Limited, cheques were signed by Sh. Asif Balwa and Sh. Rajiv Agarwal.

1652. PW 108 Sh. Atul Pancholi, who is one of the directors on the board of Kusegaon Fruits and Vegetables (P) Limited, in his examination-in-chief dated 19.03.2013, pages 1 and 2, deposed as to how he and others became directors in Kusegaon Fruits and Vegetables (P) Limited as under:

"…….Sh. K.M. Goenka and Sh. Pramod K. Goenka were the directors in the company from 01.12.2006 to 14.07.2008. Thereafter, Sh. Asif Balwa and Sh. Rajiv Agarwal also became directors w.e.f. 13.06.2008. I joined as director on the board of the company on 19.07.2008. Sh. Mohomad Asraf Nagani also joined as director on the board of the company on the same day. This fact is reflected on pages 48 to 50 of this register, which are now collectively Ex PW 108/B.

Sh. Rajiv Agarwal invited me to join the board of the company as a director due to my 23 years of experience and knowledge in accounts. I was not an employee of this company. I was an outside director. Kusegaon Fruits and Vegetables (P) Limited is not a company of DB group. Goan Real Estate and Construction Pvt. Ltd. is an associate

company of DB group. Sh. Asif Balwa and Sh. Rajiv Agarwal were employees of DB group……."

Thus, this witness is a director of Kusegaon Fruits and Vegetables (P) Limited since 19.07.2008 and is a man of experience and knowledge in accounts.

1653. Regarding receipt of money of Rs. 209 crore from Dynamix Realty to Kusegaon Fruits and Vegetables (P) Limited, PW 108 in his examination-in-chief dated 19.03.2013, pages 2 and 3, deposed as under:

> "……..I have been shown the minutes of the board meeting held on 30.03.2009 and 29.11.2009. Both these meetings were attended by me as director. The minutes are already Ex PW. 89/C-3 and C-6 respectively. The decision to borrow and invest Rs. 225 crore was taken by the board jointly. Rs. 209.25 crore came from Dynamix Realty……."

This witness referred to minutes dated 30.03.2009, Ex PW 89/C-3, resolution 3 of which pertains to authority to borrow funds and reads as under:

> "3. Authority to borrow funds:
>
> It was "RESOLVED THAT the Board of Directors of the Company do approve and ratify the borrowings of Rs.31.50 crores during the year from Dynamix Realty, an associate firm and that Mr. Asif Balwa and Rajiv Agarwal be and are hereby authorized to borrow additional funds upto Rs.225 crores from any of the associate companies or firms."

1654. In an authority reported as **M.S. Madhusoodhanam and Another Vs. Kerala Kaumudi (P) Ltd and Others, (2004) 9 SCC 204**, dealing with the minutes of meeting of a company,

Hon'ble Supreme Court observed in paragraph 47 as under:

> "Furthermore, under Section 194 of the Companies Act, 1956, the minutes of the meetings kept in accordance with the provisions of Section 193 shall be evidence of the proceedings recorded therein and unless the contrary is proved it shall be presumed under Section 195 that the meeting of the Board of Directors was duly called and held and all proceedings thereat to have taken place....."

Section 194 of the Companies Act, 1956 reads as under:

> "**Minutes to be evidence**. - Minutes of meetings kept in accordance with the provisions of section 193 shall be evidence of the proceedings recorded therein."

Thus, minutes of a meeting of a company are deemed to be correct and evidence of proceedings.

1655. In his cross-examination by defence dated 19.03.2013, page 6, PW 108 Sh. Atul Pancholi deposed about status of Sh. Rajiv Agarwal and Sh. Asif Balwa as under:

> ".....Sh. Rajiv Agarwal and Sh. Asif Balwa were associated with DB group as employees. They also have their own independent business. Kusegaon Fruits and Vegetables (P) Limited has been wholly owned company of Rajiv Agarwal and Asif Balwa since 19.07.2008.
> **Court Ques**: How do you know all these details?
> **Ans**. I know these facts since I am working for many years in this group.
> Sh. Rajiv Agarwal and Sh. Asif Balwa were running Kusegaon Fruits and Vegetables (P) Limited, independent of DB group. I know this fact as I was a director of Kusegaon Fruits and Vegetables (P) Limited.

Court Ques: You were an employee of DB group as you were working as Manager (Accounts) in Goan Real Estate and Construction Pvt. Ltd. Kusegaon Fruits and Vegetables (P) Limited was an independent company. Did you obtain permission from your employer for becoming director in Kusegaon Fruits and Vegetables (P) Limited?
Ans. I had asked my employer to become director in Kusegaon Fruits and Vegetables (P) Limited and they permitted me to do so.

They permitted me to become director, independent of my employment. Sh. Vinod Goenka and Shahid Usman Balwa did not give any specific instruction with regard to investment of Kusegaon Fruits and Vegetables (P) Limited in Cineyug Films (P) Limited....."

In his further cross-examination, pages 7 to 9, PW 108 deposed as under:

".....It is correct that Sh. Ashraf Nagani was also a director in Kusegaon Fruits and Vegetables (P) Limited. He was taking active part in decision making process. It is correct that when Kusegaon Fruits and Vegetables (P) Limited took loan from Dynamix Realty, term sheet and promissory note were executed under my signature. It is correct that tenure of the loan was later on extended and a document was executed in this regard. The term sheet, promissory note and extension letter are already Ex PW 89/DA, DB and DC respectively. All these three documents bear my signature at point B and that of Sh. Ashraf Nagani at point A.

.....
.....

It is correct that interest was paid by Kusegaon Fruits and Vegetables (P) Limited to Dynamix Realty, after deduction of TDS and a certificate was issued in this regard. Interest was paid to our company by Cineyug Films (P) Limited after deduction of TDS

and a certificate was also issued in this regard. It is correct that my company had filed an application with the income tax authority seeking lower deduction of tax on the interest received from Cineyug Films (P) Limited. The two TDS certificates and the application to income tax authority are already Ex PW 89/DE, DF and DD respectively.

It is correct that I had gone through the balance-sheet of the company as on 31.03.2009, as I was a director of the company. In this balance-sheet, which is a part of Ex PW 24/K-3 (D-727) (Sr. No. 1), an amount of Rs. 28.5 crore was reflected at point B, page 38, as share application money paid to Cineyug Films (P) Limited. This balance-sheet was signed on 28.07.2009 by the statutory auditor and the directors. It was so reflected as it was an investment in shares pending allotment. In the balance-sheet as on 31.03.2010, the transaction of Rs. 200 crore has been reflected as 8% debentures and the transaction of Rs. 6.25 crore has been reflected as equity share application money at point C, page 61. This balance-sheet was singed on 20.04.2010 by the auditors and directors.

It is correct that as and when payment was made to Cineyug Films (P) Limited, share application form was submitted to it by my company and I signed the application form as witness. The photocopies of such applications have been shown to me, which bear my signature at points A and the same are now Ex PW 108/DA-1 to DA-8. A draft copy of share subscription agreement was also attached with these application forms……."

1656. PW 108 Sh. Atul Pancholi, who was one of the directors in Kusegaon Fruits and Vegetables (P) Limited, deposed both in examination-in-chief as well as cross-examination that receipt of money of Rs. 209 crore from DB Realty was a bona fide loan transaction, for which due

documentation was done like submitting of application for share subscription, passing of board resolution and reflection in the balance sheet. He also deposed that many documents were signed by him. The version of this witness was not questioned by the prosecution, either by re-examination or cross-examination.

1657. PW 51 Sh. Mahesh Gandhi is a director in TCK Advisors (P) Limited and an independent investment Advisor, who is also a nominee director in DB Realty Limited, in his examination-in-chief dated 03.07.2012, page 5, deposed about loan to Kusegaon Fruits and Vegetables (P) Limited as under:

> ".....I never controlled or supervised the business of Dynamix Realty. I am aware of a company by the name of Kusegaon Fruits and Vegetables (P) Limited. I am aware of this company as in the normal course of its business, Dynamix Realty (P) Limited had given a loan to it. I am unable to recall if this loan transaction was discussed and approved in the board meeting of Dynamix Realty (P) Limited. If it was discussed in the board meeting, it must have been recorded in the minutes of the meeting....."

This witness in the examination-in-chief itself deposed that a loan was given to Kusegaon Fruits and Vegetables (P) Limited. In his cross-examination dated 03.07.2012, page 16, PW 51 deposed as under:

> ".....Deployment of the surplus funds was monitored by the oversight committee from time to time. I do not recall if the loan of Rs. 200 crores to Kusegaon Fruits and Vegetables Limited was authorized by oversight committee or not....."

This witness in his examination-in-chief as well as

cross-examination admitted giving loan to Kusegaon Fruits and Vegetables (P) Limited, but did not recall if it was authorized by oversight committee or not. The end result is that as per this witness, authorized by oversight committee or not, the money transferred to Kusegaon Fruits and Vegetables (P) Limited was a loan.

1658. PW 112 Sh. Satish Agarwal, General Manager (Accounts), DB Realty Limited, in his examination-in-chief dated 03.04.2013 proved various cheques signed by Sh. Rajiv Agarwal and Sh. Asif Balwa. He deposed, page 4, as under:

> ".....In DB group, Shahid Usman Balwa and Vinod Goenka used to be the decision making persons in 2007. However, this is not the position today.
> **Ques**: From whom Rajiv Agarwal and Asif Balwa used to take instructions?
> **Ans**: As far as Kusegaon Fruits and Vegetables (P) Limited was concerned, Rajiv Agarwal and Asif Balwa used to take their own decisions. However, in DB Realty, there was an oversight committee and managing director Sh. Shahid Usman Balwa was authorized to take decision up to Rs. 20 crore.
> As a person dealing with accounts, I knew that Dynamix Realty was a partnership firm. It was engaged in construction activity. It had no licence to function as non-banking financial company (NBFC). In Dynamix Realty also, there is an oversight committee and decisions up to Rs. 20 crore are taken by MD of DB Realty Limited as they are having 99% holding in the partnership firm....."

This witness is General Manager (Accounts) in DB Realty Limited since January 2009 and proved various cheques signed by Sh. Asif Balwa and Sh. Rajiv Agarwal. The witness deposed that as far as Kusegaon Fruits and Vegetables (P)

Limited is concerned, Sh. Rajiv Agarwal and Sh. Asif Balwa used to take their own decisions. However, prosecution did not put even a single question to this witness as to why the aforesaid amount of Rs. 209 crore was transferred to Kusegaon Fruits and Vegetables (P) Limited.

1659. In his cross-examination dated 03.04.2013, page 13, PW 112 Sh. Satish Agarwal deposed as under:

> ".....It is correct that the amount of Rs. 209 crore paid by Dynamix Realty to Kusegaon Fruits and Vegetables (P) Limited was a loan. It is further correct that this was also approved by the oversight committee. It is correct that this was a commercial decision as the loan was carrying an interest of 7.5% per annum and on account of this rate of interest Sh. Mahesh Gandhi agreed to it....."

In his further cross-examination, page 14, he further deposed as under:

> ".....It is correct that during this time, DB Realty Limited had issued its IPO and for which a draft prospectus was filed with the SEBI on 30.09.2009 and this fact was mentioned in the prospectus also. It is correct that in all the balance sheets of Dynamix Realty, this loan was reflected and it was considered a good investment....."

In his further cross-examination, page 16, he deposed as under:

> ".....It is correct that Rajiv Agarwal and Asif Balwa carry on their separate businesses also. It is also correct that Kusegaon Fruits and Vegetables (P) Limited is their separate company which has nothing to do with the DB group. It is correct that since I was dealing with accounts, it was my responsibility to ensure that no funds remain idle and so I will ensure

their future deployment also immediately……."

1660. PW 112 Sh. Satish Agarwal was re-examined by the prosecution on 05.04.2013 regarding IPO and mention of loan in draft prospectus filed with SEBI and in re-examination, page 1, he deposed as under:

> "……..My attention has been invited to my deposition page 14, dated 03.04.2013, wherein I had stated that DB Realty had issued its IPO and for which draft prospectus was filed with SEBI on 30.09.2009 and I had further stated that "this fact was mentioned in the prospectus also.
> **Ques**: What fact was stated in the prospectus?
> **Ans**: The fact of giving of loan of Rs. 209 crore was stated in the prospectus filed with the SEBI, which is already Ex PW 112/DF.
> **Ques**: Could you please point out as to where and on which page this fact has been stated in this prospectus?
> **Ans**: This fact is stated on page F-113, portion A to A……"

This witness was cross-examined by the defence after re-examination and in his cross-examination dated 05.04.2013, pages 1 and 2, he deposed as under:

> "……..Page F-113 deals with "disclosure in respect of material related party transaction". This material related party transaction is explained in page F-107 at serial No. 55 as Kusegaon Fruits and Vegetables (P) Limited has been said to be related as enterprise over which key management personnel (KMP) and their relatives have significant influence. Key management personnel means Sh. Asif Balwa and Sh. Rajiv Agarwal, Ms. Sunita Bali etc. DB Realty Limited had 99% shares in Dynamix Realty and, as such, the total figure is Rs. 209 crore and its 99%, that is, Rs. 207 crore, is reflected in page F-113.

Kusegaon Fruits and Vegetables (P) Limited is company of Rajiv Agarwal and Asif Balwa and that is why it has been disclosed in the prospectus as company owned by key management personnel (objected to by Sh. U. U. Lalit, learned Spl. PP)....."

This witness categorically deposed that the transfer of Rs. 209 crore from Dynamix Realty to Kusegaon Fruits and Vegetables (P) Limited was a loan and it was reflected in the draft prospectus of IPO, Ex PW 112/DF, also, filed with the SEBI on 30.09.2009. However, the version of the witness that it was a loan was not challenged by the prosecution. Only its reflection in the draft prospectus was questioned in re-examination. Now the aforesaid evidence is binding on the prosecution. In an authority reported as **Raja Ram Vs. State of Rajasthan, (2005) 5 SCC 272**, Hon'ble Supreme Court while dealing with such a situation observed in paragraphs 7 to 9 as under:

"**7.** But the difficulty in this case is that the dying declaration cannot survive scrutiny due to certain broad circumstances. The first circumstance is the testimony of the father of Rameshwari Devi who was examined as PW 6. He said that one Khajan Chand (PW 5) who was a neighbour was impressing upon the deceased while she was in burnt condition that she should not tell the authorities that she herself poured kerosene and set herself ablaze as that would land her in prosecution proceedings against her. Instead she was advised to put the blame on the husband and his parents as a way out to rescue herself. As the Public Prosecutor treated PW 6 hostile the trial court and the High Court rightly declined to place reliance on his testimony.

8. But PW 4 Subhash Chander, another neighbour, who too was present when Rameshwari Devi was

removed to the hospital had also testified to the same position as PW 6 said. Of course, he was also treated as hostile by the prosecution and, therefore, he was also placed on the same position of reliability as PW 6.

9. But the testimony of PW 8 Dr. Sukhdev Singh, who is another neighbour, cannot easily be surmounted by the prosecution. He has testified in very clear terms that he saw PW 5 making the deceased believe that unless she puts the blame on the appellant and his parents she would have to face the consequences like prosecution proceedings. It did not occur to the Public Prosecutor in the trial court to seek permission of the court to heard (*sic* declare) PW 8 as a hostile witness for reasons only known to him. Now, as it is, the evidence of PW 8 is binding on the prosecution. Absolutely no reason, much less any good reason, has been stated by the Division Bench of the High Court as to how PW 8's testimony can be sidelined."

Similarly, in an authority reported as **V. N. Deosthali Vs. State, through CBI, 2010 (1) JCC 466**, Hon'ble Delhi High Court observed in paragraph 19 as under:

"When a witness deposes a particular fact and no suggestion to the contrary is given to him in cross-examination, the party against whom the deposition is made is deemed to have admitted that fact."

This view was also reiterated in a case reported as **Javed Masood and Another Vs. State of Rajasthan, (2010) 3 SCC 538**, wherein Hon'ble Supreme Court observed in paragraphs 20 and 21 as under:

"**20.** In the present case the prosecution never declared PWs 6, 18, 29 and 30 "hostile". Their evidence did not support the prosecution. Instead, it

supported the defence. There is nothing in law that precludes the defence to rely on their evidence.

21. This Court in *Mukhtiar Ahmed Ansari v. State (NCT of Delhi)* observed: (SCC pp. 270-71, paras 30-31)

"*30.* A similar question came up for consideration before this Court in *Raja Ram v. State of Rajasthan*. In that case, the evidence of the doctor who was examined as a prosecution witness showed that the deceased was being told by one K that she should implicate the accused or else she might have to face prosecution. The doctor was not declared 'hostile'. The High Court, however, convicted the accused. This Court held that it was open to the defence to rely on the evidence of the doctor and it was binding on the prosecution.

31. In the present case, evidence of PW 1 Ved Prakash Goel destroyed the genesis of the prosecution that he had given his Maruti car to the police in which the police had gone to Bahai Temple and apprehended the accused. When Goel did not support that case, the accused can rely on that evidence."

The proposition of law stated in the said judgment is equally applicable to the facts in hand."

1661. PW 114 Ms. Aseela Vinod Goenka, who is a director in Conwood Construction & Developers (P) Limited, one of the partners in Dynamix Realty, in her examination-in-chief dated 29.04.2013, page 3, deposed about Rs. 209.25 crore as under:

".....I do not know about the transfer of Rs.209.25 crore from M/s Dynamix Realty to Kusegaon Fruits and Vegetables (P) Limited during the year 2008-2009 as this transfer has nothing to do with Conwood Construction & Developers Private Limited. I am aware about the partnership business of M/s Dynamix Realty, in which, Conwood

Construction & Developers Private Limited is a partner.....”

In her further examination-in-chief page 4, she deposed as under:

“.....**Question:** Do you know, if anyone was authorized by Conwood Construction & Developers Private Limited to participate in the partnership business of M/s Dynamix Realty on behalf of the company?
Answer: No one is specifically authorized to do so. However, since my sister-in-law Ms. Sunita Bali is Incharge of day-to-day affairs, I assume that she would be doing it. I am not aware about it as a matter of fact.....”

This witness displayed complete lack of knowledge about transfer of money to Kusegaon Fruits and Vegetables (P) Limited. Prosecution did not put its case to this witness.

1662. PW 118 Sh. S. A. K. Narayanan, Company Secretary, DB Realty Limited, in his examination-in-chief dated 07.05.2013, pages 2 and 3, deposed about deed of admission/ partnership deed as under:

“.....I have been shown a deed of admission of firm Dynamix Realty, already Ex PW111/M, D-746. This is also a genuine document and I am aware of it. This deed of admission was executed on admission of DB Realty Limited as a partner in partnership firm Dynamix Realty. The other partners of this firm are M/s Conwood Construction & Developers Private Limited and Eversmile Construction Company Private Limited. This document has been signed by Sh. Ram K. Darayanani on behalf of Eversmile Construction Company Private Limited at point B, by Sh. Rajiv Agarwal on behalf of M/s Conwood Construction &

Developers Private Limited at point A and Sh. Shahid Balwa on behalf of DB Realty Limited at point C. I recognize all the signatures. The date of execution of this deed is 17.02.2007. The capital of the firm was Rs.7,50,000/-, each partner contributing Rs.2,50,000/-.

The main objects of the partnership firm included the development and construction of buildings, in the plots under SRA scheme (Slum Area Rehabilitation) and others as mentioned in the deed.

I have been shown deed of partnership firm of Dynamix Realty, already Ex PW111/L, D-745. I recognize this document also and it is also a genuine document. The firm started with this deed……."

The witness deposed that both the deeds are genuine.

1663. PW 118 Sh. S. A. K. Narayanan in his cross-examination dated 07.05.2013, page 7, deposed about transfer of Rs. 209 crore from Dynamix Realty to Kusegaon Fruits and Vegetables (P) Limited, as under:

"……..It is correct that the transaction of Rs.209 crore, giving of loan by Dynamix Realty to Kusegaon Fruits and Vegetables (P) Limited, was shown as recoverable asset in the balance sheet of the firm. It is correct that this was a pure loan given by Dynamix Realty to Kusegaon Fruits and Vegetables (P) Limited at the rate of 7.5% per annum and it was not an investment into cinematography. For this loan, it was no legal requirement for the firm to be an NBFC nor approval of RBI guidelines. No objection was taken to this loan by the auditors of DB Realty Limited and Dynamix Realty……."

This witness also was not questioned by the prosecution about the transfer of Rs. 209 crore to Kusegaon

Fruits and Vegetables (P) Limited, though he is a company secretary of DB Realty Limited, a partner of 99% in Dynamix Realty. He just proved the shareholder's register of DB Realty Limited, its minutes book and a few other documents in his examination-in-chief. In his cross-examination, page 7, he described the transfer of Rs. 209 crore to be a loan as under:

> ".....It is correct that the transaction of Rs.209 crore, giving of loan by Dynamix Realty to Kusegaon Fruits and Vegetables (P) Limited, was shown as recoverable asset in the balance sheet of the firm. It is correct that this was a pure loan given by Dynamix Realty to Kusegaon Fruits and Vegetables (P) Limited at the rate of 7.5% per annum and it was not an investment into cinematography. For this loan, it was no legal requirement for the firm to be an NBFC nor approval of RBI guidelines. No objection was taken to this loan by the auditors of DB Realty Limited and Dynamix Realty....."

1664. This witness also was not re-examined or cross-examined by the prosecution. This aspect of cross-examination and re-examination of witnesses by the prosecution has been explained by the prosecution in a written Note XIV (Part A) submitted to the Court on 28.04.2017. The relevant part of the written submission relating to re-examination and cross-examination reads as under:

> ".....*Re-examination*
> 3. Section 138 of the Evidence Act, sets out the order of examination of witnesses. Under the Section, a witness is to be first examined-in-chief by the party calling them and if desired by the adverse party, then cross-examined.
>
> 4. Pertinently, only under specific circumstances can

re-examination be conducted by the party calling the witness. Re-examination is confined to the explanation of matters referred in cross-examination. Thus, only where matters arise in cross-examination, which require explanation can re-examination be conducted. In other words, only where there is a variance between the examination-in-chief and the cross examination or where two versions had been given in cross-examination could re-examination be conducted for the purposes of explanation.

Cross-examination

5. As per the provisions of Section 162 Cr.P.C., a statement given under Section 161 Cr.P.C. may be used only for specific purpose. If duly proved, it may be used by the accused to contradict the witness. The same can be done by the Prosecution only with the permission of the Court.

6. Further under Section 162 Cr.P.C., the contradiction may only be done in terms of Section 145 of the Evidence Act. It further provides that the statement may be used in re-examination but only to explain a matter in cross-examination.

7. In other words, Section 162 Cr.P.C. has the following ingredients:

7.1 The witness must have been examined by the IO at the stage of investigation and his statement was recorded;

7.2 He must have been examined in court on behalf of the Prosecution;

7.3 A part of or the entire statement given during investigation is proved;

7.4 The defence may use the statement for the purposes of the contradiction;

7.5 The Prosecution may use it to contradict the witness by way of cross-examination only with the permission of the court.

8. For permission of the court to re-examine its own witness, Section 154 of the Evidence Act provides that the court, in its discretion, may permit a party who calls a witness to put any question to him which may be put in cross-examination by the adverse party.

9. For contradicting the witness with his statement under Section 161 Cr.P.C, Section 145 of the Evidence Act provides that a witness may be cross-examined as to previous statements made by him in writing or reduced to writing, with or without such statement being shown to him.

10. Section 145 of the Evidence Act is required thus to be read in light of Section 162 Cr.P.C.

11. What follows that only where a witness gives evidence in court for the Prosecution, which is contrary to his statement under Section 161 Cr.P.C., can the Prosecution seek to cross examine the witness.

12. Thus, on a reading of Section 162 Cr.P.C with Sections 138, 145 and 154 of the Evidence Act, it is clear that the domain of the prosecution with regard to cross-examination or re-examination of a witness is circumscribed by these provisions....."

1665. However, the above understanding of law by the prosecution is contrary to law laid down in an authority reported as **Rammi @ Rameshwar Vs. State of MP, (1999) 8 SCC 649**, wherein Hon'ble Supreme Court observed about the scope of re-examination in paragraphs 17 to 19 as under:

"**17.** There is an erroneous impression that re-examination should be confined to clarification of ambiguities which have been brought down in cross-

examination. No doubt, ambiguities can be resolved through re-examination. But that is not the only function of the re-examiner. If the party who called the witness feels that explanation is required for any matter referred to in cross-examination he has the liberty to put any question in re-examination to get the explanation. The Public Prosecutor should formulate his questions for the purpose. Explanation may be required either when the ambiguity remains regarding any answer elicited during cross-examination or even otherwise. If the Public Prosecutor feels that certain answers require more elucidation from the witness he has the freedom and the right to put such questions as he deems necessary for that purpose, subject of course to the control of the court in accordance with the other provisions. But the court cannot direct him to confine his questions to ambiguities alone which arose in cross-examination.

18. Even if the Public Prosecutor feels that new matters should be elicited from the witness he can do so, in which case the only requirement is that he must secure permission of the court. If the court thinks that such new matters are necessary for proving any material fact, courts must be liberal in granting permission to put necessary questions.

19. A Public Prosecutor who is attentive during cross-examination cannot but be sensitive to discern which answer in cross-examination requires explanation. An efficient Public Prosecutor would gather up such answers falling from the mouth of a witness during cross-examination and formulate necessary questions to be put in re-examination. There is no warrant that re-examination should be limited to one or two questions. If the exigency requires any number of questions can be asked in re-examination."

Prosecution is now bound by the evidence of the witness.

1666. PW 119 Ms. Sunita Goenka, one of the directors in Eversmile Constructions Company (P) Limited and Conwood Construction & Developers (P) Limited, in her examination-in-chief dated 08.05.2013, page 2, deposed about Dynamix Realty as under:

> ".....I am aware of partnership firm Dynamix Realty. I know this as two of my companies, that is, Eversmile Construction Company Pvt. Limited and Conwood Construction & Developers Private Limited are its partners. This firm was constituted somewhere in 2007. DB Realty Limited is also one of the partners in the firm. Initially, Eversmile Construction Company Pvt. Limited and Conwood Construction & Developers Private Limited were the only two partners of the firm. Later on, DB Realty Limited was also inducted as a partner, in 2007....."

In her further examination-in-chief, page 5, she deposed as under:

> ".....I am aware that Dynamix Realty had given Rs.209.25 crore to Kusegaon Fruits and Vegetables (P) Limited, may be in 2008-2009. I do not know why this money was given. I do not know, if this money was returned by Kusegaon Fruits and Vegetables (P) Limited or not. Since, the share of Conwood Construction & Developers Private Limited and Eversmile Construction Company Pvt. Ltd. was only one percent in the partnership firm, no one from these companies was participating in the affairs of the partnership firm. As per the partnership deed, any of the directors of the two companies was authorized to participate in the affairs of the firm but nobody really participated on account of absence

of any economic interest.....”

In her further examination-in-chief, page 7, she deposed as under:

> “.....The decision to give Rs.209.25 crore by Dynamix Realty to Kusegaon Fruits and Vegetables (P) Limited was taken by oversight committee of Dynamix Realty.....”

1667. This witness was cross-examined by the learned Sr. PP. In her cross-examination by the learned Sr. PP on 08.05.2013, page 8, she deposed as under:

> “.....It is wrong to suggest that the day-to-day decisions regarding affairs of the two companies were being by Sh. Vinod Goenka and Sh. Rajiv Agarwal. It is wrong to suggest that these two persons also used to take financial decisions of the two companies. I have no idea, if the transaction of Rs.209.25 crore is bonafide or not as we were not involved.
> **Question:** I put it to you that no resolution regarding this transfer of money from Dynamix Realty to Kusegaon Fruits and Vegetables (P) Limited was passed by the board of the aforesaid two companies as it was not a bonafide transaction?
> **Answer:** That is not correct. No resolution was passed as the two companies had no economic interest.....”

Here also the prosecutor did not put to the witness that the amount of Rs.200 Crore was transferred as illegal gratification, but only challenged the bona fide nature of the transaction by dubbing it dubious. No question was put to the witness that illegal gratification was disguised as an ordinary business transaction. A transaction may not be bona fide one for

so many reasons and it being linked to corruption may be one of the reasons.

1668. PW 124 Sh. Yashvardhan Goenka, who is a director in Eversmile Constructions Company (P) Limited, in his examination-in-chief dated 15.05.2013, pages 1 and 2, deposed about Dynamix Realty as under:

> ".....I know of partnership firm by the name and style Dynamix Realty, as Conwood Construction & Developers Private Limited and Eversmile Construction Company Pvt. Ltd. are owing 1% stake in this partnership firm. There is no real financial purpose for these two companies to be partners in this firm and they are partners for the purpose of Urban Land Ceiling (Regulation and Development) Act. The third partner DB Realty Limited owns the rest of the stake in the firm. I do not know as to when DB Realty Limited joined this partnership firm. I do not know as to how many partners were there in this partnership firm on the commencement of the partnership....."

In his further examination-in-chief, page 4, he deposed about Rs. 209.25 crore as under:

> ".....I do not know about the transfer of an amount of Rs.209.25 crore from Dynamix Realty to Kusegaon Fruits and Vegetables (P) Limited as we had no financial connection with Dynamix Realty. I am not aware about Kusegaon Fruits and Vegetables (P) Limited. I do not remember, if Eversmile Construction Company Pvt. Ltd. passed any resolution in its board regarding the aforesaid transfer of money. However, I cannot say anything about any such resolution being passed by Conwood Construction & Developers Private Limited, as I am not on the board of this company....."

This witness was cross-examined by the learned Sr. PP and in his cross-examination on 15.05.2013, page 6, he deposed as under:

> ".....It is wrong to suggest that the transaction of Rs.209.25 crore was not resolved in the books of Eversmile Construction Company Pvt. Ltd. as it was not a bona-fide transaction....."

Here again, only bona fides of the transaction were questioned without linking the same to the acts of Sh. A. Raja. The movement of money and its parking in Kalaignar TV (P) Limited will have to be yoked to Sh. A. Raja for giving it criminal hue, but there is no legally admissible evidence indicating this.

1669. PW 137 Sh. Jignesh Shah, Company Secretary of DB group, in his examination-in-chief dated 19.08.2013, page 2, deposed about Kusegaon Fruits and Vegetables (P) Limited as under:

> ".....I have also been shown statutory register of Kusegaon Fruits and Vegetables (P) Limited, already Ex PW89/D (D-800). I know about this register as this company is a personal company of Asif Balwa and Rajiv Agarwal and they used to consult me on need basis by showing this register to me. As per this register, Asif Balwa and Rajiv Agarwal joined this company as directors on 13.06.2008, pages 48 to 50, already Ex PW108/B. Similarly, there are other directors also. As per this register, the shareholding of Asif Balwa is 50%, that is, 500 shares of Rs.100 each and that of Rajiv Agarwal 50%, that is 500 shares of Rs.100 each....."

PW 137 in his cross-examination by the defence

dated 19.08.2013, page 15, deposed about the transfer of money as under:

> ".....It is correct that I attended the meeting of oversight committee in which decision to lend Rs.200 crore in Kusegaon Fruits and Vegetables (P) Limited was taken. This loan was given with interest rate of 7.5% and was not an investment in cinematography business. It is correct that DB Realty and its subsidiaries had given loans to other companies at a rate lower than this and also interest free loans during the aforesaid period. It is correct that when the loan was approved by oversight committee, it knew that Kusegaon Fruits and Vegetables (P) Limited was owned by Asif Balwa and Rajiv Agarwal....."

In his further cross-examination, page 16, he deposed as under:

> ".....It is correct that the aforesaid loan of about Rs.200 crore was disclosed to SEBI during the process of IPO when the prospectus was filed. In the prospectus, Rajiv Agarwal and Asif Balwa were shown as Key Management Persons. In the prospectus, those companies are also required to be listed in which KMP has significant control, provided there is a transaction between the two companies. It is correct that DB Realty Ltd. or its promoters do not hold any shares directly or indirectly in Kusegaon Fruits and Vegetables (P) Limited....."

This witness also deposed that the transaction was a loan transaction. However, this witness was re-examined by learned Sr. PP.

1670. In the re-examination by learned Sr. PP, he denied the suggestion that the transfer of Rs. 200 crore was not a genuine transaction. The witness was not re-examined on many

other issues. Furthermore, when the witness supported the version of defence, there was no cross-examination by the prosecution on that point.

The perusal of the evidence of aforesaid witnesses shows that witness after witness deposed that transfer of Rs. 200 crore from Dynamix Realty to Kusegaon Fruits and Vegetables (P) Limited was a loan and it was given through banking channel by means of cheques. However, the prosecution took no steps to discredit the witnesses by putting relevant questions either by re-examination or cross-examination. No question was also asked to any witness to impeach the credit of any document. In an authority reported as **Muddasani Venkata Narsaiah (D) Th. Lrs. Vs. Muddasani Sarojana, AIR 2016 SC 2250**, Hon'ble Supreme Court emphasized the importance of cross-examination. Though the authority is about cross-examination of a witness by opposite party, but when a witness produced by a party does not support its case, the witness is required to be cross-examined by the party calling him. The spirit of the authority is fully applicable to the instant case also. In paragraph 16, Hon'ble Supreme Court observed as under:

> "Moreover, there was no effective cross-examination made on the plaintiff's witnesses with respect to factum of execution of sale deed, PW.1 and PW.2 have not been cross-examined as to factum of execution of sale deed. The cross-examination is a matter of substance not of procedure one is required to put one's own version in cross-examination of opponent. The effect of non cross-examination is that the statement of witness has not been disputed.

The effect of not cross-examining the witnesses has been considered by this Court in Bhoju Mandal & Ors. v. Debnath Bhagat & Ors. AIR 1963 SC 1906. This Court repelled a submission on the ground that same was not put either to the witnesses or suggested before the courts below. Party is required to put his version to the witness. If no such questions are put the Court would presume that the witness account has been accepted as held in M/s. Chuni Lal Dwarka Nath v. Hartford Fire Insurance Co. Ltd. & Anr. AIR 1958 Punjab 440. In Maroti Bansi Teli v. Radhabai w/o Tukaram Kunbi & Ors. AIR 1945 Nagpur 60, it has been laid down that the matters sworn to by one party in the pleadings not challenged either in pleadings or cross-examination by other party must be accepted as fully established. The High Court of Calcutta in A.E.G. Carapiet v. A. Y. Derderian AIR 1961 Cal. 359 has laid down that the party is obliged to put his case in cross-examination of witnesses of opposite party. The rule of putting one's version in cross-examination is one of essential justice and not merely technical one. A Division Bench of Nagpur High Court in Kuwarlal Amritlal v. Rekhlal Koduram & Ors. AIR 1950 Nagpur 83, has laid down that when attestation is not specifically challenged and witness is not cross-examined regarding details of attestation, it is sufficient for him to say that the document was attested. If the other side wants to challenge that statement, it is their duty, quite apart from raising it in the pleadings, to cross-examine the witness along those lines. A Division Bench of Patna High Court in Karnidan Sarda & Anr. v. Sailaja Kanta Mitra AIR 1940 Patna 683, has laid down that the system of administration of justice allows of cross-examination of opposite party's witnesses for the purpose of testing their evidence, and it must be assumed that when the witnesses were not tested in that way, their evidence is to be ordinarily accepted. In the aforesaid circumstances, the High Court has gravely

erred in law in reversing the findings of the first Appellate Court as to the factum of execution of the sale deed in favour of plaintiff."

Thus, the prosecution did not put to the witnesses that the above transaction of Rs.200 crore was a transaction of illegal gratification. Only case put to the witnesses is that it was not a bonafide transaction. To make it to be a transaction of illegal gratification, prosecution argued about the speed and proximity with which the money was transferred from one entity to another. However, mere movement of money at fast or meandering speed does not make a transaction corrupt, as people conduct their business as per their own business sense and acumen. Speed of money can be commerce driven or crime driven. Speed of money by itself cannot be conflated with criminality unless there is good and irrefutable evidence, because speed of money is an important characteristic of modern commerce. In the instant case, there is no evidence that the speed of money by itself indicates criminality of the accused.

Transfer of Money from Kusegaon Fruits and Vegetables (P) Limited to Cineyug Films (P) Limited

Introduction of Cineyug Films (P) Limited

1671. PW 115 Ms. Neelam Soorma, one of the directors of Cineyug Films (P) Limited, in her examination-in-chief dated 02.05.2013, page 1, deposed about the incorporation of Cineyug Films (P) Limited as under:

".....My husband late Sh. Sunil Soorma started Cineyug Films (P) Limited alongwith Karim Morani,

Aly Morani and Mohd. Morani in the year 1983. In the beginning, the business started under a partnership firm. Mohd. Morani was not a partner in the beginning of the firm.

Later on, the partnership business was converted into a private company. The promoters of the company were my late husband Sh. Sunil Soorma, Karim Morani, Aly Morani, Mohd. Morani and Sh. Bipin Savla. Sh. Bipin Savla left the company some years ago. I do not know what happened to his shares in the company.

In March 2002, my husband passed away and in place of him, I became a director. The shares held by my husband was transferred in my name.

Every director does not have specified functions and each of the directors does whatever is required to be done by him....."

Thus, Cineyug Films (P) Limited is a company in which Sh. Karim Morani, Sh. Aly Morani, Sh. Mohamed Morani, all real brothers, and Ms. Neelam Soorma are directors. As per PW 122 Sh. Aly Gulamali Morani, the company is engaged in film production, event management and media related activities.

Transfer of Money

1672. PW 89 Sh. Ashraf Nagani, Executive Assistant in DB group of companies, who is also a director in Kusegaon Fruits and Vegetables (P) Limited, in his examination-in-chief dated 06.12.2012, page 2, deposed as to who are the directors in Kusegaon Fruits and Vegetables (P) Limited and that he was also one of the directors, as under:

".....I know Sh. Shahid Usman Balwa, Vinod Goenka, Asif Balwa and Rajiv Agarwal of DB Group.

I know about Kusegaon Fruits and Vegetables (P) Limited. I know this company as I was a director in this company for statutory purposes during the year 2007-2008, though I do not remember the exact period. Apart from myself, Sh. Atul Pancholi, Sh. Rajiv Agarwal and Sh. Asif Balwa were also directors in this company....."

In his further examination-in-chief, page 4, he deposed as to how the company came under the control of Sh. Asif Balwa and Sh. Rajiv Agarwal and also about investment by the company in Cineyug Films (P) Limited, as under:

".....I have been shown D-800, which is a register of members of this company. I recognize this and the same is now collectively Ex PW 89/D. On looking at page 1 of this register, I find that earlier Sh. Krishan Murari Goenka and Pramod Goenka were shareholders in this company since 01.12.2006. The details are mentioned in this page and the page is now Ex PW 89/D-1. Later on, shares of Sh. Krishan Murari Goenka were transferred to Asif Balwa on 19.07.2008 and that of Sh. Pramod Kumar Goenka to Rajiv Agarwal on 19.07.2008. The page is now Ex PW 89/D-2, page 4 of the register contains the detail.

I also know about Cineyug Films (P) Limited, which is a company of Sh. Karim Morani, though I do not know him personally. There was a proposal before the Kusegaon Fruits and Vegetables (P) Limited to buy 49% equity of Cineyug Films (P) Limited. The matter was discussed in the board of Kusegaon Fruits and Vegetables (P) Limited and I was present in the meeting....."

In the examination-in-chief itself, the witness deposed that there was a proposal for investment in Cineyug Films (P) Limited.

1673. PW 89 Sh. Ashraf Nagani in his cross-examination dated 06.12.2012, pages 8 and 9, deposed about the borrowing from Dynamix Realty and lending to Cineyug Films (P) Limited a sum of Rs. 200 crore, as under:

> ".....Whatever decisions were being taken in Kusegaon Fruits and Vegetables (P) Limited were being taken in its board meeting and I used to attend the board meeting as long as I was director. When I was on the board of the company, I came to know that Cineyug Films (P) Limited had given a proposal of investment of Rs. 200 crore seeking investment in it from our company. Since our company considered the proposal to be a good opportunity, we approached several lenders asking for loan for investment in Cineyug Films (P) Limited at reasonable rate. One of the lenders approached by us was Dynamix Realty. It is correct that oversight committee of DB group approved a loan of Rs. 200 crore to us at the rate of 7.5% per annum. This matter was thoroughly discussed in our board. Thereafter, the investment in Cineyug Films (P) Limited was also discussed in the board. It is correct that the decision to take the loan and to invest in Cineyug Films (P) Limited was taken jointly by the board. Shahid Usman Balwa and Vinod Goenka have no say in Kusegaon Fruits and Vegetables (P) Limited. It is correct that in the board meeting held on 30.03.2009, the minutes of which are already Ex PW 89/C-3, the board had given authority to Rajiv Agarwal and Asif Balwa to borrow as well as to invest up to a limit of Rs. 225 crore. This was done to facilitate the aforesaid investment in Cineyug Films (P) Limited. The transaction between Dynamix Realty and Kusegaon Fruits and Vegetables (P) Limited was a genuine business transaction and I know this as I was a director on the board of latter company. Similarly, the investment in Cineyug Films (P) Limited was also a genuine business transaction.

To my knowledge and understanding, the company did not commit any illegal activity during my tenure on the board....."

In his further cross-examination, page 10, he deposed as under:

".....The loan was taken and investment was made by this company following the ancillary objects given in its memorandum of association. This was done following the ancillary objects, though the company not being non-banking financial company. It is correct that paid up capital of the company have no bearing on its lending/ investing power and so it was not taken into consideration by the board. The investment was made in Cineyug Films (P) Limited at the rate of 8% per annum so the company was getting advantage of 0.5%. We also got 49% equity in Cineyug Films (P) Limited, which is an established company. This company returned our money as per the commitment executed in the documents, though we still hold 49% shares in Cineyug Films (P) Limited....."

This witness referred to board minutes dated 30.03.2009, Ex PW 89/C-3, and item 4 of the resolution deals with authority of directors to invest in shares, debentures etc., which reads as under:

"4. Authority to Directors Under section 292 of the Companies Act, 1956 to invest Funds of the Company in the shares, debentures, mutual fund units and other securities of other Bodies Corporate.

The Board was informed that it is necessary to authorise Directors of the Company under section 292 of the Companies Act, 1956 to invest Funds of the Company in the shares, debentures, mutual fund units and other securities of other Bodies Corporate,

mutual funds, Fixed Deposits / Term Deposits etc., subject to the aggregate value of such investments not exceeding Rs. 225 Crores at any time in any one or more bodies corporate or mutual funds.

The Board after discussion passed the following resolution:

"**RESOLVED THAT** pursuant to the provisions of section 292 and other applicable provisions, if any of the Companies Act, 1956, any one of the following Directors of the Company,

Mr. Asif Balwa and
Rajiv Agarwal

be and is hereby authorised to invest the funds of the Company in the shares, debentures, mutual fund units and other securities of other bodies corporate, mutual funds, Fixed / Term Deposits etc., subject to the aggregate value of such investments not exceeding Rs. 225 Crores at any time in any one or more bodies corporate or mutual funds.

RESOLVED FURTHER THAT any one of the Directors as aforesaid be and is hereby also authorised to purchase, subscribe or otherwise acquire or to sell, transfer redeem or otherwise dispose of any shares, debentures or units of other securities of other bodies corporate, mutual funds, Fixed / Term Deposits etc. within the above said overall limits.

RESOLVED FURTHER THAT any one of the Directors as aforesaid are also authorised to sign relevant share applications, transfer deeds or other instruments and to do all acts, things and deeds as may be required, in respect of aforesaid investments made on behalf of the Company or to be disposed of by the Company."

This witness also deposed about board minutes dated 19.11.2009, Ex PW 89/C-6, in which investments were approved, confirmed and ratified and item 3 reads as under:

> "3. To approve, confirms and ratifies the Investments
>
> The Board approve, confirms and ratifies the Investments in Cineyug Films Pvt. Ltd. as and way of advance / Share Application monies pending allotment by the said Company to the tune of Rs.200 Crores and passed the following resolution:
>
> RESOLVED THAT the Board hereby approves, confirms and ratifies the investments in Cineyug Films Private Limited as and by way of advances/ Share Application monies pending allotment by the said Company to the tune of Rs. 200 Crores towards 8% Optionally Fully Convertible Debentures and Rs. 6.25 Crores towards Share Application Money for allotment of Equity / Preference Shares of the said Company and that Mr. Rajiv Agarwal and Mr. Asif Balwa, Directors of the Company be and are hereby severally authorised to sign and deliver the necessary applications and obtain the certificates from the said Cineyug Films Private Limited for the said investments."

The witness thus categorically deposed in his examination-in-chief as well as cross-examination that he knew about the transaction of Rs. 200 crore and it was a genuine transaction. The witness also proved the board minutes, Ex PW 89/C. However, the prosecution did not challenge this version of the witness, either by re-examination of the witness or by cross-examination. No question was put to him aimed at impeaching his version of transaction.

1674. PW 108 Sh. Atul Pancholi, another director of Kusegaon Fruits and Vegetables (P) Limited, in his examination-in-chief dated 19.03.2013, page 3, deposed as under:

> ".....A proposal was received from Cineyug Films (P) Limited for investment of Rs. 200 crore towards 8% ROCCPS and Rs. 6.25 crore as equity. The financial team of the company scrutinized the proposal and found the proposal good. The proposal was accepted and the amount of Rs. 209.25 crore was invested accordingly in Cineyug Films (P) Limited. This was also a joint decision of the board.
>
> I know Sh. Vinod Goenka and Shahid Usman Balwa. They had no role in the borrowing and investment by this company. They did not use to give any direction to the company....."

In his cross-examination dated 19.03.2013, page 8, he deposed as under:

> ".....It is correct that investment was made in Cineyug Films (P) Limited at the rate of 8%. It is correct that the company was getting a profit mark up of 8 to 10%. It is correct that company was also getting 49% equity of a well established company and this equity is still being held. By this investment, company is in benefit even today....."

In his further cross-examination, page 9, he deposed as under:

> ".....It is correct that I had gone through the balance-sheet of the company as on 31.03.2009, as I was a director of the company. In this balance-sheet, which is a part of Ex PW 24/K-3 (D-727) (Sr. No. 1), an amount of Rs. 28.5 crore was reflected at point B, page 38, as share application money paid to Cineyug Films (P) Limited. This balance-sheet was signed on 28.07.2009 by the statutory auditor and the directors. It was so reflected as it was an

investment in shares pending allotment. In the balance-sheet as on 31.03.2010, the transaction of Rs. 200 crore has been reflected as 8% debentures and the transaction of Rs. 6.25 crore has been reflected as equity share application money at point C, page 61. This balance-sheet was singed on 20.04.2010 by the auditors and directors.

It is correct that as and when payment was made to Cineyug Films (P) Limited, share application form was submitted to it by my company and I signed the application form as witness. The photocopies of such applications have been shown to me, which bear my signature at points A and the same are now Ex PW 108/DA-1 to DA-8. A draft copy of share subscription agreement was also attached with these application forms....."

This witness also in his examination-in-chief as well as cross-examination termed the transfer of amount of Rs. 200 crore and Rs. 6.25 crore from Kusegaon Fruits and Vegetables (P) Limited to Cineyug Films (P) Limited as investment. However, the prosecution did not question the version of the witness. No question was put to him aimed at impeaching his version of the transaction.

1675. PW 111 Sh. Pramod Kumar Goenka, in his examination-in-chief dated 02.04.2013, page 7, identified the signatures of Sh. Rajiv Agarwal and Sh. Asif Balwa on cheques and deposed as under:

".....I have been shown cheques Ex PW 93/H-1, H-4, H-7, H-14, H-21, 93/K-1, K-9, K-11, K-19, K-21, K-23, K-17, K-15, K-3, K-13, K-7 and K-5 issued by Kusegaon Fruits and Vegetables (P) Limited. All these cheques, except cheques Ex PW 93/H-7 and H-17, bear the signature of Sh. Rajiv Agarwal at point A and Sh. Asif Balwa at point B. Cheque Ex PW

93/H-7 bears the signature of Sh. Asif Balwa at point B, but I am unable to identify the signature at point A. Cheque Ex PW 93/H-17 bears signature of Sh. Rajiv Agarwal at point A, but I am unable to identify signature at point B....."

In his further examination-in-chief, at page 9, he deposed as under:

"....."I have also been shown cheques Ex PW 93/H-27, H-24, H-18, H-12 and H-10, issued by Kusegaon Fruits and Vegetables (P) Limited. Cheques Ex PW 93/H-18 and H-10 bear the signature of Sh. Asif Balwa at point B, but I am unable to identify signature at point A. Remaining three cheques bear signature of Sh. Rajiv Agarwal and Asif Balwa at points A and B respectively.

I have also been shown RTGS requests Ex PW 93/H-26, H-23 and H-11 issued by Kusegaon Fruits and Vegetables (P) Limited. All these bear signature of Sh. Rajiv Agarwal and Asif Balwa at points A and B respectively. I have also been shown RTGS requests Ex PW 93/H-17 and H-9 and both of these bear signature of Sh. Asif Balwa at point A....."

No question was put by the prosecution to this witness also about these cheques or the purpose for which the cheques were issued. Prosecution was happy with just getting the signature of Sh. Rajiv Agarwal and Asif Balwa identified.

1676. PW 106 Sh. Mitesh Kurani, Chief Financial Officer, Cineyug Films (P) Limited, who is also a qualified chartered accountant, in his examination-in-chief dated 13.03.2013, pages 3 and 4, deposed about Subscription and Shareholder's Agreement (SSA) dated 27.01.2010, executed between Kusegaon Fruits and Vegetables (P) Limited and Cineyug Films

(P) Limited, as under:

> ".....I have also been shown Subscription and Shareholders Agreement (D-669) dated 27.01.2010 between Cineyug Films (P) Limited of the first part, Sh. Karim Morani of the second part, Sh. Aly Morani of the third part, Sh. Mohamed Morani of the fourth part and Ms. Neelam Soorma and M/s Kusegaon Fruits and Vegetables (P) Limited of the fifth part. The agreement is now Ex PW 106/D. This agreement has eight schedules appended to it and signatures of the parties to the agreement appear after the schedules at page 48. These schedules are now Ex PW 106/D-1 to D-8. I identify the signatures of Sh. Karim Morani, Sh. Aly Morani, Sh. Mohammed Morani and Ms. Neelam Soorma at points A to D respectively at page 48 of the agreement. The signatures appearing at points E and F on the same page are that of Sh. Rajiv Agarwal and Sh. Asif Balwa respectively, which I also identify. Each page of this document alongwith schedules also bears the initials of the aforesaid four persons at points A to D respectively. Each page of this agreement alongwith schedules has also been initialed by Rajiv Agarwal and Asif Balwa at points E and F respectively. I identify their initials also. This agreement Ex PW 106/D also bears the signature of Sh. Karim Morani at point A on the first page itself and initial of Sh. Rajiv Agarwal at point E on this page itself....."

He also proved ledger account of Kusegaon Fruits and Vegetables (P) Limited for the years 2008-09, 2009-10 and 2010-11 Ex PW 106/E-4 to E-6 (D-658).

The prosecution did not put any question to the witness disputing the correctness/ genuineness of documents proved by him in examination-in-chief itself.

1677. Regarding payment received from Kusegaon Fruits

and Vegetables (P) Limited, PW 106 Sh. Mitesh Kurani in his examination-in-chief dated 14.03.2013, pages 3 and 4, deposed as under:

> ".....**Ques**: An amount of Rs. 212,00,89,041/- is shown at page 37 of the balance sheet, Ex PW 106/L-2, to have been received by your company from Kusegaon Fruits and Vegetables (P) Limited. Could you please explain as to under what circumstances this amount was received by your company?
> **Ans**: Out of this amount of Rs. 212,00,89,041, an amount of Rs. 200 crore was received by the company pursuant to share subscription and shareholders agreement dated 27.01.2010, already Ex PW 106/D towards 8% interest bearing optionally convertible redeemable debentures and the amount of Rs. 12,00,89,041/- is the interest accrued on this amount net of TDS.
>
> An amount of Rs. 6,24,75,000/- was received separately from Kusegaon Fruits and Vegetables (P) Limited towards equity share capital containing 1,22,500 equity shares of Rs. 10 each alongwith premium of Rs. 500 on each share, which amount has been separately shown under the heading "share capital and reserves and surpluses" in balance sheet Ex PW 106/L-2....."

The prosecution did not question the version of this witness also, given by him in examination-in-chief itself, terming the transfer of Rs. 200 crore from Kusegaon Fruits and Vegetables (P) Limited to Cineyug Films (P) Limited as an investment.

1678. PW 115 Ms. Neelam Soorma, one of the directors of Cineyug Films (P) Limited, in her examination-in-chief dated 02.05.2013, proved the minutes book of Cineyug Films (P)

Limited, minutes of various board meetings as well as various cheques issued by Cineyug Films (P) Limited in favour of Kalaignar TV (P) Limited and other documents. She deposed about SSA dated 27.01.2010, page 9, as under:

> ".....I have also been shown Share Subscription and Shareholders Agreement dated 27.01.2010. It bears my initials at point D on each page. On the last page, my signature also appears at point D. The initials at point A are that of Karim Morani, at point B are that of Aly Morani and at point C are that of Mohd. Morani. Their signatures also appears on the last page at points A, B and C respectively. The same is already Ex PW106/D....."

The witness proved the documents as well as the transactions, but the prosecution did not put even a single question disputing her version about the genuineness of the documents or the purpose behind the issue of cheques.

1679. PW 122 Sh. Aly Gulamali Morani, one of the directors of Cineyug Films (P) Limited, in his examination-in-chief dated 13.05.2013, page 1, deposed about receipt of Rs. 206.25 crore from Kusegaon Fruits and Vegetables (P) Limited and its investment in Kalaignar TV (P) Limited as under:

> ".....I am aware of a transaction of Rs.206.25 crore entered into between Cineyug Films (P) Limited and Kusegaon Fruits and Vegetables (P) Limited. Out of this money, Rs.6.25 crore was received in lieu of allotment of equity to Kusegaon Fruits and Vegetables (P) Limited and remaining Rs.200 crore was received as a loan. This transaction happened approximately towards the end of 2008 and continued till 2011-2012, though, I am not sure. The money kept coming till this period. We had a proposal to invest the amount in Kalaignar TV (P)

Limited and the money was accordingly invested there....."

In his examination-in-chief he proved the minutes book of Cineyug Films (P) Limited, Ex PW 106/DF (D-764) and various board resolutions, Ex PW 115/A, 106/DF-1, 106/DH, 115/B and 122/A-1 to A-12. He admitted that all these board minutes bear his signature.

In his cross-examination dated 13.05.2013, pages 15 and 16, he deposed about the transaction between Kusegaon Fruits and Vegetables (P) Limited and Cineyug Films (P) Limited as under:

"....."It is correct that this was on the basis of our financial team scouting the market for funds. It is correct that Kusegaon Fruits and Vegetables (P) Limited informed us that it would not like to go for pure loan but would like to have equity subscription in Cineyug Films (P) Limited. It is correct that this was because Kusegaon Fruits and Vegetables (P) Limited considered Cineyug Films (P) Limited to be attractive investment opportunity. It is correct that they were considering this as they had made lot of inquiries about our company and were happy with the results. It is correct that Kusegaon Fruits and Vegetables (P) Limited gave proposal to Cineyug Films (P) Limited consisting of both equity and debentures. It is correct that eventually, an investment of Rs.206 crore was agreed upon by Kusegaon Fruits and Vegetables (P) Limited into Cineyug Films (P) Limited. It is correct that this entire fund movement was through banking channel without movement of any cash. It is correct that our financial team expressed reservation against giving equity to them. It is correct that our financial team was comfortable with giving debentures to them. It is correct that Kusegaon Fruits and Vegetables (P)

Limited kept insisting on preference shares and for this reason, the negotiation took lot of time. It is correct that Kusegaon Fruits and Vegetables (P) Limited was asking for 50% stake in Cineyug Films (P) Limited and eventually, it gave only 49% stake and they continue to hold this stake, till date....."

This witness also justified the investment, both in examination-in-chief as well as in cross-examination. However, the prosecution did not dispute his version by putting any question to him, either in cross-examination or re-examination.

1680. PW 125 Sh. Mohamed Gulamali Morani, one of directors in Cineyug Films (P) Limited, in his examination-in-chief, dated 17.05.2013, pages 1 and 2, deposed as under:

".....I am aware of receipt of about Rs.206 crore in Cineyug Films (P) Limited from Kusegaon Fruits and Vegetables (P) Limited, approximately towards the end of 2008 and in the beginning of 2009. The decision to receive this amount from Kusegaon Fruits and Vegetables (P) Limited was taken jointly by the board of directors and the financial team....."

In his cross-examination dated 17.05.2013, pages 19 and 20, PW 125 deposed about the genuineness of the transaction as under:

".....It is correct that Kusegaon Fruits and Vegetables (P) Limited holds 49% shares in our company. It is correct that when negotiations were going on between Kusegaon Fruits and Vegetables (P) Limited and Cineyug Films (P) Limited, for investment in Cineyug Films (P) Limited, the former was keen to have 50% equity in our company. Apart from this, they also wanted preference shares. It is correct that Cineyug Films (P) Limited was keen to

give them only debentures. It is correct that there were prolonged negotiations between the two parties on this issue. It is correct that for this reason, there was considerable delay in finalizing share subscription and shareholders agreement dated 27.01.2010. It is correct that in 2010, my company offered certain properties as security to Kusegaon Fruits and Vegetables (P) Limited. It is correct that the properties so offered were in fact personal properties of the directors, in addition to the company's properties....."

This witness also deposed, both in examination-in-chief and cross-examination, that the transaction between Kusegaon Fruits and Vegetables (P) Limited and Cineyug Films (P) Limited was genuine one. In the cross-examination by the learned Sr. PP he denied the suggestion that it was not a bona fide transaction.

Thus, witness after witness deposed that transfer of Rs. 200 crore was a genuine transaction and was duly documented in the books, but the prosecution did not challenge the version of any witness or the genuineness of the documents proved by them. No question was put by prosecution to any witness that the transaction of Rs.200 Crore was a transaction of illegal gratification linked to Sh. A. Raja.

Transfer of Money from Cineyug Films (P) Limited to Kalaignar TV (P) Limited

Introduction of Kalaignar TV (P) Limited

1681. According to PW 107 Sh. P. Amirtham, one of the directors of the company, Kalaignar TV (P) Limited was started

in 2007 in the name of DMK President Sh. M. Karunanithi with Ms. Dayalu Ammal, Ms. Kanimozhi Karunanithi and Sh. Sharad Kumar as directors.

Transfer of Money

1682. Let me take note of the deposition of witnesses from Cineyug Films (P) Limited as to how and why the money was transferred to Kalaignar TV (P) Limited.

1683. PW 106 Sh. Mitesh Kurani, Chief Financial Officer, Cineyug Films (P) Limited, who is also a qualified chartered accountant, in his examination-in-chief dated 13.03.2013, pages 1 to 3, deposed about SSA dated 19.12.2008 and agreement to pledge dated 30.12.2009 as under:

> ".....I joined Cineyug Films (P) Limited in June 2007 as Chief Financial Officer (CFO). As CFO, I handle entire accounting of group companies till the finalization of accounts. I represent group companies before various revenue authorities and handle all debtors and creditors.
> .....
> .....
> I have been shown certified copy of share subscription and shareholders agreement dated 19.12.2008 between Cineyug Films (P) Limited and Kalaignar TV (P) Limited, which is mentioned at serial No. 1 of the aforesaid seizure memo. The same is now Ex PW 106/B (D-655). This agreement has been signed on behalf of Cineyug Films (P) Limited at page 24 by Sh. Mohamed Morani at point A, Ms. Neelam Soorma at point B, Sh. Karim Morani at point C and Sh. Aly Morani at point D. I identify all the four signatures as I am acquainted with their signatures. This agreement has also been initialed at each page by the aforesaid persons at points A, B, C

and D respectively. There are three annexures to this agreement and each page of the annexures has also been initialed by the aforesaid four persons at points A to D respectively. These annexures are now Ex PW 106/B-1 to B-3 respectively. At the end of annexure Ex PW 106/B-3, the signatures of the aforesaid four persons appear at points A to D, which also I identify. In annexure Ex PW 106/B-2, at pages 29 and 30, the initials of the fourth person namely Ms. Neelam Soorma has not been picked up by the photocopier. The signatures appearing at points E at page 24 of Ex PW 106/B appear to be of Sharad Kumar.

I have also been shown certified copy of agreement to pledge dated 30.12.2009 executed between pledgors namely Ms. M. K. Dayalu, Ms. Kanimozhi Karunanithi, Sh. Sharad Kumar and Kalaignar TV (P) Limited on one part in favour of Cineyug Films (P) Limited. The same is now Ex PW 106/C (D-656). This agreement bears signatures of Sh. Mohamed Morani, Ms. Neelam Soorma, Sh. Karim Morani and Sh. Aly Morani at points A to D respectively at page 7, which signatures I identify. The initials of the aforesaid four persons also appear at each page of the agreement and also schedule I to the agreement at points A to D respectively. The schedule is now Ex PW 106/C-1. The signature at points E at page 7 of agreement Ex PW 106/C appear to be that of Sh. Sharad Kumar."

PW 106 Sh. Mitesh Kurani also proved ICD agreements, executed between Kalaignar TV (P) Limited and Cineyug Films (P) Limited alongwith promissory notes dated 06.04.2009, Ex PW 106/F-2 & F-3 (D-670), for an amount of Rs. 25 crore, dated 15.07.2009, Ex PW 106/F-4 & F-5 (D-671) for an amount of Rs. 100 crore, and dated 07.08.2009, Ex PW 106/F & F-1 (D-672), for an amount of Rs. 50 crore.

He also proved correspondence file D-661, collectively Ex PW 106/G, containing correspondence between Cineyug Films (P) Limited and Kusegaon Fruits and Vegetables (P) Limited. This file also contains correspondence between Cineyug Films (P) Limited and Kalaignar TV (P) Limited, consisting of various letters exchanged between the companies, beginning 29.10.2008 till 23.10.2010, Ex PW 106/G-1 to G-24, regarding the transaction of Rs. 206.25 crore between Kusegaon Fruits and Vegetables (P) Limited and Cineyug Films (P) Limited and also transaction of Rs. 200 crore between Cineyug Films (P) Limited and Kalaignar TV (P) Limited. He also proved the balance sheets of Cineyug Films (P) Limited as on 31.03.2009 and 31.03.2010, Ex PW 106/H and 106/H-1 (D-662) respectively. He also proved another balance sheet of Cineyug Films (P) Limited as on 31.03.2010, Ex PW 106/L-2 (D-727, Sl. No. II).

Regarding receipt of money from Kusegaon Fruits and Vegetables (P) Limited, its transfer to Kalaignar TV (P) Limited by Cineyug Films (P) Limited and its reflection in the balance sheets, PW 106 Sh. Mitesh Kurani, in his examination-in-chief dated 14.03.2013, pages 1 and 2, deposed as under:

> ".....I have been shown certified copy of Form 23AC filed by Cineyug Media and Entertainment (P) Limited with the ROC, Mumbai, already Ex PW 24/L-1 (D-727 (II)). This form was filed from the ID of company secretary, but for correspondence purposes, my ID was also given, as mentioned at point B. I am acquainted with this balance sheet attached with this form as on 31.03.2009. This balance sheet is now Ex PW 106/L. The balance

sheet bears the signature of Sh. Karim Morani and Sh. Mohamed Morani at points B and C respectively. The entry at point A at page 13 of this balance sheet indicates under the head "other liabilities", liability to the credit of Kusegaon Fruits and Vegetables (P) Limited amounting to Rs. 28.50 crore. Appended to this form 23AC is an auditors report from pages 14 to 18. The same bears signature of Sh. S. P. Merchant, partner of S. P. Merchant Associates, chartered accountants, who are statutory auditors of the company, at point B. The same is now Ex PW 106/L-1. Then there is another balance sheet of the company as on 31.03.2010. It also bears signature of Sh. Karim Morani at point B and Sh. Mohamed Morani at point C. I am acquainted with this balance sheet also being chief financial officer of the company. The balance sheet is now Ex PW 106/L-2. The entry at point B at page 37 of this balance sheet under the caption "unsecured loans" and also under the sub-heading "from others" indicates credit balance of Kusegaon Fruits and Vegetables (P) Limited amounting to Rs. 212,00,89,041/-, meaning thereby, that Cineyug Films (P) Limited owed this amount to Kusegaon Fruits and Vegetables (P) Limited. Similarly, the entry at point B at page 39 under the head "current assets, loans and advances" and sub-heading "other advances" indicates that Kalaignar TV (P) Limited owed an amount of Rs. 214,86,54,109/- to Cineyug Films (P) Limited. Then there is statutory auditor's report attached to this balance sheet at pages 41 to 44 under the signature of Sh. S. P. Merchant for S. P. merchant Associates, chartered accountants, at point B. I am acquainted with this also and this auditor's report is now Ex PW 106/L-3....."

PW 106 in his further examination-in-chief dated 14.03.2013, pages 6 to 8, deposed about the reasons for reflection of the amount in balance sheet under various heads

alongwith background thereof as under:

> ".....**Ques**: In balance sheet Ex PW 106/L-2 at page 39, there is an entry at point B, under the caption "other advances" favouring Kalaignar TV (P) Limited in the amount of Rs. 214,86,54,109/-. Please explain what does this entry indicate?
> **Ans**: The company had received a proposal from Kalaignar TV (P) Limited to participate in their equity share capital amounting to Rs. 200 crore. Subsequently, we had entered into an agreement dated 19.12.2008, already Ex PW 106/B, with them to subscribe the equity share capital, as proposed by them. Our subscription would have given us between 27 to 34 per cent equity share capital of Kalaignar TV (P) Limited at the expected valuation of somewhere around Rs. 500 or Rs. 550 crore. However, later on, as per their valuation submitted to us, value of Kalaignar TV (P) Limited was ascertained more than Rs. 800 crore, which in turn reduced our proposed investment below 20%, which was not agreeable to our board. Hence, as per our understanding with them we converted the said proposal into a 10% interest bearing inter-corporate deposits and this entry shows this.
>
> I have been shown a letter dated 29.10.2008, Ex PW 106/G-22. In response to this letter, we had received a letter dated 06.11.2008 from Kalaignar TV (P) Limited, already Ex PW 106/G-21. We received the balance sheet of Kalaignar TV (P) Limited alongwith their profile of directors and their future projections. Based on this, we constituted a team of our statutory auditors for due diligence. No report in writing was received from the statutory auditors on this point.
>
> I have been shown letter dated 23.12.2008, already Ex PW 106/G-19, letter dated 28.01.2009, already Ex PW 106/G-18, and letter dated 20.03.2009, already Ex PW 106/G-17, all of which there is a reference to telecom with our directors, but I am unable to tell as to who these directors

were.

I have been shown letter dated 25.10.2010, already Ex PW 106/G-15, which says that Cineyug Media and Entertainment (P) Limited is not interested in making investment in Kalaignar TV (P) Limited. Though this letter does not make any reference to any reason for expressing lack of interest by Cineyug Media and Entertainment (P) Limited, yet the reason is as stated by me above as valuation of Kalaignar TV (P) Limited was more than that of our expectation. This letter does not make reference to any clause in the agreement dated 19.12.2008. Clause 18 of agreement dated 19.12.2008, already Ex PW 106/B, entitles us to terminate the agreement. However, as per clause 18.3, we were entitled to terminate the agreement, inter alia, if the investment fell below 5% of the total equity of Kalaignar TV (P) Limited. I do not know where the original of this agreement is, that is, agreement Ex PW 106/B, though we had received the original of this agreement……."

This witness explained that the discussion between Cineyug Films (P) Limited and Kalaignar TV (P) Limited regarding investment by Cineyug Films (P) Limited into Kalaignar TV (P) Limited had started before 29.10.2008. In this regard, letter dated 29.10.2008, Ex PW 106/G-22, was written by Cineyug Films (P) Limited to Kalaignar TV (P) Limited and the same was also replied to by Kalaignar TV (P) Limited on 06.11.2008 vide letter Ex PW 106/G-21. It may be noted that transfer of money started from 23.12.2008.

In the examination-in-chief itself, this witness justified the entire investment by Cineyug Films (P) Limited into Kalaignar TV (P) Limited and return thereof, but the

prosecution did not put any question to him challenging his version and the veracity of documents proved by him. No question at all was put to him to the effect that the entire documentation was created ex-post to rationalize payment of illegal gratification as a bona fide business transaction. No suggestion was given that the documents were created to justify and validate an illegal transaction of payment of illegal gratification. The prosecution was happy with just getting the documents and the figures mentioned therein proved. It put no question to the witness about the purpose of transfer of money and the genuineness of documents. It put no question to the witness that it was an illegal gratification meant for the favours shown by Sh. A. Raja. However, the witness pleaded ignorance about the original of agreement dated 19.12.2008.

Not only this, in his lengthy cross-examination also, he justified the investment both ways from Kusegaon Fruits and Vegetables (P) Limited to Cineyug Films (P) Limited and from Cineyug Films (P) Limited to Kalaignar TV (P) Limited. It is useful to take note of his cross-examination dated 14.03.2013, page 17, wherein he deposed as to why the money was transferred from one entity to another on the same day as under:

> ".....**Ques**: Kindly take a look on ledger account of Kalaignar TV (P) Limited in the books of Cineyug Films (P) Limited, already Ex PW 106/E-1 and 106/E-2 (D-657) and the ledger account of Kusegaon Fruits and Vegetables (P) Limited in the books of Cineyug Films (P) Limited already Ex PW 106/E-4 (D-658). <u>These books show that amounts</u>

invested by Kusegaon Fruits and Vegetables (P) Limited into Cineyug Films (P) Limited were invested by Cineyug Films (P) Limited into Kalaignar TV (P) Limited on the same dates, that is, 23.12.2008, 28.01.2009 and 20.03.2009. Please explain why is it so?

Ans: The transactions were of high value and as per understanding between both the parties, if there was delay interest would be levied and to save payment of interest, investment was made on the same day....."

In his further cross-examination dated 14.03.2013, pages 19 and 20, PW 106 explained as to when the negotiation started between Cineyug Films (P) Limited and Kalaignar TV (P) Limited as under:

"....Letters Ex PW 106/G-22 and G-20 were written by me to Sh. G. Rajendran of Kalaignar TV (P) Limited and letter Ex PW 106/G-21 was written by Kalaignar TV (P) Limited to Sh. Mohamed Morani and these letters were exchanged before execution of agreement dated 19.12.2008. These letters were exchanged for obtaining various inside information and their projections for future earning to arrive at our decision to invest. This was also to obtain financial credibility of other party. This is a normal practice in our company for dealing with other parties. Before making the investment, we were able to access a copy of their audited financial statement for the ended on 2007-08, the brief profile/ history of Kalaignar TV (P) Limited, brief profile of the promoters, the existing shareholding pattern of the promoters and most importantly the projected financial statements for the five years of the company. Subsequently we also obtained a copy of their order book....."

In his further cross-examination dated 04.04.2013,

pages 4 and 5, PW 106 deposed that the investment was through banking channels as under:

> ".....It is correct that all amount invested by Kusegaon Fruits and Vegetables (P) Limited in Cineyug Films (P) Limited were also through regular banking channels. An amount of Rs. 206 crore was invested by Kusegaon Fruits and Vegetables (P) Limited in Cineyug Films (P) Limited and out of this amount Rs. 200 crore was interest bearing @ 8% p.a. TDS was deducted by Cineyug Films (P) Limited on the interest paid to Kusegaon Fruits and Vegetables (P) Limited. Similarly, TDS was deducted by Kalaignar TV (P) Limited on the interest paid by it to Cineyug Films (P) Limited. These TDS amounts were duly deposited with the income tax department....."

PW 106 in his further cross-examination dated 04.04.2013, pages 5 to 8, deposed that the entire correspondence between the entities was proper and the documents are genuine one and the same reads as under:

> ".....It is correct that throughout my tenure with Cineyug Films (P) Limited, I have always acted honestly and diligently. I did not do anything illegal or corrupt. It is correct that throughout my tenure with this company, no occasion arose for anyone to suggest to me to do anything illegal, corrupt or improper. It is correct that I have never prepared or have been a party in preparation of any sham document. I have never prepared a document, which was not a genuine document, but was camouflaged to be so and was, in fact, meant for payment of bribe. Nor I have ever come across any such document.
>
> It is correct that we were pressing Kalaignar TV (P) Limited for returning our amount since June 2010 and letter Ex PW 106/G-23 was written in this

regard. We were demanding our money back in routine and it has nothing to do with 2G case or its FIR or its investigation. Similarly, a letter was also written in October 2010 and the same is already Ex PW 106/G-15 (D-661). Similarly, a letter was written by Kalaignar TV (P) Limited on 25.11.2010 intimating us that they would be returning this amount by 31.12.2010 and this letter is now Ex PW 106/DG.

I had seen the original of shareholders agreement entered into between Cineyug Films (P) Limited and Kalaignar TV (P) Limited and its promoters, a copy of which is already Ex PW 106/B (D-655). It is photocopy of same original. It is a genuine document and was not executed subsequently to make out justification of a sham transaction. It is correct that this agreement was not required to be executed on a stamp paper and it being executed on a plain paper does not affect its enforceability. It is not an unusual thing. It is correct that no collateral security was taken from Kalaignar TV (P) Limited when the aforesaid sum was invested in it by Cineyug Films (P) Limited as it was in the nature of investment. It is correct that transactions entered into between Kusegaon Fruits and Vegetables (P) Limited and Cineyug Films (P) Limited and Cineyug Films (P) Limited and Kalaignar TV (P) Limited were purely commercial transactions and they had nothing to do with telecom business. It is correct that these transactions were for the purpose for which they have been stated in the books of accounts to have been entered. It is correct that they were not meant for camouflaging any sham transaction/ bribe. As far as interaction with me is concerned, I know that in these transactions Shahid Usman Balwa or Vinod Goenka did not exercise any influence on me. It is also correct that they had no interaction with me. It is correct that Cineyug Films (P) Limited had invested in Kalaignar TV (P) Limited seeing business

value in the transaction and not because of some of the people connected with Kalaignar TV (P) Limited being associated with DMK. It is correct that Cineyug Films (P) Limited took the money back from Kalaignar TV (P) Limited as investment proposal did not go through and not because of registration of FIR in 2G case or anybody being called for interrogation therein. It is correct that we had obtained the loan from Kusegaon Fruits and Vegetables (P) Limited @ 8% and charged interest from Kalaignar TV (P) Limited @ 10% p.a. It is correct that this gave us margin of 25% on the cost of loan. It is correct that being CFO, I do not let any fund of the company lie idle and make arrangement in advance for deployment of the same. It is correct that for this reason back-to-back transactions in business are normal. It was the case in this case also....."

He also proved the minutes book of Cineyug Films (P) Limited, Ex PW 106/DF (D-764) and deposed that the same is a genuine book.

Thus, this witness in the examination-in-chief as well as in cross-examination justified the entire payments and return thereof claiming the documents to be genuine, but the prosecution did not question him about genuineness of documents, either by way of re-examination or cross-examination. Thus, the prosecution was highly guarded and cautious. On the face of it, his deposition does not suffer from any grave lacunae or inherent absurdity so that it can be discarded even without re-examination or cross-examination by the prosecution. This witness deposed that documents were genuine and the money transferred was a loan. The question is:

How to reject this version and reach a diametrically opposite conclusion that it was not so but illegal gratification? To arrive at such a conclusion, there must be some evidence, direct or circumstantial. Mere some deficiencies in documents would not be enough to prove criminality. If the version of the witness regarding transactions being genuine is rejected, even then how does the money transferred becomes illegal gratification? If the witness was questioned and had he trotted out even a specious explanation, things might have been different and prosecution case would have got some traction. But it was not done. It is a common fact that private business in India is not known for immaculate paper work. Defective paper work, per se, will not make a business transaction criminal. To show that the transaction was criminal, appropriate suggestions ought to have been given to the witness. In an authority reported as **S. A. Vs. A. A., 2016 IV AD (Delhi) 336**, Hon'ble Delhi High Court while dealing with such a situation observed in paragraphs 42 to 44 as under:

> "**42**. .....In criminal trials, to secure conviction, the standard of proof applied is "beyond all reasonable doubt", whereas in a civil trial, the standard of proof required to prove its case by a party is that of "preponderance of probabilities".
>
> **43.** Section 138 and 146 of the Evidence Act, which deals with the order of examinations, inter alia, states that:
>
> > "138. Order of examinations.– Witnesses shall be first examined-in-chief, then (if the adverse party so desires) re-examined. The examination and cross-examination must relate to relevant facts,

but the cross-examination need not be confined to the facts to which the witness testified on his examination-in-chief. Direction of re-examination. – The re-examination shall be directed to the explanation of matters referred to in cross-examination; and, if new matter is, by permission of the Court, introduced in re-examination, the adverse party may further cross-examine upon that matter."

and Section 146, which deals with the nature of question which may be put to a witness in his cross examination, inter alia,states:

> "146. Questions lawful in cross-examination.– When a witness is cross-examined, he may, in addition to the questions hereinbefore referred to, be asked questions which tend–
>
> (1) to test his veracity, (2) to discover who he is and what is his position in life, or (3) to shake his credit, by injuring his character, although the answer to such questions might tend directly or indirectly to criminate him or might expose or tend directly or indirectly to expose him to a penalty or forfeiture: Provided that in a prosecution for rape or attempt to commit rape, it shall not be permissible to put questions in the cross-examination of the prosecutrix as to her general immoral character.

These sections are applicable to both civil and criminal trial, and the Evidence Act does not draw a distinction with regard to applicability of the said provisions to one, or the other trial. Pertinently, **Rajinder Pershad** (supra) is a case arising from a civil trial relating to eviction of a tenant by the landlord. In **Rajinder Pershad** (supra), the Supreme

Court, inter alia, observed as follows:

"4. … … There is an age-old rule that if you dispute the correctness of the statement of a witness you must give him opportunity to explain his statement by drawing his attention to that part of it which is objected to as untrue, otherwise you can not impeach his credit. In **State of U. P.** Vs. **Nahar Singh (dead) and Ors.**, [1998] 3 SCC 561, a Bench of this Court (to which 1 was a party) stated the principle that Section 138 of the Evidence Act confers a valuable right to cross-examination a witness witness tendered in evidence by opposite party. The scope of that provision is enlarged by Section 146 of the Evidence Act by permitting a witness to be questioned, inter alia, to test his veracity. It was observed:

"14. The oft-quoted observation of Lord Herschell, L. C., in Browne v. Dunn [(1893) 6 The Reports 67] clearly elucidates the principle underlying those provisions. It reads thus:

"I cannot help saying that it seems to me to be absolutely essential to the proper conduct of a cause, where it is intended to suggest that a witness is not speaking the truth on a particular point to direct his attention to the fact by some questions put in cross-examination showing that the imputation is intended to be made, and not to take his evidence and pass it by as a matter altogether unchallenged, and then, when it is impossible for him to explain, as perhaps he might have been able to do if such questions had been put to him, the

circumstances which it is suggested indicate that the story he tells ought not to be believed, to argue that he is a witness unworthy of credit. My Lords, I have always understood that if you intend to impeach a witness you are bound, whilst he is in the box, to give him an opportunity of making any explanation which is open to him; and as it seems to me, that is not only a rule professional practice in the conduct of a case, but is essential to fair play and fair dealing with witnesses."

44. Nahar Singh (supra), which is relied upon in **Rajinder Parshad** (supra), was, no doubt, a case arising from a criminal trial. In **Nahar Singh** (supra), the Supreme Court observed:

"13. It may be noted here that that part of the statement of PW-1 was not cross-examined by the accused. In the absence of cross-examination on the explanation of delay, the evidence of PW-1 remained unchallenged and ought to have been believed by the High Court. Section 138 of the Evidence Act confers a valuable right of cross-examining the witness tendered in evidence by the opposite party. The scope of that provision is enlarged by Section 146 of the Evidence Act by allowing a witness to be questioned:

(1) to test his veracity.
(2) to discover who he is and what is his position in life, or (3) to shake his credit, by injuring his character, although the answer to such questions might tend directly or indirectly to incriminate him or might expose or tend directly or

indirectly to expose him to a penalty or forfeiture.

14. The oft-quoted observation of Lord Herschell, L. C., in Browne v. Dunn [(1893) 6 The Reports 67] clearly elucidates the principle underlying those provisions. It reads thus:

"I cannot help saying that it seems to me to be absolutely essential to the proper conduct of a cause, where it is intended to suggest that a witness is not speaking the truth on a particular point to direct his attention to the fact by some questions put in cross-examination showing that the imputation is intended to be made, and not to take his evidence and pass it by as a matter altogether unchallenged, and then, when it is impossible for him to explain, as perhaps he might have been able to do if such questions had been put to him, the circumstances which it is suggested indicate that the story he tells ought not to be believed, to argue that he is a witness unworthy of credit. My Lords, I have always understood that if you intend to impeach a witness you are bound, whilst he is in the box, to give him an opportunity of making any explanation which is open to him; and as it seems to me, that is not only a rule professional practice in the conduct of a case, but is essential to fair play and fair dealing with witnesses."

This aspect was unfortunately missed by the High Court when it came to the conclusion that explanation for the delay

is not at all convincing. This reason, is therefore, far from convincing."

1684. PW 115 Ms. Neelam Soorma, one of the directors of Cineyug Films (P) Limited, in her examination-in-chief dated 02.05.2013, pages 1 and 2, deposed about the receipt of money from Kusegaon Fruits and Vegetables (P) Limited and its payment to Kalaignar TV (P) Limited as under:

> ".....Rs.206 crore approximately was received in this company from Kusegaon Fruits and Vegetables (P) Limited in the years 2008-2009. An amount of Rs.200 crore was given by Cineyug Films (P) Limited to Kalaignar TV (P) Limited, but I do not remember the period....."

She also proved the minutes book of Cineyug Films (P) Limited, Ex PW 106/DF (D-764), and board minutes dated 07.11.2008, 02.02.2009 and 18.03.2010, Ex PW 115/A, 106/DF-1 and 115/B respectively. She also proved the account opening form of Cineyug Films (P) Limited with Oriental Bank of Commerce, Mumbai, Ex PW 93/J (D-710), and also account opening form of the company with Citi Bank, Mumbai, Ex PW 90/D (D-729).

She also deposed about cheque dated 23.12.2008, Ex PW 90/J-1 (D-733) for an amount of Rs. 10 crore, cheque dated 28.01.2009, Ex PW 90/K-2 (D-734) for an amount of Rs. 10 crore, cheque dated 20.03.2009, Ex PW 90/L-1 (D-735) for an amount of Rs. 5 crore and cheque dated 06.04.2009, Ex PW 90/J-2 (D-730) for an amount of Rs. 25 crore, all cheques issued by Cineyug Films (P) Limited in favour of Kalaignar TV

(P) Limited, totalling to Rs. 50 crore.

She also proved the eight cheques issued by Cineyug Films (P) Limited in favour of Kusegaon Fruits and Vegetables (P) Limited, that is, cheque dated 24.12.2010, Ex PW 90/J-3 (D-731), for an amount of Rs. 10 crore, cheque dated 27.12.2010, Ex PW 90/J-4 (D-732), for an amount of Rs. 20 crore, cheque dated 03.01.2011, Ex PW 90/M-1 (D-736), for an amount of Rs. 10 crore, cheque dated 05.01.2011, Ex PW 90/N-1 (D-737), for an amount of Rs. 10 crore, cheque dated 11.01.2011, Ex PW 90/O-1 (D-738), for an amount of Rs. 10 crore, cheque dated 24.01.2011, Ex PW 90/P-1 (D-739), for an amount of Rs. 65 crore, cheque dated 29.01.2011, Ex PW 90/Q-1 (D-740), for an amount of Rs. 25 crore and cheque dated 03.02.2011, Ex PW 90/R-1 (D-741), for an amount of Rs. 50 crore, totalling to Rs. 200 crore. No question was put to her about the purpose of issuing these cheques.

PW 115 Ms. Neelam Soorma in her examination-in-chief dated 02.05.2013, pages 9 and 10, also deposed about SSA and agreement to pledge dated 31.12.2009, as under:

> ".....I have also been shown Share Subscription and Shareholders Agreement dated 19.12.2008. It bears my initials at point B on each page. On the last page, my signature also appears at point B. The initials at point A are that of Mohd. Morani, at point D are that of Aly Morani and at point C are that of Karim Morani. Their signatures also appears on page 32 of the agreement at points A, D and C respectively. The same is already Ex PW106/B.
>
> I have also been shown an agreement to pledge dated 30.12.2009, already Ex PW106/C. It bears my initial at point B, that of Mohd. Morani at

point A, that of Karim Morani at point C and that of Aly Morani at point D. On the last page of agreement, signatures of all four of us appear at point B, A, C and D respectively. The schedule to this agreement, already Ex PW106/C-1 also bear the initials of all four of us at point B, A, C and D respectively……."

This witness was cross-examined by learned Sr. PP, but no question was put to her regarding genuineness or otherwise of SSA and share pledge agreement and other documents. She denied the suggestion that out of Rs. 206 crore received from Kusegaon Fruits and Vegetables (P) Limited, Rs. 200 crore was transferred to Kalaignar TV (P) Limited at the instance of Sh. Karim Morani. Not a single question was put to this witness by the prosecution about the nature/ character of amount of Rs. 206.25 crore received from Kusegaon Fruits and Vegetables (P) Limited and transfer of Rs. 200 crore to Kalaignar TV (P) Limited.

1685. PW 122 Sh. Aly Gulamali Morani, one of the directors of Cineyug Films (P) Limited, in his examination-in-chief dated 13.05.2013, pages 2 to 8, deposed in detail about the receipt of money from Kusegaon Fruits and Vegetables (P) Limited and its investment in Kalaignar TV (P) Limited and documents executed for the transfer, as under:

"……..As per minutes of the meeting held on 02.02.2009, already Ex PW106/DF-1, Sh. Karim Morani was authorized to invest only Rs.25 crore in Kalaignar TV (P) Limited.

I do not remember as to when this amount was sent by Cineyug Films (P) Limited to Kalaignar TV (P) Limited as I do not handle such transactions and

the transaction was handled by our Chief Financial Officer.

Amongst the directors of the company, there is no specific distribution of functions. All of us oversee every function of the company, jointly. Mostly every director is aware of everything happening in the company.

I have been shown share subscription and shareholders agreement entered into between Cineyug Films (P) Limited and Kalaignar TV (P) Limited on 19.12.2008, already Ex PW106/B (D-655). It bear my initials at point D on each page and signature on last page. It also bear the signatures of remaining directors, that is, Sh. Karim Morani, Sh. Mohd. Morani and Mrs. Neelam Soorma. I had been told about the contents of the document by the CFO, when I signed it. By this agreement, we had invested a sum of Rs.200 crore in Kalaignar TV (P) Limited against expected equity, which was to be bought by us from Kalaignar TV (P) Limited after its valuation, projected to us between 27% to 34%. These facts are mentioned in para C at page 3. Our CFO was discussing this matter with Kalaignar TV (P) Limited and he briefed the board about this agreement, though, I do not remember the meeting in which the board was so briefed. I won't be able to recall this fact, even if, I go through the aforesaid minutes. I do not recall, if any resolution was passed by the board of company indicating that the aforesaid amount of Rs.200 crore or part thereof had been sent to Kalaignar TV (P) Limited. I seriously do not recall it and may not be able to find it out from the board minutes, if shown to me.

We had an understanding with Kalaignar TV (P) Limited, as per the negotiations entered into by our CFO, that valuation of Kalaignar TV (P) Limited would be carried out, by Grant Thornton, as mutually agreed by both parties. The valuation carried out by Grant Thornton was not to our expectation. Our CFO informed that in this deal, we

were getting equity of Kalaignar TV (P) Limited only to the extent approximately about 18% and the same was not worth to the company to go for it. Consequently, our company decided to call the money back and the company got the money back from Kalaignar TV (P) Limited. It was discussed in the board to recall the money back and CFO was told to take all follow up actions. This find mention in the minutes dated 31.08.2009, already Ex PW106/DH, amongst other things. This resolution also speaks about conversion of money into inter corporate deposit. I do not remember, if the board ever took note of the fact of return of money. I cannot tell this, even if, I am shown the minutes. I do not know, if any resolution was passed on receipt of money from Kusegaon Fruits and Vegetables (P) Limited and even I do not know, if any resolution is required to be passed in such cases and I cannot say so even after looking at the minutes.

After the money was received back from Kalaignar TV (P) Limited, the same was returned to Kusegaon Fruits and Vegetables (P) Limited. I was not following day-to-day affairs at all, so I do not know, if any resolution was passed by the board for returning the money to Kusegaon Fruits and Vegetables (P) Limited, as the CFO was following the transaction. I cannot say so even after looking at the minutes.

Share subscription and shareholders agreement, already Ex PW106/B, was prepared by Kalaignar TV (P) Limited. It was brought to me for my signature by my CFO. I do not know, who prepared this agreement in Kalaignar TV (P) Limited. After obtaining my signature, my CFO sent its original to Kalaignar TV (P) Limited. Two copies of this agreement were signed, out of which, one was sent to Kalaignar TV (P) Limited and the other copy was retained by us. That copy is not available with us as it was sent to Kusegaon Fruits and Vegetables (P) Limited, as told to me by the CFO. It

was so sent to Kusegaon Fruits and Vegetables (P) Limited as they required it for income tax inquiries. I have no idea as to who requested for the copy of this agreement from Kusegaon Fruits and Vegetables (P) Limited.

Question: Would you please tell this Court as to who took the decision in Cineyug Films (P) Limited to obtain the aforesaid money from Kusegaon Fruits and Vegetables (P) Limited?

Answer: The CFO along with his team took this decision.

Question: Would you please tell this Court as to who took the decision in Cineyug Films (P) Limited to send the aforesaid money to Kalaignar TV (P) Limited?

Answer: It was decided by the board.

There must be some resolution by the board about this. I cannot point out the resolution about this, even after looking at the minute book.

Question: Would you please tell this Court as to who took the decision in Cineyug Films (P) Limited to send the money back to Kusegaon Fruits and Vegetables (P) Limited, after its receipt from Kalaignar TV (P) Limited?

Answer: It was done by CFO on his own.

Question: Please tell this Court, if any security was taken from Kalaignar TV (P) Limited, before or at the time of sending the aforesaid money to it?

Answer: As far as I remember, Kalaignar TV (P) Limited had pledged its shares to us and this formality was being looked after by our CFO.

I have been shown ICD agreements, already Ex PW106/F-2, PW106/F-4 and PW106/F and these are correct documents. All these three bear signatures of Mr. Mohd. Morani, Mr. Karim Morani and myself on behalf of my company. The fourth director Mrs. Neelam Soorma is a passive director and as such her signatures are not there.

I have been shown share pledge agreement entered into between Kalaignar TV (P) Limited and

Cineyug Films (P) Limited, already Ex PW106/C (D-656), dated 30.12.2009. This bear signatures of Mohd. Morani at point A, Karim Morani at point C, Mrs. Neelam Soorma at point B and myself at point D. I was informed about its contents, when I signed it. Through this agreement, Kalaignar TV (P) Limited had pledged its shares to us and the pledge was done as it was seeking time to return the money. Whenever Mrs. Neelam Soorma is present, she signs the documents, however, she does it only when all of us have signed. However, for cheques, her signatures are necessary.

I do not know as to where the original of share pledge agreement, already Ex PW106/C, is at present and our CFO may be knowing about it.

I have been shown share subscription and shareholders agreement, already Ex PW106/D, entered into between Cineyug Films (P) Limited and Kusegaon Fruits and Vegetables (P) Limited, dated 27.01.2010, D-669. I am aware of this agreement. It bears signatures of Mohd. Morani at point C, Karim Morani at point A, Mrs. Neelam Soorma at point D and myself at point B.

I have been shown a letter dated 15.05.2009, D-795, already Ex PW90/A-1, sent by Cineyug Films (P) Limited to its bank. It bears signatures of Karim Morani at point A, Mrs. Neelam Soorma at point B and myself at point C. Through this letter, we confirmed to the bank the receipt of the amount mentioned therein as inter corporate deposit……."

About delay in execution of agreement Ex PW 106/D, he deposed in his further examination-in-chief pages 8 and 9 as under:

"…….**Question:** Kindly take a look on agreement entered into between Cineyug Films (P) Limited and Kusegaon Fruits and Vegetables (P) Limited, already Ex PW106/D. Would you please tell this Court as to why this agreement entered into so late, that is, after

the receipt of entire aforesaid amount from Kusegaon Fruits and Vegetables (P) Limited?
Answer: Kusegaon Fruits and Vegetables (P) Limited were insisting on preferential shares but we were willing to give debentures and these negotiations consumed a lot of time and there were tax issues also. They kept sending us share subscription forms as security, whenever they give us money, so the delay in execution of this agreement. Finally, we gave debentures to them.

It was not decided from before to issue debentures or preferential shares to Kusegaon Fruits and Vegetables (P) Limited. I cannot tell as to where the share subscription forms are, as we are a family run business and we are not perfect professionals. I do not know, if these share subscription forms are reflected in the minutes and cannot say so even after looking at the minutes.

Question: You are already seen agreement dated 27.01.2010, already Ex PW106/D. On whose instance, you signed it and who was handling the matter as mentioned in this agreement, in the Cineyug Films (P) Limited?
Answer: I signed it on the asking of CFO Mr. Mitesh Kurani and he himself used to deal with the subject matter mentioned in the agreement.....”

Thus, in the examination-in-chief itself, this witness owned up the entire transaction as genuine one and documents signed relating thereto as correct.

In his cross-examination dated 13.05.2013, pages 16 to 18, he deposed about the reason about the investment in Kalaignar TV (P) Limited, as under:

“.....It is correct that at the time of our investment in Kalaignar TV (P) Limited, certain ICDs and promissory notes were taken as security from Kalaignar TV (P) Limited, till such time as they

issued shares to us. It is correct that this was to be done on the basis of independent valuation of Kalaignar TV (P) Limited to be duly carried out.

It is correct that as per clause 2.2 of SSA dated 19.12.2008, the investment of Cineyug Films (P) Limited in Kalaignar TV (P) Limited would automatically be converted into loan, if certain conditions were not satisfied. It is correct that the idea of giving Rs.200 crore to Kalaignar TV (P) Limited as equity was to sell the equity at a high price, at the time of IPO. It is correct that the deal with Kalaignar TV (P) Limited fell through because of mismatch in the expectation of two parties regarding valuation. It is correct that valuation report was to come by March 2009, and when the same did not come, Kalaignar TV (P) Limited asked for a six month extension of time for the valuation to come and it was so mutually agreed. It is correct that entire investment in Kalaignar TV (P) Limited by Cineyug Films (P) Limited was by banking channel and there was no cash involved. It is correct that these investments were made on the basis of authorization by the board of directors.

Court Question: You mean all four members of the board, that is, Mohd. Morani, Karim Morani, Mrs. Neelam Soorma and yourself authorized it, that is, investment?

Answer: That is correct.

It is correct that the authorization to the banks to remit money to Kalaignar TV (P) Limited was authorized by all the four directors and this was done as it was a requirement of the company. It is correct that negotiations with Kalaignar TV (P) Limited were handled by Mr. Mitesh Kurani.

Court Question: Who authorized Mr. Mitesh Kurani to do so?

Answer: The board, that is, Mohd. Morani, Karim Morani, Mrs. Neelam Soorma and myself.

It is correct that my company was unhappy with the report of Grant Thornton regarding

valuation of Kalaignar TV (P) Limited. It is correct that we were expecting 27% to 34% equity in Kalaignar TV (P) Limited. It is correct that Grant Thornton report gave us only about 18% shareholding in Kalaignar TV (P) Limited. It is correct that for this reason, Cineyug Films (P) Limited decided to drop its plan for investment in Kalaignar TV (P) Limited. It is correct that for this reason, Cineyug Films (P) Limited asked Kalaignar TV (P) Limited to return its money. It is correct that for this reason, the money was converted into interest bearing pure loan. It is correct that due to delay in repayment, Kalaignar TV (P) Limited pledged some of its shares to Cineyug Films (P) Limited. It is correct that my company had to make vigorous efforts to recover the aforesaid money from Kalaignar TV (P) Limited. It is correct that eventually, these moneys were returned by Kalaignar TV (P) Limited to Cineyug Films (P) Limited with interest, after deducting TDS. It is correct that this return of money was also through banking channels without any cash....."

In his further cross-examination at pages 21 and 22, he affirmed the genuineness of all documents as under:

".....It is correct that on signing of pledge agreement, SSAs, by all the four directors, no holding of board meeting was required. It is correct that the resolutions recorded in minutes, Ex PW90/A-5 to A-9, were genuinely passed. I had never signed any false document. All the documents shown to me today in the court and spoken by me are genuine documents. It is correct that the transaction between Kusegaon Fruits and Vegetables (P) Limited and Cineyug Films (P) Limited and Cineyug Films (P) Limited and Kalaignar TV (P) Limited and vise-a-verse is a genuine transaction. All of us three brothers had not ever done any illegal act....."

The prosecution did not question this witness at all disputing his version nor the version of the witness can be dismissed as highly improbable or absurd. It was the duty of the prosecution to cross-examine this witness as he deposed both in examination-in-chief as well as cross-examination against the prosecution case. In an authority reported as **Vishwanath Vs. State of Maharashtra, 1995 CrLJ 2571**, Hon'ble Bombay High Court while dealing with such a situation observed in para 13 as under:

> ".....It is not necessary to state that this was the last nail in the coffin of the prosecution. As a mater of fact, the prosecution had given a god-sent opportunity to accused by examining such a witness as a prosecution witness. As it that was not sufficient the prosecution after this kind of cross-examination also failed to cross-examine the witness further. After all, if this witness had seen something and if the witness had stated everything that was nothing but the defence of the accused, nothing prevented the Additional Public Prosecutor from cross-examining the witness. Nothing was done. The witness has specifically proved, therefore, as in case of the panch, that nothing happened on the tea-table, the money did not pass on the tea-table and there was no conversation at the tea-table. These two witnesses have therefore, taken out the whole wind out of the shield of the prosecution and have completely white washed the evidence given by the complainant. The whole incident, therefore, has been shrouded in mystery."

Similarly, in a case titled **Surinder Singh Vs. State (NCT of Delhi), Criminal Appeal No. 684 of 2008**, decided on 16.10.2014, Hon'ble Delhi High Court while dealing with

similar situation observed in para 9 as under:

> "A strange feature of the cross-examination of PW-8 was that he made statements therein which were contrary to the case of the prosecution and yet no attempt was made by the APP to re-examine PW-8 to seek clarifications or seek correction of the judicial record. The said statements made by PW-8 in his cross-examination read thus:
>
> > "It is wrong to suggest that the accused demanded or accepted Rs. 1000/- as bribe from the complainant and kept the same in the left pocket of the shirt. It is also wrong to suggest that any such notes were recovered from his possession. It is also wrong to suggest that I took the right hand wash of the accused as stated by me in the examination chief."

Prosecution is now bound by the deposition of this witness and its legal consequences.

1686. PW 125 Sh. Mohamed Gulamali Morani, one of the directors of Cineyug Films (P) Limited, deposed in his examination-in-chief, dated 17.05.2013, pages 1 to 5, about receipt of money from Kusegaon Fruits and Vegetables (P) Limited and its investment in Kalaignar TV (P) Limited as under:

> ".....I am aware of receipt of about Rs.206 crore in Cineyug Films (P) Limited from Kusegaon Fruits and Vegetables (P) Limited, approximately towards the end of 2008 and in the beginning of 2009. The decision to receive this amount from Kusegaon Fruits and Vegetables (P) Limited was taken jointly by the board of directors and the financial team. This money was invested by us in a company called Kalaignar TV (P) Limited. We are in fact creative people. We started sending the money during the aforesaid period itself, that is, when the money was

received. The money was in fact invested by us.

The investment of Rs.200 crore was against shares subscription in Kalaignar TV (P) Limited.

I have been shown share subscription and shareholders agreement dated 19.12.2008 entered into between Cineyug Films (P) Limited and Kalaignar TV (P) Limited, already Ex PW106/B (D-655). I am aware of this agreement and it bears my initials at point A on each page and signature on the last page at point A.

I have been shown minute book of Cineyug Films (P) Limited, already Ex PW106/DF (collectively) (D-764). It is a minute book of my company and is a genuine minute book. In this minute book, I have been shown minutes of board meeting held on 07.11.2008, already Ex PW115/A. I was physically present in this meeting. The resolutions recorded therein were passed in my presence and to my knowledge.

I have also been shown minutes of board meeting held on 02.02.2009, already Ex PW106/DF-1. I was physically present in this meeting also. The resolutions recorded therein were passed in my presence and to my knowledge. In the minutes dated 07.11.2008, the factum of receipt of an offer from Kalaignar TV (P) Limited to subscribe in their equity, is mentioned. In these two minutes, there is no mention about this agreement. The factum of investment of Rs.25 crore is mentioned in the minutes dated 02.02.2009. However, there is no mention of Rs.200 crore in the minutes either dated 07.11.2008 or 02.02.2009.

Vide minutes dated 02.02.2009, Sh. Karim Morani was authorized to send Rs.25 crore only.

I have been shown share subscription and shareholders agreement dated 27.01.2010 entered into between Cineyug Films (P) Limited and Kusegaon Fruits and Vegetables (P) Limited, already Ex PW106/D (D-669). I am aware of this agreement and it bears my initials at point C on each page and

my signature on the same point on the last page. The amount of Rs.200 crore was received from Kusegaon Fruits and Vegetables (P) Limited against preference shares and Rs.six crore and odd against 49% equity in Cineyug Films (P) Limited. The agreement was delayed as Kusegaon Fruits and Vegetables (P) Limited wanted preference shares and we wanted to give them debentures and in negotiating these things time was consumed. Furthermore, Kusegaon Fruits and Vegetables (P) Limited wanted 50% stake in Cineyug Films (P) Limited but we insisted on 49%. After lot of negotiations, we decided to issue debentures to them. The financial team of Cineyug Films (P) Limited headed by the CFO negotiated this transaction with Kusegaon Fruits and Vegetables (P) Limited. The decision to give debentures to Kusegaon Fruits and Vegetables (P) Limited was the decision of the board, after being instructed by the financial team. For receipt of this money, we had issued security during the period beginning approximately December 2008 till 2010. Some properties and shares were given as security, which properties and shares were in the name of the company, though, I do not remember correctly.

When the money was sent to Kalaignar TV (P) Limited, they also give us security in the form of ICDs and promissory notes and also executed share pledge agreement and this was done towards November-December 2008 to around August 2009.

I have been shown ICD agreements and promissory notes executed by Kalaignar TV (P) Limited and already Ex PW106/F, F1 to F-5 and these are the same securities about which I have spoken above. The security given by us to Kusegaon Fruits and Vegetables (P) Limited has been shown to me, which is already Ex PW106/G-11 and this is the same security about which I have spoken above. The details of security are mentioned in this covering letter. The security of Kalaignar TV (P) Limited is

dated 06.04.2009 and that of us is dated 10.04.2010 as such security of Kalaignar TV (P) Limited prior in time. The security was given by us later as the agreement had got delayed, as stated by me above....."

In his further examination-in-chief, page 6, he deposed as under:

"....I do not know who prepared the agreement, already Ex PW106/B, in Kalaignar TV (P) Limited. The financial team placed this agreement on my table for my signatures. We had retained a copy of this agreement, and the other one was given to Kalaignar TV (P) Limited. Later on, my CFO told me that Kusegaon Fruits and Vegetables (P) Limited wanted this agreement for some inquiries and it was handed over to them....."

He also proved cheque dated 15.07.2009, Ex PW 93/M (D-706), for an amount of Rs. 100 crore and cheque dated 08.08.2009, Ex PW 93/M-2 (D-707), for an amount of Rs. 50 crore, whereby the aforesaid amounts were transferred to Kalaignar TV (P) Limited. This witness also affirmed the genuineness of the transaction.

This witness was cross-examined by the learned Sr. PP during which he denied the suggestion that this amount was mobilized by Sh. Karim Morani from Kusegaon Fruits and Vegetables (P) Limited and was also sent to Kalaignar TV (P) Limited by him.

In his further cross-examination by the learned Sr. PP, he denied the suggestion that bogus documents were created to give legal colour to a bogus transaction and rather reiterated

his stand. It is useful to take a look on the relevant part of his cross-examination by learned Sr. PP, pages 9 to 11, which reads as under:

> ".....The Kalaignar TV (P) Limited had promised us that it would give us stake between 27% to 34% but it did not happen. It was decided between the two companies that valuation of Kalaignar TV (P) Limited would be carried out but that valuation was delayed. Finally, when the valuation report came in August 2009, we found the valuation report unacceptable. We decided to recall our money. Ultimately, we got our money back, though, belatedly. After getting the money from Kalaignar TV (P) Limited, it was returned to Kusegaon Fruits and Vegetables (P) Limited, from which it was obtained. It is wrong to suggest that the transaction between Kalaignar TV (P) Limited and Cineyug Films (P) Limited was not a bonafide transaction. It is wrong to suggest that for this reason, the valuation report was doctored to show that we were not getting the desired equity.
>
> It is wrong to suggest that Sh. Karim Morani was looking after business development and financial matters of the company. It is wrong to suggest that agreement, already Ex PW106/B, was prepared by Sh. Sharad Kumar in Kalaignar TV (P) Limited. It is wrong to suggest that this agreement was given to me by Sh. Rajiv Agarwal for my signatures. It is wrong to suggest that this agreement is a bogus document created to give a legal colour to a bogus transaction between Cineyug Films (P) Limited and Kalaignar TV (P) Limited. It is wrong to suggest that no security was given by us to Kusegaon Fruits and Vegetables (P) Limited. Volunteered: Security was given in the end.
>
> It is wrong to suggest that a bogus document has been created to show that security was given. It is wrong to suggest that the security documents given by Kalaignar TV (P) Limited, that is, ICD

agreements and promissory notes etc., are also bogus documents to give a legal colour to a malafide transaction. It is wrong to suggest that no meetings as referred to in Ex PW90/A-5 to A9, were ever held. It is further wrong to suggest that for this reason, they have not been incorporated in the minute book. It is further wrong to suggest that the agreements executed between Kusegaon Fruits and Vegetables (P) Limited and Cineyug Films (P) Limited and Cineyug Films (P) Limited and Kalaignar TV (P) Limited are bogus and manufactured documents to give legal colour to sham transactions. It is further wrong to suggest that receipt of money from Kusegaon Fruits and Vegetables (P) Limited by Cineyug Films (P) Limited and sending it to Kalaignar TV (P) Limited and vise-a-verse are not bonafide transactions. Volunteered: These transactions were through banking channels……."

This was the first time that the prosecution put a question to any witness that the documents relating to transactions were bogus. However, only general suggestions were given in this regard and no specific question was put to the witness as to how and why a particular document was liable to be treated as bogus. The attention of the witness was not drawn specifically to any internal contradiction or any other illegality in the documents, so that he had an opportunity to explain the same. A witness cannot be condemned about anything deposed to by him without giving him an opportunity to explain it, unless the deposition amounts to an absurdity.

In his further cross-examination by the defence, page 13, he reaffirmed the genuineness of SSA, Ex PW 106/B, and deposed as under:

".....Share subscription agreement, Ex PW106/B, is a genuine document and is a genuine copy of an original. It was executed on the date mentioned therein, that is, 19.12.2008 and I signed it on the same day. It is correct that as per clause 2.1, it is recorded that investor may advance money pending fulfillment of conditions. I could not point out this clause earlier as it was not specifically pointed out to me. It is correct that since share subscription agreement, share pledge agreement and ICD agreements were signed by all the directors, there was no need to convene board meeting for the same....."

In his further cross-examination, pages 16 and 17, he deposed about genuineness of the Grant Thornton report and the transactions as under:

".....The report of Grant Thornton cannot be doctored. Grant Thornton is a reputed company. It is correct that in the transaction between Cineyug Films (P) Limited and Kalaignar TV (P) Limited, Kusegaon Fruits and Vegetables (P) Limited had nothing to do with and as such, there is no question of Sh. Rajiv Agarwal handing over agreement, Ex PW106/B to me for signatures. It is correct that when there was delay in receipt of the report and in allotting shares to us, Kalaignar TV (P) Limited gave security to us. To my knowledge, neither my company nor any of its directors had created any bogus document regarding this transaction. The transaction between Kusegaon Fruits and Vegetables (P) Limited and Cineyug Films (P) Limited and Cineyug Films (P) Limited and Kalaignar TV (P) Limited are bonafide transactions and have been correctly reflected in the minute books. When the valuation report was not to our interest, we followed with the Kalaignar TV (P) Limited for returning our money, which it ultimately returned. I do not know, if Sh. A. Raja has joined CBI investigation or not....."

In his further cross-examination, pages 18 to 20, he deposed about the genuineness of the documents and start of negotiation between Cineyug Films (P) Limited and Kalaignar TV (P) Limited, as under:

> ".....It is correct that some initial discussion with Kalaignar TV (P) Limited were held by me also. Besides me, Sh. Mitesh Kurani had also conducted the negotiation with Kalaignar TV (P) Limited, though, I started the negotiation. It is correct that I instructed Sh. Mitesh Kurani to call for the financial statements of the last three years of Kalaignar TV (P) Limited and its projection for the next five years.
>
> It is correct that letter dated 29.10.2008, already Ex PW106/G-22, was written by Sh. Mitesh Kurani under my instructions. It is correct that Kalaignar TV (P) Limited wrote a letter dated 06.11.2008, Ex PW106/G-21, in response to our letter, Ex PW106/G-22, providing the aforesaid documents. Letter Ex PW106/G-21 was addressed to me. It is correct that proposal of Kalaignar TV (P) Limited was discussed in the board meeting held on 07.11.2008. It is correct that the decision to invest in Kalaignar TV (P) Limited was arrived at by the board as its joint decision, after discussion with the financial team.
>
> It is correct that when the valuation took some time, time was extended by six months by mutual consent by Kalaignar TV (P) Limited and Cineyug Films (P) Limited. It is correct that on being not satisfied with the Grant Thornton report, the board decided to negotiate the matter with Kalaignar TV (P) Limited and to convert the investment into ICDs. In the end, the investment took the form of investment bearing loan.
>
> It is correct that Kusegaon Fruits and Vegetables (P) Limited holds 49% shares in our company. It is correct that when negotiations were

going on between Kusegaon Fruits and Vegetables (P) Limited and Cineyug Films (P) Limited, for investment in Cineyug Films (P) Limited, the former was keen to have 50% equity in our company. Apart from this, they also wanted preference shares. It is correct that Cineyug Films (P) Limited was keen to give them only debentures. It is correct that there were prolonged negotiations between the two parties on this issue. It is correct that for this reason, there was considerable delay in finalizing share subscription and shareholders agreement dated 27.01.2010. It is correct that in 2010, my company offered certain properties as security to Kusegaon Fruits and Vegetables (P) Limited. It is correct that the properties so offered were in fact personal properties of the directors, in addition to the company's properties....."

The witness thus reaffirmed the genuineness of the documents and the transaction and this was not challenged by the prosecution in re-examination or cross-examination.

1687. Now, let me take note of deposition of witnesses from Kalaignar TV (P) Limited as to why the money was received and returned.

Witnesses from Kalaignar TV (P) Limited

1688. PW 107 Sh. P. Amirtham was Chief Financial Officer of Kalaignar TV (P) Limited from 27.07.2007 to 28.05.2010 and director from 28.05.2010 till date.

In his examination-in-chief dated 15.03.2013, he owned up the minutes book, Ex PW 107/A (D-742), of the company and all the minutes of various board meetings held between 06.06.2007 to 10.01.2011, Ex PW 107/DA and Ex PW

107/A-1 to A-26. He deposed that the minutes book as well as the minutes recorded therein were genuine and signed by Sh. Sharad Kumar. He also deposed that register of members and share ledger of Kalaignar TV (P) Limited, Ex PW 107/B (D-743), were also correct. He also deposed that copy of second annual report of Kalaignar TV (P) Limited for the financial year 2008-09, Ex PW 107/C, pages 95 to 100, and certified copy of auditor's report for the year 2008-09, Ex PW 107/C-1, pages 92 to 94, certified copy of balance sheet of Kalaignar TV (P) Limited as on 31.03.2009, Ex PW 107/C-2, pages 81 to 90, certified copy of annual report of Kalaignar TV (P) Limited for the year 2009-10, pages 116 to 121, Ex PW 107/C-3, certified copy of auditor's report of Kalaignar TV (P) Limited for the year 2009-10, Ex PW 107/C-4, pages 113 to 115, certified copy of balance sheet as on 31.03.2010, Ex PW 107/C-5, pages 102 to 112, (all in file D-661) and ICD agreements dated 06.04.2009, 15.07.2009 and 07.08.2009, for Rs. 25 crore, Rs. 100 crore and Rs. 50 crore respectively, Ex PW 106/F-2, F-4 and 106/F (D-670 to 672) are correct.

The relevant part of his examination-in-chief dated 15.03.2013, pages 13 to 15, relating to working of company and execution of ICD agreements is extracted as under:

> ".....**Ques**: What was the reason and under what circumstances these ICDs and promisory notes were executed?
> **Ans**: The ICDs were executed as Kalaignar TV (P) Limited was in need of money for purchasing films and the ICDs were executed for converting share into debt and the promisory notes were executed for

additional security.
Ques: Please take a look at the ICD agreement Ex PW 106/F-2. Please state where does the agreement refer to any share application or conversion of share into debt?
Ans: Entire agreement has been translated to me into Tamil and I find that such a thing does not find mention in this agreement.
Ques: Who had prepared this agreement?
Ans: Our lawyer had prepared it.
Ques: Did you sign the agreement after the contents were explained to you in Tamil?
Ans: That is correct.
Ques: Please take a look at the ICD agreements Ex PW 106/F-4 and F. Please state where do these agreements refer to any share application or conversion of share into debt?
Ans: My reply is same as above.
Ques: Who had instructed the lawyer to draft these agreements?
Ans: The management had done so.
Ques: What do you mean by management?
Ans: The management includes myself, auditor, accountant Rajendran and board of directors.
Ques: Who were members of board of directors, who participated in the aforesaid decision making?
Ans: The board members were Sh. Sharad Kumar and Ms. M. K. Dayalu. I was CFO and I did not inquire as to who took the decision.
Ques: Who communicated the decision to you?
Ans: Accountant Sh. Rajendran had communicated the decision to me.
Ques: Who used to take business decisions with respect to financial matters of Kalaignar TV (P) Limited?
Ans: I used to take these decisions as board had authorized me.
Ques: Who used to take decisions for day-to-day management of the company?
Ans: Myself.

Ques: What was the role of Ms. Kanimozhi Karunanithi in the decision making and day-to-day management of the company?
Ans: After her resignation from the board of the company and her appointment as Rajya Sabha MP, she did not involve in the decision making....."

In his cross-examination dated 15.03.2013, pages 23 and 24, he deposed about the money received from Cineyug Films (P) Limited as under:

"....."**Ques**: I put it to you that it was need for funds which brought about the transaction of Kalaignar TV (P) Limited with Cineyug Films (P) Limited?
Ans: That is right.
Ques: I put it to you that primarily the company had offered shares against these advances?
Ans: That is right.
Ques: I put it to you that before advancing money, investors carry out due diligence of the entity to whom money is being advanced?
Ans: That is correct.
Ques: I put it to you that on account of due diligence of valuation, Cineyug Films (P) Limited was not interested in shares and share application money was converted into ICDs?
Ans: That is correct....."

In his further cross-examination dated 18.03.2013, page 4, he deposed about role of Ms. Dayalu Ammal as under:

"....."**Ques**: Did Ms. Dayalu Karunanithi know about the transaction of Rs. 200 crore by Cineyug Films (P) Limited and give her approval for the same?
Ans: That is right.
It is correct that board of the company authorized Sharad Kumar to facilitate private placement of shares of the company. It is correct that

> he acted on the authority of the board and not independently. It is correct that advocate Ezhilmani drafted the share subscription agreement and handed it over to Rajendran. It is correct that this share subscription and shareholders agreement dated 19.12.2008 was signed in presence of Ramnarayanan and myself....."

In the examination-in-chief as well as in the cross-examination, this witness justified the transaction of Rs. 200 crore between Cineyug Films (P) Limited and Kalaignar TV (P) Limited. He deposed that all the board minutes were correct and balance sheet of the company and other documents were also correct. The prosecution did not put even a single question to the witness challenging his version by suggesting that it was not a bona fide transaction. It was nowhere suggested to him that it was, in fact, transfer of illegal gratification linked to Sh. A. Raja and was wrongly recorded as share application money or loan. The witness was cross-examined by the learned Sr. PP only on one point, that is, on the role of Ms. Kanimozhi Karunanithi. The witness even owned up share subscription and shareholder's agreement dated 19.12.2008, as it was signed in his presence, but the prosecution did not challenge this version also.

A document may suffer from certain deficiencies, but the witness must be afforded an opportunity to explain these. Mere some deficiencies in a document do not render it doubtful. What appears to be a deficiency in a document, may not be so if the executants are given an opportunity to explain it, unless it amounts to plain improbability or absurdity.

It is instructive to take note of the observations of Hon'ble Supreme Court made in an authority reported as **Subhra Mukherjee and another Vs. Bharat Cooking Coal Ltd. and others, (2000) 3 SCC 312.** While dealing with the question of proof of a transaction, it was observed in paragraph 12 as under:

> "There can be no dispute that a person who attacks a transaction as sham, bogus and fictitious must prove the same. But a plain reading of Question 1 discloses that it is in two parts; the first part says, "whether the transaction in question is a bona fide and genuine one" which has to be proved by the appellants. It is only when this has been done that the respondent has to dislodge it by proving that it is a sham and fictitious transaction. When the circumstances of the case and the intrinsic evidence on record clearly point out that the transaction is not bona fide and genuine, it is unnecessary for the court to find out whether the respondent has led any evidence to show that the transaction is sham, bogus or fictitious."

In the instant case the circumstantial evidence cited for showing the transaction to be bogus is the speed of transfer of money. However, it is not clear if the speed was commerce driven or crime driven. Rather, speed is the essence of modern commerce.

1689. PW 116 Sh. G. Rajendran, General Manager (Finance) of Kalaignar TV (P) Limited, in his examination-in-chief dated 03.05.2013, pages 1 to 3, deposed about SSA, receipt of money of Rs. 200 crore, ICD agreements and agreement to pledge as under:

".....I have been shown a Share Subscription and Shareholders Agreement dated 19.12.2008 entered into between Cineyug Films (P) Limited as investor and Kalaignar TV (P) Limited and its promoters, already Ex PW106/B (D-655). I am aware of this agreement. Cineyug Films (P) Limited came to Kalaignar TV (P) Limited as an investor. This agreement is hybrid agreement, that is, it carries both equity as well as interest part. Kalaignar TV (P) Limited was interested only in equity. Cineyug Films (P) Limited was also interested in buying equity of Kalaignar TV (P) Limited.

Kalaignar TV (P) Limited received Rs.200 crore from Cineyug Films (P) Limited. The money was received through banking channel in different tranches, as per the agreement, Ex PW106/B.

I have been shown three ICD agreements dated 06.04.2009, already Ex PW106/F-2 with its promissory note, already Ex PW106/F-3, dated 15.07.2009, already Ex PW106/F-4 with its promissory note, already Ex PW106/F-5 and dated 07.08.2009, already Ex PW106/F with its promissory note, already Ex PW106/F-1. These agreements were entered into to furnish additional collateral security to Cineyug Films (P) Limited.

I have also been shown two more ICD agreements dated 24.12.2008 and 29.01.2009, entered into between Kalaignar TV (P) Limited and Cineyug Films (P) Limited, D-795. I am aware about these two agreements also and these were also entered into to furnish additional collateral security to Cineyug Films (P) Limited. These agreements have been signed by Sh. P. Amritham, deemed MD of the company, at point A on the agreement dated 24.12.2008 and at point B on agreement dated 29.01.2009. These two agreements are now Ex PW116/A and PW116/B.

I have also been shown agreement to pledge dated 30.12.2009 entered into between Kalaignar TV (P) Limited and Cineyug Films (P) Limited,

already Ex PW106/C (D-656). I am also aware of this agreement. It bears signature of Sh. Sharad Kumar at points E, which I identify. I am unable to identify the signatures of other signatories. Through this agreement, the shares mentioned therein were pledged to Cineyug Films (P) Limited……."

He also deposed that minutes book Ex PW 107/A is a genuine minutes book of Kalaignar TV (P) Limited.

In his further examination-in-chief pages 3 to 6, he deposed about receipt of money from Cineyug Films (P) Limited and return thereof as under:

"……..On receipt of Rs.200 crore from Cineyug Films (P) Limited, all the money were put into the business of Kalaignar TV (P) Limited. Movie satellite rights purchase and content purchase and repayment of loan are the major expenditure of a TV company. Starting with the month of December 2010, the money was returned alongwith interest to Cineyug Films (P) Limited in different tranches. The money was returned as Cineyug Films (P) Limited insisted on its return. The Cineyug Films (P) Limited asked for the return of the money, as it had approached Kalaignar TV (P) Limited for equity participation and that did not happen. Equity participation could not happen as there was a difference of opinion regarding valuation of shares of Kalaignar TV (P) Limited. As per Grant Thornton Report our business was valued at Rs.1029 crore and after discount, it was valued at Rs.823 crore. However, Cineyug Films (P) Limited valued us at about Rs.500 crore and this led to the differences between the two parties. Grant Thornton Report was received by Kalaignar TV (P) Limited on 17.06.2009. This firm was appointed by Kalaignar TV (P) Limited for carrying out the valuation in March 2009. As per agreement dated 19.12.2008, already Ex PW106/B, the valuer was to be appointed by the signatories to

the agreement within 30 days of the agreement. Process of valuation had started from December 2008 itself. However, the valuer was appointed after the expiry of 30 days of the execution of the agreement as lot of ground work was to be done. Cineyug Films (P) Limited had no contribution in the appointment of valuer, but it insisted on valuation report.

As per minutes dated 15.10.2008, already Ex PW107/A-15, Sh. Sharad Kumar was authorized to sign the documents in this regard. The report received from Grant Thornton Report was put up before the board of Kalaignar TV (P) Limited on 13.07.2009, as reflected in the minutes of the same date, already Ex PW107/A-19. The report was sent by us to Cineyug Films (P) Limited in the month of August 2009. The report was sent to Cineyug Films (P) Limited as there was no board meeting before the aforesaid date. The report was put up before the board with some delay as the company had outsourced its secretarial work and it resulted into some delay. The money started coming from Cineyug Films (P) Limited in December 2008 and continued till August 2009. During the period of appointment of the valuer and receipt of its report, Cineyug Films (P) Limited kept insisting on the report again and again. Other than, asking for the report, they kept sending the money. Nothing else was done by Cineyug Films (P) Limited. Cineyug Films (P) Limited official Sh. Mitesh Kurani, CFO would call us every 15 days asking for the report. Cineyug Films (P) Limited did not offer to appoint its valuer. As per share purchase agreement, Kalaignar TV (P) Limited had received Rs.25 crore upto 31.03.2009 and later on, this agreement was converted into an ICD agreement. Agreement Ex PW106/B was not terminated. However, it was canceled by all parties, though, I do not remember the date and year....."

In his cross-examination dated 03.05.2013, pages 17 and 18, PW 116 deposed as under:

> ".....Share Subscription Agreement, Ex PW106/B, is the correct copy of the original. This agreement was executed in my presence. This is a genuine document and the transaction contemplated in this was also a bonafide transaction. Some advance and later on, final payment was paid/made to Grant Thornton.
>
> Mr. Raja was neither an employee nor a shareholder in Kalaignar TV (P) Limited and the same applies to his family also. The aforesaid transaction of Rs.200 crore was solely between Kalaignar TV (P) Limited and Cineyug Films (P) Limited and no other individual or entity was involved in it....."

In his further cross-examination dated 03.05.2013, pages 18 and 19, he deposed as under:

> ".....Letter, Ex PW106/G-22, dated 29.10.2008 was addressed to me by Cineyug Films (P) Limited, whereby it asked for some documents for due diligence. These documents were given by me on behalf of Kalaignar TV (P) Limited, through a letter addressed to Mohd. Morani, already Ex PW106/G-21. Through their letter dated 15.11.2008, already Ex PW106/G-20, Cineyug Films (P) Limited informed that the documents have been sent to their auditors and consultants for due diligence and they also asked for our order book and requirement of funds....."

In his further cross-examination, page 20, PW 116 deposed as under:

> ".....I was never a part of any document or transaction, which was a sham document or transaction. The transaction of Rs.200 crore is

genuine transaction between the two parties and no sham document was executed in this regard....."

Thus, PW 116 Sh. G. Rajendran owned up the entire documentation done for transaction of Rs. 200 crore. He also deposed that minutes book, Ex PW 107/A of Kalaignar TV (P) Limited was a genuine minutes book and the transaction was reflected therein also. He justified the transactions between Cineyug Films (P) Limited and Kalaignar TV (P) Limited and deposed that it was a genuine transaction for equity investment which could not be completed and later the transferred money was converted into loan. Prosecution did not challenge the version of the witness. This witness owned up the entire documentation also.

1690. Furthermore, in minutes dated 15.10.2008, Ex PW 107/A-15, there is authorization to Sh. Sharad Kumar for private placement of shares and also to negotiate with strategic investors. The exercise of this power is reflected in the letter dated 29.10.2008, Ex PW 106/G-22, a letter written by Cineyug Films (P) Limited to Kalaignar TV (P) Limited, in which it is referred that Sh. Sharad Kumar had various personal conversations with PW 125 Sh. Mohamed Morani. The two documents are contemporaneous and support the case of the defence. These documents are of period prior to 23.12.2008 when the movement of money started. The prosecution did not challenge the genuineness of these documents. Thus, the evidence of the witness would be read in favour of defence and not prosecution.

In an authority reported as **Atluri Brahamanandam (dead) through LRs Vs. Anne Sai Bapuji, (2010) 14 SCC 466**, dealing with such a situation, Hon'ble Supreme Court observed in paragraph 10 as under:

> "The aforesaid deed of adoption was produced in evidence and the same was duly proved in the trial by the evidence led by PW 1, the respondent. We have carefully scrutinised the cross-examination of the said witness. In the entire cross-examination, no challenge was made by the appellant herein either to the legality of the said document or to the validity of the same. Therefore, the said registered adoption deed went unrebutted and unchallenged. We have already referred to the recitals in the said document which is a registered document and according to the recitals therein, the respondent was legally and validly adopted by the adoptive father, late Anne Seetharamaiah and that such adoption even beyond the age of 15 years is permissible and recognised in the "Kamma" community of Andhra Pradesh. All these factors also go unrebutted and unchallenged."

Similar observations were made in case titled **Laxmibai (dead) through LRs and another Vs. Bhagwantbuva (dead) through LRs and others, (2013) 4 SCC 97**, wherein in para 40, it was observed as under:

> "Furthermore, there cannot be any dispute with respect to the settled legal proposition, that if a party wishes to raise any doubt as regards the correctness of the statement of a witness, the said witness must be given an opportunity to explain his statement by drawing his attention to that part of it, which has been objected to by the other party, as being untrue. Without this, it is not possible to impeach his credibility. Such a law has been advanced in view of the statutory provisions

enshrined in Section 138 of the Evidence Act, 1872, which enable the opposite party to cross-examine a witness as regards information tendered in evidence by him during his initial examination-in-chief, and the scope of this provision stands enlarged by Section 146 of the Evidence Act, which permits a witness to be questioned, inter alia, in order to test his veracity. Thereafter, the unchallenged part of his evidence is to be relied upon for the reason that it is impossible for the witness to explain or elaborate upon any doubts as regards the same in the absence of questions put to him with respect to the circumstances which indicate that the version of events provided by him is not fit to be believed, and the witness himself, is unworthy of credit. Thus, if a party intends to impeach a witness, he must provide adequate opportunity to the witness in the witness box, to give a full and proper explanation. The same is essential to ensure fair play and fairness in dealing with witnesses....."

Similar observations were made in case titled **Paulmeli and another Vs. State of Tamil Nadu, (2014) 13 SCC 90**, wherein Hon'ble Supreme Court in paragraph 16 observed as under:

"It is a settled legal proposition that in case the question is not put to the witness in cross-examination who could furnish explanation on a particular issue, the correctness or legality of the said fact/ issue could not be raised. (Vide *Atluri Brahmanandam v. Anne Sai Bapuji* and *Laxmibai v. Bhagwantbuva*)"

1691. PW 152 Ms. Dayalu Ammal, one of the directors of Kalaignar TV (P) Limited, in her examination-in-chief dated 28.10.2013, page 11, disowned any knowledge of transaction between Kalaignar TV (P) Limited and Cineyug Films (P)

Limited.

1692. PW 83 Ms. S. Meenakshi, Deputy Registrar of Companies, Office of ROC, Chennai, in her examination-in-chief, page 5, deposed about loan being shown in the balance sheet of Kalaignar TV (P) Limited as under:

> ".....Similarly, in balance sheet Ex PW 69/C, as on 31.03.2010, a loan has been shown to be taken for an amount of Rs. 214,86,54,109/-, but the source is not mentioned....."

1693. Thus, witness after witness owned up the transaction as bona fide one and deposed that the documents executed in regard thereto were genuine one. The prosecution did not put up any question countering the version narrated by the witnesses by suggesting that the documents were falsely created to show a transaction of payment of illegal gratification as a transaction of equity investment/ loan.

1694. What is the case of the prosecution? Prosecution case is that Sh. A. Raja as MOC&IT granted UAS licences for thirteen service areas to STPL, a company of DB group of Sh. Shahid Balwa and Sh. Vinod Goenka. It is also its case that in consideration thereof, Rs. 200 crore was paid as bribe/ reward by the companies belonging to DB group to Sh. A. Raja, which was parked in Kalaignar TV (P) Limited, in which Ms. Kanimozhi Karunanithi and Sh. Sharad Kumar were directors. However, the prosecution gave up its case in its entirety during the examination of witnesses as not a single question was put to any witness suggesting these facts.

1695. I have deliberately narrated in great detail the

submissions of parties as well as deposition of various witnesses. What is the case of the prosecution? Its case is that illegal gratification of Rs. 200 crore was paid to Sh. A. Raja by Sh. Shahid Balwa and Sh. Vinod Goenka through the circuitous route of Dynamix Realty, Kusegaon Fruits and Vegetables (P) Limited and Cineyug Films (P) Limited for the favours shown to them by him (A. Raja) regarding grant of UAS licences and allocation of spectrum to their company STPL and it was parked in Kalaignar TV (P) Limited. Witnesses were examined from all four entities, that is, from Dynamix Realty, Kusegaon Fruits and Vegetables (P) Limited, Cineyug Films (P) Limited and Kalaignar TV (P) Limited. Not even a single witness deposed that the transaction was meant for payment of illegal gratification or that it was a mala fide or sham transaction due to its link with grant of UAS licences to STPL. Nor did the prosecution suggest even to a single witness that the aforesaid transaction of money of Rs. 200 crore, routed through these entities, was a transaction of illegal gratification and the documentation was done to conceal the payment of illegal gratification. There was no suggestion that the transaction of illegal gratification was dressed up as loan. To some witnesses, only it was suggested that the transaction was not a bona fide one and the documents executed were bogus. No question was put to any witness as to how the documents lacked attributes of normality and regularity. Furthermore, a bogus document by itself does not mean payment of illegal gratification. These transactions per se are not illegal. To make out a case of illegal

gratification these documents would have to be linked to a public servant, which is lacking in this case. Furthermore, almost all the witnesses owned up the documents and transactions as genuine and their version went unchallenged by the prosecution. It was nowhere suggested to any witness that whatever may be the color, character or designation of the transaction between the four entities, it was, in fact, payment of illegal gratification to Sh. A. Raja. Thus, there is no evidence, oral or documentary, to show that Rs. 200 crore was illegal gratification meant for Sh. A. Raja and parked in Kalaignar TV (P) Limited.

1696. However, the prosecution attacked the documents as well as the transaction by way of arguments across the bar by referring to various internal contradictions in the documents and some other miscellaneous deficiencies like post-facto documentation, document(s) not being on stamp paper, wrong treatment of amount in the balance sheets, that is, a particular amount being shown under a wrong head, lack of formal documentation, non-production of documents, lack of collaterals/ securities, lower rate of interest, investment being contrary to objects clause of the entity etc. However, no question was put to any witness in this regard when he was in witness box, so that he may have had an opportunity to explain the same. A case is to be decided on the basis of evidence led by the parties and not on the basis of arguments alone. Arguments are no substitute for evidence. The end result is that prosecution failed to put its case to the witnesses indicating that it gave up

its case during examination of witnesses itself.

1697. Furthermore, PW 151 Dy SP S. K. Sinha deposed that the transactions of transfer of money, onward from Dynamix Realty to Kalaignar TV (P) Limited and and its return to Dynamix Realty was sham and dubious. However, he also did not cite any reason for arriving at such a conclusion. In the absence of evidence falling from the mouth of witnesses, his (PW 151) conclusion is of no value in the eyes of law, unless it is supported by some other legally admissible circumstantial evidence, which is also lacking in this case. It has to be kept in mind that role of investigating officer is only to collect evidence. His word, by itself, does not provide proof for commission of any offence. Examination of the IO in the witness box only shows the procedure followed during the investigation and the material collected for proof of offence alleged in the charge sheet. He can, at best, only explain the evidence collected during investigation. The conclusion is that he did not furnish any reason or evidence for calling the transaction sham and dubious, what to talk of its link with Sh. A. Raja.

1698. Chief IO PW 153 Sh. Vivek Priyadarshi did not depose anything, not even a word, about the transfer of money through the four entities.

1699. Furthermore, the minutes books of three entities, that is, Kusegaon Fruits and Vegetables (P) Limited, Cineyug Films (P) Limited and Kalaignar TV (P) Limited, were proved by the prosecution. Witnesses also deposed that the books of the three entities were genuine. In these minutes books, there are

resolutions passed about the transaction of Rs. 200 crore at different points of times. When these minutes books are genuine and their genuineness was not questioned or challenged by the prosecution by putting relevant question to the witnesses, how the transaction of Rs. 200 crore can be termed as bogus merely by resorting to arguments at the bar? Things cannot be decided in the abstract and are required to be determined in the background of facts and evidence. Arguments alone do not prove a case in a Court of law. It is only one of the elements of a criminal trial. For proof, legally admissible evidence is required.

In the light of evidence narrated above in great detail, in order to facilitate easy understanding of the case, let me take note of law on the point.

Legal Position under PC Act

1700. Section 7 of PC Act deals with the taking of gratification other than legal remuneration by a public servant. The case of the prosecution is that Sh. A. Raja took illegal gratification of Rs. 200 crore, from DB group companies for showing favour to STPL in the matter of grant of UAS licences and allocation of spectrum to it. The question is: What are the ingredients for attracting the provisions of Section 7 of PC Act? The relevant part of Section 7 of the PC Act reads as under:

> "Whoever, being, or expecting to be a public servant, accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or

forbearing to show, in the exercise of his official functions, favour or disfavour to any person or for rendering or attempting to render any service or disservice to any person, with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in clause *(c)* of Section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment which shall be not less than six months but which extend to five years and shall also be liable to fine.

…….

……."

1701. It is also the case of the prosecution that by accepting illegal gratification of Rs. 200 crore, Sh. A. Raja also committed an offence of criminal misconduct as provided in Section 13 of PC Act. The relevant part of Section 13 reads as under:

"(1) A public servant is said to commit the offence of criminal misconduct,–

…….

…….

(d) if he,–

(i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest.

…….

……."

1702. Section 11 of the PC Act provides as under:

"**Public servant obtaining valuable thing, without consideration from person concerned in proceeding or business transacted by such public servant**.– Whoever, being a public servant, accepts or obtains or agrees to accept, or attempts to obtain for himself, or for any other person, any valuable thing without consideration, or for a consideration which he knows to be inadequate, from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by such public servant, or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine."

1703. Section 12 of the PC Act reads as under:

"**Punishment for abetment of offences defined in Section 7 or 11**.– Whoever abets any offence punishable under Section 7 or section 11 whether or not that offence is committed in consequence of that abetment, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine."

1704. In a recent authority reported as **Mukhtiar Singh Vs. State of Punjab, AIR 2017 SC 3382**, Hon'ble Supreme Court while dealing with the case of illegal gratification of Rs. 2000 taken by a police officer analyzed the ingredients of these Sections relating to demand and receipt of illegal gratification and observed in paragraphs 14 to 17 as under:

"**14.** The indispensability of the proof of demand

and illegal gratification in establishing a charge under Sections 7 and 13 of the Act, has by now engaged the attention of this Court on umpteen occasions. In A. Subair v. State of Kerala, this Court propounded that the prosecution in order to prove the charge under the above provisions has to establish by proper proof, the demand and acceptance of the illegal gratification and till that is accomplished, the accused should be considered to be innocent. Carrying this enunciation further, it was exposited in State of Kerala v. C. P. Rao that mere recovery by itself of the amount said to have been paid by way of illegal gratification would not prove the charge against the accused and in absence of any evidence to prove payment of bribe or to show that the accused had voluntarily accepted the money knowing it to be bribe, conviction cannot be sustained.

15. In P. Satyanarayana Murthy (*AIR 2015 SC 3549*) (supra), this Court took note of its verdict in B. Jayaraj v. State of A.P underlining that mere possession and recovery of currency notes from an accused without proof of demand would not establish an offence under Section 7 as well as Section 13(1)(d)(i) and (ii) of the Act. It was recounted as well that in the absence of any proof of demand for illegal gratification, the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be proved. Not only the proof of demand thus was held to be an indispensable essentiality and an inflexible statutory mandate for an offence under Sections 7 and 13 of the Act, it was held as well qua Section 20 of the Act, that any presumption thereunder would arise only on such proof of demand. This Court thus in P. Satyanarayana Murthy (*AIR 2015 SC 3549*) (supra) on a survey of its earlier decisions on the pre-requisites of Sections 7 and 13 and the proof thereof

summed up its conclusions as hereunder:
(*Paras 21 & 22 of AIR*)

"23. The proof of demand of illegal gratification, thus, is the gravamen of the offence under Sections 7 and 13(1)(d)(i) and (ii) of the Act and in absence thereof, unmistakably the charge therefor, would fail. Mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof, dehors the proof of demand, ipso facto, would thus not be sufficient to bring home the charge under these two sections of the Act. As a corollary, failure of the prosecution to prove the demand for illegal gratification would be fatal and mere recovery of the amount from the person, accused of the offence under Sections 7 and 13 of the Act would not entail his conviction thereunder."

(Emphasis supplied)

16. The textual facts in Somabhai Gopalbhai Patel (*2014 AIR SCW 6078*) (supra) and Mukhtiar Singh (*AIR 2016 SC 3100*) (supra) and the quality of evidence adduced by the prosecution are clearly distinguishable and are thus of no avail to the prosecution as would be discernible from the analysis of the materials on record.

17. It is in the above adumbrated legal enjoinment, that the evidence on record has to be scrutinised. Having regard to the gravamen of the charge and the imperatives of demand of illegal gratification, the receipt and recovery thereof, the evidence on record relatable thereto only need be noticed."

1705. Similarly, in an authority reported as **Krishan Chander Vs. State of Delhi, AIR 2016 SC 298**, while dealing with a case under PC Act, Hon'ble Supreme Court observed about demand, acceptance and explanation of illegal gratification by the accused, in paragraphs 34 and 35 as under:

"**34.** It is well settled position of law that the

demand for the bribe money is sine qua non to convict the accused for the offences punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the PC Act. The same legal principle has been held by this Court in case of B. Jayaraj (*AIR 2014 SC (supp) 1837)* (supra), A. Subair (*2009 AIR SCW 3994*) (supra) and P. Satyanarayana Murthy (supra) upon which reliance is rightly placed by the learned senior counsel on behalf of the appellant. The relevant paragraph 7 from B. Jayaraj case (supra) reads thus:

"7. Insofar as the offence under Section 7 is concerned, it is a settled position in law that demand of illegal gratification is sine qua non to constitute the said offence and mere recovery of currency notes cannot constitute the offence under Section 7 unless it is proved beyond all reasonable doubt that the accused voluntarily accepted the money knowing it to be a bribe. The above position has been succinctly laid down in several judgments of this Court. By way of illustration reference may be made to the decision in C. M. Sharma v. State of A.P. (*AIR 2011 SC 608*) and C. M. Girish Babu v. CBI." (*AIR 2009 SC 2022*) (Emphasis supplied)

In the case of P. Satyanarayanana Murthy (*AIR 2015 SC 3549, Paras 19, 20,21 & 22*), (supra), it was held by this Court as under:

"21. In State of Kerala and another v. C. P. Rao (*AIR 2012 SC (Supp) 393*), this Court reiterating its earlier dictum, vis-a-vis the same offences, held that mere recovery by itself, would not prove the charge against the accused and in absence of any evidence to prove payment of bribe or to show that the accused had voluntarily accepted the money knowing it to be bribe, conviction cannot be sustained.

22. In a recent enunciation by this Court to discern the imperative pre-requisites of Sections 7 and 13 of the Act, it has been underlined in B. Jayaraj (*AIR 2014 SC (Supp) 1837*) in unequivocal

terms, that mere possession and recovery of currency notes from an accused without proof of demand would not establish an offence under Sections 7 as well as 13(1)(d)(i) & (ii) of the Act. It has been propounded that in the absence of any proof of demand for illegal gratification, the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be proved. The proof of demand, thus, has been held to be an indispensable essentiality and of permeating mandate for an offence under Sections 7 and 13 of the Act. Qua Section 20 of the Act, which permits a presumption as envisaged therein, it has been held that while it is extendable only to an offence under Section 7 and not to those under Section 13(1)(d)(i) & (ii) of the Act, it is contingent as well on the proof of acceptance of illegal gratification for doing or forbearing to do any official act. Such proof of acceptance of illegal gratification, it was emphasized, could follow only if there was proof of demand. Axiomatically, it was held that in absence of proof of demand, such legal presumption under Section 20 of the Act would also not arise.

23. The proof of demand of illegal gratification, thus, it is the gravamen of the offence under Sections 7 and 13(1)(d)(i) & (ii) of the Act and in absence thereof, unmistakably the charge therefore, would fail. Mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof, dehors the proof of demand, ipso facto, would thus not be sufficient to bring home the charge under these two sections of the Act. As a corollary, failure of the prosecution to prove the demand for illegal gratification would be fatal and mere recovery of the amount from the person accused of the offence under Sections 7 or 13 of the Act would not entail his conviction thereunder."

(emphasis supplied)

35. Further, in case of Satvir Singh v. State of Delhi, this Court has held thus:

"34. This Court in K. S. Panduranga case (*AIR 2013 SC 2164, Pp. 2175-2176 Para 41*) had held that the demand and acceptance of the amount of illegal gratification by the accused is a condition precedent to constitute an offence, the relevant paragraph in this regard from the abovesaid decision is extracted hereunder: (SCC pp. 740-41, para 39)

"39. Keeping in view that the demand and acceptance of the amount as illegal gratification is a condition precedent for constituting an offence under the Act, it is to be noted that there is a statutory presumption under Section 20 of the Act which can be dislodged by the accused by bringing on record some evidence, either direct or circumstantial, that money was accepted other than for the motive or the reward as stipulated under Section 7 of the Act. When some explanation is offered, the court is obliged to consider the explanation under Section 20 of the Act and the consideration of the explanation has to be on the touchstone of preponderance of probability. It is not to be proven beyond all reasonable doubt. In the case at hand, we are disposed to think that the explanation offered by the accused does not deserve any acceptance and, accordingly, we find that the finding recorded on that score by the learned trial Judge and the stamp of approval given to the same by the High Court cannot be faulted."

(Emphasis supplied)

35. The learned Senior Counsel for the appellant has also placed reliance upon the case of Banarsi Dass (*AIR 2010 SC 1589, Pp. 1593-1594, Para 11*) referred to supra wherein it was held that: (SCC pp. 456-57, para 24)

"24. In M. K. Harshan v. State of Kerala (*AIR 1995 SC 2178, Pp. 2180-81, Para 8*) this Court in somewhat similar circumstances, where the tainted

money was kept in the drawer of the accused who denied the same and said that it was put in the drawer without his knowledge, held as under: (SCC pp. 723-24, para 8)

'8. ….It is in this context the courts have cautioned that as a rule of prudence, some corroboration is necessary. In all such type of cases of bribery, two aspects are important. Firstly, there must be a demand and secondly, there must be acceptance in the sense that the accused has obtained the illegal gratification. Mere demand by itself is not sufficient to establish the offence. Therefore, the other aspect, namely, acceptance is very important and when the accused has come forward with a plea that the currency notes were put in the drawer without his knowledge, then there must be clinching evidence to show that it was with the tacit approval of the accused that the money had been put in the drawer as an illegal gratification.'....

1706. In another authority reported as **A. Sivaprakash Vs. State of Kerala, AIR 2016 SC 2287**, Hon'ble Supreme Court observed in paragraph 19 as under:

"In C. Chenga Reddy & Ors. v. State of A.P. (1996) 10 SCC 193 : (*AIR 1996 SC 3390*). this Court held that even when codal violations were established and it was also proved that there were irregularities committed by allotting/ awarding the work in violation of circulars, that by itself was not sufficient to prove that a criminal case was made out. The Court went on to hold:

"22. On a careful consideration of the material on the record, we are of the opinion that though the prosecution has established that the appellants have committed not only codal violations but also irregularities by ignoring various circulars and departmental orders issued from time to time in the matter of allotment of work of jungle clearance on nomination basis and have committed departmental

lapse yet, none of the circumstances relied upon by the prosecution are of any conclusive nature and all the circumstances put together do not lead to the irresistible conclusion that the said circumstances are compatible with their innocence. In Abdulla Mohd. Pagarkar v. State (Union Territory of Goa, Daman and Diu), (1980) 3 SCC 110 : (*AIR 1980 SC 499*), under somewhat similar circumstances this Court opined that mere disregard of relevant provisions of the Financial Code as well as ordinary norms of procedural behavior of Government officials and contracts, without conclusively establishing, beyond a reasonable doubt, the guilt of the officials and contractors concerned, may give rise to a strong suspicion but that cannot be held to establish the guilt of the accused. The established circumstances in this case also do not establish criminality of the appellants beyond the realm of suspicion and, in our opinion, the approach of the trial Court and the High Court to the requirements of proof in relation to a criminal charge was not proper.....”

In the instant case, the accused have explained the transaction of Rs. 200 crore as a loan. Prosecution witnesses themselves deposed that it was a loan or a commercial transaction. However, the prosecution did not re-examine or cross-examine these witnesses and, as such, is now bound by the evidence of witnesses who deposed that it was a loan.

1707. Sh. A. Raja was MOC&IT during the years 2007-2010 and, as such, a public servant. During his tenure, thirteen licences were granted to STPL. Thus, Sh. A. Raja was a public servant and had done an official act in the matter of grant of UAS licences and allocation of spectrum to STPL. An amount of Rs. 200 crore had moved from DB group of companies, the

group to which STPL belongs, to Kalaignar TV (P) Limited, a company being run by the family members of the head of DMK, a political party, of which Sh. A. Raja is also a member. The case of the prosecution is that this transfer of money to Kalaignar TV (P) Limited was illegal gratification for the favours shown by Sh. A. Raja to STPL.

1708. However, none of the witnesses, belonging to four entities and referred to above, have supported the prosecution case. There is no oral or documentary evidence to link the transfer of Rs. 200 crore to Kalaignar TV (P) Limited with Sh. A. Raja. There is no evidence of demand and acceptance of illegal gratification by Sh. A. Raja.

Parking of Money in Kalaignar TV (P) Limited

1709. Furthermore, the case of the prosecution is that the illegal gratification of Rs. 200 crore was parked in Kalaignar TV (P) Limited as it belongs to DMK party and Ms. Kanimozhi Karunanithi, one of its directors (Kalaignar TV (P) Limited), used to regularly meet Sh. A. Raja, as both belong to same party. It is the case of the prosecution that this familiarity indicates conspiracy. However, this argument is also not supported by any evidence. This is in the realm of speculation only. If two Members of Parliament, belonging to same party, meet each other, by itself, there is nothing wrong in that. The only evidence on this point is contained in the deposition of PW 7 Sh. Aseervatham Achary. It is useful to take a look on that. In his examination-in-chief dated 19.12.2011, page 4, he deposed as

under:

> ".....As far as Kalaignar TV is concerned, the family members of Sh. M. Karunanidhi are the owners. Kalaignar TV was formed in June, 2007. Mr. M. K. Stalin and Mr. M. K. Azhagiri are the sons and Mrs. Kanimozhi and Mrs. Selvi are the daughters of Sh. M. Karunanidhi. I do not remember the names of other members of his family. To my knowledge, the clearances required for launching a TV channel have to come from Ministry of information and Broadcasting.
> Question: What clearance was given at the time of launching Kalaignar TV by the Ministry of information and Broadcasting? (Objected to being leading question).
> Ans: Ministry of Information and Broadcasting gives clearances for launching of TV channels, in the form of licence.
> Mrs. Kanimozhi and Mr. Sharad Kumar were pursuing case of Kalaignar TV....."

In his further examination-in-chief, pages 7 and 8, he deposed as under:

> ".....I visited the constituency of Sh. A. Raja in Tamil Nadu with him. He belongs to DMK party. During Sh. A. Raja's visit to Tamil Nadu, political people and political leaders used to meet him and Mrs. Kanimozhi was regularly in touch with him and meeting him. During the stay of Sh. A. Raja at Delhi, almost all the Ministers from the State of Tamil Nadu of DMK party, except very senior Ministers and from amongst the Members of Parliament, belonging to DMK party, Mrs. Kanimozhi used to meet him. Sh. A. Raja used to visit the office of MOC&IT, situated at Electronic Niketan and Sanchar Bhawan as well as the residence of Mrs. Kanimozhi, situated at South Avenue....."

Perusal of the above evidence reveals that there is

nothing of any significance which can be read against Sh. A. Raja. The evidence only shows that Ms. Kanimozhi Karunanithi and Sh. A. Raja used to meet each other. He also deposed that almost all Ministers of DMK used to meet him. There is nothing unusual in that. In the absence of any other material, it would be speculative and conjectural to infer from this that the money was parked in Kalaignar TV (P) Limited simply because one of directors of company, that is, Ms. Kanimozhi Karunanithi used to meet Sh. A. Raja. PW 7 Sh. Aseervatham Achari nowhere deposed that they were in any way involved in the transaction of Rs. 200 crore or anything related thereto. These circumstances by itself, that is, belonging to same political party and meeting regularly, do not make them conspirators. Again, there is no evidence at all that Sh. A. Raja was involved in the generation of illegal gratification of Rs. 200 crore, its transfer in tranches to Kalaignar TV (P) Limited and its pre-determined destination being Kalaignar TV (P) Limited. The reliance on this witness by the prosecution shows that its case is based on far-fetched and remote possibilities only and not on any legally admissible evidence. PW 107 Sh. P. Amirtham and PW 116 Sh. G. Rajendran have not deposed anything which could point to existence of any conspiracy.

1710. The case of the prosecution is that the aforesaid payment of Rs. 200 crore was an illegal gratification for the favours shown by Sh. A. Raja to STPL and it was ultimately parked in Kalaignar TV (P) Limited under the cover of transfer through agreements/ MoU relating to equity participation/

loan. Sh. A. Raja appeared as DW 1 in his own defence and was cross-examined by the prosecution. It is instructive to take a look on his cross-examination by the prosecution regarding the payment of Rs. 200 crore. DW 1 Sh. A. Raja, in his cross-examination dated 23.07.2014, pages 2 and 3, deposed as under:

> ".....Ms. M. A. Parameshwari is my wife. Sh. R. P. Paramesh Kumar is my sister's son. My wife was legal advisor of Green House Promoters (P) Limited for sometime, as she is a practicing lawyer. Sh. R. P. Paramesh Kumar was also working in this company, though I do not remember in what capacity.
> **Ques**: I put it to you that both were directors on the board of the company?
> **Ans**: It is a matter of record.
> I did not know any Kevin Amrithraj from before. I came to know of him only when he appeared in this Court as a prosecution witness.
> **Ques**: I put it to you that you know him very well and he was an employee of Green House Promoters (P) Limited?
> **Ans**: It is incorrect. I do not know if he was an employee or not as suggested.
> **Ques**: I put it to you that you availed services of Kevin Amrithraj in the transaction of Rs. 200 crore between Kalaignar TV (P) Limited and Cineyug Films (P) Limited? (Objected to by Sh. Vijay Aggarwal, learned Advocate, on the ground that question is unrelated to the charge, which is rebutted by learned Sr. PP on the ground that name of the witness figures in the documents of prosecution supplied by Citi Bank relating to transaction of Rs. 200 crore).
> **Court Order**: Objection overruled.
> **Ans**: It is incorrect....."

In his further cross-examination dated 23.07.2014,

page 5, the following suggestion was put by the prosecutor to DW 1:

> ".....**Ques**: I put it to you that transaction of Rs. 200 crore between Dynamix Realty to Kusegaon Fruits and Vegetables (P) Limited, Kusegaon Fruits and Vegetables (P) Limited to Cineyug Films (P) Limited, and Cineyug Films (P) Limited and Kalaignar TV (P) Limited was nothing but quid pro quo for grating favours by you to STPL in issuance of UASL and allocation of spectrum to it?
> **Ans**: It is incorrect....."

These are the only questions put to Sh. A. Raja by the prosecution about Rs. 200 crore. It is a matter of great importance that Sh. A. Raja took huge risk in appearing as a witness in his own defence and had given a good opportunity to the prosecution to grill him in detail about the payment of illegal gratification, but only two general suggestions were put to him. It was not suggested to him at all that the circuitous route for transfer of money through the four entities was adopted at his instance and the documentation undertaken in this regard by these entities was bogus one to conceal the payment of illegal gratification for favours shown by him to STPL and to give a different hue to the illegal gratification. No suggestion was put to him as to how and why this transfer of money is linked to him and on what basis. The main question here is: How to link the transfer of money to Sh. A. Raja? The name PW 128 Sh. Kevin Amrithraj was introduced by the learned Sr. PP for the first time in the transfer of money from Cineyug Films (P) Limited to Kalaignar TV (P) Limited, but no

such question was put to Sh. Kevin Amrithraj in this regard, nor is there any evidence about this in his deposition. This means that prosecution has no cogent evidence at all, as also argued by the defence, to link Sh. A. Raja with the aforesaid transfer of money. The prosecution introduced the word "quid pro quo" for the first time in the cross-examination of Sh. A. Raja. In the entire prosecution evidence it was nowhere suggested to any witness that the transfer of Rs. 200 crore was an illegal gratification and that the four entities had concealed its identity to give it a colour of regular business transaction. The terse or if I may say so, NIL cross-examination by the prosecution of Sh. A. Raja indicates that it had no worthwhile evidence against him with which it could nail him. The nature of cross-examination of Sh. A. Raja on this point is indicative of total lack of evidence against him. Hence, there is no merit in the submission of the prosecution that Sh. A. Raja was involved in parking of money in Kalaignar TV (P) Limited.

Circumstantial Evidence

1711. Prosecution also put up a case that in such a case of high level political corruption, there cannot be any direct evidence, either oral or documentary. It is their case that in such a situation, the matter has to be judged from the circumstantial evidence alone as available on record. In this regard, the prosecution argued at the bar that:

(i) For transfer of money from Dynamix Realty to Kusegaon Fruits and Vegetables (P) Limited, no formal agreement was

executed and Kusegaon Fruits and Vegetables (P) Limited is a shell company with no history of business;

(ii) The Subscription and Shareholder's agreement dated 27.01.2010, Ex PW 106/D, between Cineyug Films (P) Limited and Kusegaon Fruits and Vegetables (P) Limited was executed after registration of the instant case;

(iii) The original of Share Subscription and Shareholder's agreement executed between Cineyug Films (P) Limited and Kalaignar TV (P) Limited, Ex PW 106/B, was not produced and it was not even on a stamp paper;

(iv) The amount transferred between Cineyug Films (P) Limited and Kalaignar TV (P) Limited was in violation of clause 2.2 of this agreement;

(v) The amount Rs. 200 crore was transferred immediately after the investment was received in STPL on 17.12.2008 from Etisalat;

(vi) Rate of interest was less than the market rate and no proper securities were taken for the loan;

(vii) The entities transferred the amount in violation of their objects clause;

(viii) The treatment of the amount of Rs. 200 crore in the balance sheet of different entities was not as per the accounting principles; and

(ix) Money moved at an unusual speed from one entity to another at a very proximate time.

It is the case of the prosecution that if these factors are taken into consideration, with the parking of money in

Kalaignar TV (P) Limited, a clear case of payment of illegal gratification is made out. Learned Spl. PP took great pain to emphasize the importance of these factors in a case of political corruption, where hardly any direct evidence would be available.

1712. On the other hand, the defence argued that these factors are irrelevant as all documentation required by the law was duly done and at best these factors show some deficiencies in the documents and nothing more. It is their case that these factors have no relevance to the case at all.

1713. Both parties have invited my attention to the material on record to emphasize their respective case.

1714. It may be noted that these factors relate to the four business entities and witnesses appeared from all the four entities in the witness box for the prosecution. However, no question was put to the witnesses on the aforesaid points by the prosecution. These points are such which could have easily been explained by the witnesses. However, witnesses had no opportunity to explain these facts. Moreover, as already noted above, these factors are specific to the working of the four entities and there is no material on record to indicate that these deficiencies, if any, are connected with the official acts of Sh. A. Raja. As already noted above, it was not suggested to any of the witnesses that these deficient documents were executed to conceal the payment of illegal gratification for the official acts of Sh. A. Raja or that these factors indicate a link with Sh. A. Raja.

1715. It is correct that there can hardly be any direct evidence, oral or documentary, in the case of high political corruption. It is also correct that in such cases, things have to be inferred from the circumstances of the case. But it is also correct that people cannot be held guilty without evidence or evidence which is not legally admissible.

However, in the instant case, witnesses were in the witness-box and they could have explained all the circumstances. All these circumstances spring from the evidence on record and are capable of explanation. Prosecution must have afforded an opportunity to the witnesses to explain the deficiencies in the documents, but it remained silent at that time and is now endeavouring hard at the bar to condemn the witnesses and documents executed by them, behind their back. These things must have been put to the witnesses.

1716. On the urging of learned Spl. PP that instant case is a case of high political corruption, I have endeavoured hard to persuade myself to take an expansive and liberal view of the prosecution case. However, in view of deficient, or I may say nil evidence on record, I find myself unimpressed and unmoved, whatever may be nature of the case. High profile nature of a case cannot be used as a ground for holding people guilty without legal evidence. Lack of commercial prudence in execution of documents cannot be used as a ruse to hold people guilty of corruption. The transaction was between private entities and in a private entity rate of interest, execution of securities, due diligence etc., depend upon risk aversion or risk

friendly attitude of the persons concerned. Objectivity and rationality are not always hallmark of private commerce. It is a common knowledge that there is a lot of subjectivity in this field and nothing is standardized. In case of close relations between the parties, risk mitigation procedures can be lowered or even can be given complete go-by. Lack of these attributes in a transaction may, in a specific circumstance, indicate wrongdoing but for criminalizing them specific evidence is always required. These assume significance only when matched with proper connecting evidence, which is lacking in this case. Prosecution cannot absolve itself of its burden to prove its case by piggy-riding on the so-called high magnitude of the case and media hype. The trope of high magnitude of crime does not work at the final stage of the case. At the final stage, legally admissible evidence is required. In an authority reported as **Ashish Batham Vs. State of MP, (2002) 7 SCC 317**, Hon'ble Supreme Court observed about legally acceptable evidence in paragraph 8 as under:

> "Realities or truth apart, the fundamental and basic presumption in the administration of criminal law and justice delivery system is the innocence of the alleged accused and till the charges are proved beyond reasonable doubt on the basis of clear, cogent, credible or unimpeachable evidence, the question of indicting or punishing an accused does not arise, merely carried away by the heinous nature of the crime or the gruesome manner in which it was found to have been committed. Mere suspicion, however strong or probable it may be is no effective substitute for the legal proof required to substantiate the charge of commission of a crime and graver the

charge is, greater should be the standard of proof required. Courts dealing with criminal cases at least should constantly remember that there is a long mental distance between "may be true" and "must be true" and this basic and golden rule only helps to maintain the vital distinction between "conjectures" and "sure conclusions" to be arrived at on the touchstone of a dispassionate judicial scrutiny based upon a complete and comprehensive appreciation of all features of the case as well as quality and credibility of the evidence brought on record."

Accordingly, these submissions of the prosecution are of no merit.

1717. It was further argued that there is an additional circumstance against the accused to the effect that the refund of Rs. 200 crore had occurred immediately after registration of the instant case and on CBI taking various steps in the investigation including calling Sh. A. Raja for interrogation. In the absence of any other evidence, as noted above in detail, this is also in the realm of conjectures and remote possibilities and requires no detailed discussion.

1718. The transfer of Rs. 200 crore from Dynamix Realty to Kalaignar TV (P) Limited through Kusegaon Fruits and Vegetables (P) Limited and Cineyug Films (P) Limited may have some unusual features and the documentation created for the same may suffer from deficiencies but these factors alone do not make it out a transaction of payment of illegal gratification. Imperfect documentation does not indicate payment of illegal gratification. Link with public servant must be proved by legal evidence. Opposed to this, perfect documentation also would

not make a transaction of illegal gratification clean. Everything depends upon the facts of the case.

1719. In this case, lack of chronological proximity also creates problem. The instant case hinges around allocation of spectrum in Delhi service area, which was approved by Sh. A. Raja on 26.08.2008, when the note, Ex PW 57/P-8 was put to him by PW 91 Sh. R. P. Agarwal for approval of allocation of spectrum in Delhi service area. However, the first tranche of money of Rs. 10 crore moved only on 23.12.2008. How to link the two is a huge problem. There is no evidence, direct or circumstantial, to trace the transfer of money to Sh. A. Raja. Things remain in the realm of conjectures and surmises.

It is instructive to take note of the law laid down in **Sharad Birdhichand Sarda Vs. State of Maharashtra, (1984) 4 SCC 116**, wherein in paragraph 179, Hon'ble Supreme Court observed as under:

> "We can fully understand that though the case superficially viewed bears an ugly look so as to prima facie shock the conscience of any court yet suspicion, however great it may be, cannot take the place of legal proof. A moral conviction however strong or genuine cannot amount to a legal conviction supportable in law."

Similarly, in another authority reported as **Dasari Siva Prasad Reddy Vs. Public Prosecutor, High Court of A.P, (2004) 11 SCC 282**, Hon'ble Supreme Court observed in paragraph 24 as under:

> "A strong suspicion no doubt exists against the appellant but such suspicion cannot be the basis of

conviction going by the standard of proof required in a criminal case. The distance between 'may be true' and 'must be true' shall be fully covered by reliable evidence adduced by the prosecution. But, that has not been done in the instant case....."

1720. In the end, I have no hesitation in holding that there is absolutely no material on record to link Sh. A. Raja with the abovesaid transfer of Rs. 200 crore to Kalaignar TV (P) Limited. In such a situation, transaction of money between these entities cannot be designated as payment of illegal gratification for the official acts of Sh. A. Raja, that is, for favours shown by him to STPL in the matter of grant of UAS licences and allocation of spectrum. Accordingly, prosecution case is without merit.

Cheating of DoT

1721. It is the case of the prosecution that accused Sh. A. Raja and Sh. Siddhartha Behura forged note of Sh. A. Raja dated 07.01.2008, Ex PW 60/L-28, and used it as genuine one in order to cheat the DoT into believing that the policy of first-come first-served as recorded in note Ex PW 60/L-23, that is, priority from the date of payment, was having the concurrence of learned SG.

On the other hand, defence denied it submitting that there is no evidence indicating any forgery or cheating by any of the accused.

1722. Let me take note of the law on this point.

Section 415 IPC defines "Cheating" as under:

"**Cheating.**– Whoever, by deceiving any person, fraudulently or dishonestly induces the person so

deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat"."

Section 420 IPC provides as under:

"**Cheating and dishonestly inducing delivery of property.**– Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

Section 468 IPC provides as under:

"**Forgery for purpose of cheating**.– Whoever commits forgery, intending that the [document or electronic record forged] shall be used for the purpose of cheating, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

Section 471 IPC provides as under:

"**Using as genuine a forged [document or electronic record]**.– Whoever fraudulently or dishonestly uses as genuine any [document or electronic record] which he knows or has reason to believe to be a forged [document or electronic record], shall be punished in the same manner as if he had forged such [document or electronic record]."

1723. In an authority reported as **International Advanced Research Centre for Powder Metallurgy and New Materials (ARCI) and Others Vs. Nimra Cerglass Technics Private Limited and Another, (2016) 1 SCC 348,** Hon'ble Supreme Court observed about the ingredients of offence of cheating in paragraph 15 as under:

> "The essential ingredients to attract Section 420 IPC are: (i) cheating; (ii) dishonest inducement to deliver property or to make, alter or destroy any valuable security or anything which is sealed or signed or is capable of being converted into a valuable security; and (iii) mens rea of the accused at the time of making the inducement. The making of a false representation is one of the essential ingredients to constitute the offence of cheating under Section 420 IPC. In order to bring a case for the offence of cheating, it is not merely sufficient to prove that a false representation had been made, but it is further necessary to prove that the representation was false to the knowledge of the accused and was made in order to deceive the complainant."

1724. Similarly, in another authority reported as **Iridium India Telecom Limited Vs. Motorola Incorporated and Others, AIR 2011 SC 20,** dealing with the question of cheating, Hon'ble Supreme Court observed in paragraphs 41 and 42 as under:

> "**41.** The next important question which needs to be examined is as to whether the averments made in the complaint if taken on their face value would not prima facie disclose the ingredients for the offence of cheating as defined under Section 415 IPC. The aforesaid section is as under:

"Cheating. - Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceive, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".
Explanation – A dishonest concealment of facts is a deception within the meaning of the section."

42. A bare perusal of the aforesaid section would show that it can be conveniently divided into two parts. The first part makes it necessary that the deception by the accused of the person deceived, must be fraudulent or dishonest. Such deception must induce the person deceived to: either (a) deliver property to any person; or (b) consent that any person shall retain any property. The second part also requires that the accused must by deception intentionally induce the person deceived either to do or omit to do anything which he would not do or omit, if he was not so deceived. Furthermore, such act or omission must cause or must be likely to cause damage or harm to that person in body, mind, reputation or property. Thus, it is evident that deception is a necessary ingredient for the offences of cheating under both parts of this section. The complainant, therefore, necessarily needs to prove that the inducement had been caused by the deception exercised by the accused. Such deception must necessarily produce the inducement to part with or deliver property, which the complainant would not have parted with or delivered, but for the inducement resulting from deception. The explanation to the section would clearly indicate that there must be no dishonest concealment of facts. In other words, non-disclosure

of relevant information would also be treated as a misrepresentation of facts leading to deception.

It was, therefore, necessary for the High Court to examine the averments in the complaint in terms of the aforesaid section. The High Court upon detailed examination of the 1992 PPM, the Stock Purchase Agreements and the 1995 PPM concluded that even if the averments made in the complaint are accepted on their face value, it would only disclose a civil dispute between the parties."

1725. I have already extensively quoted the evidence on record. No witness from DoT deposed that any deception was practiced upon him by any of the accused. There is absolutely no evidence to the effect that any false representation was made by any of the accused. No witness from DoT deposed that he was misled by the note, Ex PW 60/L-28. Hence, there is no merit in the submission of the prosecution that by altering this note, Sh. A. Raja and Sh. Siddhartha Behura cheated DoT officials into believing that the altered policy had the concurrence of learned SG. Accordingly, there is absolutely no evidence of cheating on record.

Criminal Breach of Trust

1726. It is the case of the prosecution that spectrum is a precious resource and it was allocated arbitrarily and dishonestly by Sh. A. Raja, disregarding all departmental norms. It is the case of the prosecution that Sh. A. Raja and Sh. Siddhartha Behura were custodian of the spectrum. It is the case of the prosecution that they breached the trust reposed by the Government in them by illegally allocating the spectrum. It

is the case of the prosecution that both the accused, thus, committed criminal breach of trust.

On the other hand, defence denied it submitting that there is no evidence in support of such an allegation.

Let me take note of the law on criminal breach of trust.

Section 405 IPC defines “criminal breach of trust” as under:

> “**Criminal breach of trust**.– Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or willfully suffers any other person so to do, commits "criminal breach of trust".

Section 409 IPC provides as under:

> “**Criminal breach of trust by public servant, or by banker, merchant or agent**.– Whoever being in any manner entrusted with property, or with any dominion over property in his capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent, commits criminal breach of trust in respect of that property, shall be punished with [imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

1727. I have already extensively extracted the evidence as referred to above. Perusal of evidence reveals that there is

absolutely no evidence at all showing any ingredients of the offence of criminal breach of trust. Accordingly, there is no evidence at all showing commission of offence of criminal breach of trust by any of the accused. Thus, submission of the prosecution is without merit.

Sanction for Prosecution of R. K. Chandolia

1728. It is the case of the defence that sanction for prosecution of Sh. R. K. Chandolia was not properly granted and, as such, there is no sanction in the eyes of law. This has been disputed by the prosecution submitting that sanction was granted properly and there is no legal defect in the sanction. Both parties have invited my attention to the sanction order Ex PW 79/A as well as to the deposition of PW 79 Sh. R. Gopalan, Secretary, Department Economic Affairs. My attention was also invited to some case law.

1729. Let me take note of law on the point of sanction.

Section 19 of PC Act provides as under:

> "**Previous sanction necessary for prosecution**.– (1) No Court shall take cognizance of an offence punishable under sections 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction,–
>
> *(a)* in the case of a person who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of that Government;
>
> *(b)* in the case of a person who is employed in connection with the affairs of a State and is not removable from his office save by or with sanction of the State Government, of that Government;

(c) in the case of any person, of the authority competent to remove him from his office.

(2) Where for any reason whatsoever any doubt arises as to whether the previous sanction as required under sub-section (1) should be given by the Central Government or the State Government or any other authority, such sanction shall be given by that Government or authority which would have been competent to remove the public servant from his office at the time when the offence was alleged to have been committed.

…….
……."

1730. In an authority reported as **Jaswant Singh Vs. State of Punjab, AIR 1958 SC 124**, while dealing with the validity of sanction order, Hon'ble Supreme Court observed as under:

"The sanction under the Prevention of Corruption Act is not intended to be nor is an automatic formality and it is essential that the provisions in regard to sanction should be observed with the complete strictness.

The object of the provision for sanctions is that the authority giving the sanction should be able to consider for itself the evidence before it comes to a conclusion that the prosecution in the circumstance be sanctioned or forbidden. It should be clear from the form of the sanction that the sanctioning authority considered the evidence before it and after consideration of all the circumstances of the case sanctioned the prosecution, and, therefore, unless the matter can be proved by other evidence, in the sanction itself the facts should be referred to indicate that the sanctioning authority had applied its mind to the facts and circumstances of the case."

1731. Now let me take note of the evidence on record. PW

79 Sh. R. Gopalan in his examination-in-chief dated 20.11.2012, deposed as under:

> ".....The department received set of papers including CBI report and statements of witnesses alongwith copies of some files from the CBI. The same were examined in the Ministry and thereafter, the papers were taken to the Minister and explained to the Minister and based on these views, the Minister thought it appropriate to accord the sanction and accorded the same. After grant of sanction by the Hon'ble Minister, I authenticated the same under my signature and seal of the department. The sanction order is now Ex PW 79/A, running into three pages. The Minister, before according the sanction, discussed the matter with me and sought certain clarifications. I also showed him relevant documents and statements of witnesses. The sanction order was drafted in the department....."

1732. In his cross-examination, pages 4 to 6, PW 79 Sh. R. Gopalan deposed as under:

> ".....I came to know about the facts of the case from CBI report, statements of witnesses and other documents. I cannot recollect exactly as to how many statements of witnesses were there. In a general way I can say that we received CBI report, statements of witnesses and a set of documents. The documents were first looked into by Director and he must have spent about three hours in that. The Director came to me in the course of the day in the afternoon, but I do not remember the time exactly. I also spent about three hours on that as the documents were quite voluminous. I went to the Minister in the evening at about 7 PM. All these things happened on 01.04.2011. The Minister was present in the office. I took the matter to the Minister on the same day as I had finished the matters of the day. The Director told me that he had

brought all the papers received from the CBI. I also took all the papers to the Minister. The entire documents were capable enough to be carried by only one person. I do not remember if the case diaries were also received from the CBI. The Director, who had brought the papers to me, had not prepared any brief note for me. Officially the case comes with a note sheet, but when we discussed the matter with each other, no note was brought. However, when I took the matter to the Minister, I took a note to him. The Minister spent about thirty to forty five minutes on the matter. The Minister, after according the sanction on the note sheet, authorized me to authenticate the same. This fact is not mentioned in the sanction order Ex PW 79/A. The sanction order was prepared in the department after discussing with the Director. I got it typed by one of my private secretaries. WPC means Wireless wing as used in the sanction and UAE means United Arabs Emirates. GSM is a technology like CDMA, but the full form I cannot tell. I cannot tell as to under which sections accused R. K. Chandolia was charge sheeted. I cannot recall as to with which of the persons he was alleged to be in conspiracy.

When I went to the Minister, I had the entire file. The draft of sanction had already been typed and I carried the same to the Minister. I am not carrying that draft today with me. The entire process of according sanction was complete by about 8:45 PM on that day. I showed the Minister some of the statements and certain portions of CBI report. I showed the statements including that of Sh. Aggarwal, Sh. Srivastava and Sh. Kushvaha. I cannot tell as to how many statements of these witnesses were received from the CBI. I handed over the sanction order to a CBI officer, who was there, though I do not remember it exactly. He was called in the evening. I do not know as to what were the duties assigned by MOC&IT to accused R. K. Chandolia. I do not remember if a list of witnesses

and a list of documents were also received from the CBI.....”

1733. The perusal of evidence reveals that there was enough application of mind by the competent authority. Sanction is an administrative order of the competent authority. It is required to be based on as much evidence as is good enough to give a clear view to the competent authority that the accused was prima facie involved in the alleged offence. The competent authority is not required to go into the detailed merit of the case by perusing each and every page of the voluminous record. Competent authority is an administrative authority and not a judicial authority deciding a dispute. In the sanction order as well as in the evidence of the witness, there is enough material to indicate application of mind by the competent authority. Accordingly, the submission that the sanction is not valid for want of due application of mind is without merit.

Processing of DoT Files: Whether there was Interference by any of the Accused?

1734. It may be noted that the TRAI Recommendations were processed in DoT file D-5 and the processing thereof commenced from 12.09.2007 onwards and the last order relevant to this case was recorded by Sh. A. Raja on 30.10.2007, Ex PW 36/A-20. In the entire file, all the notes have been recorded by the officials at their own pace and as per their own wisdom without any outside interference. Similarly, in DoT file D-7, all the notes as to why the opinion of learned SG was

sought and also as to how and in what manner applications be processed and LOIs be issued were recorded by the officials as per their own understanding and wisdom and at their own pace. Similar is the case of DoT file D-10, in which applications of STPL were processed. All notes were recorded by the officers as per their own understanding. In this file, ideas and notes were proposed, turned down and re-proposed in due course by the officers without any outside intervention. This also applies to the DoT files in which applications of Unitech group were processed. There is no interference by any of the accused in the processing of the files. No witness in the witness box deposed that he was asked by any of the accused to record or not to record a note in a particular manner. So whatever was done in the files was done by the officers on their own, except the two files already noted above, that is, D-6, for which Sh. A. K. Srivastava tried to blame Sh. R. K. Chandolia and file D-78 for which Sh. P. K. Mittal tried to blame Secretary (T) Sh. Siddhartha Behura. There is absolutely no evidence of any outside interference. There is no evidence of any top-down imposition by Sh. A. Raja or anyone else.

Selective Use of Official Notes

1735. The prosecution endeavoured hard to make use of selective notes recorded by different officers in the official files of DoT to rope in the accused. My attention was invited to different notes recorded by various officers to emphasize that Sh. A. Raja was going contrary to official policy. Even internal

contradictions in different notes recorded by different officers was sought to be used against Sh. A. Raja. Some of the notes recorded by different officers, which were favourable to the accused, were not even proved by the prosecution in the hope that the same will not be read.

On the other hand, defence insisted that entire note be read and understood in proper perspective by reading the preceding as well as succeeding notes in conjunction. Their case is that there cannot be any selective use of notes recorded by different officers in the course of disposal of an issue.

However, the approach of the prosecution is wrong as entire file is required to be read and the notes recorded by different officers are mere suggestions which may or may not be accepted by the competent authority. The end result is that there cannot be any selective use of the notes for or against anyone.

Let me take note of the law on point as to how Government functions in practice and what is the legal standing of notes recorded by different officers while dealing with an issue.

In an authority reported as **Bachhittar Singh Vs. State of Punjab and Another, AIR 1963 SC 395,** Hon'ble Supreme Court while dealing with an issue relating to transaction of business of the government observed in paragraph 10 as under:

> "The business of State is a complicated one and has necessarily to be conducted through the agency of a large number of officials and authorities. The

> Constitution, therefore, requires and so did the Rules of Business framed by the Rajpramukh of PEPSU provide, that the action must be taken by the authority concerned in the name of the Rajpramukh. It is not till this formality is observed that the action can be regarded as that of the State or here, by the Rajpramukh....."

Thus, it is clear that the business of State has to be conducted through the agency of large number of officials and authorities.

In an another authority reported as **Jasbir Singh Chhabra and Others Vs. State of Punjab and Others, (2010) 4 SCC 192**, the Hon'ble Supreme Court, while dealing with a question of change of land use from industrial to residential and working of the government in relation to this, observed in paragraph 35 as to how government works and the same reads as under:

> "It must always be remembered that in a democratic polity like ours, the functions of the Government are carried out by different individuals at different levels. The issues and policy matters which are required to be decided by the Government are dealt with by several functionaries some of whom may record notings on the files favouring a particular person or group of persons. Someone may suggest a particular line of action, which may not be conducive to public interest and others may suggest adoption of a different mode in larger public interest. However, the final decision is required to be taken by the designated authority keeping in view the large public interest. The notings recorded in the files cannot be made basis for recording a finding that the ultimate decision taken by the Government is tainted by mala fides or is influenced

by extraneous considerations. The Court is duty-bound to carefully take note of the same....."

From this authority, it is clear that in Government final decision is required to be taken by competent authority in large public interest. The notes recorded by various officers during the processing of an issue cannot be used to taint the final decision with mala fides.

Similarly, in an authority reported as **Mangal Amusement Park (P) Ltd. & Anr. Vs. State of Madhya Pradesh & Others, 2012 IX AD (SC) 98,** while dealing with a similar issue, Hon'ble Supreme Court in paragraph 23 observed as under:

".....One has to recognise that where different authorities are dealing with a particular subject, it is quite possible that on some occasions, they may take a stand different from each other, though ultimately it is the decision of the competent authority which matters....."

It is clear from this authority that different officers take different stands from each other during processing of an issue. However, ultimately the decision of competent authority prevails.

The aforesaid view has been reiterated by the Hon'ble Supreme Court in a recent authority reported as **Vivek Batra Vs. UOI, AIR 2016 SC 4770**, wherein Hon'ble Supreme Court observed in paragraphs 7 to 10 as under:

"**7.** There is no dispute that for an IRS officer Cadre Controlling Authority is the Finance Minister of the Government of India. In Bachhittar Singh v.

The State of Punjab, Constitution Bench of this Court has held that the business of the State is a complicated one and has necessarily to be conducted through the agency of large number of officials and authorities.

8. In Jasbir Singh Chhabra and others v. State of Punjab and others, this Court held as under -

"35. It must always be remembered that in a democratic polity like ours, the functions of the Government are carried out by different individuals at different levels. The issues and policy matters which are required to be decided by the Government are dealt with by several functionaries some of whom may record notings on the files favouring a particular person or group of persons. Someone may suggest a particular line of action, which may not be conducive to public interest and others may suggest adoption of a different mode in larger public interest. However, the final decision is required to be taken by the designated authority keeping in view the large public interest. The notings recorded in the files cannot be made basis for recording a finding that the ultimate decision taken by the Government is tainted by mala fides or is influenced by extraneous considerations....."

9. In Sethi Auto Service Station and another v. Delhi Development Authority and others, this Court observed as under:

"14. It is trite to state that notings in a departmental file do not have the sanction of law to be an effective order. A noting by an officer is an expression of his viewpoint on the subject. It is no more than an opinion by an officer for internal use and consideration of the other officials of the department and for the benefit of the final decision-making authority. Needless to add that internal notings are not meant for outside exposure. Notings in the file culminate into an executable order, affecting the rights of the parties, only when it reaches the final decision-making authority in the

department, gets his approval and the final order is communicated to the person concerned."

10. In view of the law laid down by this Court, as above, we are of the opinion that the sanction cannot be held invalid only for the reason that in the administrative notings different authorities have opined differently before the competent authority took the decision in the matter. It is not a case where the Finance Minister was not the competent authority to grant the sanction....."

In the instant case, competent authority itself, that is, Sh. A. Raja is facing allegations of wrongdoing. However, in such a case also, there can be no selective use of notes. Things have to be read in proper perspective.

Investigation, Examination of Witnesses and Filing of Documents by Prosecution

1736. It is the case of the defence that the official record seized by the CBI and produced before the Court does not reveal any wrong doing by any of the accused. It is the case of the defence that the instant case was registered on 21.10.2009 by CBI and nothing was done by it in this case for about a year. It is the case of the defence that this was due to the fact that CBI could not find anything wrong in the grant of licences and allocation of spectrum during the tenure of Sh. A. Raja. It is the case of the defence that sometime after registration of the instant case, media hype started and the investigating agency came under tremendous pressure. It is the case of defence that in order to be seen to be doing something, as opposed to doing nothing, CBI started recording the statements of the witnesses

at break neck speed by putting undue pressure on them. It is the case of the defence that all important witnesses were put under pressure and they were left with no other option except to toe the prosecution line. It is the case of the defence that evidence of prosecution witnesses is required to be discarded in totality on this ground alone as the witnesses were under intense pressure, both by the CBI as well as the media.

1737. The prosecution vigourously rebutted the arguments submitting that the examination of witnesses proceeded on the basis of understanding of the voluminous record of the case. It is the case of the prosecution that witnesses were examined in fair, proper and expeditious manner as and when the need arose depending upon the understanding of the matter and development in the case. It is the case of the prosecution that entire investigation has been fair and proper and there was no pressure at all on any witness. Whatever they stated before the CBI, was stated by them on their own as per their understanding of the case. It is the case of the prosecution that witnesses recorded their statements before CBI in a free and transparent atmosphere and whatever they stated was also recorded truthfully by CBI officers. It is the case of prosecution that all investigating officers deposed that the statements of witnesses were recorded truthfully. The delay in recording of statements of witnesses has been explained by the prosecution in its written Note XIV (Part B) submitted to the Court dated 28.04.2017 on the ground that record of the case was voluminous.

1738. Both parties invited my attention to the material on record. I proceed to examine the same.

1739. Let me take note of the pace with which the investigation proceeded relating to examination of witnesses. The instant case was registered on 21.10.2009. However, the first statement of Sh. M. Krishnamoorthy was recorded only on 21.01.2010, that is, after full three months. The next witness Sh. Gaurav Jain of Unitech was recorded on 07.09.2010, almost one year after registration of the case. Only thereafter recording of witnesses started with some earnestness. However, an outstanding feature of the case is that the more important a witness was, the more delayed was his examination. It is surprising as to how witnesses became goldmine of information at the last stage of investigation, though they were available to the investigating agency at the earliest possible opportunity after registration of the case. It is beneficial to take a look as to how the recording of statements by the investigating agency proceeded and the same is as under:

Statements recorded Under Section 161 CrPC- Year 2010

Month	**PW**	**PW No. u/S 161**	**Name of the witness**
January (21.01.2010)	117	150	M. Krishnamoorthy
Till August	**No witness recorded**		
September 07.09.2010	104	67	Gaurav Jain (Unitech)
8, 9, 10 & 13.09.2010	88	3	R. K. Gupta (ADG (AS-I) DoT
22.09.2010	87	22	Dinesh Jha (DWA, DoT) **(3)**

October 05.10.2010	62	4	A. S. Verma (DoT)
06.10.2010	88	3	R. K. Gupta (DoT)
7, 8, 12, 13, 18, 19, 27 & 28.10.2010	110	2	Nitin Jain (DoT)
21, 25 & 26.10.2010	131	51	Sudhir Gupta (TRAI)
23.10.2010	129	146	T. Balakrishnan (Canara Bank)
24.10.2010	128	149	Kevin Amritraj (Green House)
26.10.2010	127	144	Pushparaj Jaishankar Kannan (Eterna) **(7)**
November 01.11.2010	104	67	Gaurav Jain (Unitech)
4 & 8.11.2010	133	68	Kiran Sharma (Unitech)
10.11.2010	95	60	Anil Rustgi (Unitech)
18.11.2010	40 41 80	36 39 35	Rahul Vats (Idea) Anand Dalal (TTSL) A. S. Narayanan (Loop)
19.11.2010	46 49 113	17 14 69 & 148	Shiv Kumar Sharma (DoT) S. E. Rizwi (DoT) Krishan Goyal (**first witness from DB**)
20.11.2010	48	15	Subhash Chand Sharma (DoT)
23.11.2010	45 56	18 40	S. S. Negi (DoT) Rakesh Mehrotra (Tata)
29.11.2010	60	1	A. K. Srivastava (DoT) **(13)**

December 1, 3, 6 & 9.12.2010	60	1	A. K. Srivastava (DoT)
02.12.2010	73	24	M. K. Rao (DoT)
03.12.2010	52	9	Ashok Kumar Dhar (DoT)
04.12.2010	62	4	Abhay Shankar Verma (DoT)
	110	2	Nitin Jain (DoT)
	123	6	N. M. Manickam (DoT)
06.12.2010	81	10	Madan Chaurasia (DoT)
10.12.2010	53	11	Bharat Lal Panwar (DoT)
	75	5	Sukhbir Singh (DoT)
11.12.2010	47	8	Manoj Kumar Khatri (DoT)
13.12.2010	54	41	Ajay Sharma (Datacom)
16.12.2010	36	31	D. S. Mathur (DoT)
21.12.2010	126	44	Niira Radia (Tata) **(13)**
Statement recorded under Section 161 CrPC in the Year 2011			
January 06.01.2011	49	14	S. E. Rizwi (DoT)
07.01.2011	59	13	Sudhir Kumar Saxena (DoT)
10.01.2011	49	14	S. E. Rizwi (DoT)
12.01.2011	58	16	Adi Ram (DoT)
13.01.2011	35	49	T. Narsimhan (Sistema)
15.01.2011	17	95	Nilesh R. Doshi (**first witness of Reliance**)
	64	70	Mythili Ramakrishnan (PNB Bank)
	71	109	Ashok Wadhwa (Reliance)
	94	75 & 135	Vinod Kumar Khuman (OBC Bank) **(4)**
17.01.2011	60	1	A. K. Srivastava (DoT)

18.01.2011	55	54	Vinod Raina (Shyam Telelink)
19.01.2011	87	22	Dishesh Jha (DoT)
20.01.2011	110	2	Nitin Jain (DoT)
21.01.2011	45 46 48 57 110	18 17 15 21 2	Surender Singh Lunia (HFCL) Shiv Kumar Sharma (Dot) Subhash Chand Sharma (DoT) R. J. S. Kushvaha (DoT) Nitin Jain (DoT) **(5)**
22.01.2011	87	22	Dinesh Jha (DoT)
24.01.2011	31 41 100	45 39 88	Raj Kumar Kapoor (Bycell) Anand Dalal (Tata) Ashish Karyekar (Reliance) **(3)**
25.01.2011	14 72 126	71 80 44	Paresh Rathod (Reliance) Pradeep Sevanti Lal Shah (Reliance) Niira Radia (Tata) **(3)**
27.01.2011	38 39 63 65 126	46 48 64 96 44	Rupender Sikka (S. Tel) Surinder Singh Lunia (HFCL) Alok Kumar (PNB Bank) Sanath Kumar Aggarwal (PNB Bank) Niira Radia **(5)**

28.01.2011	33	37	Akhilesh Kumar Saxena (Spice)
	52	21	R. J. S. Kushvaha (DoT)
	63	64	Alok Kumar (PNB Bank)
	65	96	Sanath Kumar Aggarwal (PNB Bank)
	67	38	Preeti Malhotra (Spice) **(5)**
29.01.2011	126	44	Niira Radia (Tata)
31.01.2011	13	63	Ankur Huria (HDFC Bank)
<u>February</u> 02.02.2011	130	99	V. D. Rao (Reliance)
04.02.2011	57	21	R. J. S. Kushvaha (DoT)
05.02.2011	57	21	R. J. S. Kushvaha (DoT)
	87	22	Dinesh Jha (DoT)
	98	87	Amit Sarin (Anant Raj) **(3)**
07.02.2011	89	94 & 162	Mohd. Ashraf Nagani (DB)
08.02.2011	3	62	Ashraf (DB)
	76	66	Faiyaz Ahmed (DB)
	77	7	K. Sridhara (DoT)
09.02.2011	36	31	D. S. Mathur (DoT)
	77	7	K. Sridhara (DoT)
11.02.2011	91	109	Ashok Wadhwa (Reliance)
12.02.2011	90	20	R. P. Aggarwal (DoT)
13.02.2011	18	117	Deepak Maheshwari (Reliance)
	106	129	Mitesh Kurani (**first witness of Cineyug**)
14.02.2011	93	73	Rajbir Singh Chahal (OBC Bank)
15.02.2011	112	114	Satish Aggarwal (DB)

16.02.2011	60 140	1 166	A. K. Srivastava (DoT) Anil Ambani (Reliance)
18.02.2011	93 116	73 127	Rajbir Singh Chahal (OBC Bank) G. Rajendran (**first witness of KTV**)
21.02.2011	4 68	59 74	Amit Vij (ICICI Bank) Ujjwal Mehta (DoT)
22.02.2011	44 45 46 48 49 99	19 18 17 15 14 91	Mukesh Kumar (DoT) Surinder Singh Negi (DoT) Shiv Kumar Sharma (DoT) Subhash Chand Sharma (DoT) S. E. Rizwi (DoT) Devendra Chandavarkar (ICICI Bank) **(6)**
23.02.2011	29 30 84 99	55 28 58 91	Yogendra Pandey (DoT) Lata Dawar (DoT) Amit Khot (ICICI Bank) Devendra Chandavarkar (ICICI Bank) **(4)**
24.02.2011	84	58	Amit Khot (ICICI Bank)
25.02.2011	102	93	Kaushal Nagpal (Unitech)
28.02.2011	27 28	116 29	Reena Saxena (DoT) Deepa Rohra (DoT

March 01.03.2011	11	30	Nripendra Mishra (DoT)
	73	24	M. K. Rao (DoT)
	136	167	Yogesh Sharma (Anant Raj) **(3)**
02.03.2011	98	87	Amir Sarin (Anant Raj)
03.03.2011	56	40	Rakesh Mehrotra (Tata)
	83	113 & 139	S. Meenakshi (ROC)
	94	75 & 135	Vinod Kumar Khuman (OBC Bank)
	112	114	Satish Aggarwal (DB) **(4)**
04.03.2011	24	72 & 140	Rajendra Singh Meena (ROC)
	60	1	A. K. Srivastava (DoT)
	91	2	R. P. Aggarwal (DoT) **(3)**
05.03.2011	78	106	D. Subba Rao (MoF)
08.03.2011	26	112	Gaurav Srivastava (Selene)
	32	111	V. Mohan (Parsvnath)
09.03.2011	1	57	Anand Subramaniam (Reliance)
	5	98	Uday Shahasrabuddhe (HDFC Bank)
	9	77	Vardharajan Srinivasan (Reliance)
	60	1	A. K. Srivastava (DoT)
	73	24	M. K. Rao (DoT)
	82	108	P. K. Sharma (PMO)
	93	73	Rajbir Singh Chahal (OBC Bank) **(7)**

10.03.2011	6	90	Bharat Amberkar (Reliance)
	15	89	Ashish Tambawala (Reliance)
	102	32	G. E. Vahanwati (AG)
	139	115	Ramesh Shenoy (Reliance) **(4)**
11.03.2011	19	97	Sateesh Seth (Reliance)
	40	36	Rahul Vatts (Idea)
	57	21	R. J. S. Kushvaha (DoT)
	87	22	Dinesh Jha (DoT)
	97	26	B. B. Singh (DoT)
	101	92	Hasit Shukla (Reliance)
	152	143	Dayalu Karunanithi (KTV) **(7)**
12.03.2011	97	26	B. B. Singh (DoT)
14.03.2011	105	138	S. Somasundaram (Indian Bank)
15.03.2011	24	72 & 140	Rajender Singh Meena (ROC)
	57	21	R. J. S. Kushvaha (DoT)
	60	1	A. K. Srivastava (DoT)
	121	23	T. K. Vardha Krishnan (DoT) **(4)**
16.03.2011	24	72 & 140	Rajender Singh Meena (ROC)
	61	33	G. S. Grover (DoT)
	91	20	R. P. Aggarwal (DoT) **(3)**

17.03.2011	24	72 & 140	Rajendra Singh Meena (ROC)
	43	52	Vivek Narayan (BSNL)
18.03.2011	12	82	Tarun Das (TRAI)
	37	43	Mohit Gupta (Unitech)
	116	127	G. Rajendran (KTV)
21.03.2011	21	81	V. K. Budhiraja (DB)
	34	42	A. K. Dalmia (Allianz)
	57	21	R. J. S. Kushvaha (DoT)
	60	1	A. K. Srivastava (DoT)
	75	5	Sukhbir Singh (DoT)
	96	65	Deodatta Pandit (DB)
	107	132	P. Amirtham (KTV) **(7)**
22.03.2011	60	1	A. K. Srivastava (DoT)
	92	50	P. K. Mittal (DoT)
	104	67	Gaurav Jain (Unitech) **(3)**
23.03.2011	10	83	Vijay Kumar (MCD)
	42	27	Shah Nawaz Alam (DoT)
	77	7	K. Sridhara (DoT) **(3)**

24.03.2011	1	57	Anand Subramaniam (Reliance)
	7	103	Aseervatham Achari (DoT)
	8	84	Vijender Kumar Sharma (DB)
	16	110	Desh Raj (DoT)
	20	107	Viersh Goel (TRAI)
	90	134 & 163	Ranjeet Kumar Jha (Citi Bank) **(6)**
25.03.2011	74	25	M. Revathi (DoT)
	85	105	Ajay Chandra (Unitech)
	87	22	Dinesh Jha (DoT)
	121	23	T. K. Vardha Krishnan (DoT) **(4)**
26.03.2011	66	104	T. K. Vishwanathan (MoLJ)
	86	85	Manju Madhvan (DoT)
28.03.2011	11	30	Nripendra Mishra (TRAI)
	36	31	D. S. Mathur (DoT)
29.03.2011	41	39	Anand Dalal (Tata)
	60	1	A. K. Srivastava (DoT)
30.03.2011	23	78	Prem Lal Malik (ROC)
31.03.2011	22	79	V. K. Gupta (ROC)
April 01.04.2011	4	59	Amit Vij (ICICI Bank)
04.04.2011	122	137	Aly Gulamali Morani (Cineyug)
05.04.2011	115	131	Neelam Soorma (DB)
	125	130	Mohamed Gulamali Morani (Cineyug)

07.04.2011	112 137	114 128	Satish Agarwal (DB) Jignesh Shah (DB)
11.04.2011	93	73	Rajbir Singh Chahal (OBC Bank)
13.04.2011	109	136	Tushar Shah (Aditya Birla Finance Service)
23.04.2011	69 120	141 142	K. L. Kamboj (MCA) R. P. Paramesh Kumar (Green House)
27.04.2011	90	134 & 163	Ranjeet Kumar Jha (Citi Bank)
May 03.05.2011	89 108 111 124	94 & 162 161 160 159	Mohd. Ashraf Nagani (DB) Atul Pancholi (KTV) Pramod Kumar Goenka (**first witness for Kusegaon**) Yashvardhan Goenka (DB) **(4)**
04.05.2011	51 111 114 118 119	157 160 155 158 156	Mahesh Gandhi (DB) Pramod Kumar Goenka (Kusegaon) Aseela Goenka (DB) S. A. K. Narayanan (DB) Sunita Goenka (DB) **(5)**
05.05.2011	4	59	Amit Vij (ICICI Bank)
12.05.2011	126	44	Niira Radia (Tata)
25.05.2011	50	165	Prabhas Kumar (SCB Bank)

1740. As earlier noted, the case was registered on 21.10.2009. PW 60 Sh. A. K. Srivastava, DDG (AS), is the most important witness recorded in the case and this is apparent from

the length of his deposition in the witness box, which runs into full 352 pages. However, his first statement was recorded by the CBI on 29.11.2010, that is, more than one year after registration of the case. Thereafter, he was examined on 01.12.2010. It may be noted that a raid was conducted by CBI at his residence on 08.12.2010 and his examination by the CBI continued after this also. The then Secretary (T) PW 36 Sh. D. S. Mathur was examined for the first time by the CBI only on 16.12.2010, that is, more than one year after the registration of the case. The then Director (AS-I) PW 110 Sh. Nitin Jain, who was responsible for the licensing branch, was examined by the CBI for the first time on 07.10.2010. It is thus clear that three most important functionaries of the DoT were examined by the CBI at a highly belated stage. It is these three witnesses who have deposed that a cut-off date was fixed by Sh. A. Raja, that first-come first-served policy was not followed by him and the entry fee was also not revised. Not only this, PW 86 Ms. Manju Madhavan, the then Member (T), who deposed that entry fee was not revised despite her objection, was examined on 26.03.2011, that is, only five days before filing of the charge sheet. Not only this, PW 77 Sh. K. Sridhara, Member (T), was examined on 08.02.2011.

1741. PW 57 Sh. R. J. S. Kushvaha, Joint Wireless Advisor, who again is an important functionary of the WPC wing, was examined by the CBI for the first time on 21.01.2011, that is, after one year and three months of the registration of the case. Similarly, PW 87 Sh. Dinesh Jha, Deputy Wireless Advisor, was

examined by the CBI for the first time on 22.09.2010, again after about one year of the registration of the case. It is these two witnesses who deposed that priority from date of payment for TTSL was not followed in the matter of allocation of spectrum, particularly in Delhi service area, and when they objected to it, they were summarily transferred.

Furthermore, PW 71 Sh. Ashok Wadhwa is also an important witness regarding the eligibility of STPL. He is at the centre of whole issue of eligibility. He was also examined at a highly belated stage on 15.01.2011. By all means, he is the most important witness as far as eligibility of STPL is concerned, but his examination by the CBI was also delayed.

1742. The most important witness of the case is PW 7 Sh. Aseervatham Achary. He was Additional PS to Sh. A. Raja for a long time. It is this witness who deposed about the association between Sh. A. Raja and Sh. Shahid Balwa & Sh. Vinod Goenka and Sh. Sanjay Chandra. Furthermore, this is the witness who deposed about the association between Sh. A. Raja and Ms. Kanimozhi Karunanithi. However, the CBI deemed it proper to examine him at a very belated stage, that is, on 24.03.2011, that is, only a week before filing of charge sheet.

1743. Investigating Officer PW 153 Sh. Vivek Priyadarshi in his cross-examination dated 25.11.2013, page 4, deposed about the delayed examination of witnesses as under:

> ".....It is wrong to suggest that statements of all witnesses cited in the case were recorded between October 2010 and April 2011. It is correct that Sh. A. K. Srivastava was available from 22.10.2009 and his

first statement was recorded on 29.11.2010. It is correct that vast majority of the witnesses cited in this case were recorded between October 2010 and April 2011....."

1744. The Investigating Officer thus admitted that most of the witnesses were recorded between October 2010 and April 2011. Whatever little incriminating evidence, if at all, has come on record in support of the prosecution case, is found in the statement of the above referred witnesses. As noted above, these witnesses were the most important witnesses and ought to have been examined at the earliest possible opportunity. It is true that the record seized in the case is huge and the case is complicated one. But this cannot be a ground for such unwarranted and unexplained delay in the examination of witnesses by the investigating agency. Raids were conducted on the premises of some important DoT officials, who have been examined as prosecution witnesses in the case. It is also in public domain that there was a huge hype around the case created by individuals, group of individuals as well as the media, both print and electronic. Sh. A. Raja was arrested by the CBI on 02.02.2011. As is clear from the above chart, large number of witnesses were examined after the arrest of Sh. A. Raja. This unwarranted delay in the examination of important witnesses coupled with the type of hype around the case indicates that the witnesses may be under pressure or were even coerced to toe the prosecution line.

1745. Even the witnesses who were expected to be in the

know of everything that had happened in this case, were recorded at a very late stage and with a rapid pace. No plausible explanation has been given for the delay except citing the high profile nature of the case. This puts a cloud about fairness of investigation. In an authority reported as **Babubhai Vs. State of Gujarat and others, (2010) 12 SCC 254**, Hon'ble Supreme Court while dealing with the question of fairness of investigation observed in paragraphs 32 and 36 as under:

> "**32.** The investigation into a criminal offence must be free from objectionable features or infirmities which may legitimately lead to a grievance on the part of the accused that investigation was unfair and carried out with a ulterior motive. It is also the duty of the investigating officer to conduct the investigation avoiding any kind of mischief and harassment to any of the accused. The investigating officer should be fair and conscious so as to rule out any possibility of fabrication of evidence and his impartial conduct must dispel any suspicion as to its genuineness. The investigating officer "is not merely to bolster up a prosecution case with such evidence as may enable the court to record a conviction but to bring out the real unvarnished truth", (Vide *R. P. Kapur v. State of Punjab, Jamuna Chaudhary v. State of Bihar,* SCC at p. 780, para 11 and *Mahmood v. State of U.P.*).
>
> **36.** In *Manu Sharma v. State of (NCT of Delhi)*, one of us (Hon'ble P. Sathasivam, J.) has elaborately dealt with the requirement of fair investigation observing as under: (SCC pp. 79-81, paras 197, 199-201)
>
> *"197.…* The criminal justice administration system in India places human rights and dignity for human life at a much higher pedestal. In our jurisprudence an accused is presumed to be

innocent till proved guilty, the alleged accused is entitled to fairness and true investigation and fair trial and the prosecution is expected to play balanced role in the trial of a crime. The investigation should be judicious, fair, transparent and expeditious to ensure compliance with the basic rule of law. These are the fundamental canons of our criminal jurisprudence and they are quite in conformity with the constitutional mandate contained in Articles 20 and 21 of the Constitution of India.

199. It is not only the responsibility of the investigating agency but as well as that of the courts to ensure that investigation is fair and does not in any way hamper the freedom of an individual except in accordance with law. Equally enforceable canon of the criminal law is that the high responsibility lies upon the investigating agency not to conduct an investigation in tainted and unfair manner. The investigation should not prima facie be indicative of a biased mind and every effort should be made to bring the guilty to law as nobody stands above law dehors his position and influence in the society.

200. …The court is not to accept the report which is *contra legem* but (sic) to conduct judicious and fair investigation....

201. ….The investigation should be conducted in a manner so as to draw a just balance between citizen's right under Articles 19 and 21 and expansive power of the police to make investigation."

1746. In an another authority reported as **Ganesh Bhavan Patel and another Vs. State of Maharashtra, (1978) 4 SCC 371**, Hon'ble Supreme Court observed in paragraph 47 as under:

> "All the infirmities and flaws pointed out by the trial Court assumed importance, when considered in the light of the all-pervading circumstance that there was inordinate delay in recording Ravji's statement (on the basis of which the "F.I.R." was registered) and further delay in recording the statements of Welji, Pramila and Kuvarbai. This circumstance, looming large in the back-ground, inevitably leads to the conclusion, that the prosecution story was conceived and constructed after a good deal of deliberation and delay in a shady setting, highly redolent of doubt and suspicion."

1747. I may add that there was no expeditious investigation in this case. On registration of the case, for more than a year, almost nothing was done in the case and then suddenly all the witnesses were recorded one after the another as if the investigators had all of a sudden gained all the knowledge of the case and the witnesses had also become source of all the information.

1748. I may also add that similar attitude was adopted by prosecution relating to filing of documents and it kept filing documents almost till the conclusion of trial. Large number of documents were filed more than a dozen times on the ground that they were missed out due to inadvertence. In the last, the prosecution had to be stopped and the occasion for this arose when an application dated 06.08.2014 was filed by the prosecution praying for filing of documents and summoning of additional witnesses. Though the application was allowed vide order dated 19.11.2014, but the following observations were made in para 29:

".....Having allowed the application, I may remind the prosecution that frequent and fragmentary filing of documents do cause anxiety and uncertainty in a trial, if not prejudice to the accused. As a matter of course, entire documents with list of witnesses should be filed with the charge-sheet. But an occasion may arise where this may not be possible and documents may be filed subsequently also necessitating the summoning of additional witnesses. But this cannot become a rule. In this case, prosecution has been allowed to file documents fourteen times, though the defence has also not lagged behind as it has competed with the prosecution and has been allowed to file the documents running into about eight full size steel boxes. But prosecution should remember that Indian legal system does not cleave to be theory of hound-the-accused-at-all-cost-by-all-means-fair-or-foul. An accused is also entitled to certain rights and to a fair trial. He is not a quarry to be pursued, caught and killed. He is deemed to be innocent until proved guilty and is entitled to a fair trial. Filing of documents has been repeatedly allowed on the plea of crime being of a grave magnitude in which officers are prone to inadvertence. Though, the prosecution has been successful in making out a case that the documents sought to be placed on record are essential for the just decision of the case but such practice cannot go on endlessly. It is necessary that the accused on trial should not have the feeling that he is being subjected to a trial of uncertain nature. The quest for truth cannot become a lifelong activity, and if it is so, no criminal trial would ever come to an end. The case has been under investigation since 21.10.2009 and since then the prosecution has been collecting material. This is sufficient time for any investigation to complete. Early completion of investigation and speedy trial are essential features of our legal system. Unnecessary delay in trial causes mental, physical and financial strain on the accused

> as well as on the system, even if the steps taken by the parties may be broadly characterized to be within the four corners of law but still it is a thing to be avoided. I hope the prosecution would take note of it and stop at this."

1749. In the last, the prosecution again filed an application dated 15.04.2015 for filing certain documents accompanied by proper certification of banking and other authorities on the ground that the documents already filed and exhibited were lacking in proper certification. However, the surprise of the application was that it was accompanied by documents running into about 15000 pages. This application was promptly dismissed vide order dated 22.12.2015. The sheer number of documents filed in the case shows that the idea of the prosecution was to bury this Court under the weight of documents and at least in this matter defence also equally competed with the prosecution and liberally summoned and filed documents taking advantage of high-profile nature of the case.

1750. It is surprising as to how many a witnesses suddenly acquired all the knowledge of the case and became virtual gold mine of information. This puts a question mark on the truthfulness of the prosecution case and lends credence to the theory of pressure on the witnesses. This theory of pressure is further corroborated by the conduct exhibited by witnesses in the witness-box, particularly the DoT officials, such as, Sh. D. S. Mathur, Sh. A. K. Srivastava, Sh. K. Sridhara, Sh. Nitin Jain, Sh. P. K. Mittal, Sh. R. J. S. Kushvaha, Sh. D. Jha etc. During their

deposition, not only did they depose contrary to official record but also kept fumbling for answers and gave evasive replies skirting around the real issue. This is clear from perusal of their testimony. The prosecutor was hesitant in putting straight questions and witnesses were equally evasive and hesitant in their reply. For example, testimony on the point of draft Ex PW 36/B-3 makes the attitude of both prosecutor and witnesses clear. They kept beating about the bush and never came to the bush. Prosecution was also wary off putting straight questions to them apprehending they may blurt out anything and was satisfied just with proving the documents by getting the handwriting or signatures identified. In the end, pressure on the witnesses cannot be ruled out and this puts a question mark on the fairness of investigation.

Conduct of Secretary (T) Sh. D. S. Mathur and other Officers of DoT

1751. PW 36 Sh. D. S. Mathur was Secretary (T) during most of the relevant time. He was the administrative head of DoT and was Advisor to the Minister. His conduct in the witness-box is of great importance.

In his examination-in-chief dated 09.04.2012, page 1, PW 36 Sh. D. S. Mathur deposed as under:

> "I am 1971 batch IAS Officer, since retired, belonging to Madhya Pradesh cadre. I joined central Government on deputation first in 2004 and was posted as Director, National Academy, Masoorie. From there I got posted in Delhi as Secretary, Information and Technology Department, MOC&IT,

in April 2006. From there, I got posted as Secretary, DoT in the same ministry in July 2006 and continued there till my superannuation on 31.12.2007. When I joined as Secretary, DoT, Mr. Dayanidhi Maran was Minister, MOC&IT. In May 2007, Mr. A. Raja was appointed as Minister, MOC&IT. Mr. A. Raja remained Minister, MOC&IT, till my superannuation on 31.12.2007.

Being Secretary, DoT, I was Advisor to the Minister, MOC&IT. I was also administrative head of DoT. Telecom Commission was created in 1989 in the department of DoT. Secretary, DoT, is the Ex-officio Chairman of Telecom Commission. During my tenure as Secretary, DoT, around 25 UAS Licences were issued, that is, from July 2006 to 31.12.2007....."

Thus, Sh. D. S. Mathur was the administrative head of the department and was expected that he would work with great sense of responsibility and would ensure that Government rules and regulations were observed in the transaction of official business.

1752. The question is: Whether Sh. D. S. Mathur was working in a responsible manner and according to rules and guidelines?

In the instant case, TRAI Recommendations dated 28.08.2007 were received in DoT on 29.08.2007 and the same were processed in the DoT and were also approved by the Telecom Commission on 10.10.2007. Thereafter, note dated 11.10.2007, Ex PW 36/A-14, recorded by Sh. Nitin Jain, was put up for administrative approval. Sh. D. S. Mathur agreed to the note. The matter went to Sh. A. Raja. He approved the note on 17.10.2007, vide note Ex PW 36/A-15. In this note, inter

alia, Sh. A. Raja approved dual technology to the pending applicants also by recording:

> ".....In view of above approvals, pending requests of existing UASL operators for use of dual / alternate wireless access technology should be considered and they should be asked to pay the required fees. Allocation of spectrum in alternate technology should be considered from the date of such requests to WPC subject to payment of required fees....."

In the downward journey, the file was seen by Sh. D. S. Mathur, and he appended his signatures below the note, indicating agreement to the decision. He did not record any objection. However, later on, when vide note dated 18.10.2007, Ex PW 36/A-16, letters for in-principle approval were proposed to be sent to the three pending applicant companies, who had applied for dual technology, Sh. D. S. Mathur objected to it and recorded note, which prosecution, in its great wisdom, did not exhibit. The note reads as under:

> "This matter was discussed. It may be processed as per the procedure being proposed separately."

On recording this note, Sh. D. S. Mathur marked the file to Sh. A. Raja. Sh. A. Raja took cognizance of this note and again recorded note dated 18.10.2007, Ex PW 60/C-6, revising the criteria, which reads as under:

> "It is unfortunate that the secretary has not properly recorded what was discussed with me. It was decided in that discussion that till TEC recommendations on spectrum are received, no spectrum may be issued to any one. For allocation of spectrum for dual technology, the date of payment of required fee should determine the seniority.

Necessary orders may be issued."

1753. Note, Ex PW 36/A-15, was also seen by Sh. D. S. Mathur and he appended his signature showing his agreement with the note, but when letters of in-principle approval were being sent to companies, he objected to it in writing vide note extracted above. It is thus clear that Sh. D. S. Mathur did not object to the things at the right point of time. Whatever may be the worth of the order on dual technology to pending applicants, but it is clear that Sh. A. Raja had passed a correct order that allocation of spectrum in dual technology should be considered from the date of such request to WPC. This was according to the then existing Guidelines. It is the Secretary (T) who made the Minister to change the order of priority of dual technology applicants for allocation of spectrum from the date of application to date of payment vide note Ex PW 60/C-6. Sh. D. S. Mathur agreed to it by appending his signature on the file in its downward journey. To an extent, it was a correct intervention, otherwise the applicants for dual technology would have got priority from 2006. However, later on he changed his stance and deposed that the concept of seniority from date of payment was introduced by Sh. A. Raja. This shows the attitude of Sh. D. S. Mathur of not contributing to the decision making process at the right time and later on blaming others. This conclusion is fortified by the fact that, inter alia, on receipt of applications of TTSL and TTML on 22.10.2007 for allocation of dual technology spectrum, note dated 23.10.2007, Ex PW 36/A-18, was recorded by Sh. R. K. Gupta. When this

note reached Sh. D. S. Mathur, he recorded the following note, Ex PW 36/A-10, regarding dual technology, in which he recorded that :

> "Some more applications have been made for permission to use GSM technology in areas where the applicant is using CDMA technology. These applications should be considered alongwith the applications for new licences numbering 575 & are pending since more than six months in chronological order as these are received.
>
> In case applications made now for permission to use GSM technology in areas for which the applicant is licensed to use CDMA technology are allowed, these applications would get an unjustifiable advantage in allocation of GSM spectrum."

The note indicates that the Secretary was not in favour of priority from date of application to the dual technology applicants. This note negated the case of the prosecution also. In this regard, Sh. D. S. Mathur, in his examination-in-chief dated 09.04.2012, pages 10 to 12, deposed as under:

> ".....On 18.10.2007, as far as I remember, three applicants had applied for use of dual technology, that is, Reliance, Shyam and HFCL. I have been shown page 20/N (D-5 vol. I), whereby a process note was started by Sh. Nitin Jain, Director (AS-I), for issuance of in principle approval for dual technology to the aforesaid three companies. The three companies had prayed for GSM technology for the circles mentioned in the note sheet. The note is now Ex PW 36/A-16. The note sheet was accompanied by draft letters. The file moved through Sh. A. K. Srivastava DDG (AS), Legal Advisor Sh. Santok Singh, Member (T) Sh. K.

Sridhara and finally the file came to me. I recorded a note to the effect that this matter was discussed and it may be processed as per the procedure being proposed separately. My signature appears at point A. I recorded this note as it was a new beginning in the department and a procedure had to be clearly laid down. This I had told the then Minister also and I accordingly recorded the note. My note is encircled red at point B. After recording my note, I marked the file to the Minister.

I have been shown page 21/N of the same file, wherein the Minister observed that whatever was discussed was not correctly recorded by me and he also said that allocation of spectrum for dual technology, the date of payment of required fee should determine the seniority. Then he ordered that necessary orders may be issued. The order of the Minister is dated 18.10.2007 and is now Ex PW 36/A-17. The signature of the then Minister is at point A, which I identify. The file was "seen" by me on the same date and my signature in token thereof is at point B.

I have been shown note sheet 23/N and 24/N of D-5, vol. I. This note was initiated by Sh. R. K. Gupta, ADG (AS-I) on 23.10.2007. In this note, he had mentioned that some more applications may come for grant of dual technology permission and had said that on these pending requests action would be initiated once the policy had been finalized for this purpose. The file was routed through Sh. Nitin Jain, Director (AS-I), Sh. A. K. Srivastava, DDG (AS), Sh. K. Sridhara, Member (T) and then it came to me. I expressed my apprehension that in the given situation there was a likelihood of causing injustice to some applicants or the other and the purpose of writing this note was to first frame a guideline so that every applicant gets his due. The note of R. K. Gupta is Ex PW 36/A-18, pages 23/N and 24/N. My note is available at pages 24/N and 25/N and is now Ex PW 36/A-19. My

signature dated 24.10.2007 is at point A. After recording my note, I marked the file to Minister, MOC&IT. On 30.10.2007, the then Minister Sh. A. Raja recorded that the decision on seniority of existing UAS Licence vis-a-vis new applications will be taken after the opinion of the Law Ministry is received. The file was marked back to me, but as I was on tour it directly went to Member (T) Sh. K. Sridhara. The note of the Minister is Ex PW 36/A-20 and also bears his signature at point B, which I identify....."

In his deposition, he nowhere explained his objections and rather attempted to place the blame on the Minister for delay in disposal of applications of TTSL/ TTML. Note, Ex PW 36/A-19, of Sh. D. S. Mathur makes his view clear that date of application for dual technology cannot determine seniority. This note and the note dated 18.10.2007 at 20/N are on the same lines. This shows that Sh. D. S. Mathur would not record objections at the right time. For his own actions also, he would blame others.

1754. Not only this, the aforesaid note was recorded by Sh. D. S. Mathur on 24.10.2007, Ex PW 36/A-19, in file D-5, wherein he indicated as to how dual technology applications should be processed with the pending 575 applications. However, on the same day, in file D-7, Sh. Nitin Jain had put up a note, Ex PW 36/B-2, for seeking opinion of Solicitor General on the issue of grant of new UASL and use of dual technology spectrum. In this note, inter alia, it was recorded that M/s Tata applied for dual technology spectrum and a decision was required to be taken in this case also. This note was also agreed

to by Sh. D. S. Mathur on 24.10.2007 itself and was approved by Sh. A. Raja. While agreeing to this note, Sh. D. S. Mathur should have recorded his opinion about processing of applications of M/s Tata, as was recorded by him in file D-5, vide note Ex PW 36/A-19. But he did not do this and simply agreed with the note. This shows that he was capable of passing two contradictory orders in different files or agreeing to two opposite views at the same time.

1755. The note Ex PW 36/B-2 of Sh. Nitin Jain was approved by Sh. A. Raja on 25.10.2007. However, when the file came downward and reached Sh. D. S. Mathur, he disagreed and recorded note dated 25.10.2007, Ex PW 36/B-6, which reads as under:

> "Opinion of Solicitor General may be obtained as per the draft approved by MCIT. However, the attention of MCIT may be drawn to NTP 99 para 3.1.1. The policy has stipulated that availability of adequate frequency spectrum is essential for entry of additional operators. Hence the options to issue LOIs/ licences to all 575 applicants do not stand in the light of this provision. NTP 99 was approved by the Union Cabinet and only the Cabinet can effect a change in the policy."

It may be noted that again when the file was moving upward, Sh. D. S. Mathur agreed but when the file came downward, he disagreed. In such a situation, how Government shall function?

1756. This shows the ambivalent and mischievous attitude of Sh. D. S. Mathur. He was the administrative head of the DoT and should have considered everything before appending his

signature to the note Ex PW 36/B-2 and marking it upward to the Minister. Not only this, his objection was duly noted and considered and note dated 26.10.2007, Ex PW 36/B-7, was again recorded by Sh. A. K. Srivastava, taking on record change in the policy since the introduction of NTP-99. Thus, his objection was duly taken care of. However, when such an important issue was being discussed in the department, and the aforesaid note, Ex PW 36/B-7 was marked to him, he left the headquarters and proceeded on tour.

1757. As already noted, Law Ministry did not give any opinion on the reference and instead returned it with an advice to refer the matter to EGoM. However, the DoT did not agree with it and note dated 02.11.2007, Ex PW 36/B-8, was recorded by Sh. Nitin Jain seeking approval for issue of LOIs. This time also, Sh. D. S. Mathur, instead of staying at the headquarters, proceeded on tour. This note for issue of LOIs was approved by Sh. A. Raja on 02.11.2007 itself. However, when Sh. D. S. Mathur returned, Member (T) marked the file to him. Sh. D. S. Mathur again expressed a different opinion and recorded note dated 05.11.2007, Ex PW 36/B-9, which reads as under:

> "Action may be initiated after orders of the MCIT are obtained clearly on the above issues. He has expressed his desire to discuss them further."

It indicates that Sh. D. S. Mathur had some disagreements/ objections about the approval dated 02.11.2007. His objections were duly considered in a meeting

held on 06.11.2007 in which Sh. A. Raja, Sh. D. S. Mathur himself, Additional Secretary (T), Member (T) Sh. K. Sridhara and DDG (AS) Sh. A. K. Srivastava were present and after considering all issues, Sh. Nitin Jain recorded detailed note dated 07.11.2007, Ex PW 36/B-10 and approval was sought for issue of LOIs. This note was agreed to Sh. D. S Mathur on 07.11.2007 and was approved by Sh. A. Raja on 07.11.2007 itself. When the file came downward, it was again seen by Sh. D. S. Mathur and in token thereof, he signed the file.

1758. Thereafter, instead of issuing LOIs, the process of vetting of LOIs started. In that process Sh. Shah Nawaz Alam, vide his note dated 23.11.2007, Ex PW 36/DQ-22, raised a question of priority about allocation of spectrum and when this note reached Member (F) Ms. Manju Madhavan, she recorded note dated 30.11.2007, Ex PW 36/B-11, about revision of entry fee. Sh. D. S. Mathur agreed with this note also, despite the fact that note of Sh. Shah Nawaz Alam was contrary to the Guidelines dated 25.01.2001, regarding allocation of spectrum. The objection of Member (F) regarding revision of entry fee had already been considered by the DoT in file D-9, vide note dated 27.11.2007, Ex PW 36/C-2, which was recorded in consultation with Member (F) herself. This note was recorded when letter of Secretary (Finance) was replied to by Sh. D. S. Mathur himself, vide letter dated 29.11.2007, Ex PW 36/C-5, in which it was clearly recorded that TRAI in its Recommendations dated 28.08.2007 had not recommended any change in the entry fee and hence, no changes were considered in the existing policy,

including entry fee.

1759. When the file, with objections of Sh. Shah Nawaz Alam and Member (F), reached Sh. A. Raja, he recorded note dated 04.12.2007, Ex PW 36/B-13, in which he recorded that the priority for allocation of spectrum was clearly defined in the WPC guidelines and that the question of entry fee had also been considered by the department several times. When the file reached Sh. D. S. Mathur in the downward journey, he saw the file and signed the same without recording any disagreement about non-consideration of entry fee by DoT.

Thus, Sh. D. S. Mathur was in the habit of first agreeing to a proposal and then resiling from it and also leaving the headquarters, when his presence was most needed for discussing important issues.

1760. Not only this, in the witness box, Sh. D. S. Mathur failed to recognize his own handwriting. As noted above, for sending the file to learned SG, drafts were prepared. In this regard, Sh. D. S. Mathur in his examination-in-chief dated 09.04.2012, pages 13 and 14, deposed as under:

> ".....I have been shown file of DoT, D-7, regarding UAS Licensing Policy. This file is of the DoT and is now collectively Ex PW 36/B. I have been shown note 1/N and 2/N initiated by Sh. Nitin Jain, Director (AS-I), dated 24.10.2007 regarding seeking of the opinion of Ld. Solicitor General of India on grant of new unified access service licences and approval for use of dual technology spectrum by such licencees. For sending the matter to the learned Solicitor General, a brief was also prepared and it was submitted through Sh. A. K. Srivastava, DDG (AS) and Sh. K. Sridhara, Member (T). The brief

alongwith note sheet finally reached me. The brief is available at pages 26 to 30 (4/C). The brief is dated 24.10.2007 and is now Ex PW 36/B-1. The brief was put up by me alongwith the file to the then Minister on 24.10.2007 and my signature in this regard is at point A on 2/N. The note sheet is Ex PW 36/B-2. The brief which was meant for learned Solicitor General has certain corrections, but I have no idea as to who made the same. I have also been shown a brief at pages 31 to 35 (5/C) of the same file. The corrections made in brief Ex PW 36/B-1 have not been incorporated in this note 5/C. This note is now Ex PW 36/B-3. I am saying this after comparing the two drafts.

There are corrections in Ex PW 36/B-3 and I cannot say as to who made these corrections....."

Thus, Sh. D. S. Mathur could not recognize the corrections in draft, Ex PW 36/B-1.

However, on the next day, he changed his stand and on 10.04.2012, page 1, he deposed as under:

".....I have been shown file D-7, Ex PW 36/B, and my attention has been drawn to a note proposed to be sent to the learned SG, already Ex PW 36/B-4, and the existing policy of the Government is mentioned as alternative 1 in para 11 of this note.

At this stage, the witness submits that yesterday he made a mistake while making his statement regarding draft Ex PW 36/B-1. He wishes to volunteer something on this point and he is permitted to do so.

In this draft the corrections were made by me in my hand.

I have been shown draft already Ex PW 36/B-3. In this draft also, there are corrections in paragraphs 12 and 13. I do not know as to who made these corrections in pencil....."

In his cross-examination dated 23.04.2012, page 10, he deposed as under:

> ".....**Ques**: When you made the statement regarding draft Ex PW 36/B-1, after seeing the same that you do not remember as to who made the corrections, were you not able to recognize your own handwriting?
> **Ans**: Regarding draft Ex PW 36/B-1, I had earlier deposed that I do not remember as to who has made corrections therein as there was some confusion in my mind, but later on, on the next day I corrected it....."

Thus, Sh. D. S. Mahur is true to his habit of first saying one thing and then changing his stand.

This indicates that Sh. D. S. Mathur was not in a position to identify his own handwriting. He discarded all responsibility as to what happened in the department. He must have known that these drafts are at the root of whole controversy.

1761. Sh. D. S. Mathur even did not know as to which officer of DoT was supposed to do what work. In his cross-examination dated 18.04.2012, page 7, he deposed as under:

> ".....I do not know if it is the responsibility of Member (T) and DDG (AS) to ensure that the policy of the DoT is complied with relating to UAS Licences. I do not know if it is the responsibility of other members also to ensure that policy of DoT is complied with relating to UAS Licences in their respective departments....."

Furthermore, he did not know the objects of NTP-99. It is interesting to take note of his cross-examination dated

11.04.2012, page 3, which reads as under:

> ".....I do not know if one of the main objects of the policy of the Government was to increase tele density. The object of the policy is mentioned in clause 2.0 of NTP-1999 and the gist of the object is availability of affordable and effective communication. The targets of the policy are mentioned in para 2.0 at page 12 and one of the targets is to increase tele density in rural areas. I must have been aware of the objects of the policy as mentioned herein when I was Secretary, Telecom. I have also become aware of them now on the policy being shown to me. It is correct that one of the key objects of the policy was to increase in tele density....."

He became aware of the telecom policy only when it was shown to him.

1762. Not only this, he disowned all responsibility for the cut-off date of 10.10.2007 proposed by Sh. A. K. Srivastava and in his cross-examination dated 12.04.2012, pages 9 and 10, he deposed as under:

> ".....I have been shown file, D-6, already Ex PW 36/E, wherein on page 1/N there is a proposal initiated by Sh. A. K. Srivastava, the then DDG (AS) for fixing a cut-off date for receipt of new UASL applications and the proposal is already Ex PW 36/E-1. I had not discussed this matter with Sh. A. K. Srivastava before he recorded this note. As per this note, by the note of the date 167 applications had already been received. The reason for this note as mentioned in this is the difficulty in handling large number of applications. I am not aware if adequate spectrum was available on the date of the note for accommodating these applications. I did not ask for availability of spectrum on 24.09.2007 for accommodating these applications. The possibility of

receiving large number of applications was foreseen by me as Secretary, DoT, in case of announcement of cut-off date. I agreed with the note of Sh. A. K. Srivastava without assessing the availability of spectrum. It is wrong to suggest that I misled Mr. A. Raja, the then Minister, MOC&IT, by endorsing the proposal of Sh. A. K. Srivastava without assessing the spectrum availability. It is wrong to suggest that I did not assess the spectrum availability because I thought that it was not necessary. I did not approve the proposal of Sh. A. K. Srivastva as the same was to be done by the Minister, I just agreed with him. I did not discuss with Sh. A. K. Srivastava or Member (T) before agreeing with Sh. A. K. Srivastava. It is correct that the file went to the then Minister only after I agreed with the note of Sh. A. K. Srivastava……."

This deposition shows that he had no interest in the working of the department. He did not discuss anything with anyone and just agreed with the proposal of Sh. A. K. Srivastava. He did not even ask about availability of spectrum. He did not discuss such an important issue with any other officer or the then Minister. The question is: What for a Secretary is meant in a Government department?

1763. Furthermore, Sh. D. S. Mathur did not remember most of the events in DoT. In his cross-examination dated 18.04.2012, page 5, he deposed as under:

"……..I do not remember if after the fixing of cut-off date of 25.09.2007, I constituted a committee to process the applications. I do not remember if pursuant to the fixing of this cut-off date by the Minister, the processing of applications started. I do remember that the processing of the applications started during my tenure. I cannot tell the

approximate period when the processing of the applications started. I do not remember if I ever constituted a committee for processing of the applications for issuance of LOIs.....”

Here, Sh. D. S. Mathur suffered from total amnesia. This is when he had retired only about five years ago on 31.10.2007.

1764. Furthermore, wherever Sh. D. S. Mathur felt comfortable, he could raise objections and wherever he felt otherwise, he did not raise any objection and could stay silent. In this regard, his cross-examination dated 18.04.2012, page 15, is important, wherein he could not find any mistake or irregularities in the letters written by Sh. A. Raja to Hon'ble Prime Minister. In this regard, his cross-examination dated 18.04.2012, pages 14 and 15, reads as under:

“.....The copies of the two letters Ex PW 7/A and 7/B, written by Sh. A. Raja to the Hon'ble Prime Minister on 02.11.2007 came to my notice in first week of November itself on my return from tour as I found the same in my dak. I also came to know about letter mark PW 36/A written by Hon'ble Prime Minister to Sh. A. Raja during the same period. In letter Ex PW 7/A, Sh. A. Raja had written about the constitution of GoM.

In my absence, Sh. K. Sridhara, Member (T), was the senior most officer available in the department as far as issuance of licences is concerned. I cannot confirm if on seeing the aforesaid two letters in my dak, I discussed this with Sh. K. Sridhara. He never informed me that he had prepared the two letters written by Sh. A. Raja to the Hon'ble Prime Minister. He also did not inform me that he was with Sh. A. Raja when these two letters were prepared. He also did not inform me about the

> letter dated 26.12.2007, already Ex PW 7/C. He did not inform me that he had prepared this letter or was present during the preparation of this letter. I do not remember if I find any mistake or irregularity in these three letters, Ex PW 7/A, B and C. Once a letter had already been written by the Minister to the Hon'ble Prime Minister, I could not have commented upon the same. I cannot comment if letters, Ex PW 7/A and 7/B, are in accordance with the note Ex PW 36/B-8……..”

These three letters are also at the root of whole controversy but Sh. D. S. Mathur did not know anything nor did he know if there was any mistake or irregularity in these letters of Sh. A. Raja. If there was no mistake in these letters, the entire prosecution case is knocked out.

It may also be noted that the case of the prosecution is that the policy of first-come first-served was manipulated by Sh. A. Raja vide letter dated 26.12.2007, Ex PW 7/C, whereby priority was changed from date of application to date of compliance, but the Secretary did not know if there was any irregularity in this or not.

1765. He also deposed contrary to the deposition of PW 57 Sh. R. J. S. Kushvaha and PW 77 Sh. K. Sridhara and guidelines dated 25.01.2001 regarding seniority for allocation of spectrum. In his cross-examination dated 24.04.2012, page 6, he deposed as under:

> “……..Even for grant of WPC licence for spectrum, the seniority would be as per the date of receipt of application in the DoT. It is wrong to suggest that seniority for WPC licence for spectrum is determined as per the date of receipt of application in the WPC

wing. **Volunteered**: If two applications bears the same date of receipt in the WPC wing, then their seniority would be determined on the date of receipt in the DoT for UAS Licence……..”

The seniority for allocation of spectrum is from date of application to WPC, complete in all respects. Thus, Sh. D. S. Mathur displayed total ignorance of official rules and procedure.

Stopping of Processing of Applications awaiting TRAI Recommendations: Role of Sh. D. S. Mathur

1766. It may be noted that as per Guidelines dated 14.12.2005, a UASL application is required to be disposed of within thirty days. However, Sh. D. S. Mathur advised Sh. A. Raja not to do so.

PW 36 Sh. D. S. Mathur in his cross-examination dated 12.04.2012, page 6, deposed as to how the processing of applications was stopped awaiting TRAI Recommendations as under:

“……..I have been shown file, D-43, collectively Ex PW 16/F, wherein on page 10/N, there is a photocopy of a proposal of some other file to the effect that further processing/ examination of existing/ new UAS Licences applications received in future will be carried out after receipt of TRAI recommendations and decision taken thereon by the Government. The proposal is Ex PW 36/DJ. It is correct that the processing of applications for UAS Licence started after TRAI recommendations were received on 29.08.2007 and decision taken thereon by the Government in November 2007……..”

It may be noted that in file D-44, Ex PW 36/DL-48, applications of TTSL for UAS licences in Assam, North-East and J&K service areas were being processed w.e.f 28.07.2006, when the first note was recorded. However, PW 81 Sh. Madan Chaurasia recorded note dated 26.04.2007, Ex PW 60/J-46, indicating the number of pending applications to be 53. The note also indicated the fact that vide reference dated 13.04.2007, TRAI Recommendations had been sought, and, as such, the pending applications may be processed after the receipt of TRAI Recommendations. In continuation to that, Sh. Nitin Jain recorded note dated 11.05.2007, Ex PW 60/J-47, on the same lines, which was agreed to by DDG (AS) and Member (T) and file reached Sh. D. S. Mathur, Secretary (T), who recorded note dated 18.05.2007, Ex PW 60/J-48, which reads as under:

> "May like to see. Certain applications submitted earlier are pending in some circles and others submitted in other circles at a later date have been processed. Decision on para 4 and 5 may be postponed till MOC&IT has discussed it and other related issues with all stakeholders."

This was approved by Sh. A. Raja on 17.07.2007. As per Guidelines dated 14.12.2005, an application was required to be disposed of within thirty days, but Sh. D. S. Mathur proposed otherwise for no reason at all as pending applications were to be disposed of as per existing parameters and the Minister agreed with it. Thus, many applications were kept pending for months on the pretext of awaiting TRAI

Recommendations on the initiative of Sh. D. S. Mathur. This shows his attitude towards official work. This shows the reluctant attitude of Sh. D. S. Mathur towards his duties, as he could have advised that the pending applications should be disposed of as per the then prevailing guidelines instead of advising to keep them pending for months together awaiting TRAI Recommendations.

1767. It may also be noted that Idea was pressing hard for disposal of its application dated 26.06.2006 and was writing both to the DoT as well as to the TRAI, but on account of the initiative of the Secretary (T), the application could not be disposed of. One of such grievances of Idea is contained in letter dated 06.07.2007, Ex PW 36/DR-9. Some other representations of the company are also placed in CD-131, Ex PW 36/DS-18, which were addressed to TRAI. Who is responsible for the accumulation of applications and delay in the grant of licences? Obviously, it is the idea of Sh. D. S. Mathur.

A bare perusal of the aforesaid material shows that the attitude and behaviour of Sh. D. S. Mathur was casual and wholly irresponsible. He had no sense of responsibility towards official work. He was putting up objections after objections in the matter of deciding of policy for the processing of applications without suggesting anything worthwhile of his own. It is he who was largely responsible for changing the policy of first-come first-served through redrafted LOI as noted above. It is his actions which led to the confusion in the policy in the DoT and led to the registration of the instant case.

1768. Not only this, he was totally remiss in the performance of his duties relating to processing of TRAI Recommendations. On perusal of the record, I find that there is a letter dated 15.10.2007, Ex PW 11/DM-11 (D-5, vol. II), written by Sh. Nripendra Misra, the then Chairman, TRAI to Secretary (T) Sh. D. S. Mathur, to accord due priority to the Recommendations of TRAI and also to communicate decision of DoT on the Recommendations to TRAI in a formal manner. However, Sh. D. S. Mathur did not reply to the letter. Sh. Nripendra Misra again wrote letter dated 19.10.2007, Ex PW 11/DM-12, addressed to Sh. D. S. Mathur drawing his attention to the fact that Recommendations dated 28.08.2007 were interlinked and action was required to be taken by identifying and implementing linkages in the Recommendations. He also requested Sh. D. S. Mathur to bring the far reaching impact of the Recommendations to the notice of Hon'ble Minister for Communications & IT. This time also Sh. D. S. Mathur did not bother to reply. Thereafter, again on 06.11.2007 Sh. Nripendra Misra wrote letter Ex PW 11/DM-14 to Sh. D. S. Mathur to communicate to the Authority the decision taken on the Recommendations dated 28.08.2007. This shows how much pain Sh. Nripendra Misra was taking to ensure due implementation of TRAI Recommendations. Only thereafter, the acceptance of Recommendations by the DoT was conveyed to the TRAI vide letter dated 08.11.2007, Ex PW 11/D. On receipt of this letter Sh. Nripendra Misra again wrote letter dated 29.11.2007, page 199 (D-5, vol. II), to Sh. D. S. Mathur

requesting him to refer those Recommendations, which were not accepted, back to the Authority for its reconsideration. He further wrote that this has to be ensured so as to avoid future legal complications. However, Sh. D. S. Mathur did not reply. Sh. Nripendra Misra again wrote letter dated 07.12.2007, page 98 (D-5, vol. II), bringing to the notice of Sh. D. S. Mathur that Sh. Rajeev Chandrasekhar, Hon'ble MP, Rajya Sabha, had observed that para 7.39 of TRAI Recommendations dated 27.10.2003 relating to multi-stage bidding process were valid for any licensing decision by DoT and requested him to throw light on the matter, but Sh. D. S. Mathur did not reply. Thus, there are at least five letters written by Sh. Nripendra Misra to Sh. D. S. Mathur on various issues, but I could not lay my hand on any reply sent by Sh. D. S. Mathur. This shows the attitude of Sh. D. S. Mathur towards other Government functionaries as well as his official duties. The irresponsible and callous attitude of Sh. D. S. Mathur is reflected by his conduct in not replying to the letters of Sh. Nripendra Misra, Chairman (TRAI), who was also at one time, Secretary (T). On the other hand, the record reflects the earnestness and commitment of Sh. Nripendra Misra, with which he was seeking the implementation of the Recommendations. Had Sh. D. S. Mathur heeded to the advice of Sh. Nripendra Misra, things would not have gone so bad leading to the registration of instant criminal case. The efforts of Sh. Nripendra Misra for ensuring proper implementation of TRAI Recommendations deserve appreciation. The record bears out that Sh. D. S. Mathur was largely responsible for the mess

in the DoT. He was perhaps awaiting his impending retirement on 31.12.2007. He could have awaited his retirement in a more graceful manner.

1769. His flip-flop about need and timing for issue of new licence is also reflected in his deposition already noted above. In response to letter dated 14.09.2006, Ex PW 11/L (D-834), of Sh. Nripendra Misra, he wrote to TRAI vide letter dated 19.10.2006, Ex PW 11/M (D-835), that TRAI Recommendations were required only for a new category of licence. However, in his cross-examination dated 19.04.2012, he could not recall if the Recommendations were to be sought for a new category of licence and not for introduction of new operator in an existing category. This shows that Sh. D. S. Mathur was not just passing his time, but was irresponsible also in the sense that he could recall facts as per his convenience.

1770. Though the deposition of PW 7 Sh. Aseervatham Achary does not inspire confidence, yet at least on one point he appears to be truthful. He deposed that in December 2007, he saw Sh. A. Raja shouting at and arguing with Sh. D. S. Mathur. What a Minister shall do with such an obstructive and dithering Secretary, except to shout at him? A Secretary must realize that as per the constitutional scheme of things, an elected representative has to be at the helms of affairs of a Government department. A Minister is a hard core politician, who is responsible to his electorates as well as to Parliament. He has also to retain the faith of the Prime Minister to stay in council of Ministers. He has to perform to the maximum within the time at

his disposal. Every Minister wishes to be seen to be doing something as opposed to be doing noting. If a Minister does not perform, he risks eclipse of his political career. However, as noted above, Sh. D. S. Mathur was bent upon to not let the Minister do anything. If Sh. A. Raja was working against the policies of the Government, he could have informed the Cabinet Secretariat or the PMO. Nothing of this sort was done by Sh. D. S. Mathur. A Secretary is a Secretary to the Government of India and not to his Ministry alone.

Conduct of other Officers

1771. Similar was the conduct of PW 60 Sh. A. K. Srivastava, whose footprint are writ large on the face of the entire record of DoT. Almost all important notes, as have already been referred to above, have been recorded by him, but in the witness box he tried to wriggle out of the same by blaming others or resorting to technicalities. Not only this, he unauthorizedly took the file to Law Ministry for seeking opinion of the learned SG after the same was received in the DoT and was seen by his senior Sh. K. Sridhara and obtained an opinion contrary to earlier one. It was this officer who had suggested the cut-off date vide his note dated 24.09.2007, Ex PW 36/E-1 (D-6), but in the witness box, shifted the blame to Sh. R. K. Chandolia. It is this officer who was responsible for approving the installation of four counters vide note 10.01.2008, Ex PW 52/A, but in the witness box tried to cast the blame on Sh. Siddhartha Behura. The DoT record is full of his actions or

inactions, but in the witness box he tried to put the blame on others. It is the notes recorded by Sh. A. K. Srivastava, which are at the center of whole controversy and confusion, but he blamed others for the notes disregarding the official record prepared by him. He also created a false impression, that applications for UAS licences started pouring in after receipt of TRAI Recommendations, by recording in the note dated 24.09.2007, Ex PW 36/E-1, relating to cut-off date. The fact of the matter is that from the date of receipt of TRAI Recommendations on 29.08.2007 till 24.09.2007, only two companies had filed applications for UAS licences. This false impression continued in all future notes of DoT leading to an impression that these applications started pouring in at the behest of Sh. A. Raja. Thus, he also contributed to the mess created by Sh. D. S. Mathur.

1772. As noted earlier, the same can be said about Ms. Manju Madhavan, Member (F), regarding her great efforts in suggesting revision of entry fee. It may be noted that she kept mum when the time was appropriate, but when everything was decided and reached the final stage, she raised unnecessary objections, without considering her earlier stand during the reply to the Ministry of Finance vide letter dated 29.11.2007. There is no evidence that her objection relating to revision of entry fee was based on any well-considered reasoning. Her suggestion popped up at the last stage based on letter of the Finance Secretary, which had already been duly replied to by DoT. She also ignored the fact that copy of TRAI

Recommendations were also supplied to her. DDG (LF) was member of the committee, which considered TRAI Recommendations and she was also present when Telecom Commission approved the Recommendations.

She also marked the file of STPL to the Secretary (T) and MOC&IT without specifically dealing with the objections, if any, as to its eligibility. This action of her put the Secretary (T) Sh. Siddhartha Behura and the Minister Sh. A. Raja in unnecessary trouble.

1773. Similarly, PW 92 Sh. P. K. Mittal, DDG (AS-II), also tried to shift the blame to Sh. Siddhartha Behura by making oral statements for the note Ex PW 75/A-1 (D-78) regarding intra-service roaming. He had not mentioned anywhere in the note that it was being done as desired by the Secretary. He also disowned the official note recorded by him by making oral statement.

1774. The conduct of PW 110 Sh. Nitin Jain, Director (AS-I), has also been no better. Most of the most important notes were recorded by him, but he too tried hard to blame others for these notes. In note dated 02.11.2007, Ex PW 36/B-8, he proposed the cut-off date of 25.09.2007, but in witness-box, he did not know whether this date was a proposal or anything else. Similarly, he is the author of note date 24.10.2007, Ex PW 36/B-2, for sending reference to learned SG, but did not know who placed draft Ex PW 36/B-3 on record. He displayed total ignorance about such a vital issue which is at the root of whole controversy.

1775. On the same lines is the conduct of Joint Wireless Advisor PW 57 Sh. R. J. S. Kushvaha and Deputy Wireless Advisor PW 87 Sh. Dinesh Jha, both of whom tried hard to shift the blame to others for their intransigence in not putting the file for Delhi service area. Instead of refusing to put up the file, they ought to have put up the file by taking note of correct position as per guidelines. It was none of their business to not put up the file by resorting to the tactics of lack of clarity in the policy. In fact, every file put up by them for allocation of spectrum was put up taking note of seniority from the date of application to the WPC, in case of new applicants as well as dual technology applicants. They could have done the same for Delhi service area also. However, both of them tried to distinguish these cases from the case of Delhi by citing adequate availability of spectrum in these service areas. Nevertheless, they ought to have put up the file by following the same seniority and at the same time, recording their objections, if any. They had no business to not put up the file, even when told to do so by Wireless Advisor Sh. R. P. Aggarwal. Their refusal was highly inappropriate and it was more so as in all cases, as already noted above, they had determined the seniority from the date of application to the WPC and not from date of payment. Both of them created unnecessary controversy and were thus, rightly transferred, as their conduct amounted to breach of official discipline. Their conduct added a lot of unnecessary heat to the controversy relating to allocation of spectrum.

1776. From the perusal of material on record, it is clear

that most of the mess in the DoT, in the matter of processing of applications for UASL, and grant of licences was created by the officers. It is the result of their lack of sense of responsibility and clarity about the way official business is to be conducted. Not only this, most of the officers have exhibited fickle mindedness and timidity by disowning the written official record. They even disowned the record prepared by them and tried to shift the blame to others by making oral statements contrary to official record. Official record prepared by a public servant in the ordinary course of business is deemed to be correct and truthful and is considered sacrosanct. It is more so in the case of officers as senior as Joint Secretary, Special Secretary and the Secretary to Government of India, because they constitute the core of governance in the country. Their actions become precedent for the future. However, all officers of such superior ranks, endeavoured hard to disown their own notes and blame others, that is, the accused, for everything done by them. This is not acceptable in the face of the official record. These witnesses kept wavering and were not committed to any particular stance. Their evidence turned out to be unworthy of reliance. The conduct of the above officials deserves strong disapproval.

Role of Law Ministry

1777. It may be noted that vide note dated 26.10.2007, Ex PW 36/B-7, a reference dated 26.10.2007, Ex PW 60/C, was sent by DoT to Law Secretary for seeking opinion of the learned

Attorney General of India/ Solicitor General on the issues mentioned in draft, Ex PW 36/B-4, relating to issue of new licences and allocation of spectrum to dual technology applicants. When this reference reached Law Ministry, Sh. P. K. Malhotra, Joint Secretary (Law), examined it and also discussed the matter with Sh. A. K. Srivastava, DDG (AS), and Sh. Nitin Jain, Director (AS-I). On discussing the matter with these two officers, he recorded vide note dated 31.10.2007, Ex PW 36/DK-16, that it was not clear from the reference whether the DoT intended to seek opinion of the Law Officer on the issue of disposal of 575 applications for grant of LOIs/ licences only or wanted to obtain the opinion on the issue of usage of dual technology. He also recorded that in case opinion of Law Officer was also sought on the issue of spectrum, full facts and documents on this issue would be required. With these observations, he returned the reference and marked the same to Member (T) Sh. K. Sridhara. The file returned to DoT and was placed before Sh. K. Sridhara, an officer of the rank of ex-officio Secretary to the Government of India. He saw the file on 01.11.2007 itself and appended his signature thereon in token of seeing the file. Thus, the file reached in the safe custody of DoT.

1778. However, Sh. P. K. Malhotra orally called the file back on 01.11.2007 itself. Sh. A. K. Srivastava recorded note of the even date, Ex PW 60/C-1, to the effect that Sh. P. K. Malhotra had spoken to him and wanted the file back and accordingly, the file was sent to the Law Ministry. As already

noted, how could Sh. P. K. Malhotra recall the file by oral orders once it had reached the safe custody of DoT and was also seen and signed by an officer superior in rank to him? How could Sh. A. K. Srivastava take the file out of the custody of DoT without the permission of his superiors?

1779. Anyway, the file reached Law Secretary PW 66 Sh T. K. Vishwanathan, who also recorded that the reference could not be answered as the issues had been mixed up. He recorded note dated 01.11.2007, Ex PW 36/DK-17, observing that the questions posed for the opinion of Attorney General/ Solicitor General appeared to be too broad and the issue of disposal of application for UASL also appeared to be mixed up with allocation of spectrum. On recording this note, he marked the file to Minister of Law & Justice. Perusal of the notes clearly reveals that this file was called back by Sh. P. K. Malhotra on the asking of Sh. T. K. Vishwanathan. Why? When the file came back to the Law Ministry, Sh. P. K. Malhotra did not record any observation of his own in the file and perhaps rightly as he knew that the file was called back unauthorizedly. The file straightway went to Sh. T. K. Vishwanathan, who recorded the aforesaid note. When the reference had already been returned by Sh. P. K. Malhotra, Joint Secretary (Law), there was no occasion for Sh. T. K. Vishwanathan, who later on rose to become Secretary General, Lok Sabha, to duplicate the same process by unauthorizedly calling the file back and record thereon that the reference was not fit for answer as the issues were mixed up. Why this duplication of efforts? There was a

purpose behind it. Subsequent events showed that the purpose was to create unnecessary controversy with the help of Sh. A. K. Srivastava.

1780. However, instead of returning the reference, he marked the file to Law Minister recording that Minister of Law & Justice may see for directions. When the reference had come from an officer of the rank of ex-officio Secretary to the Government of India and the same was dubbed as not fit for answer by the Law Secretary, where was the need for him to mark the file to Law Minister? He could have returned the reference with his noting alone, but he deliberately marked the file to the Law Minister without recording anything as to why the matter needed ministerial attention.

The file reached the Law Minister and he recorded, without any proposal and all of a sudden, the following note, Ex PW 60/C-2:

> "I agree.
>
> In view of the importance of the case and various options indicated in the statement of the case, it is necessary that the whole issue is first considered by an empowered group of Ministers and in that process legal opinion of AG can be obtained."

1781. In the opinion of the Law Minister due to the importance of the matter, it needed to be referred to the EGoM. In giving this opinion, the conduct of the Law Secretary and the then Law Minister was against all established canons, discipline and protocol of Government working. The Law Secretary and the Law Minister were working in tandem. Why? Because the

file was called unauthorizedly from the DoT. The Joint Secretary and Secretary (Law) had already dubbed the reference as not good for answer. The Law Secretary could have returned the file on his own, but he marked the file to the Law Minister. The noting regarding the matter being referred to EGoM came suddenly without any proposal from any quarter.

The problem is that this opinion was not given in regular and ordinary course of business. If such an opinion was required to be given, it must have been given in the first instance itself. Still, if the Law Minister felt so strongly about the matter to be referred to the EGoM, he should have written either to the Prime Minister or to Sh. A. Raja, instead of recalling from DoT, a reference which had already been returned. Law Ministry had no business to surreptitiously recall the file in this manner. It was also equally uncalled for the Law Minister to give a wholly contrary opinion.

1782. Furthermore, GoM was constituted for dealing with vacation of spectrum and raising resources for the same. This is clear from letter Ex PW 36/DH-1 (D-363). The GoM was not meant for considering processing of applications received in DoT for grant of UAS licences. This was well within the administrative domain of DoT. In this background, the opinion of Law Ministry was wholly outlandish and was aimed at creating unnecessary controversy and stalling the process of licensing in the DoT. Learned Spl. PP had no answer to the question as to how the file could have been taken out of the custody of the department by Sh. A. K. Srivastava without the

permission of his superiors. Prosecution relied upon this advice of Law Ministry against the accused with great ardour but it is of no use and was rightly termed as out of context by DoT.

Role of Solicitor General/ Attorney General

1783. As already noted above, the Solicitor General had approved the action of DoT regarding change of policy of first-come first-served from date of application to date of payment. In his note, he had specifically noted that he had seen the notes and the issue of new LOIs was not before any Court and what was proposed was fair and reasonable. However, in the witness-box, he tried to wriggle out of the same. It is the change of stance by Sh. G. E. Vahanwati which led to unnecessary controversy. He was perfectly right in recording that what was proposed was fair and reasonable as in the changed circumstances, the department could not have remained imprisoned by the policy of first-come first-served, in which seniority was determined from date of application, as non-serious players, without any financial sources, were trying to take advantage of it. The payment criteria was introduced to discourage speculative players with no financial resources to roll-out the services. Had he stood by his notings, the controversy would have died down much earlier. He had the capacity, calibre and standing to explain the whole issue, but unfortunately he too chose to depose against his own official noting by resorting to legal technicalities. He endeavoured hard to absolve himself of all responsibility. Thus, his evidence did

not match up to his standing. It is unfortunate that he is one of those witnesses whose testimony has been rejected in toto for being contrary to official record.

Role of Finance Ministry

1784. PW 78 Sh. D. Subba Rao, the then Finance Secretary, had written letter dated 22.11.2007, Ex PW 36/C-1 (D-9), to PW 36 Sh. D. S. Mathur, the then Secretary (T), regarding grant of dual technology permission to the three applicants, that is, Reliance, HFCL and Shyam Telelinks, at a fee determined in 2001. The relevant part of letter reads as under:

> "..... .....
> 1. During the presentation on the Spectrum Policy to the Cabinet Secretary on 20 November 2007, you had mentioned, among other things, that: (i) three CDMA operators were given crossover licence for GSM operations; (ii) the fee for this licence was determined at Rs. 1600 crore (for all India operations with pro-rata determination for less than all India operations); and (iii) that one of the licensee has already paid the licence fee.
>
> 2. The purpose of this letter is to confirm if proper procedure has been followed with regard to financial diligence. In particular, it is not clear how the rate of Rs. 1600 crore, determined as far back as in 2001, has been applied for a licence given in 2007 without any indexation, let alone current valuation. Moreover, in view of the financial implications, the Ministry of Finance should have been consulted in the matter before you had finalized the decision.
>
> 3. I request you to kindly review the matter and revert to us as early as possible with responses to the

above issues. Meanwhile, all further action to implement the above licences may please be stayed. Will you also kindly send us copies of the letters of permission given and the date?

…….
……."

1785. This letter reached DoT on 23.11.2007 and was treated as "urgent". As already noted above, this letter was processed in detail in file D-9 vide note dated 27.11.2007, Ex PW 36/C-2, recorded by Sh. Nitin Jain. Sh. A. K. Srivastava and Sh. D. S. Mathur agreed with the note and thereafter, the matter was discussed with Member (F), who was ex-officio Secretary to the Government of India and also had access to the Finance Minister. Thereafter, reply dated 29.11.2007, Ex PW 78/C (D-363), was sent to Sh. D. Subba Rao. The relevant part of the letter reads as under:

"…….
…….
Kindly refer to your D. O. letter No. 10709/FS/2007 dated 22nd November, 2007 on use of dual technology.

As per Cabinet decision dated 31st October, 2003 accepting then recommendations of Group of Ministers (GoM) on Telecom matters, headed by the then Hon'ble Finance Minister, it was inter-alia decided that "The recommendations of TRAI with regard to implementation of the Unified Access Licensing Regime for basic and cellular services may be accepted. DoT may be authorised to finalise the details of implementation with the approval of the Minister of Communications & IT in this regard including the calculation of the entry fee depending on the date of payment based on principle given by TRAI in its recommendations." In terms of this

Cabinet decision, the amendment to NTP 99 was issued on 11th November, 2003 declaring inter-alia that for telecommunication services the licence for Unified Access (Basic and Cellular) services permitting licensees to provide Basic and/ or Cellular Service using any technology in a service area shall be issued.

The entry fee was finalized for UAS regime in 2003 based on the decision of the Cabinet. It was decided to keep the entry fee for the UAS licence the same as the entry fee of the fourth cellular operator, which was based on a bidding process in 2001.

The dual technology licences were issued based on TRAI recommendations of August, 2007. TRAI, in its recommendations dated 28th August, 2007, has not recommended any changes in entry fee/ annual license fee and hence no changes were considered in the existing policy……..."

This letter clearly stated that TRAI had not recommended any change in the entry fee.

1786. When the reply reached Sh. D. Subba Rao, he recorded note dated 30.11.2007, Ex PW 78/D, on the face of letter itself, which reads as under:

"May pls. see at Dak stage. Our letter is at F/x. No reply on why a matter with financial implications has not been referred to MOF. We will put up on file."

After recording this note, he marked the reply to Finance Minister. The then Finance Minister Sh. P. Chidambaram recorded note dated 30.11.2007, Ex PW 78/DB, on the letter, which reads as under:

"Please examine carefully portion marked on the margin."

1787. It may be noted that the portions which have been underlined above were marked in blue pen on the left margin by Sh. P. Chidambaram. Thereafter, only noting on this letter is of AS (EA) dated 03.12.2007, where she records "pl. discuss" and marked the same to Director (Infra). Thereafter, there is no noting on the face of this letter. As per note dated 26.11.2007, Ms. Sindhushree Khullar was AS(EA). As per note dated 17.12.2007, Ex PW 78/DE (D-363), Ms. Shyamala Shukla was Director (Infra). There is no record as to what was the fate of this letter in the Finance Ministry.

1788. However, before this, the issue of spectrum allocation and pricing/ entry fee charged from dual technology applicants had appeared in the press and it was taken note of by the Finance Ministry. As per the directions of Finance Secretary, the issue was discussed with Sh. P. K. Garg, the then Wireless Advisor, and Sh. A. K. Srivastava, DDG (AS), and a detailed note dated 22.11.2007, Ex PW 78/DJ (D-363), was recorded by Ms. Shyamala Shukla, Director (Infra). This note also contains para (iv) which reads as under:

> "DEA could take up this issue with the DoT and ask them to revise the entry fee. Initially, TRAI could look into a scientific method of doing so and make its recommendations. This issue should be decided by the DoT after due inter-ministerial consultations. **Draft of letter to be sent to Secretary, DoT is placed at DFA.**"

This note talks about revision of entry fee. Consequently, letter dated 22.11.2007 was sent to the Secretary (T). Though this letter was processed in this file, but Sh. D.

Subba Rao in his cross-examination dated 19.11.2012, page 15, deposed that he wrote the letter on his own and it was not processed in the departmental files. The fact of the matter is that the letter was processed and a draft was prepared and thereafter only the above letter was sent to Secretary (T). It may be due to inaccurate recall of events by Sh. D. Subba Rao.

1789. This note was marked to AS (EA) Ms. Sindhushree Khullar, who again recorded note dated 26.11.2007, wherein she also referred to a tabular note at 50/N and marked the file to Finance Secretary/ Finance Minister. Sh. D. Subba Rao on 27.11.2007 recorded note, Ex PW 78/DK, to the effect that:

> "I've spoken to Sec. Telecom. They are sending a reply. Pls. watch. We will put up to FM after receiving the reply."

He marked the file to AS (EA). It may be noted that AS (EA) had referred to a tabular note at 50/N also in her earlier note. This tabular note is also dated 26.11.2007 and she had marked the file to Finance Secretary. In this note also, she referred to a letter of Finance Secretary to Secretary (T) and recorded that reply is awaited. Below this note also, Sh. D. Subba Rao recorded as under:

> "I spoke to Sec. Telecom. He said a reply is pending approval of Minister (Telecom)."

He marked the file to Finance Minister Sh. P. Chidambaram, who recorded note dated 03.12.2007, Ex PW 78/DA, which reads as under:

> "If reply has been since received, pl. put up on file."

1790. It appears that Finance Minister missed to recall that reply had already been received on 29.11.2007 and on 30.11.2007 itself he had directed that the letter be examined carefully relating to portions marked on the margin. The file was marked downward and reached Ms. Shyamala Shukla, Director (Infra), who recorded a detailed note dated 17.12.2007, Ex PW 78/DE, and marked the note to JS (Infra). However, thereafter there is no movement in the file.

1791. It may be noted that vide letter dated 12.12.2007, Ex PW 36/C-7, Ms. Shyamala Shukla had asked DoT to supply copy of the Cabinet Note dated 31.10.2003, copy of the Cabinet decision and copy of D.O. letter from Secretary (T) to Finance Secretary and the same were supplied by DoT vide note dated 13.12.2007, Ex PW 36/C-9.

1792. Taking note of the entire material on the file, she concluded the note with a question that if the entry fee was revised, then the question was whether such a decision taken in future would be applicable to those who have already paid the prescribed fee to DoT and have got the LOIs in their favour? It is the same question which TRAI had also raised citing legacy issues and overriding consideration of level-playing field. Thereafter, there is no material on the file as to what was the view of Ministry of Finance. It appears that after 17.12.2007, Ministry of Finance felt satisfied and went into silent mode on this issue. Sh. A. Raja deposed that on receipt of copy of Cabinet note and other documents sent by DoT to Finance Ministry, the Finance Minister was satisfied with the actions of DoT. His

version appears to be truthful as it matches with official record.

1793. Sh. D. Subba Rao is the only witness examined from the Ministry of Finance as a witness. He has deposed that note of Ms. Shyamala Shukla dated 17.12.2007, Ex PW 78/DE, did not reach him as Finance Secretary. Thus, Ministry of Finance could not reach any decision as to what could be done regarding the entry fee. It appears that after creating the controversy, it chose to remain silent and let the DoT issue the LOIs with the existing entry fee. However, after the issue became hot, they started raising so many questions, which were not pertaining to 2G spectrum, that is, entry fee for issue of UAS licence coupled with initial spectrum of 4.4+4.4 MHz. Sh. D. Subba Rao in his examination-in-chief itself deposed that Finance Ministry was insisting on pricing of spectrum beyond 4.4+4.4 MHz. This means they had no issues with the initial spectrum of 4.4+4.4 MHz conflated with UAS Licence. Thus, the letter of the Finance Secretary, in which he had asked routine question, injected a new frisson in the entire controversy. The issue raised by the Finance Secretary was also not taken to its logical conclusion. I may also add that query of the Finance Secretary was not based on any sound reasoning, but was just a routine query based on press report, but it led to unnecessary controversy as CBI alleged that it was a strong recommendation for revision of dual technology fee. However, Sh. D. Subba Rao displayed the quality of a sterling witness by remaining reasonable and objective in his deposition and in the end deposed that there was no loss to exchequer and only some

sacrifice of revenue was there.

1794. The raising of objection by the Finance Secretary also shows that Member (F), who is a representative of Finance Ministry in the rank of ex-officio Secretary to the Government of India, was not doing her job properly. It was her duty to look after the interest of finance in the matters of DoT and raise the issues at the earliest possible opportunity, if there was any revenue loss due to any business transacted in the DoT. However, at the right time she kept mum, but she became wiser only after the Finance Secretary raised the question and persisted with an objection, the reply of which had already been sent to the Finance Secretary in consultation with her. In the DoT files, there is no contribution of Member (F) in any manner, whatsoever. In the matter relating to eligibility of STPL, her role is also suspect as instead of getting the objection of AO (LF-II) resolved, she marked the file upward for approval by MOC&IT. Same was the attitude of Sh. B. B. Singh, DDG (LF), who, instead of recording his own note, made unauthorized insertions in the note of others. Instead of suggesting a solution, the officials of LF branch kept the file tossing here and there, without taking any responsibility for anything. This shows the working of the officials belonging to finance branch that when the time is appropriate, they would keep mum and when things reach a definite stage or generate heat, they would immediately start raising unnecessary objections, creating trouble for others that too without reaching any final conclusion.

Role of PMO: Whether Hon'ble Prime Minister was Misled, if so, by Whom?

1795. It is the case of the prosecution that the facts were misrepresented to the then Hon'ble Prime Minister by Sh. A. Raja, which contention has already been rejected. However, the question is: Whether there was any misrepresentation of the facts to the then Hon'ble Prime Minister, and if so, by whom?

1796. Sh. A. Raja wrote letter dated 02.11.2007, Ex PW 7/A (D-358), to the then Hon'ble Prime Minister informing him of the decision of DoT dated 02.11.2007, taken vide note Ex PW 36/B-8, for issue of LOIs for new licences. The letter was seen by the then Hon'ble Prime Minister and was treated as urgent. He had discussed the matter with Principal Secretary. However, there is no record as to whether this letter was examined by the PMO or not. The other letter written on the same day is Ex PW 7/B. This letter was written in response to the letter of Hon'ble Prime Minister, also dated 02.11.2007, Ex PW 82/C. There is no material on record to show if this letter was placed before the then Hon'ble Prime Minister or not as it carries no endorsement on its face despite being original one. PW 82 Sh. P. K. Sharma, Section Officer of the PMO, could not say if these letters were deliberated in the PMO or not. Had these letters been deliberated in the PMO, there must have been some record, but no such record has been produced before this Court by either of the parties. By the letter dated 02.11.2007, Ex PW 7/B, Sh. A. Raja had specifically informed the Hon'ble Prime Minister about processing of large number of applications in the

backdrop of inadequate spectrum. In this letter, he had clearly mentioned that the spectrum to the tune of 60 to 65 MHz was likely to be vacated by the defence forces and would be available for 2G services. He had also categorically recorded that auction of spectrum was considered by TRAI and Telecom Commission and auction was not recommended. Some other issues were also raised, but these two issues were quite important. As already noted above, there is no material on the record to show if this letter was taken note of in the PMO. Hon'ble Prime Minister may even not be aware of this reply.

1797. However, there is one more letter dated 26.12.2007, Ex PW 7/C (D-361), which was written by Sh. A. Raja to the then Hon'ble Prime Minister. This letter was written when Hon'ble TDSAT as well as Hon'ble Delhi High Court had not granted any stay to COAI against the actions of the DoT relating to approval of dual technology and other issues. In this letter, Sh. A. Raja had clearly mentioned about the letters dated 02.11.2007 written by him to the Prime Minister, already referred to above, Ex PW 7/A and 7/B, as well as his personal discussions with him (Prime Minister). He had also mentioned that he had discussed the issues with the then Hon'ble External Affairs Minister at great length as well as with the Solicitor General of India, as he was representing DoT in the Courts. In the Annexure to the letter, he had explained three important issues, that is, subscriber linked criteria for allocation of spectrum, use of dual technology spectrum and issue of new licences. Regarding issue of new licences, he had explained that

it is a three stage process, that is, issue of LOI, issue of licence and grant of wireless licence. This letter was seen by the then Hon'ble Prime Minister and was treated as urgent one and he had directed the Principal Secretary to examine the same urgently. Accordingly, this letter was examined by Sh. Pulok Chatterjee on 31.12.2007 vide note, Ex PW 82/DC-1, and the file was marked to Principal Secretary Sh. T. K. A. Nair. Thereafter, this letter was acknowledged by the then Hon'ble Prime Minister vide acknowledgment dated 03.01.2008, Ex PW 82/D, sent to Sh. A. Raja.

1798. However, on 06.01.2008, Sh. Pulok Chatterjee after discussing the matter with Sh. T. K. A. Nair, again recorded a long note, Ex PW 82/DC-3, running from 1/N to 5/N. It may be noted that letter of Sh. A. Raja ran into two pages with an annexure of three pages. After recording this note, he marked the file to Principal Secretary Sh. T. K. A. Nair who signed it on 07.01.2008 and marked the file to the then Hon'ble Prime Minister. The question is: What is the subject matter of this note, which runs into five pages? This note discussed only the spectrum related issues as to how much spectrum was available in the country, how much was available in other countries, how the spectrum should be used and how spectrum was to be allocated and few other related issues about spectrum. This note did not consider at all the issue of new licences, which were to be issued as per the changed criteria from date of application to date of payment and was also the most controversial one. Thus, this note gave only a partial view of

the whole issue and ignored the most important and controversial issue of new licences. Moreover, the note suffered from the vice of excessive length and technical jargon. It is lengthier than the letter of Sh. A. Raja. Prime Minister is a busy executive. Wherefrom would he find time to read such lengthy notes. Prime Minister is not expected to be immersed in files. It was much easier and better for him to read and understand the letter of Sh. A. Raja rather than this note of Sh. Pulok Chatterjee.

1799. As already noted above, the file was placed before the then Hon'ble Prime Minister on 07.01.2008. It is not clear from the record, if this note was seen by the then Hon'ble Prime Minister or not. However, it is clear that somebody from the PMO had given a go ahead to the DoT for issue of new licences and most probably it was Sh. Pulok Chatterjee himself, as his note records that he had spoken to Secretary (T). Thereafter only on the same day, the process of issue of LOIs started with the recording of notes by Sh. Nitin Jain and Sh. A. K. Srivastava. Had the PMO hinted otherwise, the DoT would not have dared to go ahead with the process of issue of LOIs as Secretary (T) had only joined on 01.01.2008 and was quite new in his job. He would not have dared to go against the PMO.

1800. It may be noted that the changed criteria for issue of LOIs and grant of licence is at the root of the controversy. In the changed criteria priority for licence was to be determined from date of payment as opposed to date of application, as was indicated in this letter. In the process of issue of LOIs, notes

dated 07.01.2008, Ex PW 42/DB and PW 60/L-23, were recorded in DoT in file D-7.

1801. This changed criteria was the most controversial issue and it was duly communicated to the then Hon'ble Prime Minister by Sh. A. Raja and the relevant part of the letter reads as under:

> "..... .....
>
> **3. Issue of New Licences**
>
> Although UASL guidelines issued in December 2005 clearly indicates that "**Licences shall be issued without any restriction on the number of entrants for provision of Unified Access Services in a service Area"**, DOT sought recommendation of TRAI on number of UAS licences to be issued in a Service Area on 13-4-2007 (prior to taking over by the present Minister). The recommendations of TRAI were received by DOT on 29-08-2007 which suggested that **"No Cap be placed on the number of access service providers in any Service Area"**. This recommendation was accepted by the department on 17-10-2007 in order to encourage more competition in the Telecom Sector and decided to grant new UAS Licences. This is first time that December 2005 UASL guidelines are being implemented in letter and spirit in view of TRAI recommendation.
>
> DOT has been implementing a policy of First-cum-First Served for grant of UAS licences. The same policy is proposed to be implemented in granting licence to existing applicants. However, it may be noted that grant of UASL licence and allotment of Radio Frequency is a three stage process.
>
> 1. **Issue of Letter of Inter (LOI):** DOT follows a policy of First-cum-First Served for granting LOI to the applicants for UAS licence, which means, an

application received first will be processed first and if found eligible will be granted LOI.

2. **Issue of Licence:** The First-cum-First Served policy is also applicable for grant of licence on compliance of LOI conditions. Therefore, any applicant who complies with the conditions of LOI first will be granted UAS licence first. This issue never arose in the past as it one point of time only one application was processed and LOI was granted and enough time was given to him for compliance of conditions of LOI. However, since the Government has adopted a policy of **"No Cap"** on number of UAS Licence, a large number of LOI's are proposed to be issued simultaneously. In these circumstances, an applicant who fulfills the conditions of LOI first will be granted licence first, although several applicants will be issued LOI simultaneously. **The same has been concurred by the Solicitor General of India during the discussions.**

3. **Grant of Wireless Licence:** The First-cum-First Served policy is also applicable for grant of Wireless Licence to the UAS Licencee. Wireless Licence is an independent licence to UAS licence for allotment of Radio Frequency and authorising launching of GSM/ CDMA based mobile services. There is a misconception that UAS licence authorises a person to launch mobile services automatically. UAS licence is a licence for providing both wire and wireless services. Therefore, any UAS licence holder wishes to offer mobile service has to obtain a separate Wireless Licence from DOT. It is clearly indicated in Clauses 43.1 and 43.2 of the UAS Licence agreement of the DOT.

Since the file for issue of LOI to all eligible applicants was approved by me on 2-11-2007, it is proposed to implement the decision without further delay and without any departure from existing guidelines."

Thus, Sh. A. Raja had communicated to the then

Hon'ble Prime Minister that telecom licensing is a three stage process and that licences would be issued to the applicants who complied with the LOI conditions first, that is, mode of payment first.

1802. Since the noting, Ex PW 82/DC-3, was placed before the then Hon'ble Prime Minister on 07.01.2008, the process of issue of LOIs also started on the same day. However, this note, Ex PW 82/DC-3, conveyed only a partial view of the things relating to spectrum only to the then Hon'ble Prime Minister, if it is presumed that the note was seen by him as it does not bear his signature. The note was totally silent on the issue of new licence. However, DoT went ahead with the issuance of LOIs and on 10.01.2008 issued 120 LOIs to new applicants. This issue became controversial and when the then Hon'ble Prime Minister came to know of it, note dated 11.01.2008, Ex PW 82/DC-4, was recorded by Sh. B. V. R. Subramaniam to the following effect:

> "PM says that the DoT has issued licences today. That may be taken into account and the issues accordingly modified and submitted to him pl."

1803. Thereafter only, Sh. Pulok Chatterjee became wiser and rectified his mistake and placed the correct facts before the then Hon'ble Prime Minister, but by that time it was too late. In this regard, Sh. Pulok Chatterjee recorded note dated 15.01.2008, Ex PW 82/DC-5, taking note of new licences issued by changed criteria, which reads as under:

> "20. Ref. the clarification sought above.

21. DOT proposes to continue the existing policy of first-come-first-served basis for grant of licences. This is a 3-stage process as follows:

1) issue Letters of Intent (LsOI) on first-come-first-served basis to applicants;
2) issue UAS licences to those who fully comply with LOI conditions (payment of fee etc.) on first-complied-first-served basis;
3) issue Wireless Licence for allotment of radio frequency (spectrum) on first-licenced-first-served basis.

22. As per DOT sources, spare spectrum available with DOT is very limited that may just be able to accommodate (a) pending requirement of additional spectrum of existing operators (b) requirement of those given licences in December 2006 and (c) CDMA operators who have applied for GSM technology.

23. It is true that a certain number of operators have already been issued LsOI/Licences/Wireless Licences. A suggestion regarding what could be done vis-a-vis those who have been issued all three is given in para 17 (b). Those who have been issued only LOIs so far could be considered for allocation of spectrum up to the 'threshold' level once they fulfill all LOI conditions. After they have fully utilized the 'threshold' amount of spectrum, they will be eligible to bid for additional spectrum in open auction.

24. The proposal in para 19 is resubmitted for approval."

1804. This note ought to have been recorded on 06.01.2008 itself and the attention of the Hon'ble Prime Minister must have been brought to this issue. It is in this note only that Sh. Pulok Chatterjee took note of the issue of the new

licences desired to be issued by DoT in the manner referred to in the letter of Sh. A. Raja and extracted above, but by that time LOIs had already been issued. Sh. Pulok Chatterjee ought to have taken note of these facts in his earlier note dated 06.01.2008 itself, but he did not do so for the reasons best known to him and placed only a partial view before the then Hon'ble Prime Minister regarding spectrum related issues. It is clear from the record of the case that issue of LOIs and grant of UAS licence by changed criteria was creating controversy in the country leading to the registration of the instant case. Sh. A. Raja had justified the changed criteria, as referred to above, but this important issue was not placed before the then Hon'ble Prime Minister at the right time. This was done only when the controversy broke out after issue of LOIs on 10.01.2008.

1805. On seeing the note dated 15.01.2008, the then Hon'ble Prime Minister was left with no option except to express his resentment, which is clear from note, Ex PW 82/DC-6, dated 23.01.2008, recorded on slip, which reads as under:

> "PM wants this informally shared with the department. Does not want a formal communication and wants PMO to be at arms length."

On this, Sh. Pulok Chatterjee recorded note dated 25.01.2008, Ex PW 82/DC-7, recorded on the same slip, which reads as under:

> "Informally shared with Secretary, DoT. We may keep on file."

1806. The question is: Who misrepresented the facts to the

then Hon'ble Prime Minister? It was not Sh. A. Raja, but Sh. Pulok Chatterjee, in consultation with Sh. T. K. A. Nair, as he had suppressed the most relevant and controversial part of the letter of Sh. A. Raja from the then Hon'ble Prime Minister. If the words "Wants PMO to be at arms length" are read in the context of the case, it is clear that they are aimed at officials of the PMO and not at Sh. A. Raja. Why? Because whatever Sh. A. Raja intended to do relating to telecom licences was conveyed by him to the then Hon'ble Prime Minister in his letter, but the PMO presented only a partial view to the then Hon'ble Prime Minister on 07.01.2008, vide note dated 06.01.2008, Ex PW 82/DC-3. Accordingly, DoT issued 120 LOIs on 10.01.2008. Thus, the record shows that the facts were misrepresented to the then Hon'ble Prime Minister by the officials of the PMO and not by Sh. A. Raja. PW 153 Sh. Vivek Priyadarshi in his cross-examination dated 20.11.2013, pages 10 and 11, deposed in roundabout manner about this issue as under:

> ".....I had visited the PMO on 09.03.2011. It is correct that as per file Ex PW 82/DC, page 6/N, already Ex PW 82/DC-4, Hon'ble Prime Minister was having knowledge of issuance of LOIs on 11.01.2008. I had seen this file during my visit to PMO, but did not seize it because I did not find it relevant to the case for the reason that it did not reveal any communication of decision or views of the PMO to MOC&IT other than which it had already conveyed vide letter dated 02.11.2007; and because it also revealed that the matter was yet under consideration at PMO when the LOIs were issued by DoT on 10.01.2008. It is correct that letter

dated 26.12.2007 was written by A. Raja to PMO was dealt with in this file. It is wrong to suggest that I did not seize this file on account of noting of Sh. Pulok Chatterji at page 5/N and a chit at page 7/N, already Ex PW 82/DC-6, as this material would have gone against the prosecution case. I did not examine Sh. Pulok Chatterji to find out as to what conversation he had with new Secretary Sh. Sidharath Behura. It is wrong to suggest that for these reasons this file was most relevant. It is wrong to suggest that PMO was aware of the goings-on in the DoT regarding the issuance of LOIs and licences through this file prior to 10.01.2008. It is wrong to suggest that I am deposing falsely on this point as noting of Sh. Pulok Chatterji is dated 06.01.2008....."

This cross-examination of IO as well as the note dated 06.01.2008, Ex PW 82/DC-3, recorded by Sh. Pulok Chatterjee shows that he (Pulok Chatterjee) had spoken to Secretary (T) and during that he gave go ahead to DoT, but later on, entire blame was shifted to Sh. A. Raja.

1807. In his further cross-examination, pages 12 and 13, PW 153 Sh. Vivek Priyadarshi deposed as under:

".....**Ques**: I put it to you that if there was anything wrong in the actions of A. Raja relating to the issuance of LOIs, UAS licences and allocation of spectrum, PMO could have stopped that, being aware of the same before or after the event?
Ans: During investigation it came on record that DoT had asserted in response to the suggestions of Ministry of Finance to seek enhanced entry fee from the new UAS LOI holders on the basis that since LOIs had already been issued, they were now contractually obliged to sign UAS licences with the new LOI holders and to give start up spectrum to them at the old 2001 prices, although Ministry of

> Finance was of the view that such changes could be made even after LOIs were issued as per provisions contained therein. However, upon further deliberations between the two Ministries, it was decided not to cancel LOIs as these had already been issued and at least to enhance spectrum charges for further licences and additional spectrum. In aforesaid background PMO also could decide. However, I am not aware of any such decision……."

The investigating officer has avoided giving answer to the question by referring only to entry fee and nothing else. Thus, it is clear that complete facts were not placed before the then Hon'ble Prime Minister by his own office for which Sh. A. Raja cannot be faulted.

About Public spirited Persons/ Private Applicants

1808. It may be noted that trial of the instant case attracted lot of public attention. Everyone was curious to know about the case. Due to this, the Courtroom would always remain overcrowded, filled up with persons from all sections of society. Due to this, scores of people appeared before the Court and submitted that true facts had not been placed before the Court. However, when questioned as to whether they were in possession of any definite material for making such an assertion, almost all of them withdrew and left. But about a dozen of such persons filed written applications asking either for further investigation of the case or summoning of additional accused left out by the CBI. However, none of these applications were found to be supported by any legally admissible material. All the applications were based either on the material already

on Court record or wholly irrelevant material. Accordingly, all these applications resulted in dismissal. Still many people kept appearing before the Court till the last submitting that entire facts were not placed before the Court. When questioned about the material in their possession, all were found to be lacking in this. None of them volunteered to be a Court witness.

1809. I may note that the last of such applications was filed on 25.08.2017 by one Dr. Amaidhy, a senior citizen from Chennai. He alleged that investigation of the instant case was not conducted in a fair manner. He also alleged that the murder of Sh. Sadhick Batcha was also not investigated in a fair manner. He also stated that Sh. Sadhick Batcha was willing to become an approver in the instant case and that is why he was killed. However, this application was also found to be full of unfounded allegations. This application was also dismissed vide order dated 15.09.2017.

1810. It is also to be noted that there are many representations on record made by various prominent public spirited persons before various Authorities relating to wrongdoing in the instant case. However, none of them also volunteered to enter the witness-box. What does all this mean? Apparently this means that nobody had any good or first hand material in his possession. The fate of the case thus depended upon witnesses from DoT and from the companies of the accused. The witnesses from DoT were either highly guarded, and if I may say so hesitant, in their deposition, and also went against official record rendering themselves unreliable.

Witnesses from the companies of the accused also did not support the prosecution version.

1811. I may also add that for the last about seven years, on all working days, summer vacation included, I religiously sat in the open Court from 10 AM to 5 PM, awaiting for someone with some legally admissible evidence in his possession, but all in vain. Not a single soul turned up. This indicates that everybody was going by public perception created by rumour, gossip and speculation. However, public perception has no place in judicial proceedings.

About the Prosecution

1812. In the beginning, the prosecution started with the case with great enthusiasm and ardour. However, as the case progressed, it became highly cautious and guarded in its attitude making it difficult to find out as to what prosecution wanted to prove. However, by the end, the quality of prosecution totally deteriorated and it became directionless and diffident. Not much is required to be written as the things are apparent from the perusal of the evidence itself. However, a few instances would suffice to indicate the behaviour of the prosecution. Several applications and replies were filed in the Court on behalf of the prosecution. However, in the latter and also in the final phase of the trial, no senior officer or prosecutor was willing to sign these applications or replies and the same used to be signed by a junior most officer Inspector Manoj Kumar posted in the Court. When questioned, the reply

of the regular Sr. PP would be that the learned Spl. PP would sign it and when the learned Spl. PP was questioned, he would say that CBI people would sign it. Ultimately, the petition/ reply would be filed under the signature of Inspector. This shows that neither any investigator nor any prosecutor was willing to take any responsibility for what was being filed or said in the Court.

Also, when final arguments started, learned Spl. PP submitted that he would file written submissions. But instead of filing written submissions, he started arguing the matter orally and argued it for several months. On conclusion of final arguments for the prosecution, he did not file written arguments, but instead submitted that he would file it only when the defence would file its written arguments. That was highly unfair. The prosecutor should have filed his written submissions in the first instance or at least contemporaneously with the oral submissions, so that the defence had a clear view of the case of the prosecution. The final arguments for the defence started and they kept filing their written submissions contemporaneously with their oral submissions. When the rebuttal arguments started only then the prosecution started filing its written arguments on day-to-day basis, apart from making oral submissions. In a sense, the main address of the prosecution was made during the rebuttal arguments. In order to meet this unique situation, the defence had to be given extra two days for further rebutting the arguments of the prosecution introduced through written arguments. Not only this, the most painful part is that learned Spl. PP was not ready to sign the

written submissions filed by him. What is the use of a document in a Court of law, which is not signed by anyone? When questioned as to why the learned Spl. PP was filing unsigned written submissions, his reply would be that some defence advocates had also not signed the written submissions. Great efforts had to be made to persuade the learned Spl. PP to sign the written submissions, but all in vain. Thereafter, written orders had to be repeatedly passed to make him sign the written submissions filed by him in the Court under the threat that unsigned written submissions would not be taken note of. Only thereafter he yielded and signed the written submissions. When the learned regular Sr. PP and the Inspector present in the Court were questioned as to why they were not signing the written submissions, their reply was that the same were not coming from their office and were instead coming from the office of the learned Spl. PP. Their submission was that unless these written arguments were processed in their office, they would not sign it. This shows that the learned Spl. PP and the regular prosecutor were moving in two different directions without any coordination. Many more things can be said but that would only add to the length of the order.

1813. In the end, examination of the action or inaction of officials belonging to various departments, that is, DoT, Law Ministry, Finance Ministry and PMO, shows that the controversy about the issue of LOIs on 10.01.2008 and subsequent grant of licences and allocation of spectrum arose due to unnecessary questions and objections raised by some of the officials and

unwarranted suggestions put forward by others. None of these suggestions were carried to logical conclusion and were left unaddressed in between. These were used by others to create unnecessary controversy.

About the DoT Files

1814. It may be noted that the policy decisions of DoT are scattered in different official files and, as such, are difficult to trace and understand. For example, the introduction of UAS licensing regime and issue of addendum to NTP-99 was dealt with in file D-591. The first-come first-served policy was enunciated in file D-592. TRAI Recommendations were sought vide noting in file D-5 and were processed and approved therein. The issue of stoppage of processing of pending applications for UAS Licences awaiting TRAI Recommendations was dealt with in file D-44. The issue of sending a reference to learned SG was dealt with in file D-7 and many important policy decisions were taken in this file. The issue of cut-off date was dealt with by opening a new file, that is, file D-6. Note dated 07.01.2008, Ex PW 60/O-1, recorded by Sh. R. K. Chandolia for sending letters exchanged between Sh. A. Raja and Hon'ble PM to Sh. A. K. Srivastava, have been placed in file D-598. These are only a few examples of how policy issues are strewn around here and there in a disorderly manner. Because of this, it becomes very difficult for outside agencies and institutions to understand issues in proper perspective, leaving scope for controversy.

Furthermore, files are also opened and closed too quickly in an haphazard manner even for a small issue and there is no systematic way of dealing with issues in one file in a sequential manner at one place. Documents relating to one issue are placed or inserted whimsically in any file without any regard for relevance of the issue. It becomes very difficult to know as to how many files were opened for dealing with a particular issue and why. It also becomes very difficult to arrange and align such files in consecutive manner to understand the progress of the case from beginning to end. For example, a meeting was held in DoT on 06.11.2007 and consequent to that, note dated 07.11.2007, Ex PW 36/B-10, was recorded for processing of applications and issue of LOIs. However, there are no minutes of this meeting, except reference in the above note. The officers disowned the content of this note by giving different interpretations and it became very difficult to know as to which officer expressed what view as everyone blamed others. Not only this, PMO was informed about this decision on the same day vide letter dated 06.11.2007, but a copy of this letter was placed in file D-6, which is wholly unconnected with the issue. When documents are not traceable easily and readily and policy issues are scattered haphazardly in so many files, it becomes difficult for anyone to understand the issues. Non-understanding of issues in proper perspective led to a suspicion of grave wrongdoing, where there was none, at least as per record of the Court. This factor greatly contributed to the controversy in the instant case

as the DoT could neither effectively communicate the issues to others nor others could understand the same. The issues got snowballed when media reports started appearing. One of the first media reports was a news item dated 08.11.2007 in Economic Times captioned "Jarring Call: Grabbing precious spectrum for a song", Ex PW 60/K-143. This was also dealt with in file D-6 vide note dated 08.11.2007, Ex PW 36/E-7, recorded by Sh. A. K. Srivastava. This news item highlighted that MOC&IT had not accepted the Recommendations of TRAI and DoT for auction of 2G spectrum and thus, a loss of Rs. 10,000 crore would be caused to the Exchequer. This news item was rightly denied by the DoT as factually incorrect. However, on account of the various actions and inactions of the officials, as noted above, nobody believed the version of DoT and a huge scam was seen by everyone where there was none. These factors compelled people to conjecture about a big scam. Thus, some people created a scam by artfully arranging a few selected facts and exaggerating things beyond recognition to astronomical levels.

1815. The lack of clarity in the policies as well as Guidelines also added to the confusion. The Guidelines have been framed in such technical language that meaning of many terms are not clear even to DoT officers. When the officers of the department themselves do not understand the departmental guidelines and their glossary, how can they blame companies/ others for violation of the same. The worst thing is that despite knowing that the meaning of a particular term was ambiguous

and may lead to problems, no steps were taken to rectify the situation. This continued year after year. For example, in the instant case, large part of the controversy relates to interpretation of clause 8, dealing with substantial equity. The terms used in this clause include "Associate", "Promoter", "Stake" etc. No one in the DoT knows their meaning, despite the fact that the Guidelines were framed by the DoT itself. The interpretation of these words is haunting the DoT since these words were first used, but no steps were taken to assign them a specific meaning. In such circumstances, DoT officers themselves are responsible for the entire mess.

Furthermore, notes recorded by various officers in the files are in highly illegible handwriting which are difficult to read and understand. A wrong impression and understanding is created by such badly written notes. Furthermore, the notes are either cryptic, even telegraphic, or extremely lengthy, recorded in highly technical and layered language, which cannot easily be understood by others, but can conveniently be used for finding fault with the superior authorities for agreeing to or disagreeing from it, as the case may be. Notes have also been recorded on extreme margins of the note sheet, some of which have become frayed with the passage of time and cannot be read and understood properly. Non-understanding of the official notes by outside agency creates an impression of wrongdoing.

1816. Thus, the genesis of the instant case lies not so much in the actions of Sh. A. Raja but in the action/inaction of others, referred to above. There is no material on record to

show that Sh. A. Raja was mother lode of conspiracy in the instant case. There is also no evidence of his no-holds-barred immersion in any wrongdoing, conspiracy or corruption.

1817. There is no evidence on the record produced before the Court indicating any criminality in the acts allegedly committed by the accused persons relating to fixation of cut-off date, manipulation of first-come first-served policy, allocation of spectrum to dual technology applicants, ignoring ineligibility of STPL and Unitech group companies, non-revision of entry fee and transfer of Rs. 200 crore to Kalaignar TV (P) Limited as illegal gratification. The charge sheet of the instant case is based mainly on misreading, selective reading, non-reading and out of context reading of the official record. Further, it is based on some oral statements made by the witnesses during investigation, which the witnesses have not owned up in the witness-box. Lastly, if statements were made orally by the witnesses, the same were contrary to the official record and thus, not acceptable in law.

1818. I may add that many facts recorded in the charge sheet are factually incorrect, like Finance Secretary strongly recommending revision of entry fee, deletion of a clause of draft LOI by Sh. A. Raja, Recommendations of TRAI for revision of entry fee etc.

The end result of the above discussion is that, I have absolutely no hesitation in holding that the prosecution has miserably failed to prove any charge against any of the accused, made in its well choreographed charge sheet.

1819. Accordingly, all accused are entitled to be acquitted and are acquitted.

1820. The bail bonds of the accused are hereby cancelled and sureties stand discharged. Documents, if any, of the sureties be returned to them after cancellation of endorsement thereon, if any.

1821. In terms of provisions of Section 437A CrPC, all accused are directed to furnish bail bond in the sum of Rs. Five lac with one surety in the like amount for appearance before the Hon'ble Appellate Court, as and when required.

1822. I also record my deep appreciation for Advocates for both parties for the hard work put in by them during the trial of this voluminous, technical and complex case, the record of which runs into about three-four lac pages.

1823. File be consigned to the **Record Room**.

Announced in open Court
today on 21.12.2017

(O.P. Saini)
Spl. Judge/CBI(04)/ PMLA
(2G Spectrum Cases)
New Delhi