CHAPTER – VII

Revenue shared by M/s Sistema Shyam Teleservices Limited and M/s Shyam Internet Services Limited

7.1 Brief Profile of SSTL and SISL

Shyam Telelink Limited (STLL) was incorporated on 20 April 1995. During the financial year 2007-08, SISTEMA Joint Stock Financial Corporation of Russia acquired the controlling stake in STLL and the Company became subsidiary of SISTEMA. SISTEMA's shareholding in STLL was 73.74 *percent* as of 31st March 2008. The name of the company was changed from ShyamTelelink Ltd to Sistema Shyam Teleservices Ltd (SSTL) with effect from 22 January 2009. As on 31 March 2015, SISTEMA's shareholding is 56.68 *percent* and continues to be the holding company of SSTL.

Shyam Internet Services Limited (SISL) was incorporated on 10th May 2000 and was granted Category 'A' License in November 2000 for operating Internet Services throughout the country. The company has converted the License to Category 'B' License in December 2003 and has started its services commercially from November 2001. The company is a wholly owned subsidiary of SSTL.

7.1.1 Licences granted to SSTL and SISL

STLL was awarded Basic Telephony Service License by Department of Telecommunications (DoT) on 4 March 1998 for the Rajasthan service area and commenced its commercial operations in Jaipur under the Brand name 'Rainbow' from June 2000.

In accordance with the DoT guidelines on Unified Access (Basic and Cellular) Services License (UAS) dated 11 November 2003, the Company migrated to the UAS with effect from 14 November 2003.

On 25 January 2008, STLL acquired UAS for 21[1] telecom circles, thus becoming licensee to provide its services across the country.

The Supreme Court of India vide its judgment dated 2 February 2012 quashed 122 telecom licenses granted to various Telecom Operators on or after 10 January 2008. The licenses also included the license for 21 circles held by SSTL. The license held by SSTL (erstwhile STLL) for Rajasthan Circle was not covered by the said order as it was issued prior to 10 January 2008.

[1] AP, Assam, Bihar, Delhi, Gujarat, Haryana, HP, J&K, Karnataka, Kerala, Kolkata, MP, Maharashtra, Mumbai, NE, Orissa, Punjab, TN, UP (E), UP (W), West Bengal.

Subsequently, the Company participated in spectrum auction conducted by DoT in March 2013 and won the " Right to Use of Spectrum" in eight telecom circles of India namely Delhi, Gujarat, Karnataka, Kerala, Kolkata, Tamil Nadu, Uttar Pradesh (West) and West Bengal for a period of 20 years. On 3 October 2013 DoT issued Unified License - Access Services to the Company for the above eight telecom circles for 20 years. On 9 October 2013, DoT allotted the right to use spectrum in the said telecom circles for 20 years as per terms of auction.

On 3 September 2014, the Company received authorization under the Unified License (UL) to provide National Long Distance (NLD) services.

Shyam Internet Services Ltd (SISL), a 100 *percent* subsidiary company of SSTL, was awarded ISP Category B license by DoT on 18 December 2003.

7.1.2 Spectrum allotted to SSTL

SSTL is basically a CDMA (Code Division Multiple Access) operator. The LSA wise spectrum allotted to SSTL as on 31 March 2015 is given below.

Table – 7.1
LSA-wise spectrum allotted

LSA	CDMA Spectrum allotted (in MHz)	MW Access Spectrum	MW Backbone Spectrum
		(in MHz)[2]	
Delhi	3.75	112	Nil
Gujarat	3.75	56	Nil
Karnataka	3.75	112	Nil
Kerala	3.75	112	Nil
Kolkata	3.75	56	Nil
Rajasthan	3.75	56	Nil
Tamil Nadu	3.75	112	Nil
UP (West)	3.75	112	Nil
West Bengal	3.75	112	Nil

Note: (1) The company had 4.4 MHz GSM Spectrum in Rajasthan LSA.

(2) From 2008-09 to 2011-12 the company had 2.5 MHz CDMA spectrum in 21LSAs (except Rajasthan) which was cancelled by the Supreme Court of India in February 2012

[2] One carrier = 56 MHz

.7.1.3 Gross Revenue, Deduction, Adjusted Gross Revenue reported and revenue share paid by SSTL

Telecom Service Providers are required to pay LF and SUC at a percentage of AGR on quarterly basis on self-assessment basis. GR, Deductions, AGR reported and revenue shared (LF and SUC) by SSTL during these years are as follows:

Table –7.2

(₹in crore)

Year	Subscriber Base* (In lakh)	GR	Deductions	AGR	Percentage of AGR to GR	Revenue share (LF+SUC)
2006-07	2.74	151.50	45.60	105.90	70	9.82
2007-08	2.67	128.11	48.09	80.01	62	7.45
2008-09	7.29	95.19	45.26	49.93	52	5.25
2009-10	38.50	237.03	84.60	152.43	64	15.94
2010-11	138.44	691.06	244.81	446.25	65	53.43
2011-12	207.00	1,390.02	366.99	1,023.04	74	124.79
2012-13	171.00	1,561.97	386.64	1,175.33	75	139.00
2013-14	90.90	1,192.21	326.53	865.68	73	96.79
2014-15	89.20	1,389.90	292.48	1,097.42	79	122.77
Total		**6,836.99**	**1,841**	**4,995.99**		**575.24**

Source: 1. Statements of Revenue and License Fee of SSTL.

2. TRAI Annual Reports 2007-08 to 2014-15.

Licenses in 21 circles were cancelled by Hon'ble Supreme Court in February 2012. SSTL filed curative petition before the Hon'ble Supreme Court and discontinued telecom services in 13 circles on 11 March 13.

7.2 Under reporting of revenue by SSTL

As mentioned in para 1.2 (a), the GR shall be inclusive of all types of revenue stated therein without any set-off for related item of expense etc. and as brought out in Para 1.3, service revenue shall be shown gross and details of discount/rebate indicated separately.

Audit examination of records/Books of accounts (Vouchers, General Ledger (GL), Trial Balance (TB), Profit and Loss Accounts (P&L account), Balance Sheets, etc.) of SSTL revealed that the Company had not adhered to the provisions of the License Agreement as brought out in the succeeding paras:

7.2.1 Under reporting of revenue due to netting off of revenue pertaining to Commission/discounts/waivers/Free Air Time

Scrutiny of TBs for the years 2006-07 to 2014-15 relating to SSTL revealed that certain revenue account heads such as Primary Revenue Waiver - Rev A, Primary Rev Waiver-Wireless - E-charge, Prepaid Revenue -FAT (free air time) wireless, Smartphone Free Air Time-PrP, Primary Rev Waiver - Wireless - Paper recharge, Revenue-Free Data (Rev-B) – Prepaid, Revenue-Free Data –Post Prepaid, Discount – Wireline, etc. had debit balances. These debit balances amounting to ₹ 306.24 crore for the years from 2008-09 to 2014-15 were set off adjusted service revenue. Set off of debit balances against revenue resulted in revenue getting netted-off in the books of accounts.

The consolidated amount of debit balances in the revenue heads and its impact on LF and SUC are given below:

Table – 7.3

(₹in crore)

Revenue Account Heads	Debit balances in revenue heads	LF Impact	SUC Impact	Annexure Reference
Discount/Waivers to Dealers[3] (**Waiver-Wireless-paper recharge, Waiver-Wireless-E-charge, Discounts to dealers, etc.)**	172.41	14.75	4.30	**7.01**
Free Airtime[4] (**Prepaid Revenue -FAT (Free Air Time) wireless, Smartphone Free Air Time-PrP etc.,)**	133.01	11.15	3.32	**7.02**
Free data usage charges[5] (**Revenue-Free data, Revenue-Data processing fee, Smartphone data usage charges etc.,)**	0.82	0.08	0.02	**7.03**
Total	**306.24**	**25.98**	**7.64**	

Management stated (September 2016) that -

- The GLs were reclassified into two major categories for the purpose of brevity and proper explanations i.e. Extra talk time given to subscribers in line with tariff plans filed with TRAI amounting to ₹ 133.83 crore (covering Free airtime & Free data usage charges) and Discount to distributors amounting to ₹ 172.40 crore (covering waivers/discounts/distributor commission).
- The GLs as highlighted by audit were having debit balances only on account of accounting treatment of extra talk value given to subscribers as per the TRAI filings

[3] For the years 2006-07 to 2007-08 SAP was not available and netting off of discount was not noticed by Audit in the TB provided.
[4] For the years 2006-07 to 2007-08 SAP was not available and netting off of discount was not noticed by Audit in the TB provided.
[5] For the years 2006-07 to 2008-09 SAP was not available and netting off of Free Data Usage Charge was not noticed by Audit.

only. In certain prepaid tariff scheme, if extra airtime was provided to subscribers on making recharge through specified recharge vouchers denominations, the tariff amounts which were actually paid by the subscribers were ultimately booked as revenue. The company had recognised the full value of Gross receipt from subscriber as revenue and accordingly the amount of LF payable was correctly declared in AGR filed to DoT. The amount of notional revenue sought to be included in AGR was not as per the license agreement.

- Regarding Discount to distributors, SSTL enters into separate agreement with the distributors on principal to principal basis (P2P) and hence, the trade margin on bulk purchase on recharge vouchers paid to the distributors should not be added back for the purpose of computing LF.

Contention of the Management was not acceptable. Audit view on the treatment of netting off of revenue pertaining to Commission/discounts/waivers/Free Air Time for revenue share has been explained under Para 2.2.1 (A & B) of this Report.

Thus, netting off of discount to distributors and FAT amounting to ₹ 306.24 crore resulted in short payment of LF and SUC by ₹ 25.98 and ₹ 7.64 crore respectively.

7.2.2 Under reporting of revenue from Forex gain for GR/AGR

In terms of license agreement, the 'Gross Revenue shall be inclusive of installation charges, late fees and any other miscellaneous revenue, without any set-off for related item of expense, etc.'. Hence, realised Forex gain should be considered for the purpose of revenue share without any set off of related item of expense.

Audit observed that the Company had a complex system of accounting Forex gain/loss. It had ten GL codes and on enquiry it was found that the segregated realised Forex gain was not directly available in the GL. Further, audit noticed that most of the exchange rate fluctuation gain/loss was on account of foreign loans taken by the Company.

In this regard the Management has also stated that:

- Nomenclature i.e., Exchange rate fluctuation-Gain, Unrealized- Exchange rate fluctuation-Gain etc., given in the GL account codes cannot be considered for any audit observation, as these were never confirmed by company.
- The accounting system "SAP" had multiple restriction and limitation and due to this various entries were not accounted as per their nomenclature.

Forex gain/losses result from individual transactions and hence, individual transactions cannot be clubbed. Also, forex gain/loss can undergo changes depending on the mechanism of individual contracts therefore losses cannot be netted off for the purpose of revenue share.

Hence, for quantification of realised forex gain, audit has considered the above constraints and based on the GL codes that impacted the P&L A/c, worked out the realised forex gain of by picking up all the credits without any set off of forex losses during the years 2009-10 to 2014-15 and by deleting all credit entries relating to reclassification/rectification/re-valuation/ duplications. After taking into account the documents, calculations and the reply submitted by the Management the amount of realised forex gains works out to ₹ 6.41 crore.

As mentioned at para 2.2.5 of this report, Audit could not arrive at the actual value of items accounted under realised gain every year for want of original value of each item. The operator should calculate the gain of each item with reference to its initial value of accounting and include the total forex gain in GR/AGR.

Management replied (September 2016) that

- The Accounting Standard 9 of Revenue Recognition specifically excludes the foreign exchange gain from the definition of revenue.
- The gain/loss on account of exchange difference are notional in nature and such reduction of liabilities/loans cannot be treated as revenue from operations. The realised forex gain is towards overall business risk and company would assume in foreign currency transactions.
- TDSAT (April 2015) had ruled that Forex gains are not to be included in the AGR.

Audit views on the reply of the Management are as given below:

- AS-9 only states that realised or unrealised gains resulting from changes in foreign exchange rates and adjustments arising on the translation of foreign currency financial statements were not included within the definition of "revenue" for the purpose of this Standard (AS-9). Treatment of forex gain/loss is covered under AS-11.
- The Company has been following mercantile method of accounting and as per commercial principle of accounting, "the profit/loss" is to be arrived after taking into account all accrued receipts and expenses and comparing of trading assets between two different dates. Under the mercantile system of accounting a forex gain (revenue)/loss (expenditure) incurred as a result of exchange differences are rational and cannot be considered as contingent/notional in nature. Further, audit has considered the realised gain only.

- Audit noted that DoT had gone on appeal against the TDSAT judgment of April 2015. While the matter is sub-judice at the Hon'ble Supreme Court, Audit is of the view that forex gains should be a part of GR computed for payment of revenue share since it fall within the broad definition of GR given in the License agreement.

Thus, non-reporting of forex gain for the purposes of revenue share in accordance with the License Conditions resulted in its understatement to the extent of ₹ 6.41 crore for the years 2009-10 to 2014-15 leading to short payment of LF & SUC amounting to ₹ 0.55 crore and ₹ 0.15 crore respectively (**Annexure-7.04**).

7.3 Under reporting of revenue in the Statements of Revenue and LF (AGR Statements) though reported in the books of accounts.

7.3.1 Non consideration of other income in the AGR

As per the terms of the license agreement, all revenue incomes have to be included in GR for the purpose of license fee. However, scrutiny of P&L Account, TBs and the AGR statements for the years 2006-07 to 2014-15 relating to SSTL revealed that certain revenue account heads such as interest income, miscellaneous income and dividend income were excluded from the GR for the purpose of LF and SUC.

Consequently, GR in the Statement of Revenue and License Fee submitted to DoT for the years 2006-07 to 2014-15 was short to the extent of ₹ 383.14 crore. The details are given below.

Table – 7.4

(₹in crore)

Revenue Heads	Amount not considered for AGR
Interest Income	380.55
Miscellaneous Income	2.54
Dividend Income	0.05
Total	**383.14**

SSTL Management stated that -

- The company was having license for providing telecom services and it generates revenue by way of provision/delivery of services. The revenue not related to provisioning of services does not require license to operate and were not in the ordinary course of activity of the company.
- With respect to financial years 2006-07 to 2011-12, license fee on non-license activity (Treasury income, Other Income, profit on sale of assets etc.) was not payable by SSTL since accrual of these income of the company was mainly on account of treasury activities.
- The TDSAT passed judgement on 30 August 2007 stating that the interest earned on investment was to be excluded from the GR/AGR for the purpose of LF. The issue was settled with a decision of non-applicability of LF/SUC on treasury income. The TDSAT judgment was in force till the Judgment dated 11 October 2011of the Supreme Court of India.
- After the Supreme Court judgment, SSTL has made payment of LF & SUC under protest on treasury income, etc. from financial year 2012-13 till date to avoid interest and penalty and currently the matter is sub-judice before the Supreme Court of India.

Audit view on the management reply is as follows:

- Licence agreement clearly prescribes the inclusion of interest, dividend and any other miscellaneous revenue in GR/AGR.
- TDSAT judgment 30 August 2007 has become null and void after Hon'ble Supreme Court judgment dated 11 October 2011.
- Audit has considered the payment of LF & SUC by SSTL during the years 2012-13 to 2014-15 on Interest income, Miscellaneous income, Dividend income, etc. amounting to ₹ 135.09 crore and has worked out the LF and SUC impact on the balance amount of ₹ 248.05crore (₹ 383.14 - ₹ 135.09 = ₹ 248.05).

Thus, non-consideration of other income to the extent of ₹ 248.05 crore for the purposes of revenue share during the period from 2006-07 to 2011-12 resulted in under reporting of GR/AGR to that extent leading to short payment of LF and SUC by ₹ 21.79 crore and ₹ 5.59 crore respectively (**Annexures – 7.05, 7.06 and 7.07**).

7.3.2 Non consideration of certain revenue for calculation of SUC

Format of Statement of Revenue and License Fee (AGR Statement) prescribed as Appendix II to Annexure II as referred in Clause 20.4 of the UASL agreement, is an integral part of the License Agreement. In the Statement, item 1 A has been prescribed to reflect the "Revenue from Wireline Subscribers" and item 7,8,9 and 11 has been prescribed to reflect the revenue from "sharing/leasing of Infrastructure, sale/lease of bandwidth, links, R&G cases, turnkey projects, etc."

Clause 18.3 of UASL agreement provides that "While calculating AGR for limited purpose of levying Spectrum Charges based on revenue share, revenue from Wireline Subscribers shall not be taken into account".

Audit scrutiny revealed that in respect of SSTL (Rajasthan LSA[6]) the following revenues other than 'Revenue from Wireline Subscribers' for the years 2006-07 to 2014-15 amounting to ₹ 40.22 crore **(Annexure 7.08)** were not considered for computation of Spectrum Usage Charges (SUC), in the respective years as given below which was in contravention of the provisions of the License agreements. This resulted in understatement of AGR to the extent of ₹ 40.22 crore and consequent under payment of SUC.

Management stated (September 2016) that Clause 18.3 of UASL agreement mandates that revenue only from wireless subscribers shall be taken into account for calculating SUC. Hence, revenue from lease line, revenue from sharing of infrastructure, IUC and treasury income was not to be considered for calculation of SUC.

The reply is not acceptable as in terms of clause 18.3 of UASL agreement, revenue from wireline subscribers (item 1A of the Statement) only needs to be excluded for spectrum

[6] This observation was not noticed in other LSAs as wireline services were not provided in those LSAs by SSTL.

charges. Since revenue from sharing/leasing of Infrastructure, sale/lease of bandwidth, links, R&G cases, turn key projects, etc. was in item 7, 8, 9 and 11 of the statement, above revenue should be considered for computation of Spectrum charges also.

Thus, non-inclusion of revenue from lease line, revenue from sharing of infrastructure and treasury income resulted in understatement of GR/AGR to the extent of ₹ 40.22 crore and consequent short payment of SUC amounting to ₹ 0.91 crore.

7.4 Interest on short/non-payment of LF and SUC

On issues raised above (from paras 7.2 to 7.3) short/non-payment of LF and SUC worked out to ₹ 48.32 crore and ₹ 14.29 crore respectively. The interest on this short/non-payment of LF and SUC is ₹ 54.10 crore **(Annexure-7.09).** The calculation of interest was based on the rate prescribed in the Licence agreement i.e. 2 *per cent* above the Prime Lending Rate of State Bank of India existing as on the beginning of the financial year and the period considered for the calculation was from the end of the concerned financial year up to March 2016. The interest has been compounded monthly as prescribed in the licence agreement.

7.5 Non-compliance to license agreement regarding norms for preparation of Annual Financial Statements by SSTL

The Unified access Service License and the Unified License agreement, Annexure-III (Between DoT & SSTL) provides norms for preparation of Annual Financial Statement by the Service Provider for the purpose of Revenue Share.

Some of the salient requirements under the norms are as below:

- Service revenue (amount billable) shall be shown gross and details of discount/rebate indicated separately.
- Item-wise details of income that has been set off against corresponding expenditure.
- Security or any other Deposits taken from the subscribers shall be shown separately, for each category and the amount that has fallen due for refund but yet to be paid also disclosed under two categories, namely: (1) up to 45 days (2) more than 45 days.
- Details of reversal of previous years' debits, if any shall be shown component wise, under miscellaneous head (e.g. Bad debts recovered etc.)

The Management was requested to provide the records as required to be maintained under the license agreement. In reply, the Management stated that they have mapped the requisite information to their GLs/financials and has not given any separate information as required to be maintained as per the norms of the License agreement.

These Financial Statements/Books of Accounts (General Ledger, Trial Balance, Profit and Loss Accounts, Balance sheet) are prepared as per the Companies Act and the Indian Accounting Standards but do not directly provide the information as required to be maintained under the norms for preparation of Annual Financial Statement as per the License Agreement.

Instances of understatement of revenue as brought out in the report would confirm that the revenue recognised for payment of licence fee were not in line with the licence conditions nor the preparation of accounts was fully compliant with the norms prescribed by DoT. Few such instances are given below:

- As per the norms revenue was to be shown as gross without any deductions. However, as detailed in paragraph of this report it can be seen that Discount/Commission/ Waivers, Free airtime etc., were netted off from revenue and not disclosed to DoT.

- In paragraph 2 it was mentioned that revenue was netted off by reclassification entries. This was due to non-compliance to the prescribed norms of providing figures of gross revenue without netting off.

DoT was asked for its response on non-compliance of these conditions of the contract by the PSPs. DoT has not given any response till date.

In view of the above DoT has over the years failed to issue and enforce instructions to the Service Providers to comply with the norms for preparation of Annual Financial Statement as required under Annexure-III of the License Agreement which were vital. Consequently during the years 2006-07 to 2014-15, the Company netted off its revenue and DoT could not detect the same.

Further, Audit observed that during the years 2006-07 to 2014-15 the GR of SSTL was ₹ 6,837 crore, the deductions claimed was ₹ 1,841 crore and the average deduction percentage works out to 27 percent of the GR. Although the average deductions claimed by SSTL over a period of nine years from 2006-07 to 2014-15 was within 30 per cent of the GR still the verification of deductions claimed by the Company was done quarterly, LSA wise by the concerned Controllers of Communications Accounts (CsCA). However, correctness of majority of the revenue i.e. 70 per cent of the Gross Revenue is merely assessed based on self-declaration made by the Company at DoT Level.

Also, the LF Wing of DoT has failed to obtain the information as required to be maintained by the SSTL in accordance with Annexure-III of the License Agreement and absence of these data would render the process of verification and assessment ineffective.

Thus, the entire verification and assessment of Revenue Share of the Service Provider is focused on the verification of deductions claimed by the Service Providers instead of on their GR.

Also, the verification, assessment and issue of demand letters for LF and SUC relating to SSTL have been completed by DoT only up to the year 2012-13 and 2011-12 respectively. Delays in assessment and issue of demand letters will further delay the recovery of dues from the Service Provider.

On this being pointed out by audit, it was stated by the Management:

- The Auditors conclusion that SSTL is not maintaining the financial statements in terms of the License Agreement is factually incorrect. It is stated that SSTL maintains the financial statements in terms of the License Agreement.

- The observations of the auditor is derived from the financial books of accounts maintained by the company and it has failed to appreciate the fact that the reason for such observation is purely on account of prolonged litigation on interpretation of component of gross revenue which is still pending adjudication before the Supreme Court.

Audit views on the reply of the Management are as given below:

- The Management reply is not tenable as the Company has maintained the books of accounts in compliance to the AS and the Companies act. The requirement of Annexure III is different such as netting off from revenue is not permitted except the permissible three deductions and hence, the company has not complied with the terms of the License Agreement.

- Audit had to therefore, examine in detail all the books of accounts to determine the AGR and in the process found under reporting of revenue and excess claim of deductions as pointed out in the earlier paras. Had the Company complied and maintained the books of accounts as per the License Agreement the entire revenue of the Company along with deductions from the same for the purposes of GR/AGR would have been readily available.

7.6 Response of DoT/SSTL to the audit observations

Audit observations on the revenue share payable by M/s SSTL were communicated to DoT and SSTL during September 2016 for their further comments. DoT has furnished (February 2017) a consolidated reply for all the TSPs as mentioned in para 2.4. SSTL had reiterated once again (September 2016) their submission made in reply to audit observations issued during the course of premise audit along with General Comments and Specific Comments on Audit observations.

Audit has considered all the submissions made by SSTL and has addressed the same in the respective paras.

New Delhi
Dated : 22 March 2017

(P K Tiwari)
Director General of Audit
(Post and Telecommunications)

Countersigned

New Delhi
Dated : 24 March 2017

(Shashi Kant Sharma)
Comptroller and Auditor General of India