

# The Immaculate Conception of Reliance Jio

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Auctions, whether at Christie's or Sotheby's for works of art, or of telecommunications spectrum by the government of India, are fascinating psychological games. When the interests of large competing corporate groups are involved, not surprisingly, allegations are aired of criminal intent by manipulation of rules.

Even as the Department of Telecommunications (DoT) prepares for the next round of auctions of scarce – and hence, valuable – electromagnetic spectrum, the person at the helm of this important wing of the government is the same individual who supervised the controversial auctions of fourth-generation (4G) spectrum nearly six years ago that paved the way for a company in the Reliance group headed by the country's richest man, Mukesh Ambani, to become a key player in this field.

The earlier contentious electronic auctions of 4G spectrum were conducted over a period of 16 days from May 24, 2010 onwards, under the supervision of J S Deepak, a 1982 batch officer of the Indian Administrative Service who was, until recently, Secretary, Department of Electronics and Information Technology in the Ministry of Communications and Information Technology. On January 29, 2016, he was appointed Secretary, DoT, in the same Ministry.

Why were the May-June auctions of 4G spectrum in 2010 so controversial?

As a telecom expert explains, in a spectrum auction, there is a crucial extra twist: the bid value is made up of two parts. The first is the business value that the spectrum holds for the bidder and the possible destruction of value should the spectrum be secured by a competitor. The second part is that – unlike in a Sotheby's auction where the loser ends with a bruised ego – in an auction of telecom spectrum, the loser's bottom-line is badly bruised.

More than five years after the auctions took place, the losers — including Sunil Mittal's Bharti Airtel, Kumar Mangalam Birla's Idea Cellular and the UK-based multinational Vodafone — are all still smarting at the outcome. On the face of it, they were outwitted by a company which is now known as Reliance Jio Infocomm. But the company was then a little known firm called Infotel Broadband Services Private Limited (IBSPL), promoted by Anant Nahata, son of Mahendra Nahata (of Himachal Futuristic Communications Limited fame), which allegedly acted as a “front” for the Reliance group.

How did this microscopic company find the humungous amount of finance to become a major player in this intensely competitive industry? After all, companies headed by Anil Ambani's Reliance Communications, Vodafone and Tata Communications had to exit the 4G auction process because of the very high stakes involved.

## Fronting for Reliance

At the time it entered the auction, IBSPS had a paid-up capital of Rs 2.51 crore, a net worth of Rs 2.49 crore, and just one single leased line client from which it earned Rs 14.78 lakh. It also had no more than Rs 18 lakh in the bank and was [ranked 150th in the list of internet service providers](#) (ISPs) compiled by the Telecom Regulatory Authority of India (TRAI).

IBSPS's promoting company Infotel Digicom Private Limited (IDPL) had an equity capital of Rs 6 lakh and a net worth of Rs 8.55 lakh on 31 March 2009. IDPL did not have any fixed assets on that date and had earned a revenue of Rs 2.59 crore primarily in the form of "other income" and made a net profit of Rs 42.80 lakh in 2009-10.

Nevertheless, IBSPS managed to meet the financial requirements for bidders – an earnest money deposit in the form of a bank guarantee from Axis Bank of Rs 252.5 crore, a sum that was a hundred times its net worth. (Doubts have been raised about the authenticity of this bank guarantee, but that's another story.)

The e-auction for broadband wireless access spectrum ended on June 11, 2010, after 117 rounds. The provisional results recommended by an inter-ministerial committee (IMC) were to be approved by a committee of secretaries to the government of India headed by the cabinet secretary and including the finance secretary, the secretary to the now-defunct Planning Commission, and the secretary of the DoT.

The results of the auction were declared on the afternoon of June 11 with the approval of the IMC, indicating that IBSPS was the winner. According to a report of the Comptroller and Auditor General of India (CAG) presented in parliament on May 8, 2015, when the committee of secretaries met on June 12, 2010 to consider the recommendations of the IMC for approval of the provisional results, they were informed that the "auctioneer was satisfied with the conduct of the auction process".

It was also reiterated that "the electronic auction system was not compromised from both security and competition aspects and there was no indication of any collusive and coordinated bidding". The committee was informed that the details of the auction of broadband wireless access (BWA) spectrum including the provisional results had been scrutinised by the IMC and were recommended for approval.

Meanwhile, on June 11, at an extraordinary general meeting of its shareholders called at short notice, IBSPS raised its authorised share capital by 2,000 times, from Rs 3 crore to Rs 6,000 crore by issuing 75% of its shares to Reliance Industries Limited (RIL), a listed company and India's single biggest corporate entity in the private sector, making itself a subsidiary of the latter.

On June 19, 2010, IBPSL ceased to be a private limited company and became a public limited company. On January 22, 2013, the company was renamed Reliance Jio Infocomm Limited. This was done before IBSPS's memorandum of association – a document that governs the relationship of the company with external entities – was altered and the increase in its authorised share capital recorded by the Registrar of Companies in the Ministry of Corporate Affairs.

The director general (post & telecommunications) at the CAG's office had some sharp observations to make in his draft report: that IBSPL had not declared its relationship with Reliance Industries as an associate or partner in its application for participating in the auction for 4G spectrum when details of all applications were disclosed on the website of the DoT on April 6, 2010.

The draft report of the CAG prepared in 2013 did not mince words: "The DoT failed to recognise the tell-tale sign of rigging of the auction right from [the] beginning of the auction" in which a small ISP, Infotel Broadband Services Pvt Ltd (IBSPL) emerged as the winner of pan-India broadband spectrum by paying 5,000 times of its net worth.

"The government should get the matter investigated even at this juncture, fix responsibilities on the bidders, which violated the auction conditions/rules prescribed and cancel the allotment of the BWA spectrum along with exemplary punishment on the colluding firms," the draft report stated.

### **Upgrading the license**

It was only after the 4G spectrum auctions had concluded that Reliance's rivals realised the Mukesh Ambani-led company would eventually get to use the 2.3 GHz spectrum for mobile telecom services – instead of the obscure Nahata-owned operation using it for fixed line internet services. They now contend that the dynamics of the auction would have been very different had they known that the DoT would allow the BWA spectrum to be used not just for internet services but also for mobile telecom services.

All the claims about how spectrum prices were arrived at using "clean" auction-determined market prices seem to be under a dark shadow of doubt now. Had it been known that Infotel Broadband Services Private Limited (IBSPL) would overnight acquire a new avatar and no longer provide innocuous internet services, the entire auction strategy of Airtel, Idea, Vodafone and Anil Ambani's Reliance Communications would have been very different, it is argued. They had clearly been outwitted.

Though IBSPL had entered the 4G auction as an ISP (Internet Service Provider), which is the licence that remained in effect in its new incarnation as Reliance Jio, Mukesh Ambani's company applied to the DoT in 2011 for a "mobile country code" and a "mobile network code" that would enable an operator to set up a "public land mobile network" – a network that is operated either by the administration or an accepted agency for the purpose of providing land telecom services.

This was after the DoT had already clarified, first in 2008 and again in 2010, that voice services were permitted only using second generation (2G) and 3G spectrum. The TRAI had recommended that 4G or BWA spectrum should be utilised for faster diffusion of broadband and data services only. According to the Telecommunication Engineering Centre, a branch of the DoT, the technology platform that Reliance Jio wanted to use – long-term evolution (LTE), a 4G broadband wireless technology – had capabilities that were "much wider in scope" than those permitted in the ISP licence.

In April 2012, at the request of the DoT, the TRAI furnished guidelines on changing the licensing framework and replacing it with a new Unified Licence regime, which went on to facilitate the migration of internet service providers into full service operators offering voice

services. The TRAI guidelines were deliberated upon by a DoT committee and subsequently by the Telecom Commission. Thereafter, two more committees were constituted to debate different aspects of the issue, one in August 2012 and one in September of the same year.

The upshot of these deliberations was that in February 2013, the conversion of ISP licences to the new unified licence was approved and Reliance Jio was the first to take advantage of this decision. The company paid an “entry fee” of Rs 15 crore and a “migration fee” of Rs 1,658 crore in August 2013 and was granted a unified licence on October 21, 2013, formally authorising it to provide voice services.

### **Adding up the loss to the exchequer**

The draft CAG report contended that the “migration fee” was a sum that had been decided upon in 2001 and as such did not correctly represent the true market value of the spectrum. The report estimated that if the rate of inflation between 2001 and 2013 was to be taken into account the “present value” of the 4G spectrum would be at least Rs 5,025 crore. The difference between the price paid and the price estimated, Rs 3,367 crore, was the loss to the public exchequer that ensued from the “undue advantage” given to Reliance Jio.

During the auctions of 2010, those holding unified access services (UAS) or cellular mobile telephone services (CMTS) licences had paid Rs 1,658 crore as an entry fee, while the ISP licensees had paid only Rs 30 lakh. Between 2001, when the price had been decided upon, and 2013, when Reliance Jio paid the entry fee, market conditions had changed dramatically. But in this case, the price was not modified to reflect present value.

The DoT’s permission had allowed ISP licensees holding 20 MHz BWA spectrum to offer pan-India voice calling services by paying the incremental Rs 1,658 crore as entry fee – a fraction of the market price for the same quantity of 3G/2G spectrum.

According to the draft CAG report, the difference between the proportionate prices for 20 Mhz band size in 2.1 Ghz spectrum band (3G) and 2.3 Ghz spectrum band (4G) was Rs 20,653 crore on the basis of the 2010 auction price. Add to that the “net” (not gross) present value of the entry fee for UAS licensees at the end of financial year 2009-10, that is Rs 3,847 crore minus Rs 1,658 crore, and the figure would increase to Rs 22,842 crore.

However, the report of the CAG that was tabled in parliament on May 8, 2015 estimated the losses ensuing from undue benefits extended to Reliance Jio to be only Rs 3,367 crore, as against Rs 22,842 crore mentioned in the draft report prepared in August 2014. What led to this dilution in numbers?

Senior advocate Harish Salve, who represents Reliance, has claimed in the Supreme Court that the discrepancy in numbers is due to the fact that someone had “planted” misinformation in the CAG’s office. At the press conference following the submission of the final report, when Suman Saxena, the deputy CAG, was asked how the figure of “undue benefit” to Reliance Jio had come down so drastically in the final report, she responded by saying: “A draft is a draft.”

According to a reliable source within the CAG who spoke on condition of anonymity, key officials of the auditing body were under both external and internal pressure. Two senior

government bureaucrats allegedly tried to influence officials in the CAG's office to "tone down" the report.

The source said that the head of Reliance Jio in Bihar met top officials in the CAG's office and sought to fix appointments with them to meet Mahendra Nahata, a director in Reliance Jio who is also the father of Anant Nahata, the promoter of IBSPL, the alleged front company through which RIL covertly gained entry into the 4G spectrum allocation process.

In March 2014, CAG officials allegedly received instructions from the "top" to "save" senior government officials and meet those who had sought appointments with them.

### **Truncated report**

The first audit note had been issued by the DG (P&T) in September 27, 2013, followed by a second note that was sent to the DoT on November 5, 2013. Replies to these were received in January- February 2014 and a draft audit report was issued to the DoT in May 2014. The DoT's replied to this report in July 2014, after which a draft of the final report was issued to the headquarters of the CAG in October 2014.

After a few rounds of going back and forth in the office of the CAG (including its headquarters), discussions with deputy CAG Suman Saxena and her team were held in the first week of January 2015. A truncated report was received on February 13, 2015, on which day the DG also sent in a detailed note to the deputy CAG. By then, the draft report of 104 pages had been drastically shortened to a mere 13 pages.

To claim that the auction price determined in 2010 was "market determined" is at best disingenuous and at worst, patently wrong.

There is a "but" factor here though. Is it possible that the commercial intelligence of the rivals of the Reliance groups was so abysmal that they did not know the Nahatas were fronting for Mukesh Ambani as they had in the past? Even the Nahatas had publicly said that a business deal with the elder son of Dhirubhai Ambani was in the offing.

The draft CAG report mentions that Anant Nahata had confirmed on television on June 11, 2010 that talks were on with the Reliance group. In fact, a day earlier, on June 10, the *Economic Times* had mentioned that IBSPL could be taken over by Reliance Industries, with all-India 4G spectrum prices touching Rs 12,257 crore.

Where then was the concealment of the real identity of the Nahata firm? Was it then just a sharp legal practice that took the competition unawares? Should the government have allowed a gaming of the system in such a brazen manner? The jury is out on these questions.

Lawyer and activist, Prashant Bhushan, of the Centre for Public Interest Litigation, has already challenged the government's March 2013 decision to allow RJIL to offer voice services on its 4G spectrum by paying only Rs 1,658 crore (the effective entry fee paid by all telcos offering mobile telephony) in what he describes as a back-door entry for Reliance.

In the interest of ensuring justice, the Supreme Court should seek answers from Suman Saxena and R B Sinha, former DG (P&T) in the office of the CAG, S.K. Ghosh, senior vice president, Reliance Jio and Vijayalakshmy K Gupta, the then chairperson of the inter

ministerial committee (IMC) tasked to oversee the 3G/4G auctions. Gupta was a former member (finance) of the Telecom Commission. She was a 1974 batch officer of the Indian Defence Accounts Service who later became financial adviser (defence finance) in the defence ministry when the present comptroller and auditor general of India S.K. Sharma was defence secretary between 2011 and 2013. After her retirement from government service, Gupta became a member of the Telecom Regulatory Authority of India.

The other important person who knows what exactly happened during the 4G spectrum auctions in 2010 is of course the current secretary, DoT, J S Deepak.