

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL

NEW DELHI

Dated : 17.11.2011

Petition No.359 (C)/2011

Wire & Wireless (India) Ltd & Anr. ... Petitioners

Vs.

M/s Krishna Cable Network ... Respondent

BEFORE:

HON'BLE MR. JUSTICE S.B. SINHA, CHAIRPERSON

HON'BLE MR.P.K. RASTOGI, MEMBER

For Petitioner : Mr.Tejeev Singh Bhatia, Advocate

For Respondent : None.

J U D G M E N T

The petitioner no.1 is a Multi Service Operator (MSO) having a PAN India presence.

It was earlier known as `Siti Cable Network Ltd'. The parties hereto entered into an agreement on or about 26.9.1996 for obtaining supply of signals of the channels of which the petitioner no.1 was the MSO for its retransmission by the respondent herein who is a Local Cable Operator (LCO).

According to the petitioner they had been raising and serving invoices upon the respondent herein for the amount of subscription fee stipulated in the agreement as also showing the outstanding amount as on the date of raising of the invoice.

The petitioner contends that the respondent had been making payments of the stipulated subscription fees on ad-hoc basis, sometimes by cash and sometimes by cheque; the last of such payment having been made by a cheque dated 31.8.2008 drawn on Andhra Bank, New Delhi; the same would be deemed to be a part

payment within the meaning of Section 19 of the Limitation Act,1963 (the Act).

The petitioner has filed a ledger account for the period 21.4.2009 to 30.4.2011, showing that a sum of Rs.2,11,865/- was due and payable by the respondent to it. The said ledger account is said to have been maintained by the petitioner in ordinary course of its business.

The period for which the aforementioned sum is due and payable by the respondent is upto 1.1.2009.

This petition has been filed on 30.8.2011.

Despite service of notice nobody has appeared on behalf respondent. The respondent, however, was intimated about the date of ex-parte hearing of the petition.

In support of its case the petitioner has filed an affidavit affirmed by Mr.V. Suresh Kumar, Senior Manager, Legal, wherein inter alia he contended that invoices/ bills on the respondent had continuously been raised but despite the same the respondent did not make payments thereof. He furthermore stated that the

respondent made part payments of the outstanding amount to the petitioners.

It was also stated :-

"I state that against such outstanding dues the respondent had made part-payments through cheque thereby acknowledging the outstanding dues. I state that the last of such payment acknowledging the debt was made on 31.8.2008 vide cheque no.430546 dated 30.8.2008 drawn on Andhra Bank, New Delhi and a payment receipt vide no.ABE 00049, dated 30.8.2008 was also issued by the petitioners to the respondent."

Mr.Bhatia, learned counsel appearing on behalf of the petitioners would contend that having regard to the fact that the respondent has made payment of a sum of Rs.20,000/- by cheque, the same would amount to an acknowledgment within the meaning of Section 19 of the Act and thus, the amount payable by the respondent would be for the entire period of contract.

The parties hereto had entered into an agreement in the year 1996. There is nothing on record to show that the terms and conditions thereof had been modified and if so, when.

Mr.Suresh Kumar is Sr.Manager, Legal. He in his evidence did not state that he had anything to do with the service of invoices upon the respondent.

Actual service of the invoices, in our opinion, therefore, has not been proved as no such statement has been made by the said witness.

Section 19 of the Act reads as under :-

"19. Effect of payment on account of debt or of interest on legacy -

Where payment on account of a debt or of interest on a legacy is made before the expiration of the prescribed period by the person liable to pay the debt or legacy or by his agent duly Authorised in this behalf, a fresh period of limitation shall be computed from the time when payment was made:

Provided that, save in the case of payment of interest made before the 1st day of January,1928, an acknowledgment of the payment appears in the hand-writing of, or in a writing signed by the person making the payment.

Explanation - For the purposes of this section,
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(a) Where mortgaged land is in the possession of the mortgagee, the receipt of the rent of produce of such land be deemed to be a payment;

(b) "Debt" does not include money payable under a decree or order of a court."

The ledger account filed by the petitioner as noticed heretobefore dates back from 24.9.1999. As on 31.3.2008, on which date the cheque for a sum of Rs.20,000/- is said to have been issued by the respondent, was after the expiry of the period of limitation before 31.3.2005.

The said cheque, thus, ex-facie cannot be said to have been issued by way of acknowledgement or otherwise for the entire period.

Keeping in view the facts and circumstances of this case, the pleadings of the parties as also the affidavit of Mr.Suresh Kumar it is difficult to hold that issuance of the said cheque dated 1.8.2008, would render part payment for the entire period.

Payment by way of a cheque for the purpose of constituting part payment of the entire dues as has been claimed by the petitioner must be with the knowledge of the extent of the debt.

In this case, however, for every month a separate bill is issued. As payment appears to have been made towards subscription fee for a particular month, mere giving of a cheque

would not constitute payment and thereby no fresh period of limitation would start.

Strong reliance has been placed by Mr. Bhatia on a decision of the Division Bench of Andhra Pradesh High Court in *Thavva Subrahmanyam vs. Chenna Venkataratnam* reported in AIR 1956 A.P. 105.

In that case the defendant therein was being supplied with salt from time to time by the plaintiff.

There cannot be any doubt or dispute that payment made by a cheque is accepted in the commercial world. For the purpose of attracting the provisions of Section 19 of the Act, the debt, however, must be known to the debtor. Acknowledgement and part payment must relate to the debt. If there is no acknowledgement of the debt, there could be no renewal thereof.

Section 19 of the Act provides for merely acknowledgement of liability. Having regard to the fact that the deponent of the affidavit Mr. Suresh Kumar had not been able to prove service of the invoices on the basis whereof the entire basis of the argument on Section 19 of the Act is made out, in our opinion, the petitioner is entitled to a decree only for the period 30.8.2008 and 31.12.2008.

The petitioner had been raising bills on its own showing for a sum of Rs.20,084/-p.m. The respondent had been making payment of Rs.20,000/- p.m. The petitioner, therefore, would be entitled only to a balance amount for the said months i.e. for a sum of Rs.84/- p.m. totaling to Rs.336.

The petitioner shall also be entitled to interest pendent lite and future interest @9% p.a.

The petition is allowed in part and to the extent mentioned hereinabove. However, in view of the fact that there is no appearance on behalf of the respondent, there shall be no order as to costs.

(S.B. Sinha)
Chairperson

(P.K. Rastogi)
Member

November 17, 2011

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