

**TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL**

**NEW DELHI**

**Dated : September 2, 2011**

**Petition No. 382(C) of 2010**

IndusInd Media & Communication Limited      ...Petitioner

Vs.

Friends Cable-Udita Cables      ...Respondent

**BEFORE:**

**HON'BLE MR. JUSTICE S.B. SINHA, CHAIRPERSON  
HON'BLE MR.P.K. RASTOGI, MEMBER**

For Petitioner      :    Ms.Vandana Jaisingh, Advocate

For Respondent      :    Mr.Yoginder Handoo, Advocate

**J U D G M E N T**

**S.B. Sinha**

The petitioner has filed this petition praying, inter alia, for the following reliefs:

- a) "The respondents be ordered and directed to pay to the petitioner amount of Rs.12,08,956/- as on 31<sup>st</sup>

August, 2010 with further interest @24% p.a. compoundable till realization.

- b) That the petitioner has transmitted the signals to the respondent even after 30-4-2008. Hence subscription fees for 21 days @Rs.10,112/- p.m. be granted.
- c) The respondent be restrained by passing an order of injunction from taking the signals from any other MSO and transmitting the signals to their subscribers, till the outstanding due amount has been paid to the petitioner.
- d) Hold the said disconnection by the respondent as illegal, violative of the TRAI's Regulation.
- e) Pass ad-interim/interim/ex-parte order(s) in terms of the above prayers.
- f) Pass such other and further orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.
- g) Any other order deemed fit and proper.
- h) The cost of this petition."

The said petition has been filed on the following premise.

- (i) The respondent which is a local cable operator entered into subscription agreements with the petitioner since 1999.
- (ii) It had been supplying signals to about 100 subscribers which was reduced subsequently to 50 subscribers.

- (iii) The respondent had been making payments on a provisional basis, although, according to the petitioner invoices were being raised and served on it.
- (iv) The respondent was to pay at the rate of Rs.180/- per point per month.

The respondent, on the other hand, contends:

1. It had all along been taking supply of signals from the petitioner for 50 points only.
2. It had been making payments as and when demanded by the petitioner's agent Shri Ashish Kherke.
3. The rate of supply of signal was not Rs.180/- per point.
4. It had not stopped taking supply of signals from the petitioner from March, 2008 but the petitioner itself stopped supply of signals to its network.

The Tribunal in view of the aforementioned pleadings of the parties framed the following issues:

"i) Whether, in the facts and circumstances of this case, the petitioner is entitled to a decree as has been prayed for?

ii) Whether the claim of the petitioner is barred under the law of limitation?

iii) Whether the signals have been disconnected by the petitioner/respondent?

iv) The amount of interest to which the petitioner is entitled to?"

The petitioner in support of its case has examined Shri Madhav Betgeri, General Manager, Operations.

The respondent has examined Mehboob Gani, the proprietor of M/s Friends cable.

The respondent in this case has not denied that there was a privity of contract between the parties.

It furthermore admits that it had been taking supply of signals upto February, 2008.

The petitioner although contends that it had been supplying signals to the respondent's network upto November, 2008 but it has kept its claim limited upto April, 2008.

It has, however, prayed for a decree by way of damages for supply of signal for 21 days on the premise that respondent did not issue any notice as provided for under Clause 4.2 of the Telecommunication (Broadcasting & Cable Services Interconnection Regulation 2004 (The Regulations).

This petition has been filed on 10.11.2010.

The petitioner has although filed a large number of invoices showing that the respondent was to pay a total amount of Rs.10,112.40/- inclusive of tax it appears from the records that it had

been paying more or less at the rate of Rs.10,000/- per month. Although it went into arrears for some months. Service of the invoices upon the respondent, however, has not been proved.

The petitioner has also served a legal notice dated 9.9.2010 upon the respondent. Despite service, the respondent did not reply thereto.

One of the principal questions which arises for consideration is as to whether a part of the claim is barred by limitation.

The petitioner has filed its ledger account for the period 27.11.1999 to 16.4.2008. The said accounts have been maintained in ordinary course of business.

The respondent furthermore does not deny or dispute that it had been making payments to the petitioner and such payments find place in the said ledger account.

Ms. Vandana Jaisingh would contend that this petition is not barred by limitation keeping in view the fact that the accounts were maintained on a continuous basis. In any event, the learned counsel would urge that the three years period should be calculated from February, 2008 keeping in view the admission made by the respondent itself.

Article I of the Schedule appended to Limitation Act, 1963 reads as under:

"Description of suit	Period of limitation	Time from which period begins to run
(1) For the balance due on a mutual, and current account, there have been reciprocal demands between the parties.	Three years.	The close of the year in which the last item admitted or proved is entered in the account; such year to be computed as in the account."

It is not in dispute that the account of the parties was not mutual. Only because the account maintained was a current one the same would not mean that there had been reciprocity between the parties.

Section 3 of the Limitation Act, 1963 bars the jurisdiction of a Court to entertain a petition/suit which is barred by limitation.

A petitioner and/or plaintiff must plead and prove the exceptions contained in the Limitation Act, if any.

It is not the case of the petitioner that the period of limitation for one reason or the other has been saved or stood extended.

This aspect of the matter has been considered by this Tribunal in M/s IndusInd Media & Communications Ltd. vs. Hansa Cable,

Petition No.123(C) of 2009 wherein it was opined that the period of limitation would be three years holding as under:

“From a bare perusal of the aforementioned provision, it is evident that for the purpose of invoking the same, the accounts not only had to be continuous one but also must be mutual. There was no mutuality in the transactions by and between the parties hereto. The petitioner, therefore, is not entitled to maintain a petition beyond the period of 3 years from the date of filing of the respective petitions.”

On similar terms is the decision of this Tribunal in Indusind Media & Communication Ltd. vs. Polycable being Petition No.122(C) of 2009 disposed of on 28.5.2010, wherein a similar contention has been negatived.

We are also unable to accede to the submission of Ms. Jaisingh that the starting point for computing the period of limitation should be February, 2008 in view of the admission made by the respondent.

The respondent has merely admitted supply of signals to its network by petitioner upto the said period. He has not admitted its liability therefor. He has not acknowledged his liability for a period of more than three years.

There is also nothing in writing to show that he has acknowledged its liability prior to the initiation of the present proceedings.

It may be true that according to the petitioner, the respondents owes to it a huge amount but the same by itself cannot be a ground for extending the period of limitation.

The Limitation Act is a statute of repose. It envisages that a creditor would be vigilant and alert and it would enforce its claim within the prescribed period of limitation.

Unless and until the matter comes within the purview of the exceptions contained in Section 25 of the Indian Contract Act and Section 18 or any other relevant provision of the Limitation Act, 1963, the period of limitation cannot be held to have been extended.

We are, therefore, are of the opinion that the petitioner is entitled, if any, for a decree for the period beginning from November, 2007.

The respondent, however, is bound by its admission. So far as the supply of signals to its network by the petitioner is concerned the respondent, as noticed heretobefore, has not denied for disputed the payments made to the petitioner.

Perusal of the ledger account filed by the petitioner would show that by and large the respondent had been paying at the rate of Rs.10,000/- per month; whereas the respondent's case is that it was liable to pay the feed charges at the rate of Rs.9,000/- only. From the

petitioner's own showing it has merely been raising invoices for a sum of Rs.10,112.40.

More significantly the sum of Rs.9,000/- said to be payable to the petitioner clearly tallies with its case that the respondent had 50 subscribers and the rate was Rs.180/- per month. There cannot be any doubt or dispute that the respondent was liable to pay the aforementioned sum of Rs.9000/- towards subscription charges besides taxes.

The question which survives for consideration is as to whether the respondent is liable to pay the subscription charges upto February, 2008 or April, 2008.

We may in this connection notice that the respondent itself in his evidence categorically admitted that it had started taking feed from SCOD 18 from April, 2008. It is also its case as would appear from the tenor of his cross-examination that it had continued to retransmit signals to its subscribers as would appear from the following:

"Q: I put it to you that the amount of more than Rs.10,000/- was being paid by you, you will have some entry in your accounts books?

(Objected to by the learned counsel for the respondent that the question is ambiguous.)

A: No. I do not maintain any accounts.

Q: I put it to you that you have no proof to show that you have made the payment to the collecting agents during the period November, 2006 to October, 2007?

A: Yes.

Volunteers: I used to make the payments. I was not given the bills.

I used to ask for the receipt verbally from the collection agent but it was never given. I have never asked it in writing from the agent and there was no reason for asking from the petitioner as I had no dealing with the petitioner.

Q: I put it to you that you had to pay Rs.10,112.40/- towards monthly subscription charges in the year 2007-2008 for the feed taken by you?

A: I do not remember.

Volunteers: I used to pay whatever was demanded by the collection agent.

Q: I put it to you that you were taking the feed of petitioner company till November, 2008?

A: It is incorrect.

Volunteers: My feed was disconnected in February, 2008.

I did not ask the petitioner why the feed was disconnected.

Volunteers: I was not also asked by the petitioner regarding disconnection.

I started taking signals from SCOD 18 since April, 2008 and before that I managed feed from local cable operators for two months.

I do not remember the name of the local cable operators and the name of the company whose signals I took for two months.

Q: I put it to you that you have stopped taking signals of the petitioner without giving notice to the petitioner from April, 2008 and the company continued to give the signals till November, 2008?

A: I have not disconnected the signals. I do not know anything about the notices. It is the company who disconnected the signals."

The respondent has contradicted himself as regards maintenance of books of accounts by him.

In the 4<sup>th</sup> question put to him in the cross-examination he stated that he was an income tax payee for more than 10 years and he has been maintaining books of accounts, although at a later stage of his cross-examination he in answer to a question as to whether he has paid an amount of more than Rs.10,000/- and whether he had made entries in his books of accounts answered in the negative contending that he had not been maintaining any account.

It was for the respondent keeping in view the defence raised by him to show that it had made payments to the petitioner's agent.

It is difficult for us to believe that although he had been in cable business since 1999 he would not insist for obtaining a receipt. He, however, while accepting that there is no proof to show that he had made payments to the collecting agent during the period November, 2006 to October, 2007 volunteered "I used to make the payments. I was not given the bills."

He furthermore in answer to a suggestion that he was required to pay Rs.10,112.40 stated that he did not remember.

In the aforementioned context, the perusal of the statement of account submitted by the petitioner becomes relevant.

The account shows a credit note for a sum of Rs.45,421.00 was shown in the entry dated on 25.3.2008 for reversal of excess billing for April, 2007 to March, 2008 due to difference in rate. It shows that there was excess billing to the extent of Rs.45,421.00 for 12 months. Therefore, the rate of monthly subscription fee Rs.10,112.00 has to be reduced by  $\text{Rs.45,421/-}/12 = \text{Rs.3785.00}$  per month. In fact, the respondent paid an amount of Rs.7,303.00 only on 15 November, 2007. No amount has been paid after November, 2007. The petitioner is entitled for an amount of Rs.6,327.00 per month.

The petitioner, therefore, in our opinion has made out a case for passing a decree for supply of signals upto April, 2008.

A minor issue has been raised in the reply that it had been carrying on business only in the name of M/s Friends Cable and not in the name of Udita Cable; whereas the petitioner's case is that he was proprietor of both the concerns.

Having regard to the fact that the petitioner had been raising single invoices for both the networks and had been maintaining one account therefor and furthermore having regard to the fact that the respondent had also been paying for its cable operation; it really does not matter as to whether the respondent had been operating under the name of M/s Friends Cable alone or M/s Udita Cable also; there being no dispute with regard to the number of point of supply.

So far as the petitioner's claim for 21 days feed charges by way of damages is concerned, evidently the petitioner has stopped supply of signals to the respondent's network itself. There was no reason, if it had continued to supply signals upto November, 2008, to confine its claim to April, 2008. It, therefore, goes to show that the petitioner was aware that the respondent has stopped taking supply of signals from April, 2008. If it had accepted the said position, in our opinion, it is not entitled to damages calculated at the aforementioned rate for the period of 21 days.

Mr. Handoo, however, is correct in his submission that as no contract in writing was entered into the petitioner cannot claim interest @ 24% on the principal amount.

Having regard to the facts and circumstances of this case, we are of the opinion that interest of justice would be subserved if the interest @9% per annum on the amount due is allowed.

Let a decree for a sum of Rs.31,637/- (Rs.6327 x 5) together with interest @9% per annum be drawn.

The petitioner shall also be entitled to *pendente lite* and future interest at the same rate.

This petition is allowed in part and to the extent mentioned hereinbefore but in the facts and circumstances of the case, there shall be no order as to costs.

**(S.B. Sinha)**  
**Chairperson**

**(P.K. Rastogi)**  
**Member**

**September 2, 2011**  
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