

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL
NEW DELHI

Dated 1.11.2012

R.A. No.15/2012 in Petition No.275 (C)/2011

Indian Cable Net Company Ltd., Kolkata ... Petitioner

Vs.

M/s Satellite Cable Netcom ... Respondent

BEFORE:

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

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

For Petitioner : Mr.Tejveer Singh Bhatia, Advocate

For Respondent : Ms.Nidhi Parashar, Advocate for
Mr.Navin Chawla, Advocate.

ORDER

S.B. Sinha

This application for review of the judgment and order passed by this Tribunal dated 24.8.2012 has been filed by the petitioner.

2. In the said application, it has inter alia been contended that this Tribunal held that a part of the claim is barred by limitation despite the fact that the relevant fact was pleaded and the relevant documents were brought on record, which this Tribunal failed to take into consideration in the light of Sections 18 and 19 of the Limitation Act, 1963 (the Act).

3. Mr.J.S. Bhatia, learned counsel appearing on behalf of the applicant would draw our attention to the fact that although this Tribunal in the judgment has noticed the relevant contentions of the petitioner, it failed to consider the same, stating as under:-

"23. It is seen that the respondent has been paying the subscription amount regularly till December 2009. The bill amount and the amount paid every month is almost the same. The issue is basically of outstanding as on 1.4.2008 i.e. for a period to 3 years of filing of this petition.

The petitioner contends that law of limitation will not apply as the respondent has paid same amount in

the end of the year 2009. Mr. Bhatia, the counsel for the petitioner brought to our notice few receipts of certain amount page 34, 36, 37 of Evidence file where an amount of Rs. 50,000/- was paid against old outstanding amount."

4. In support of the said contention our attention has been drawn to the relevant pleadings of the parties contained in paras 10, 11 and 12 of the application herein, which read as under:-

"....It is respectfully submitted that various invoices were sent by the petitioner clearly mentioning the total outstanding dues payable by the respondent, the respondent after receiving those invoices has made only part-payment towards the outstanding mentioned in these invoices.

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By a letter dated 3.12.2008, the petitioner requested the respondent to clear the said amount of outstanding dues. A copy of the said letter dated 3.12.2008 of the petitioner received by Mr. D. Chakraborty of the respondent is annexed as ANNEXURE P-4. It is respectfully submitted that after receiving the said communication dated 3.12.2008, the respondent has made part payments towards the said outstanding, however, the respondent has failed to make payment of the entire outstanding dues of the petitioner.

xxx

It is respectfully submitted that after receiving the said letter the respondent has made part payment towards the said outstanding, the respondent however, has failed to make the payment of the entire outstanding dues."

5. Ms.Nidhi Parashar, learned counsel appearing on behalf of the respondent, on the other hand, would contend that the question of acknowledgement and/or part payment on the part of the respondent could have been considered, only in the event, the claim of the petitioner was not barred under the law of limitation.

6. The contention of the applicant that its claim was not barred under the law of limitation emanates from the invoices wherein allegedly the arrears/ outstanding have been shown and against which payments have been made.

7. The petition was filed on 30.1.2011. The petitioner claimed recovery for a sum of Rs.65,59,510/- as in June, 2010 with interest @ 18% p.a. for the period 1.4.2005 to 30.3.2009. It is not in dispute that only those invoices which were issued after the TRAI amended the Telecommunication (Broadcasting and Cable Services) Interconnection Regulation, 2004 in 2009 contained the details of the arrears. It is, thus, idle to contend that any amount mentioned therein by way of part payment of the demand which was already barred by limitation would not come within the preview of Sections 18 and 19 of the Act.

8. The Supreme Court of India in *Tilak Ram and Ors. vs. Nathu and Ors.* reported in AIR 1967 SC 935, stated the law with regard to the acknowledgement of liability, thus :-

"7. The section requires (i) an admission or acknowledgment (ii) that such acknowledgment must be in respect of a liability in respect of a property or right, (iii) that it must be made before the expiry of the period of limitation, and (iv) that it should be in writing and signed by the party against whom such property or right is claimed. Under the Explanation such an acknowledgment need not specify the exact nature of the property or the right claimed. It is manifest that the statement relied on must amount to an admission or acknowledgment and that acknowledgment must be in respect of the property or right claimed by the party relying on such a statement."

9. It may be noticed that the Allahabad High Court in the case of *Israrul Haq and Anr. vs. Lala Ram & Ors.* reported in AIR 1986 Allahabad 249, with regard to the application of Section 20 of the old Limitation Act which is equivalent to Section 19 of the new Limitation Act opined in the following terms :-

"3. The only point for consideration is whether the claim with the exception of Rs. 315 was barred by time. Learned counsel for the appellants contended that after the termination of the tenancy on 15-5-50, the amount due to the plaintiffs was Rs.4,095. The aforesaid amount was the total amount due from the first defendant to the plaintiffs. The payment of Rs. 2,100 by two cheques was payment "on account of a debt" within the meaning of Section 20 of the Limitation Act. It gave a fresh period of limitation of the plaintiffs. The lower appellate Court took the view

that the suit related "to the amount of arrears of rent falling due every month." It held:-

"I, therefore, hold that the payment of Rs. 2,100 by the defendant appellant per Ex. A-2 was not a part payment towards the entire amount of rent that was due at that time but it was payment for specified period and so has "not the effect of extending the period of limitation or of saving the plaintiff's claim for rent for the period ending 31-3-1950 from limitation"

It further held that the plaintiff's claim for rent for the period commencing from 1-4- 1950 to 15-5-1950 only was within time.

4. It may be mentioned that the receipt given to the first defendant (Ex. A-2) was not signed by the plaintiffs. It, however, mentioned that the receipt was "on account of rent from October 1948 to July 1949 at of Rs. 210 per month." Learned counsel for the appellants referred to Kedar Nath Mitter v. Deno Bandhu Saha AIR 1916 Cal 580. The aforesaid case was referred to in Puttupal v. Jagannath AIR 1935 All 53 , and the proposition of law enunciated therein was disapproved.

Learned counsel for the respondents relied on Abdul Aziz v. Munna Lal AIR 1921 All 325. It was observed:-

"In the case of a tradesman's account the liability to pay for each item of goods delivered, either day by day or week by week, is in the case of each item the date of delivery of that particular item".

The aforesaid principle was approved by the Division Bench in AIR 1935 All 53 (supra). In the aforesaid case the suit was for the recovery of the amount due to the plaintiffs on account of betel supplied to the defendant firm from time to time. It was observed:-

"The plaintiff in a case like this is, of course entitled to appropriate the payments to the earlier items in the account but not to credit them to the entire balance due up to date in the sense of saving limitation for each and every item."

10. It is now well-settled principles of law that an application for review as envisaged under Order 47 Rule 1 of the Code of Civil Procedure would lie inter alia if there exists any error apparent on the face of the record.

11. It is now also well-settled that the issue relating to the exceptions contained in Sections 18 and 19 of the Act would be a mixed question of law and fact. This Tribunal in its judgment clearly opined that the respondent had been making payments only in respect of the current subscription fee raised in the invoices.

12. From the conduct of the parties also, it is evident that the respondent had been making payments only towards the current charges and not towards the arrears.

13. It has rightly been contended by Ms.Parashar that the petitioner has never raised a plea that it was entitled to adjust the payments made by the respondents towards the dues which were

barred under the law of limitation as envisaged under Section 60 of the Indian Contract Act. Having not raised such a plea of adjustment of the payments made, the respondent was liable to the adjustment towards the current dues only. The contention of the respondent is that the purported receipts on the basis whereof the issue of acknowledgment and/or part payment is sought to be raised has not been legally brought on record.

14. Most of the receipts furthermore would clearly go to show that the payment had been made against the current dues only. A few receipts, admissibility thereof was in question, was said appropriated by way of part payments.

This Tribunal held :-

18. The petitioner produced a copy of the subscription agreement dated 22.10.2001. The agreement does not show the basis of monthly subscription charges. Clause 5.1.2 show that the cable operator will pay basic service charge @ 33/- per subscriber per month. The bills sent to the respondent show the subscription amount without any details of subscriber. It cannot be determined on the basis of the agreement or the bill on what basis the bills were prepared.

19. After April 2008, the respondent is paying almost the same amount every month as per the invoice. However, the dispute is about the arrears for the period prior to May 2008. From the year 2005 onwards, the monthly subscription was reduced many times as seen from the statement of account but what is the basis of the same is not known. The petitioner has not produced any record to show the basis of

certain amount being billed to the respondent prior to May 2008. Even invoices prior to January 2008 not produced.

21. The respondent is raising the issue of poor quality of signals. The marketing manager of the petitioner had acknowledged the receipt of the letter dated 4.6.2007. We may reproduce the contents of the same letter :

“With telephonic conversation with you and your technical team, I previously informed you that our signal at Serampore control room is so bad in lower band.

So please treat this matter seriously and sincerely and provide us the better signals so that we can provide best service to our end customers. And our operators has been already informed me that if you do not recover this signal problem as early as possible, then will join with other MSO.”

On 3.12.2008, the petitioner wrote a letter to the respondent for settling the dues of Rs. 56,66,598/- upto November 2008. On 10th December 2008, the respondent replied saying that our company dissolved couple of years back and request to settle the amount to Rs. 6.00 lakhs. We may read the same :

“In this month, I have received a bill from you of Rs. 56,66,596.00 with total outstanding dues. In that situation I would like to request you please settle the amount to Rs. 6,00,000.00 (Rupees six lacs Qrly). You also know that our company M/s Sattellite Cable Netcom is dissolved since couple of years. You also know that out bill amount was higher.”

The Chief Executive Officer of the petitioner company sent a letter to the respondent on 10.09.2009

offering to settle the account at Rs. 10,00,000/-. We may read the same :

"This is for your further intimation that an Agreement was made between us on 22/10/2001 and after that you started using our service and still you are using it. Your outstanding amount now reaches at Rs. 56,66,598/- (Rupees Fifty Six Lac Sixty Thousand Five Hundred and Ninety Eight only).

It becomes very much pathetic to say that after giving repeated reminder, you did not clear the dues and all along we showed and proved our level of patience. It is also very much painful to listen request to settle and account at Rs. 6,00,00,000/- whereas the outstanding is Rs. 56,66,598/-. As you are showing your business loss (Ref. letter dated 10.12.2008) and expecting to get sympathetic stand from us, we must also feel that you are able enough to understand the injury of financial loss.

This is for your kind intimation that by settling the account at Rs. 6,00,00,00/- you are asking us to allow a discount of Rs. 50,66,598/- (Rupees Fifty Lac Sixty Thousand Five Hundred and Ninety Eight only).

As you are currently involved in the same industry we are hopeful that you are eligible enough to understand how much the amount costs or create loss to a business financially. But, as we are very much sympathetic on you are still expecting to keep a good and healthy relationship with you, after losing so many months' time and subscription from you, now offering you to settle the account at Rs. 10,00,00,000/- (Rupees Ten Lac only) with a single installment.

This is our request you to come to our registered office at the earliest and settle the account immediately."

15. Moreover, it has rightly been pointed out that although the payments have been made by way of cheques, the petitioner has shown the same in the cash register.

16. Learned counsel for the parties intended to take us through the evidences adduced by them.

17. This review application is thus in effect and substance is an appeal, which has been filed under the garb of a review. If the petitioner is aggrieved by the judgment of this Tribunal, it may prefer an appeal.

18. Mr.Bhatia would submit that the offer of the respondent that it would pay a sum of Rs.6 lakhs towards the arrears having not been accepted, the payment of the said sum did not arise. In response to the aforementioned offer made by the respondent, the petitioner's representative wanted the respondent to pay a sum of Rs.10 lakhs.

19. The respondent it may be placed on record denied receipt of any invoice after December, 2009.

20. Mr.Bhatia would, however, draw our attention to an order of this Tribunal in the case of WWIL vs. Krishna Cable being Petition No.359 (C)/2011 disposed of on 17.11.2011, wherein it has been held :-

“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.”

21. The said decision is not applicable to the facts and circumstances of the present case.

22. However, we may notice that even therein the petitioner had not proved services of the invoices and in absence thereof it was held that Sections 18 and 19 will have no application.

23. For the reasons aforementioned, we do not find any merit in the review application. It is dismissed accordingly.

(S.B. Sinha)
Chairperson

(P.K. Rastogi)
Member

November 1, 2012
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