

**TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL  
NEW DELHI**

**Dated 15<sup>th</sup> October, 2012**

**Petition No.53(C) of 2012**

Wire and Wireless India Ltd. & Anr. ...Petitioners  
Vs.  
Sur Sangam Cable Network ...Respondent

**BEFORE:**

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

For Petitioners : Mr.Surender Kumar,Advocate for  
Mr.Tejeev Singh Bhatia,Advocate  
For Respondents : None

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

The Petitioner No. 2 is a content aggregator.

It is said to have entered into an agreement with the Respondent herein on or about 06.02.1997.

Inter-alia, on the premise that the Respondent had threatend to migrate to another MSO without service of any notice as contemplated under clause 4.2 and 4.3 of the Telecommunication (Broadcasting and Cable Services) Inter Connect Regulations, this Petition has been filed on the premise that for the period of

01.04.1999 and 30.11.2012, the Respondent has failed and/or neglected to pay the due subscription fee for a sum of Rs. 5,74,053.

The Petitioner served notices upon the Respondent but despite service of notice nobody appeared for it.

A substituted service as envisaged under Order V Rule 20 of the Code of Civil Procedure had also been issued but despite the same the Respondent did not appear. In the aforementioned situation this case has been set down for ex-parte hearing.

The Petitioner in support of its case has examined one Shri V Suresh Kumar.

According to the said witness the Respondent was a defaulter having defaulted in making payments of subscription fee regularly as it had all along been making part payments of the amount payable under the agreement.

The said witness contended that Respondent had been raising invoices which it had been accepting on a regular basis.

In support of its case the Petitioner has filed invoices, legal notice dated 04.12.2010 issued by the JP and Associates as also notices dated 16.08.2011 and 03.01.2012.

The Petitioner has also filed its ledger account.

This petition has been filed on or about 25.01.2012.

The learned counsel appearing on behalf of the Petitioner submitted that the Respondent having been making part payments despite the fact in the invoices not only the amount of subscription fee but also arrears payable by it having been mentioned the question of a part of the claim being barred under the law of limitation does not arise.

The relationship between the parties hereto as noticed hereretobefore dates back to 19.09.1999. The Petitioner has filed the complete ledger account. Apart from the fact that in terms of the Amending Regulation of 2009, the broadcaster and MSOs were directed to mention the arrears in invoice, there was no occasion with regard prior thereto and, thus, the question of making part payments against the invoiced amount before 2009 cannot be accepted.

Furthermore Mr. Suresh in his affidavit does not say that the invoiced were served on the Respondent.

As indicated heretobefore, a vague statement has been made that the invoices were raised and the same had been accepted by the Respondent.

The question of acceptance of the invoices would arise only when the same are served.

The Petitioner, therefore, would be entitled to a decree only for the period three years prior to 20.01.2012 its claim in respect of the period prior thereto being barred under the law of limitation.

The Petitioner in his books of account has shown that a sum of Rs. 4,81,203/- was due and payable by the Respondent as on 01.02.2009.

The Petitioner, therefore, in my opinion is entitled to a decree for a sum of Rs. 92,850/- only. The Petitioner is also entitled to interest on the said amount @ 9% per month.

The Petition is allowed to the aforementioned extent without any order as to costs.

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

MM