

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

**Dated 17<sup>th</sup> September, 2012**

**Petition No.54(C) of 2012**

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

**BEFORE:**

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

For Petitioners : Mr. Tejveer Singh Bhatia, Advocate

For Respondent : Mr. Rajender Yadav, Advocate

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

The Petitioner, a Multi Service Operator (MSO) has filed this Petition for recovery of a sum of Rs. 3,69,280/- together with interest @ 18% per annum against the Respondent herein, which is a Local Cable Operator (LCO).

Indisputably, no agreement in writing has been entered into by and between the parties hereto.

It is also not in dispute that the Petitioner is the successor in interest of Siti Cable. The said Siti Cable is said to have been supplying signals to the Respondent's network since 1994.

The Petitioner is said to have taken over the cable business of the said Siti Cable on or about 17.11.2006, pursuant to a scheme of demerger.

We may notice that according to the Petitioner, it had continuously been raising and serving the invoices upon the Respondent, which has been denied and disputed by the Respondent.

In terms of a collection receipt dated 26.02.2009, the Respondent admittedly paid a sum of Rs. 15,000/-.

Relying on or on the basis thereof, the Petitioner contends that by reason of such payment the Respondent must be held to have made part payment and/or acknowledged its dues, which were reflected in the invoices served upon it, and in that view of the matter this Petition is not barred under the law of Limitation.

It may further be placed on record that although no agreement in writing has been produced before this Tribunal nor any claim in respect thereof has been made in the evidence, in paragraph 16 of the Petition, the Petitioner stated as under:-

*“It is most respectfully submitted that Respondent who is a cable operator has already recovered the amounts from the subscribers/households and has not complied with the payment terms of the contractual obligations arrived between the Petitioners and Respondent. The Respondent is under an obligation to clear all its outstanding subscription dues in terms of the said agreement signed between the parties.”*

The Respondent in its reply, although does not deny or dispute the payments were being made to the said Siti Cable and/or to the Petitioner herein, but according to it, neither any invoice was raised by the Petitioner nor served upon it.

Allegedly, the Respondent had been paying the amount of the subscription fee as and when demanded by the concerned employees of the Petitioner from time to time and in that view of the matter, no amount, according to it, is due or owing from it.

Keeping in view the rival contentions of the parties, as noticed heretofore, the issues which arise for consideration of this Tribunal are :

- i) *Whether the Petition is barred under the law of limitation?*
- ii) *Whether the Petitioner has made out a case for recovery of a sum of Rs.3,69,288/- with interest as prayed for in this Petition?*
- iii) *Whether the Respondent is liable to pay unto the Petitioner the said amount or any other amount as it is stated that the Petitioner despite granting exclusively with regard to the areas of operation the Respondent has appointed other LCOs?*

This Petition was filed on or about 17.05.2012. As indicated heretofore, the claim of the Petitioner relates to the period 1999 and February 2009.

The principal question which, thus, arises for the consideration of this Tribunal is as to whether a part of the claim is barred under the law of limitation.

It is not in dispute that pursuant to the arrangements entered into by and between the parties hereto, and/or the predecessor in interest of the Petitioner, the invoices were used to be raised on the monthly basis.

From the statement of account filed by the Petitioner, it would appear that payments from time to time, which is contended to be only part payment, used to be made by the Respondent.

The Petitioner in support of its claim has also relied upon a legal notice issued on or about dated 04.12.2010 followed by its letters dated 10.08.2011 and 03.01.2012, which are not of much relevance.

Mr. Bhatia, learned counsel appearing for the Petitioner, would contend that keeping in view the aforementioned part payment made by the Respondent on 28.02.2009, Section 19 of the Limitation Act, 1963 would become applicable.

In this behalf, attention of this Tribunal has been drawn to the statements made in paragraph 5 of the petition and the reply thereto by the Respondent.

In paragraph 5, the Petitioner merely states that 'the Petition is within limitation'.

Paragraph 4 of the Reply reads as under:-

*“That the Petitioner is again liable to be dismissed as the same is time barred as by way of the present petition, the Petitioners are claiming outstanding dues in respect of the alleged invoices relating to the Period barred by the limitation.”*

The Petitioner, thus, did not plead as how the period of limitation is saved.

**Order VII Rule 6 of the CPC reads as under:**

***“6. Grounds of exemption from limitation law.- where the suit is instituted after the expiration of the period prescribed by the law of limitation, the plaint shall show the ground upon which exemption from such law is claimed:***

***[Provided that the Court may permit the plaintiff to claim exemption from the law of limitation on any ground not set out in the plaint, if such ground is not inconsistent with the grounds set out in the plaint.]”***

The Petitioner did not make any statement in the petition that the Respondent has either acknowledged the debt or made any part payment with regard thereto.

In his affidavit by way of evidence, Shri Lalit Kumar Gautam (R.W. 1) stated as under:

***“That the deponent says that the Petitioners have stopped providing signals to the Respondent long back in the year 2009 and at present there is no relationship with the Petitioner and Respondent and as such this Hon’ble Tribunal has got no jurisdiction to try and adjudicate the matter under reference.”***

In his cross examination as regards the payments made by the Respondent, he stated:-

*"I used to take signals from Panchsheel (and the name of the company was Siti Cable, Vijay Nagar).*

*I used to pay Rs. 25/- per collection in the year 1995.*

*I was having about 150 connections and the subscription fee payable by me varied from Rs. 2,500/- per month to Rs. 30,000/- per month. I used to make payments only by cash.*

*The payments were made either directly by me or the employees of Siti Cable used to collect the amounts from me.*

*Vol.: Most of the times, employee of Siti Cable used to collect the amount I used to get receipts for the payments made by me which were sent to me on random basis. Sometimes I used to receive 3-4 receipts at once and sometimes no receipt was received by me. I am an income Tax assesses and file my income tax returns.*

*I do not maintain any books of accounts.*

*I have not filed any receipts on record.*

*I used to send the payment in the office of Siti Cable at Vijay Nagar.*

*Q1. What was the subscription fee according to your for the months of February and March 2009, payable by you?*

*A.I had paid whatever amount was demanded by the Petitioners. I had made payment of Rs. 30,000/- or Rs. 15,000/-.*

*B. I did not keep any account of the money paid by me of the Petitioners as I was paying to the Petitioners every months as demanded.*

*With regard to part payments the said witness sated as under:-*

*“It is incorrect to suggest that payments made by me vide receipt dated 26.02.2009 bearing no. DL005/000513/2008/R(ABP00737) of Rs. 15000/- was part payment made by me towards the outstanding of Rs. 3,54,838/- as mentioned in invoice dated 1.2.2009.”*

He was not asked any question with regard to the particulars of the alleged dues.

According to him, his network had been disconnected on many occasions.

Relying on the receipt dated 26.02.2009 read with paragraph 10 of the affidavit of RW 1, Mr. Bhatia submitted that part payment having been made against the invoice issued on 01.02.2009 and the Respondent having admitted and acknowledged that the relationship between the parties continued up to 2009, the question of this petition being barred under the law of limitation does not arise.

Mr. Yadav, learned counsel appearing for the Respondent, on the other hand, submitted that the arrears, if any, had been shown for the first time on or about 1.11.2006 which in fact had never been brought to the notice of the Respondent. It was urged that the Respondent having not been served with any invoice and no invoice number in fact having been maintained in the collection receipt, the question of the same being part payment against the entire dues of the Petitioner does not arise.

From the record it does not appear that each invoice was assigned some number. From the receipt in question, however, it would appear that only the connection number being D1005 has been mentioned and not the invoice number.

It furthermore appears from the invoice dated 1.11.2006 that an outstanding of Rs. 3,45,086/- was shown therein for the first time.

From various receipts filed by the Petitioner itself, it would appear that collections have been made against specific invoices as for example 1.12.2005, 1.04.2005, 01.05.2005, 11.11.2006, 01.01.2006 and 01.04.2006 etc.

It does not appear that receipt had been granted for each month. Even otherwise, if the Petitioner intended to raise a question with regard to purported acknowledgment on the part of the Respondent it was required to be specifically pleaded.

The Petitioner even otherwise did not prove the service of invoices upon the Respondent.

If a particular sum had been adjusted against one invoice, there is absolutely no reason as to why the continuity thereof has not been maintained in the matter of receipt of payments.

Moreover, the Petitioner has lodged claim only up to 01.03.2009. This petition, as noticed hereto before, having been filed in January 2012. Thus, at best the Petitioner would be entitled to a sum of Rs. 45,000/- being the bills for two months @ Rs. 30,000/- out of which the Petitioner paid a sum of Rs. 15,000/-.

Submissions of Mr. Bhatia that this petition is not barred under the law of limitation, cannot be accepted.

Section 19 of the Limitation Act merely provides for acknowledgement of liability.

Acknowledgment and part payment must relate to a debt. If there is a debt, acknowledgement must be of the same.

The question of application of Section 19 of the Limitation Act would not, thus, arise in this case.

In Wire & Wireless (India) Ltd & Anr. Vs. M/s Krishna Cable Network, Petition No. 359(C) of 2011 disposed of on 17.11.2011, this Tribunal opined as under:-

*“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 witness of the Petitioner Mr. V. Suresh Kumar, in this case also, in his cross examination stated as under:

*“Q. 36: Copy of all the receipts as filed by you as Annexure P-3 from page 76 to 95 of the paper book shows a specific column of invoice number, date and amount. Is it correct?”*

*A: Yes.*

*Q. 37: In neither of the above said receipts any invoice number or amount has been mentioned by the Petitioner. Is it correct or incorrect?”*

*A: It is correct.*

*Q. 38: In every above said receipts, it is shown that the amount received is towards the amount due. Is it true or false?*

*A: It is true.*

*Vol.: Prior to TRAI Regulations there is no necessity to show arrears in the invoices, thereafter it is mandatory by the Petitioners to show monthly invoices amount as well as arrears. What are the payments received from the Respondent, the company issues receipt on month to month basis.”*

The said witness, furthermore, accepted that the Petitioner Siti Cable used to maintain the accounts of the Respondent.

The said witness also conceded that the Respondent migrated to the network of another MSO in March 2009. He furthermore acknowledged that the copy of the original invoices were with the Petitioner no. 2 and not with the Petitioner no. 1. The same has not been produced.

With regard to service of the said invoices, Shri Suresh Kumar stated as under :

*“Q. 31: Do the Petitioners have any proof to show that the above invoices had ever been served upon the Respondent?”*

*A: As per the existing business practice, the Petitioners have been serving original invoices by hand on all the affiliated cable operators in Delhi including the Respondent. No cable operator including the Respondent has never given any receipt or endorsement on the photocopy of the invoices which are now under the custody of Petitioner no. 2.”*

It was obligatory on the part of the Petitioners to prove the mode and manner in which the invoices were being raised and served. It should have examined its own employees, who used to serve the invoices upon the Respondent.

There is no such market practice nor can there be any considered in absence of any pleadings that invoices used to be served by hand only.

Having considered the materials on record, I am of the opinion that the Petitioner is entitled to a decree for a sum of Rs. 45000/- only. The Respondent shall be liable to pay the interest @ of 9% per annum from March 2009 till realization thereof.

In the facts and the circumstances of the case there shall be no order as to costs.

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

MM