

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

Dated 7th January, 2020

Broadcasting Petition No. 404 of 2018

Siti Network Ltd. ... Petitioner
Versus
I Right Television Network ... Respondent

BEFORE:

HON'BLE MR. JUSTICE SHIVA KIRTI SINGH, CHAIRPERSON

For Petitioner : Ms.Ritwik Nanda, Advocate
Mr.Abhishek Bose, Advocate
Ms.ApoorvaVijh, Advocate
For Respondent : None

Judgement(Oral)

This petition has been heard *ex-parte* against the respondent because even after service of notice through paper publication it chose not to appear and has not filed any reply to contest the claim of the petitioner.

2. The prayer of the petitioner is as follows: -

- “(i) Pass a decree in favour of the Petitioner thereby directing the Respondent, pay a sum of Rs. 2,81,100/- (Rupees Two Lakhs Eighty One Thousand and One Hundred Only) to the Petitioner towards the outstanding dues as on date;
- (ii) Pass a decree in favour of the Petitioner awarding interest @ 18% from 09.10.2015 till realization of the outstanding amount;
- (iii) Pass a decree in favour of the Petitioner awarding pendentelite and future interest @ 18% till the realization of the outstanding amounts;
- (iv) Award litigation costs in favour of the Petitioner;
- (v) Pass such other further orders as this Hon'ble Tribunal may deem fit in the facts and circumstances of the case.”

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3. Petitioner is an MSO. At the relevant time petitioner's name was Siti Cable Network Ltd. which appears in the Channel Placement Agreement dated 29.07.2015 (Annexure P4) made with the respondent who is a broadcaster. Subsequently, the name of the petitioner company was changed to the present nomenclature as per certificate issued by Registrar of Companies, Mumbai, dated 05.08.2016.

4. By referring to the Channel Placement Agreement, learned counsel for the petitioner has shown that the name of the respondent's channel was A-One and the term of the agreement was from 01.05.2015 to 30.04.2016. The agreement could be terminated earlier in accordance with the provisions contained therein, mainly if there was default in payment of the carriage fee as per stipulation in Clause 9 of the agreement which is as follows: -

“(i) In consideration of providing access of its network by SITI CABLE within the Territory for carriage of Channel(s) of the Local channel operator during the Term, the Local channel operator shall pay negotiated Carriage Fee of Rs. 7,80,000/- (Rupees Seven Lakh Eighty Thousand Only) per annum plus taxes.

(ii) In addition, the Local channel operator shall be liable for the payment of all applicable taxes, cesses, etc. including service tax, as may be applicable on the Carriage Fee payable by the Local channel operator to SITI CABLE.

(iii) SITI CABLE shall raise invoice on Monthly Basis to the Broadcaster for payment of carriage fee and the same has to be paid within a period of seven days from the date of receipt of the invoice.

(iv) The payment of Carriage Fee shall be subject to deduction of Income Tax at source (TDS) at applicable rates, for which necessary TDS Certificates shall be issued by the Broadcasters within thirty (30) days from the date of deduction of the same by the Local channel operator from the Carriage Fee.

(v) If the Local channel operator fails to pay the Carriage Fee to SITI CABLE on or before the due date(s), then without prejudice to any action which may be taken by SITI CABLE under the applicable Statute/Regulations etc. for the time being in force, the Local channel operator shall be liable for the payment of interest @ 18% per annum during the period of such delay beyond the due date(s).”

5. The pleadings of the petitioner disclose that it was issuing invoices for each month @ Rs. 65,000 plus Taxes which amounted to Rs. 74,100/- per month. The actual invoices whose

numbers are mentioned in the statement of account (Annexure P6) are altogether 6 in number. These are contained in Annexure P5 (Colly). Against the invoices for six months covering the period from May, 2015 to October, 2015, in the running statement of account, the various amounts received from the respondent are indicated against the respective dates when the payments were received. After adjusting the payments made by the respondent and reversing entries of payments against cheques which subsequently got dishonoured, the petitioner has claimed through this petition a total outstanding amount of Rs. 2,81,100/-.

6. The petition was filed as late as on 02.08.2018 whereas the first three invoices had become due for payment in July, 2015 itself. The subsequent three invoices, as per terms of payment agreed between the parties became due for payment after at least a week from 01.08.2015, the date of issue of the 4th invoice. Hence ~~the matter~~, the claim for recovery of the amount covered by three later invoices is apparently within the period of limitation. That amount would come to Rs.2,22,300/-. So far as the remaining claimed amount of Rs. 58,800/- is concerned, that was clearly outstanding for payment before the issuance of the 4th invoice on 1.8.2015 and hence *prima facie* this amount appears to be barred by limitation. Shs.

7. In order to overcome the aforesaid hurdle, learned counsel for the petitioner has placed reliance upon provisions in Sections 18 and 19 of the Limitation Act, 1963. As per Section 18 a fresh period of limitation is to be computed from the time when the competent person acknowledges his liability in writing and signed by such person. She has relied upon two judgements, one of Hon'ble Patna High Court in AIR1981 Pat187 (Rajpati Prasad vs Kaushalya Kuer And Ors.) rendered by a learned single Judge of the said court and the other, a full Bench judgment of Hon'ble High Court of Gujarat at Ahmedabad reported in AIR2000 Guj261(Hindustan Apparel Industries vs Fair Deal Corporation). The judgement of Patna High Court differed from a judgement of Bombay High Court so as to hold that merely because a cheque is subsequently dishonoured, it cannot be said that there is no admission of

the liability of the debt for which the cheque purports to have been issued. The aforesaid view of Patna High Court has been approved and accepted by the full Bench of Gujarat High Court in the case of Hindustan Apparel Industries (*Supra*).

8. On the basis of aforesaid proposition of law, learned counsel for the petitioner has submitted that prior to 01.08.2015 the statement of account shows that two cheques, each for Rs. 30,000/-, had been dishonoured leading to reversal of the entries and after 01.08.2015 three more cheques were dishonoured whose total value is Rs. 1,10,000/-. On that basis it has been claimed that fresh period of limitation would begin on account of acknowledgement of debt for which those cheques had been issued. The amount of dishonoured cheques is more than Rs. 58,400/- for which the issue of limitation has arisen.

9. Alternatively, learned counsel for the petitioner has referred to Section 19 of the Limitation Act, 1963 which prescribes that the fresh period of limitation shall be computed from the time when a debt is paid even in part, provided the prescribed period of limitation has not expired when such part payment is made. In support of this proposition, that if payment is made through a cheque in part payment of the debt, a fresh, period of limitation should be computed from the date such cheque is given, reliance has been placed upon a judgement of Hon'ble High Court of Delhi reported in 1997 (47) DRJ (Rajesh Kumari vs Prem Chand Jain). The aforesaid judgement of Delhi High Court clearly helps the case of the petitioner because in this case part payments have been credited to the benefit of the respondent in August and September, 2015, when the outstanding was more than One Lakh even after adjusting the two payments made through cheques. Hence, the entire outstanding at least till the date of such part payment, would be well within the period of limitation which has to be computed afresh from the date of such payments which were made within the period of limitation.

10. In a case like the present one where there is a running account between the parties maintained during the usual course of business, it appears safer and more reliable to accept the plea of fresh limitation on the basis of Section 19 of the Limitation Act instead of Section 18 because under Section 18 a cheque may, in a given situation be accepted as acknowledgment even if it is dishonoured but then evidence may be led to show that the outstanding debt had been subsequently paid by the concerned party. Since there was a running account and part payments were made in August and September, 2015, a fresh period of limitation commenced in the light of the provisions under Section 19 of the Limitation Act, 1963 and the judgement of Hon'ble High Court of Delhi in case of Rajesh Kumari (*Supra*).

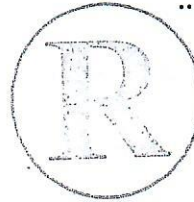
11. In view of aforesaid discussion, the entire claim of the petitioner for Rs. 2,81,100/- is found to be within the period of limitation and, therefore, recoverable because it is supported by relevant invoices and the statement of account available on record. Accordingly, the claim of the principle amount of Rs. 2,81,100/- is allowed.

12. It must be clarified here that there is no other legal impediment available on the records in maintaining this petition and in grant of reliefs, particularly when no objection of any kind has been raised by the other side who has preferred to leave the matter uncontested.

13. So far as prayer for interest for the pre and post litigation period is concerned, the same appears to be justified but not at the rate of 18% although it finds mention in the agreement. Following several judgements of this Tribunal in similar matters, interest is allowed but only @ 9% for both the periods. The pre litigation period will be counted from the month of November, 2015 because the last invoice issued in the beginning of October, 2015 can safely be deemed to have been served by end of October, 2015. Hence, that period will be from November, 2015 to July, 2018 because the petition was filed on 02.08.2018. For the latter period, interest shall be calculated from the date of filing of the petition till the

decretal amount is realised. Since the respondent has chosen not to contest the petition, there shall be no order as to costs.

14. The petition is allowed in aforesaid terms. The respondent is permitted to pay the decretal dues including interest within two months from today failing which the petitioner will be entitled to execute the judgement and decree through appropriate proceedings. The Registry shall prepare a decree on the basis of this judgement at an early date, preferably within four weeks.



(S. K. Singh, J)
Chairperson

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