IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY PETITION NO. 398 OF 2015

M/s.K-NET Pvt.Ltd. …Petitioner
vs.
M/s.Hathway Cable and Datacom Ltd. ....Respondent

Mr.Bharat B. Merchant with Mr.Ishwar Ahuja for Petitioner.
Mr.Zal Andhyarujina with Mr.Thakore, Ms.Jyoti Ghag and Rajendra Jain I/b. Thakore Jariwala & Ors. for Respondent.

CORAM : S.C. GUPTE, J.

30 NOVEMBER 2016

P.C. :

Heard learned Counsel for the parties.

2 This petition seeks winding up of the Respondent company on account of inability to pay the Petitioner's debt. The Petitioner's debt is said to have arisen out of distributorship agreements dated 14 November 2000 and 12 November 2003. The Petitioner relies on an invoice issued by the Petitioner on 30 June 2011 raising a claim of distributorship commission / incentive for the period between April 2011 and June 2011. The Petitioner also relies on a reconciliation statement, which is said to have been signed by an officer of the Respondent company on 27 July 2011. Based on this debt, i.e. the reconciled amount, a statutory notice was issued by the Petitioner on 10 October 2013. There was neither compliance nor reply to this statutory notice on the part of the Respondent. This petition has been filed thereafter on 7 July 2014.

3 The main defence of the Respondent is that the employee, who

has signed the reconciliation statement, based on which the oustandings are claimed by the Petitioner, had no authority to do so. The Respondent relies on an e-mail dated 18 July 2011 addressed by the particular employee, Shri Aman Shiman, indicating his resignation from the services of the Respondent. The Respondent also relies upon a clearance certificate, which shows that the particular employee was designated as a Deputy Manager and working in the operations department of the Respondent. He is said to have joined the Respondent on 10 December 2007 and resigned on 18 July 2011. The last working day of the person is said to be 18 July 2011. The clearance certificate also records that the mobile given by the Respondent was returned to the Respondent by the employee on 18 July 2011, i.e. the last working day. The privilege leave to the credit of the employee, as on the date of his leaving the service, was also calculated and shown in the clearance certificate. This clearance certificate is also signed by the particular employee. Based on these facts, it is submitted by the Respondent that the so called reconciliation statement on the part of the Respondent, relied upon by the Petitioner and made the basis of the present petition, is a fabricated document. The concerned employee, who had nothing to do with the accounts department and who was working with the operations department of the Respondent, has after resigning from the services of the Respondent signed the so called reconciliation statement using the stamp of the Respondent. It is submitted that this aspect of the matter also reflects on the Respondent's defence on the ground of limitation. It is submitted that the invoice relates to distributorship commission / incentive for the period between April 2011 and June 2011. The invoice is dated 30 June 2011. Considering the fact that the petition was filed on 7 July 2014, the claim in respect of past dues is clearly barred by the law of limitation. It is submitted that the only document, which is said to save this limitation period, is the fabricated reconciliation statement procured by the Petitioner.

4 The Respondent has also submitted in its affidavit in reply that the set top boxes provided to the Petitioner under the two distributorship agreements belonged to the Respondent company and not to the Petitioner. Yet the Petitioner took away several set top boxes, which were installed at the consumers' end. It is submitted that the Petitioner has migrated to a rival Multi System Operator without following due process of law. It is also claimed that during the subsistence of the distributorship agreements, the Petitioner has defaulted in payments of various amounts collected by it from local operators towards subscription charges.

5 All this clearly indicates that there are serious disputes raised by the Respondent to the Petitioner's debt. These disputes clearly appear to be *bona fide* disputes, which would require a trial for adjudication of the Petitioner's dues. In the premises, the Petitioner's debt cannot sustain a winding up petition.

6 In the premises, the petition is dismissed. No order as to costs.

(S.C. Gupte, J.)