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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of decision: 30.08.2018.*

+ **CO.PET. 26/2014**

WORLD WRESTLING ENTERTAINMENT INC..... Petitioner

Through Mr.Preet Pal Singh and Ms.Priyam
Mehta, Advs.

versus

MOBISOFT TELESOLUTIONS PRIVATE LIMITED.... Respondent

Through Mr.Samrat Nigam, Mr.Amit Punj and
Mr.Abhimanyu Walia, Advs.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (ORAL)

1. This petition is filed under section 433(e) and 434 of The Companies Act, 1956 seeking winding up of the respondent company. The case of the petitioner is that the petitioner is inter alia a provider of downloads, streams, voice tones, ringtones, match results and match fixtures for mobile publishing and stream of worldwide reputation. The respondent approached the petitioner to obtain a limited, revocable, non-exclusive and non-transferable license to use and exploit the said contents solely for providing the said contents to the mobile telecommunications devices of customers in India, Sri Lanka and Bangladesh. Parties entered into a contract on 01.07.2006 whereby the respondent was granted the said license by the petitioner. In consideration thereof it is stated that the petitioner raised various invoices with regard to the royalties' payable by the respondent for use of the said contents amounting to USD 225,000.00. However, the respondent failed to make the payment of the said invoices. Accordingly, the

petitioner issued a notice on 29.07.2010 for breach of the said Content Agreement. Thereafter a legal notice was sent on 04.10.2012. Reply was received from the respondent denying liability on 16.10.2012. However, it is pleaded that subsequently on 10.12.2012 an email was received from the respondent acknowledging the liability.

2. Learned counsel appearing for the respondent has strongly submitted that the claim filed by the petitioner is barred by limitation. He submits that there are total eight invoices claimed by the petitioner which are starting from 01.04.2009 till 31.12.2010. He submits that the winding up petition is filed in January 2014 indicating that it is barred by limitation. He secondly submits that the reliance of the petitioner on email dated 10.12.2012 is misconceived as no such email was sent. He submits that in response to the legal notice dated 04.10.2012 a categorical answer was sent on 16.12.2012 denying the liability. Hence, subsequently to accept the liability a few months later appears to be quite an improbable situation. He thirdly submits that this winding up proceeding cannot be converted into a forum for recovery. The remedy available to the petitioner as per the agreement was to approach the appropriate court in US and that procedure cannot be short circuited by filing a winding up petition.

3. I may note that as per the Content Agreement dated 01.07.2006 the accounting period has been described as follows:-

“The Accounting periods under this agreement shall be monthly.”

4. Similarly, clause 5.2 of the Agreement reads as follows:-

“5.2. **Royalty Payments And Reports.** Within thirty (30) days of the end of each Accounting Period during the Term, Wireless Provider shall: (i) pay to WWE the royalty fee due for such previous Accounting Period, by wire transfer in accordance with

the instructions set forth in Exhibit 4, which wire instructions WWE shall have the right to change from time to time in its sole and absolute discretion, by notice to Wireless Provider; and (ii) send to WWE a royalty report in Excel spreadsheet format and substantially in the form attached as Exhibit-1. All royalties not paid when due shall bear interest at the lesser of: (i) one and one half percent (1.5%) per month; or (ii) the maximum rate allowed by law.”

5. It would follow that within 30 days of the end of each accounting period the respondent is obliged to pay the royalty due for such previous account period/accounting period. Hence, each month’s payment became payable within 30 days thereafter.

6. It is manifest from a reading of the above clauses that in this case time has been fixed for making payments. Accounting period is monthly. For each accounting period payment has to be made within 30 days from the date of each account period. Hence within 30 days from the date of each accounting period, the respondent was obliged to pay royalty due.

7. Learned counsel for the petitioner has, however, submitted that the phrase used is “30 days at the end of each accounting period during the term”. He submits that this would imply that the respondent had the option to pay the amount till the end of the term of agreement. The term of the agreement expired on 31.03.2011. Hence, he submits the claim cannot be said to be barred by limitation as the limitation period will run from 31.03.2011.

8. A conjoint reading of clause 1 and clause 5.2 of the contract would show that the respondent was obliged to make payment within 30 days of the end of the accounting period. The accounting period is monthly. Hence, at the end of each month within 30 days, the respondent was obliged to

make payment. The limitation would run from the said date. There is no merit in the contention of the learned counsel for the respondent that the limitation would run in terms of the agreement from the date the agreement came to an end.

9. None of the parties have argued as to which of the Articles of the Limitation Act would be applicable. In the present case the agreement spells out the date when the payment is due. Article 55 of the Schedule to Limitation Act reads as follows:-

	Description of suit	Period of limitation	Time from which period begins to run
55.	For compensation for the breach of any contract, express or implied not herein specially provided for.	Three years	When the contract is broken or (where there are successive breaches) when the breach in respect of which the suit is instituted occurs or (where the breach is continuing when it ceases.

10. In the present case noted above, the respondent was obliged to make the payment within thirty days at the end of each month. Failure to do so would imply that the contract was broken and limitation period started running thereafter. On expiry of three years from the said date, the dues would become barred by limitation.

11. Here the invoices are of 01.04.2009 till 31.12.2010. The petition is filed in January 2014. Hence, prima facie, in my opinion, the claim of the plaintiff is barred by limitation.

12. Next plea that was stressed by the learned counsel for the petitioner was reliance upon the communication dated 10.12.2012. It was pleaded that

this was a clear acknowledgement of amount payable by the respondent. I may only note that in response to the legal notice dated 04.10.2012 vide email dated 16.10.2012 the respondent has stated that all outstanding had been settled and the agreement was terminated by the earlier management and hence nothing further survives in this case. The email is sent by Mr.Kamal Goel. Immediately within less than two months the same gentleman is said to have sent another email on 10.12.2012 where he has offered to settle the matter. The respondent has denied that any such email was issued. They have also pleaded that there was no proof of receipt of this email by the petitioner. Prima facie it is not possible to accept this document as an acknowledgement of debt as has been sought to be argued. As pointed out, there is nothing on record to accept the authenticity of this email. Even otherwise there is merit in the plea of the respondent that the same signatory, namely, Mr.Kamal Goel had in response to the legal notice denied the liability. Within two months thereafter he in all probabilities could not have authored another email admitting that there is some amount payable to the petitioner.

13. It is settled legal position that it is not the function of the company court to enter into an adjudication of disputed facts which should have been the subject matter of the Civil Suit.

14. Reference in this context may be had to the judgement of the Supreme Court in *IBA Health (I) Pvt. Ltd. vs. Info-Drive Systems Sdn.Bhd., (2010) (4) CompLJ 481 (SC)* where the Supreme Court held as follows:-

“17. The question that arises for consideration is that when there is a substantial dispute as to liability, can a creditor prefer an application for winding-up for discharge of that liability? In such

a situation, is there not a duty on the Company Court to examine whether the company has a genuine dispute to the claimed debt? A dispute would be substantial and genuine if it is bona fide and not spurious, speculative, illusory or misconceived. The Company Court, at that stage, is not expected to hold a full trial of the matter. It must decide whether the grounds appear to be substantial. The grounds of dispute, of course, must not consist of some ingenious mask invented to deprive a creditor of a just and honest entitlement and must not be a mere wrangle. It is settled law that if the creditor's debt is bona fide disputed on substantial grounds, the court should dismiss the petition and leave the creditor first to establish his claim in an action, lest there is danger of abuse of winding-up procedure. The Company Court always retains the discretion, but a party to a dispute should not be allowed to use the threat of winding-up petition as a means of forcing the company to pay a bona fide disputed debt.”

15. In view of the above, in my opinion, the debt is a bona fide disputed debt. There are issues which will have to be adjudicated by appropriate Civil Court. Liberty is granted to the petitioner to take steps before an appropriate Civil Court. In case any such steps are taken any observations made by this court herein would not in any manner prejudice any of the parties.

16. Petition is dismissed accordingly. All issues are kept open. Liberty is granted to the petitioner to seek condonation of delay, if any, under section 14 of the Limitation Act. In case, such a plea is raised, the same would be dealt with as per law. All pending applications, if any, also stand disposed of.

JAYANT NATH, J

AUGUST 30, 2018

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