
(2012) 11 DEL CK 0232

In the Delhi High Court

Case No : CS (OS) No. 226 of 2000

M/s. Bigdot Advertising and Communications Pvt. Ltd.

APPELLANT

Vs

Union of India and Another

RESPONDENT

Date of Decision : 27-11-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Constitution of India, 1950 — Article 299
Contract Act, 1872 — Section 70
Limitation Act, 1963 — Section 19

Citation : (2013) 2 AD 212

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : K.R. Chawla with Mr. Sunil Verma, for the Appellant; B.V. Niren, CGSC for the defendant No. 1 and Mr. P.K. Bansal, Advocate for defendant No. 2, for the Respondent

Final Decision : Disposed Off

Judgement

Valmiki J Mehta, J.—This is a suit filed by the plaintiff company M/s BIGDOT Advertising & Communications Pvt. Ltd. for recovery of Rs. 3,16,39,009.64/- against Union of India through Secretary, Department of Telecommunications/defendant no. 1 and Telecommunications Consultants India Ltd. (TCIL)/defendant no. 2. The amount claimed is stated to be the balance payment due for advertisements which were got published by the plaintiff for the defendant no. 2.

(i) The facts of the case are that the plaintiff received a letter dated 4.10.1995 (Ex. P1) from the defendant no. 1 through one Mr. Umesh Verma, Director in the Department of Telecommunications (DOT) that the advertisements in various publications for DOT's full page advertisement captioned "Indian Telecommunications-Opening upto the World" have been approved by the Minister of State for Communications, and that the advertisements should be inserted as early as possible without waiting for a formal order from TCIL, and on whose behalf the advertisements were to be issued. Alongwith the letter Ex. P1

dated 4.10.1995 there were the lists of 114 newspapers and 20 magazines in which advertisements were to be published throughout the country. With respect to changing some of the publications, i.e. numbering 8, a letter dated 5.10.1995/Ex. P3 was thereafter received by the plaintiff from the defendant no. 1 through the said Mr. Umesh Verma, Director. The plaintiff in terms of these letters Ex. P1 and Ex. P3 coordinated with the defendant no. 2/TCIL on the aspect of release of the advertisements. Major part of the advertisements (advertisements in the newspapers) were published by the plaintiff from 6.10.1995 to 8.11.1995. The advertisements which were issued in this period were the advertisements only in the newspapers. So far as the advertisements in the magazines are concerned, called "double spread advertisements", the same were issued in the issues of the magazines for the months of December 1995 and January 1996.

(ii) The plaintiff simultaneous to the issuing of the first batch of advertisements wrote its letter dated 12.10.1995/Ex. P31 to the defendant no. 2 informing the total cost of the advertisements to be approximately Rs. 201 lakhs. The plaintiff also asked for release of the formal work order by Ex. P31.

(iii) With respect to the advertisements inserted in the newspapers, the plaintiff vide its letter dated 8.11.1995/Ex. P66 submitted its invoice for a sum of Rs. 1,59,37,410/- for payment to the defendant no. 2. Alongwith the letter Ex. P66 dated 8.11.1995, 350 copies of the tear sheets of the publications were annexed. The invoice contains the names of the newspapers, sizes of the advertisement and the discounts given by the concerned newspapers wherever applicable.

(iv) The plaintiff further avers in the plaint that at an earlier point of time, i.e. on 6.10.1995, the plaintiff had received a communication from the defendant no. 2/TCIL whereby TCIL had asked the plaintiff to inform the cost of the publication of the advertisements so that the defendant no. 2 is enabled for early release of the work order. Plaintiff had given the necessary reply vide Ex. P-31 dated 12.10.95. The plaintiff's case further is that the formal work order was not issued as the Managing Director of the defendant no. 2, Sh. A.S. Bansal was out of the country, and that when Sh. A.S. Bansal returned back, the plaintiff addressed its communication dated 19.10.1995/Ex. P65 requesting for release of the work order.

(v) Since the plaintiff's bill dated 8.11.1995 for Rs. 1,59,37,410/- was not being released by the defendant no. 2, the plaintiff addressed its communication dated 13.11.1995/Ex. P80 to the Managing Director of the defendant no. 2 for expediting the payments. This was followed by the plaintiff's letter dated 24.11.1995/Ex. P81 reiterating the same subject. The plaintiff has then relied upon an undated letter/Ex. P-82 of the Joint Secretary, Sh. S.D. Chaturvedi of the defendant no. 1 (copy marked to plaintiff) clarifying to the Managing Director of defendant no. 2 that it is the defendant no. 2/TCIL who has to make the payments and this has been so opined by the Member (Finance) of the Department of Telecommunications. By this letter Ex. P82, the defendant no. 1 through its Joint Secretary asked the defendant no. 2 that the payments should

be released to the plaintiff without any further delay.

(vi) After insertion of the double spread advertisements in the magazines during the months of December, 1995 and January, 1996, the plaintiff sent its letter dated 5.2.1996/Ex. P83 annexing therewith the invoice with respect to the advertisements in the magazines. Alongwith this invoice the copies of the magazines were annexed. The invoice with respect to the advertisements inserted in the magazines was for a sum of Rs. 36,46,500/-.

(vii) The plaintiff has then averred in the plaint that defendant No. 2 was chased for payment, but the defendant No. 2 postponed the payment because it was informed to the plaintiff that there was a financial stringency as a result of which payment was not being released. Another reason given for not making the payment was that defendant no. 2 was a small company and it had asked the Ministry/defendant no. 1 for moneys, and when the moneys would be received by the defendant no. 2 from the defendant no. 1, then payments would be made to the plaintiff.

(viii) On account of non-payment of the dues by the plaintiff to the Indian Newspaper Society (INS), and which had accumulated as plaintiff failed to clear the charges for advertisements which were got published, the membership of the plaintiff with INS was cancelled w.e.f. 1.6.1996. It is on account of the plaintiff being a member of INS, that the plaintiff is able to get advertisements published with various newspapers for the PSUs such as the defendant no. 2. The benefit to the plaintiff for being a member of INS includes the fact that it is entitled to 60 days grace period for payment to the various newspapers and other publications. There are said to be only five/six accredited agencies of INS, and of which plaintiff was one such.

(ix) Plaintiff further pleads that ultimately the defendant No. 2 made a part payment of Rs. 59,82,166.80/-. Out of the amount of Rs. 59,82,166.80, an amount of Rs. 59,822/- was by giving of a TDS certificate by the defendant no. 2 to the plaintiff, and the balance amount of Rs. 59,22,344.80/- was by a cheque dated 8.1.1997 which was handed over on 30.1.1997. The plaintiff states that this part payment was made because the defendant No. 2 claimed that payments which can be made to the plaintiff were only at DAVP rates i.e. rates fixed by the Directorate of Advertising and Visual Publicity and not the actual rates which were charged by the newspapers/magazines.

(x) The plaintiff further pleads to have been harassed unnecessarily with respect to non-payment for advertisements which were issued, and therefore, it is argued that it was left with no other alternative except to send a legal notice u/s 80 CPC dated 20.9.1999 claiming the principal amount with interest which on the date of notice was said to be Rs. 3,06,06,122.63/-. The suit ultimately came to be filed for Rs. 3,16,39,009.64/- of which the balance principal amount due is Rs. 1,36,01,743.20/-.

2(i) Both the defendants have appeared and filed their written statements. The

Union of India, Department of Telecommunications/defendant No. 1 pleads that it is not liable because it has no privity of contract with the plaintiff. It is also pleaded that payments which can be made to the plaintiff are only at DAVP rates and not the commercial rates at which advertisements have been got published by the plaintiff in 114 newspapers and 20 magazines.

(ii) The defendant No. 2 in its written statement has similarly pleaded lack of privity of contract as no formal order was said to be issued to the plaintiff. The defendant No. 2 on account of lack of privity of contract pleads that it is therefore neither a necessary nor a proper party inasmuch as whatever advertisements which were released on behalf of the defendant No. 2 were of the defendant no. 1/DOT and did not related to the defendant No. 2 and therefore it was only the defendant No. 1 which was liable to make the payment. Defendant No. 2 has also taken up a plea of the suit being barred by limitation.

The defendant No. 2 in para 17 of its written statement states that the defendant No. 2-company is a 100% government PSU and fully controlled by the defendant no. 1/Department of Telecommunications, and that therefore it is obliged to carry out the directions of the Department of Telecommunications. It is pleaded that only because of the directions of the defendant no. 1 that the defendant No. 2 made the part payment to the plaintiff of Rs. 59,82,166.80/-, however, the subject payment cannot fasten the defendant No. 2 with any liability.

3(i) Issues were framed in this case on 2.4.2003 and which read as under:-

1. Whether the suit of the plaintiff is barred by limitation as alleged by defdt. no. 2? OPD

2. Whether there was a valid contract between the parties in terms of Article 299 of the Constitution of India and whether the same is hit by Article 299? OPP

3. Whether the plaintiff was entitled only on DAVP rates? OPD

4. Whether the plaintiff has not been paid for the work done? OPP

5. Whether the plaintiff is entitled to interest, if so from which period and at what rate?

(ii) Issues framed on 2.4.2003 were modified vide order dated 13.9.2004 whereby issue No. 2 was recast by deleting the same and framing three issues bearing Nos. 2, 2(a) and 2(b) as also another issue pertaining to damages and which read as under:-

2. Whether there was any concluded contract between the parties for the job executed by the plaintiff for the defendant? OPP

2(a) If the above issue is answered in affirmative, whether the said contract is hit by the Article 299 of the Constitution of India? OPD

2(b) If issue No. 2 is answered in affirmative whether the defendants are estopped from raising the plea of invalidity of the contract after having got the

work executed from the plaintiff? OPp

The following additional issue also needs to be framed:

Whether the plaintiff is entitled to any damages? OPP

Issue Nos. 2, 2(a) and 2(b)

4. Though there is no specific issue with respect to defendant No. 2 not being liable because there is no privity of contract with the defendant No. 2 (and which is the case of the defendant No. 2), however, since there exists the requisite pleading, I am including this aspect in issue No. 2 as framed on 13.9.2004. Basically both the defendants plead that there is no contract of the plaintiff with them. Each of the defendants is basically throwing the ball in the court of the other defendant, although it is not disputed by either of the defendants that in fact a payment of Rs. 59,82,166.80/- was made to the plaintiff for the advertisements which were got published by the plaintiff. The aspect therefore to be decided is as to who is liable i.e. whether it is the defendant No. 1, or it is the defendant No. 2, or that both the defendants are liable jointly and severally.

5. The liability of either the defendant No. 1, or the defendant No. 2, or both, in the facts of the present case can necessarily exist only if the plaintiff has a privity of contract with any or both of them. Only that defendant will be liable with whom the plaintiff had a privity of contract i.e. such defendant for whom the plaintiff issued the advertisements, because, in law, liability in a case such as the present can only be of the person with whom the contract has been entered into more so because the plaintiff specifically claims that its entitlement arises because of a contract entered into, and pursuant to which it issued advertisements in various newspapers and magazines. The determination of the aspect of privity of contract, i.e. whether there is privity of contract with defendant no. 1/Union of India or with defendant No. 2/TCIL, is compounded by the fact that not only there is no specific written contract, but also because the correspondence which exists in this case of both the defendants inter se as also their correspondence with the plaintiff, and which correspondence seems to suggest that liability could be either of the defendant No. 1 or the defendant No. 2 or both.

6. On an in-depth examination of the facts of the case and the documents on record I am of the opinion that in the present case contract of the plaintiff is with the defendant No. 2 and not with the defendant No. 1. My reasons for holding that plaintiff's contract is only with the defendant No. 2 and not with the defendant No. 1, are as under:-

(i) Both the covering letters dated 8.11.1995/Ex. P66 (annexing invoice details as per Ex. P67 to Ex. P79) and 15.2.1996/Ex. P83 (annexing invoice details as per Ex. P84 to Ex. P89) were sent not to the defendant No. 1, but to the defendant No. 2.

(ii) The defendant No. 2 at no point of time after receiving of the letters with the

annexures, i.e. Ex. P66 to Ex. P79 and Ex. P83 to Ex. P89, ever wrote to the plaintiff that these covering letters and invoices have been wrongly addressed to the defendant No. 2 on the ground that there is no contract with the defendant No. 2 and that these documents should be addressed and sent to the defendant No. 1. The defendant No. 2 by its such action impliedly accepted that it was the defendant No. 2 with whom the plaintiff had the contract, otherwise the defendant No. 2 would have vehemently objected on receipt of the aforesaid covering letters with invoices, and would have asked that the covering letters and invoices be sent to the defendant No. 1.

(iii) It is the defendant No. 2 which had made the payment of Rs. 59,82,166.80/- to the plaintiff. Merely because the receipt by which the plaintiff accepted this payment, Ex. P113 dated 30.1.1997, states that payment has been received from defendant No. 2 on behalf of the defendant No. 1 will not make any difference inasmuch as out of the total payment of Rs. 59,82,166.80/-, a part amount was by means of a TDS certificate of Rs. 59,822/- issued by none else than the defendant No. 2, i.e. the total payment made of Rs. 59,82,166.80/- is comprised of two parts, one of the cheque paid of Rs. 59,22,344.80/- (vide cheque No. 52348 dated 8.1.1997) and second of the amount of Rs. 59,822/- which was not a payment but only a TDS certificate issued by the defendant No. 2. A TDS certificate is only issued by a person who is liable to make the payment. It is the person who issues the TDS certificate, gets the benefit and thus the defendant No. 2 who has issued the TDS certificate is quite clearly the contracting party. What is the internal arrangement between the defendants is not or need not be the concern of the plaintiff, and which I am observing inasmuch as there is certain correspondence inter se the defendants that the liability should be apportioned between the Ministry/defendant No. 1 and the company-TCIL/defendant No. 2.

Though the defendant No. 2 has written its letter dated 21.5.1998/Ex. P119 (i.e. well after all the advertisements were completed by February, 1996) and which letter states that payment is being processed and shall be made by DOT, really the same is only a matter of internal arrangement inter se the defendants, once we take into account the fact that bills/invoices have been raised upon the defendant No. 2 to which no objection was raised and the TDS certificate has been issued by the defendant No. 2.

(iv) Plaintiff has proved on record the note (date illegible) Ex. DW2/P3 which was put up by the defendant No. 2 to its Board of Directors for making of the payment by the defendant No. 2 to the plaintiff. Even if we take the fact that this note did not translate into the Board resolution, this note is signed by as many as three highest ranking persons in the defendant no. 2, and who are none other than the Managing Director and the Directors (Technical and Finance) of the defendant No. 2. This note Ex. DW2/P3 shows an admission that it is the defendant No. 2 who is liable to pay, although as per the note since defendant No. 2 was a small organization it was to take reimbursement from the defendant

No. 1/Department of Telecommunications-the parent Ministry of defendant No. 2. At this stage, I must reiterate that as per para 17 of the written statement filed by the defendant No. 2 there is a clear admission that the defendant No. 2 is controlled and governed by the defendant no. 1/Department of Telecommunications, and the defendant No. 2 is obliged to carry out any directions of the defendant No. 1.

(v) The plaintiff has also proved on record the letter dated 24.11.1995 sent by it to the Chairman and Managing Director of the defendant No. 2 as Ex. DW2/P12, and which document contains an endorsement in the handwriting and signatures of the Managing Director of the defendant No. 2 stating "Sr. Mgr. (L & T): Please settle Old: I do not like to hold any money of contractor who has worked. I have spoken to J.S. Please pursue." The J.S. which is referred to in this letter dated 24.11.1995 is the Joint Secretary of the defendant No. 1. In fact, the Joint Secretary vide his letter dated 28.11.1995/Ex. PX1 had asked the Managing Director of defendant No. 2 to release all pending payments and debit the same to the defendant No. 1/Department of Telecommunications. Also, by a letter of the same date of the endorsement i.e. 28.11.1995, the Managing Director of the defendant No. 2 vide Ex. PX2 had written to the Joint Secretary that payment should be released by the defendant No. 1 to the defendant No. 2 and thereafter on the very next date thereof payment will be released by the defendant No. 2 to the plaintiff. All that is stated in this letter Ex. PX2 is that defendant No. 2 is a small company which does not have liquid amount to pay Rs. 2 crores, however, in this letter there is no issue ever raised by the defendant No. 2 that payments have not to be made by defendant No. 2 to the plaintiff for various advertisements which were issued.

7(i). The aforesaid shows that on a preponderance of probabilities, the contract of the plaintiff was with the defendant No. 2, though really the controlling entity qua the contract (including issuing of various directions from time to time) was the defendant No. 1. The requirement of publishing the advertisements without a formal order possibly was because as urged on behalf of the plaintiff that the concerned Minister was to go to a Telecom Conference at Geneva in a short period of time and had to carry the published advertisements which showed opening of telecommunication sector in India to the world. I may note that in the cross-examination of the witness of the defendant No. 1, namely Sh. L.T. Tlulanga/DW-1 (Deputy Secretary, DOT) the plaintiff put specific questions as to the World Telecommunications Exhibition taking place in Geneva and all the Ministers and the Ministerial staff going to Geneva. Though, this witness expressed ignorance as to whether the advertisement material was taken by the Minister to Geneva, however, the witness admitted that the World Telecommunications Exhibition took place in Geneva in October, 1995 i.e. the month in which major part of the advertisements were published. This part of the cross-examination of the DW-1 when taken with the letter dated 4.10.1995/Ex. P1 from the defendant No. 1 to the plaintiff, leaves no manner of doubt that there was great urgency in getting the advertisements published because the

said advertisements were really the advertisements not of the defendant No. 2 but of the defendant No. 1 as to the opening of the telecommunication sector in India to the world, and which were required to be shown at the exhibition in Geneva which took place in October, 1995. This letter Ex. P1 specifically states "....since the advertisement is required to be inserted as early as possible, you may go ahead with the release of the same pending receipt of formal order from TCIL.....".

(ii) Also, though there is no material on record, possibly the advertisements of the defendant No. 1 were got inserted on behalf of the defendant No. 2 for two reasons. First reason is and as has been argued on behalf of the plaintiff is that, defendant No. 1 being a Government department would have been hidebound (required to follow certain procedures including of getting the advertisements issued through DAVP at DAVP rates) and since time was short for the Minister to visit the exhibition in Geneva, therefore, the route which was adopted for issue of the advertisements was not through DAVP but through the defendant No. 2, a PSU which is not bound to issue advertisements only through DAVP. The second reason is that DAVP has contracts only with the limited publications and quite a few of the publications in which advertisements were published were not in the approved list of DAVP.

I may at this stage itself note that the witnesses of the defendant No. 2, namely, Sh. Shashi Chawla/DW-2 in his cross-examination dated 22.10.2007 and Sh. A.K. Chandrashekhara/DW-3 in his cross-examination dated 8.7.2008, in so many terms admitted that when advertisements are issued by the defendant No. 2 they are issued through various advertising agencies at commercial rates, and not necessarily through DAVP, and that one such advertising agency through whom advertisements are issued was the plaintiff. It is admitted by these witnesses in categorical terms that payments for advertisements published are to be made to the advertising agency at commercial rates i.e. not DAVP rates and which aspect will be material as will be seen in the later part of this judgment.

8. The conclusions which thus emerge from the above discussion are that on account of shortage of time the plaintiff was asked to go ahead with the publication of the advertisements without waiting for formal order; at no point of time either the defendant No. 1 or the defendant No. 2 even indirectly informed the plaintiff that issuance of advertisements was illegal; there is correspondence numbering about half a dozen inter se the defendants with respect to payments to be made to the plaintiff and of apportioning of the quantum to be paid between the defendant No. 1 and the defendant No. 2; there did take place an exhibition in Geneva in October, 1995 which the then Minister visited; and finally that the defendant No. 2 is not bound to only issue advertisements through DAVP and it has in the past been issuing the advertisements through advertising agencies and paying the advertising agencies at commercial rates and not DAVP rates.

9. Therefore, I hold that it is the defendant No. 2 who is liable inasmuch as the

privity of contract of the plaintiff was with the defendant No. 2, though the advertisements which were issued were of the Department of Telecommunications/defendant No. 1. The witness of the defendant No. 2, DW3, in his cross-examination dated 1.10.2008 has admitted that though the advertisements were of defendant No. 1, defendant No. 2 being a telecom company also got the benefit thereof. The contract of the plaintiff is therefore held to be with the defendant No. 2 to whom the bills/invoices were issued; which entity made the payment including the TDS certificate; and also has in its file had a note signed on 1.5.1996 not only by its Managing Director but also by two other Directors (Technical and Finance) that payment to the plaintiff had to be made.

10. Though, I have held only the defendant No. 2 as liable on account of aforesaid facts, I must point out a disconcerting fact that the correspondence inter se the defendants on record shows that the plaintiff probably has been made to run from pillar to post for its payments on account of tussle between the defendant No. 1 and defendant No. 2. Defendant No. 2 is a 100% owned government company, and as per its own admission was working in accordance with the directions of the defendant No. 1, and because of various reasons including the most important one of financial stringency of the defendant No. 2, payment was not made to the plaintiff initially. Thereafter, part payment of Rs. 59,82,166.80/- was made but the plaintiff was made to chase the defendants for balance payment, and ultimately was forced to file the present suit for recovery of balance amount. I must also observe that the counsel for the defendant No. 1 at one stage did try to take up a case that action has been taken against the author of the letters Ex. P1 and Ex. P3 (Sh. Umesh Verma, Director of the Department of Telecommunications) as also the author of the letter Ex. P82 and Ex. PX1 (Sh. S.D. Chaturvedi, Joint Secretary), however, there is nothing on record to buttress this fact. Even assuming, I accept this argument that the defendant No. 1 has taken action against two of its officers, however, why should the plaintiff who got the advertisements published, be penalized by non-payment when the plaintiff has already been blacklisted/deaccredited by the INS causing it to go out of business.

(ii) Though the defendant No. 1 also pleaded the defence of Article 299 of the Constitution of India, I need not go into that aspect since I have held that only the defendant No. 2, with whom there is privity of contract, is liable. I am however of the opinion that both in facts and law, the defence of the defendant No. 1 may not be justified (besides lacking bonafides) for the reason that the Supreme Court in the Constitution Bench judgment in the case of State of West Bengal Vs. B.K. Mondal and Sons, has held that once the government takes benefit of services, then, although there is no contract as per Article 299, yet, on the principles of Section 70 of the Contract Act, 1872, government is liable to make payment of the dues. This Constitution Bench judgment was delivered possibly so as to avoid injustice to a person who provides services to the Union of India, incurs expenditure and whereafter such person is stonewalled for

payment by the UOI on account of bar contained under Article 299 of the Constitution of India. I need not say anything further inasmuch as I am not holding the UOI liable in the facts of the present case, and as stated above it is the defendant No. 2 which is liable to make the payment on account of its privity of contract with the plaintiff.

11. In view of the above, issue Nos. 2, 2(a) and 2(b) are decided by holding that it is the defendant No. 2 which will be liable to the plaintiff for the amount which is being decreed in the subject suit.

Issue Nos. 3, 4 and additional issue framed on 13.9.2004

12(i). That now takes us to the issue as to whether the defendant No. 2 is liable to pay to the plaintiff only at DAVP rates or is defendant No. 2 liable to pay to the plaintiff the commercial rates which the plaintiff has to pay to the various publications. I note that the advertisements were got issued by the plaintiff with the publications as a member of INS, and which members of INS get discounted rates from the publications.

(ii) Before proceeding on this issue as to what are the rates at which the plaintiff has to be compensated, i.e. whether a DAVP rates or commercial rates, there are two aspects which I must strongly bring into note.

(iii) The first aspect is that the stand of the defendants that payments had to be made at DAVP rates goes totally against the stand of these defendants that there was no contract with the plaintiff and therefore was of the defendants to make the payment. Once it is accepted that part payment of Rs. 59,82,166.80/- was made to the plaintiff, I really fail to understand as to how the defendants could have kept on harping that there is no contract with the plaintiff and that plaintiff was not entitled to payment because none of the defendants had any contract with the plaintiff.

(iv) The second aspect, and an important one which has persuaded me to decree the suit of the plaintiff against the defendant No. 2, is that a statement is made before me on behalf of the plaintiff that plaintiff receives no great benefit out of the advertisements issued at commercial rates, because the plaintiff only gets 15% commission out of the total payment, and, in furtherance of this bonafide intention of the plaintiff, counsel for the plaintiff on instruction from the plaintiff has agreed that whatever amount is decreed against the defendant No. 2 can be deposited in the Court so that the payments can be first released directly to different newspapers and magazines whose dues have to be paid, and only after payment of the dues of the publications (and which will be negotiated by the plaintiff) that balance amount left in Court be paid to the plaintiff. It is agreed on behalf of the plaintiff that a Receiver be appointed to act for making the payments of the negotiated amounts of the dues (principal plus interest) of the newspapers and magazines. The plaintiff also agrees that plaintiff will directly negotiate with the newspapers and magazines with respect to the dues which would be payable to such newspapers and magazines inasmuch as such

newspapers and magazines besides claiming the principal amount may also claim certain other compensation towards interest. In any case, the counsel for the plaintiff states that no amount which is deposited by the defendant No. 2 in this Court will be taken by the plaintiff till the dues of each of the publications i.e. the newspapers and magazines are cleared. I may note that plaintiff has already received a sum of Rs. 59,82,166.80/-, and it was not clear as to whether some payments from this amount already received has been made by the plaintiff to any of the publications, however during the hearing, counsel for the plaintiff on instructions from Sh. Satyapal Anand, Managing Director of the plaintiff, has made it clear that the plaintiff had made certain payments to the publications and which payments are duly appearing in its audited accounts. Details of such audited accounts including balance sheets and profit and loss account are agreed to be filed in the Court so that Receiver has the information as to the different payments which have been made to different publications and the balances due.

(v) It is on the basis of the aforesaid two aspects that I am now proceeding to decide whether the plaintiff has to be compensated at commercial rates qua advertisements issued or only at DAVP rates as claimed by the defendants.

13. I have already adverted to in some detail above the aspect that the defendant No. 2 has in past got advertisements issued not through DAVP only, but also through other accredited commercial agencies with the INS. Certain portions of the cross-examination of DW-3/Sh. A.K. Chandrashekhar on behalf of defendant No. 2 are relevant in this regard, and the same read as under:-

Q. How many years you served in TCIL?

Ans. I served for 12 years from 1995 till 2007.

Q. Did TCIL during your tenure ever got advertisement done through DAVP?

Ans. No.

Q. During your tenure TCIL had been getting the advertisement done in various newspapers and magazine and if so from whom?

Ans. From multiple agencies from whom we take quotations.

Q. I put it to you that this advertisements in the various agencies was on the commercial rates and not on DAVP rates. What have you to say?

Ans. It is correct.

Q. Is it correct that the TCIL will always get advertisement done through Accredited Advertisement Agencies only?

Ans. We go by multiple agencies irrespective of whether they have direct accreditation or not from Newspapers.

Q. Can you give any example when TCIL had gone to a Non Accredited Advertisement Agency?

Ans. This information can be taken from TCIL as I am no more an employee with TCIL.

Ex. P.X.1 and P.X.2 appear to be correct.

Ex. P.X.2 has been certified as a true copy by our Company Secretary whose signature I identify.

xxxx xxxx xxxx

Ques. Is it correct that DAVP rates are applicable only when Government advertisements are published through DAVP?

Ans. I am not aware.

Ques. Is it correct that TCIL had been giving advertisements through other agencies and as well through the plaintiff prior to this advertisement?

Ans. TCIL had been giving the advertisements to other agencies as well as the plaintiff only TCIL's own advertisements.

Ques. I put it to you that advertisement TCIL had been giving only through INS Accredited Advertising Agencies. What have you to say?

Ans. No.

Ques. Is it correct that the rates to those agencies were paid on commercial basis and not on DAVP rates?

Ans. Whenever TCIL had released their own advertisements through any agency which is paid on commercial rates as PSU's are not entitled on DAVP rates. It is only the Government who are entitled for DAVP rates and TCIL had released only their own advertisement.

xxxx xxxx xxxx

Q: Is it correct that any advertisement got done by TCIL was paid only on commercial rates?

Ans: Yes. As I understand as per my office it is on commercial rates.

It is correct that if the government get the advertisement done through DAVP, the government pays to them (DAVP) at DAVP rates.

xxxx xxxx xxxx xxxx

14. One thing is very clear that it is only through an accredited agency (with INS) such as the plaintiff that the advertisements can be published through the various publications and also that the discounted rates are those which are clearly specified by INS i.e. rates are not nebulous. Further, the defendant No. 2 was not hidebound to get advertisements issued only through DAVP, and it had got advertisements issued in the past through accredited agencies of INS such as the plaintiff and had paid for the advertisements at commercial rates. Also, there

are publications which are covered and have a contract with DAVP, but, there are other publications with which DAVP has no contract, and therefore, since the list of publications (i.e. both newspapers and magazines) in which the plaintiff had to issue the advertisements included certain newspapers and magazines which did not have DAVP contracts, it was necessary for advertisements to be issued not directly by the defendant No. 1 but through the defendant No. 2/PSU which was not bound to get the advertisements issued only through DAVP approved publications and at DAVP rates. On account of the short period of time in which the publications were to be issued, inasmuch as the Minister was visiting the exhibition in Geneva in October 1995 and had to carry the advertisement material with him which showed opening of the telecommunication sector in India to the world, the plaintiff was directed to go ahead in issuing the advertisements without waiting for a formal order. The plaintiff got the advertisements published in good faith, and for the same it became liable to pay amount of over Rs. 2 crores to the publications. Failure to pay the publications resulted in deaccreditation of the plaintiff from INS. Also, at no point of time, did any of the defendants ever write a letter to the plaintiff before the advertisements were got published from October, 1995 to January, 1996 that the plaintiff will only be paid at DAVP rates. Therefore, the defendants having taken the benefit of the services of getting the advertisements issued in various publications at commercial rates must pay for them. The defendant No. 2 therefore on the principle contained in Section 70 of the Contract Act, 1872 is bound to pay the plaintiff at the commercial rates, and which rates were admittedly being paid by the defendant No. 2 as per past practice to other commercial advertising agencies who are accredited with INS, the plaintiff being one such accredited agency.

15. I note that counsel for the defendant No. 2 wanted this Court to give a finding that there should be an apportionment of liability of payment inter se the defendant Nos. 1 and 2, however, that dispute is a dispute inter se the defendant Nos. 1 and 2, and surely the defendant No. 1 being the parent Ministry will look into the aspect, however, since there is no counter claim filed before me by the defendant No. 2 against the defendant No. 1, I cannot pass any decree asking the defendant No. 1 to take over the liability or apportion the liability which is the subject matter of the present suit.

16. I refuse to grant any damages as claimed by the plaintiff inasmuch as this is a case of non-payment of dues, and under issues of contract, there can only be a requirement of payment of balance dues with interest, and no damages arise in contractual matters de hors the aspect of payment of balance dues. Also, the plaintiff has failed to lead any credible evidence whatsoever on the aspect of any alleged damages which have been suffered by him, and which further persuades me to decline the claim of damages.

17. Accordingly issue Nos. 3 and 4 are decided in favour of the plaintiff and against the defendant No. 2 by holding that the plaintiff will be entitled to the

balance principal amount of Rs. 1,36,01,743.20/- from the defendant No. 2.

So far as additional issue as framed on 13.9.2004, the same is decided against the plaintiff holding that plaintiff is not entitled to any damages as claimed by it.
Issue No. 1

18. This issue of limitation arises because the invoices are of November, 1995 and February, 1996 whereas the suit is filed on 25.1.2000 i.e. beyond three years. The suit is however within limitation as a part payment of Rs. 59,82,166.80/- was made to the plaintiff on 30.1.1997, and which part payment by cheque extends limitation u/s 19 of the Limitation Act, 1963 by three years upto 30.1.2000. The suit filed on 25.1.2000 is thus not time-barred and I hold accordingly. Issue No. 5

19. This issue is that whether the plaintiff is entitled to interest, if so for what period and at what rate. This aspect will cover two parts i.e. pre-suit interest and the pendente lite and future interest.

20. Considering the facts of the present case where there is in a way some lapse on the part of the plaintiff in getting a proper contract signed, and which really is the cause of disputes, I am inclined to grant pre-suit interest only @ 6% per annum simple. This rate of interest will be payable from 1.2.1997 inasmuch as part payment of Rs. 59,22,344.80/- was made by a cheque which was handed over on 30.1.1997. Thus, pre-suit interest which would be payable would be at 6% per annum simple on the balance principal amount of Rs. 1,36,01,743.20/- from 1.2.1997 till the date of filing of the suit. I am also of the opinion that even pendente lite and future interest till payment should also be granted at the same rate of 6% per annum simple. While granting interest at the rate of 6% per annum simple, I have duly factored in the position that really the plaintiff will only be entitled to 15% of the total amount payable as commission alongwith the interest thereon. Since there are further intricacies with respect to payment of amounts to the different publications with interest and the entitlement of the plaintiff, considering that some amount of balancing will be required, interest of justice will be met on the plaintiff being granted interest @ 6% per annum simple pre suit, pendente lite and future. Relief. In view of the above, suit of the plaintiff is decreed for a sum of Rs. 1,36,01,743.20/- alongwith interest from 1.2.1997 till the filing of the suit @ 6% per annum simple and also pendente lite and future interest @ 6% per annum simple till payment. Parties are left to bear their own costs. Decree sheet be prepared.

I reiterate that the amount which would be payable by the defendant No. 2 to the plaintiff, on this judgment becoming final, will necessarily be deposited only in this Court and will not be released to the plaintiff unless the negotiated dues of the different publications in which advertisements were done by the plaintiff are first cleared.

I appoint Mr. Prasouk Jain, Advocate, office at: 459, Old Block, Delhi High Court, New Delhi-110003, Mobile No. 9899314700 as a Receiver in this case for taking

all actions for distributing the decretal amount which would be deposited in this Court on the present judgment becoming final to the respective publications which are the subject matter of Ex. P66 to Ex. P79 and Ex. P84 to Ex. P89. I may state that counsel for the plaintiff has no objection to appointment of Mr. Prasouk Jain, Advocate as a Receiver in this case although he is associated with Mr. B.V. Niren, counsel appearing for UOI. Fees of the Receiver are fixed at Rs. 1 lakh for the work to be done by him under the present judgment including taking all necessary steps and also communicating with the different publications for payment of their respective dues. The Receiver will be entitled to all out of pocket miscellaneous expenses in addition to his fees. Also, if so requested by the plaintiff, the Receiver can after payment of the dues of the publications correspond with the INS on behalf of the plaintiff.

The suit is decreed and disposed of with the aforesaid observations.