

ILR 2013 KAR 3941**ARAVIND KUMAR, J****Sudarshan Cargo Pvt. Ltd., vs. M/s. Techvac Engineering
Pvt. Ltd., ***

A) CODE OF CIVIL PROCEDURE, 1908 (ACT 22 OF 2002) – ORDER V RULE 9 – SUB-RULE (3) OF RULE 9 OF ORDER V – Issue of suit summons by means of fax message or e-mail service – Utilisation of digital technology and electronic communication system in the Courts – HELD, Order V of Code of Civil Procedure prescribes the mode and procedure for issue and service of summons. Rule 9 of Order V came to be substituted by Act 22/2002 and under the amended provision namely sub-Rule (3) of Rule 9 of Order V, enables the Court to issue summons to the defendant by delivering or transmitting a copy thereof addressed to the defendant or his agent apart from other modes prescribed therein and also by means of fax message or electronic mail service. – FURTHER HELD, In view of the fact that digital technology and electronic communication system becoming part of day to day transactions and the use of computers have resulted in the traditional paper documents giving way to the utilisation of advanced

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technology and as such the electronic commerce eliminates the need for paper based transaction and keeping in mind the fact that India was a signatory to the United Nations' Commission on International Trade Law, it adopted the modern law on electronic commerce in 1996 and to revise the laws as per modern laws and to bring in suitable amendments to the existing laws to facilitate e-commerce, e-governance. Hence, the Information Technology Act, 2000 was enacted. Thus, keeping the statement of objects and reasons with which the IT Act, 2000, came into force, the statutory provisions have to be understood so as to achieve its purpose and not to dilute it resulting in such interpretation defeating the purpose of the IT Act, 2000 for which it was enacted. – ON FACTS, FURTHER HELD, The very preamble of IT Act, 2000 would indicate that it has been enacted to provide legal recognition for transactions which would be carried out by use of electronic data as an alternative to traditional paper based communications. The necessity to introduce the said Act can be noticed from the preamble of IT Act, 2000 and the introduction would be *complete answer to the issue on hand* – INFORMATION TECHNOLOGY ACT, 2000 – SCOPE OF – DISCUSSED.

(Paras 18,19,20)

B) EVIDENCE ACT, 1872 (ACT 21 of 2000) – SECTION 3 – Substitution of Clause (2) in Section 3 – Meaning of evidence

– HELD, Information Technology Act, 2000 coming into force from 17.10.2000, the Indian Evidence Act, 1872 also correspondingly came to be amended and certain provisions of the Evidence Act has also undergone changes by Act 21 of 2000. The word “evidence” as defined under Section 3 interpretation clause, has undergone change and Clause (2) is substituted and as per Clause 2 of Section 3, all documents including electronic records produced for the inspection of the Court, such documents are called documentary evidence.

– FURTHER HELD, Another insertion to Section 3 of the Evidence Act was made, whereunder certain expressions having the meanings assigned to them in the IT Act, 2000 also came to be inserted and they are “*the expressions “Certifying Authority”, electronic signature, Electronic Signature Certificate, “electronic form”, “electronic records”, “information”, “secure electronic record”, “secure digital signature” and “subscriber” shall have the meanings respectively assigned to them in the Information Technology Act, 2000 (21 of 2000).*” (Para 16)

- C) INFORMATION TECHNOLOGY ACT, 2000–SECTION 4 – Legal recognition to electronic records – E-mail communication and legal recognition – HELD, Section 4 of the IT Act, 2000 provides that if information or any other matter is to be in writing or in the typewritten or printed form, then, notwithstanding anything contained in such law,

the requirement is deemed to have been satisfied if such information or matter is rendered or made available in an '*electronic form*' and same is accessible to be used for a subsequent reference. – FURTHER HELD, Undisputedly, an e-mail is a communication addressed to a definite person and it means a person who is intended by 'originator' to receive such electronic record as per Section 2(b) of IT Act, 2000 and the 'originator' would mean a person who sends or transmits any electronic message to any other person as defined under Section 2(za) of IT Act, of 2000. Thus, if an acknowledgment is sent by a 'originator' to the 'addressee' by e-mail, without any intermediary, it amounts to electronic communication by e-mail which is an alternative to the paper based method of communication. This mode of transaction is legally recognised under Section 4 of the IT Act, of 2000 .
(Paras 15,17)

- D) **LIMITATION ACT, 1963 – SECTION 18 – Effect of acknowledgement in writing – Whether e-mail/s acknowledging the debt would constitute a valid and legal acknowledgement of debt though not signed as required under Section 18 of the Limitation Act – Acknowledgement is an admission by the Debtor to the Creditor indicating the loan transaction –**

HELD,

- (a) **Section 18 does not provide that acknowledgement has to be in any particular form or to be express. Even a statement which, if literally construed, does amount to an acknowledgement, may be sufficient, if it implies an admission of liability. A narrow interpretation should not be put on what constitutes acknowledgement under Section 18. An acknowledgement is an admission by the Debtor to the Creditor indicating that he owes money to the Creditor. The acknowledgement requires to be examined in the light of surrounding circumstances by an admission that the writer owes a debt. Generally speaking, a literal construction of the statement on which the acknowledgement is sought to be founded should be given. If there is an admission of fact of which the liability in question is a necessary consequence, it should be taken as an acknowledgement.**

(Para 10)

- (b) **If the intention of the parties is to acknowledge a pre-existing debt within the period of limitation, then it is an acknowledgement under the Limitation Act, 1963. An unconditional acknowledgment implies a promise to pay because that is the natural inference if there is no other contrary material.**

(Para 10)

– FURTHER HELD,

(a) Section 18 of the Limitation Act, 1963 prescribes that acknowledgement of liability if made in writing before the expiration of the prescribed period, a fresh period of limitation has to be computed from the time when the acknowledgement was so signed. Thus, essential requirements of a valid acknowledgment under Section 18 of the Limitation Act, 1963 are: (a) It must be in writing; (b) Must be signed by the party against whom such right is claimed; (c) the word ‘writing’ employed in Section 18 refers to paper based traditional manual writing.

(Para 14)

(b) However, the Information Technology Act, 2000 provides for legal recognition for transactions carried out by means of electronic data/electronic communication which involve the use of alternatives to paper based methods of communication and storage of information. The IT Act, of 2000 came in to force with effect from 17.10.2000. On account of advanced technology taking giant steps and the business transactions being conducted through the use of digital technology and communication systems, said Act came into force. It also requires to be noticed that on account of the business community as well as individuals increasingly using computers to create, transmit and store information in the

electronic form instead of traditional paper documents and for facilitating e-commerce and e-governance, the above said Act came into force. (Para 15)

– ON FACTS, FURTHER HELD,

- (a) A harmonious reading of Section 4 together with definition clauses of the Information Technology Act under Sections 2(a), 2(r), 2(t), 2(v) and 2(za) would indicate that on account of digital and new communication systems having taken giant steps and the business community as well as individuals are undisputedly using computers to create, transmit and store information in the electronic form rather than using the traditional paper documents and as such the information so generated, transmitted and received are to be construed as meeting the requirement of Section 18 of the Limitation Act, particularly in view of the fact that Section 4 contains a non obstante clause. (Para 21)**
- (b) Since respondent does not dispute the information transmitted by it is in electronic form to the petitioner by way of message through the use of computer and its network as not having been sent by it to the petitioner, the acknowledgement as found in the e-mails dated 14.01.2010 and 06.04.2010 originating from the respondent to the addressee namely, petitioner, such e-mails have to be**

construed and read as a due and proper acknowledgement and it would meet the parameters laid down under Section 18 of the Limitation Act, 1963 to constitute a valid and legal acknowledgement of debt due. (Para 21)

- (c) Hence, that an acknowledgement of debt by e-mail originating from a person who intends to send or transmit such electronic message to any other person who would be the 'addressee' would constitute a valid acknowledgement of debt and it would satisfy the requirement of Section 18 of the Limitation Act, 1963 when the originator disputes having sent the e-mail to the recipient. (Para 22)

**COMPANIES ACT, 1956 – SECTIONS 433(e) AND (f), 436
READ WITH SECTION 434 – PETITION SEEKING
WINDING UP – DISCUSSED.**

Company Petition is Admitted.

Sri M/s. B.K. Sampathkumar and Associates, Adv. for Petitioners,
Sri Arun Srikumar, Advocate for Respondent.

ORDER

Aravind Kumar, J

Heard the Learned Advocates appearing for the parties.

2. This petition is filed under Section 433(e), (f) and 436 read with Section 434 of the Companies Act, 1956 seeking winding up of the respondent-Company on the ground that it is unable to pay debt due to petitioner.

3. Petitioner is a licensed Custom House Agent and also an IATA accredited international freight forwarding agent. Respondent - Company is engaged in the manufacture, sales and distribution of scrubbing or drying machines and all kinds of industrial or domestic vacuum pumps.

4. During the period September, 2008 to November, 2008 at the request of respondent, petitioner had carried four consignments by shipment which were covered by four Bills of Lading. Pursuant to said service extended by petitioner company it has raised invoices on 09.09.2008, 31.10.2008 and 01.11.2008 (2 nos.) for a total sum of ₹ 4,39,313/- on the respondent/ Company. Copies of these four invoices are at Annexure-A. On account of non-payment of the amounts due under these invoices by respondent to the petitioner there was exchange of correspondence by e-mail between the parties. Respondent/ Company by its e-mail dated 14.01.2010 has informed the petitioner that on account of delay in tie up of its funds payments were not made and respondent has also informed the petitioner that it would be sending its statement of accounts for reconciliation and will make arrangements of funds to pay the dues of the

petitioner. Subsequently on 06.04.2010 there was one more e-mail from respondent to petitioner whereunder it has categorically admitted that it is in a position to make a commitment of settling the dues of the petitioner starting from the said month. It is also agreed to thereunder that first payment would be made between 10th and 15th of the said month namely April, 2010. Respondent has also categorically stated that it would clear all the dues by the end of May, 2010. Having said so, respondent did not pay the amounts to the petitioner and as such a statutory notice came to be issued by the petitioner on 04.12.2012 - Annexure-L and on receipt of the same it was admitted in the reply issued by the respondent that certain amounts are due by it to the petitioner. However, the quantum of amount due as claimed by the petitioner came to be doubted by the respondent. Said reply notice was followed-up by the petitioner by issuance of a rejoinder on 08.01.2003 whereunder it asserted the total outstanding amount due and payable by respondent was ₹ 4,39,313/-. There is no further reply by the respondent to this rejoinder. Thereafter petitioner has approached this Court on 10.01.2013 by filing present petition for winding up of respondent-Company.

5. On issuance of notice of this petition respondent appeared and filed its statement of objections. It is specifically contended by the respondent that for want of reconciliation of accounts matter could not be settled. It is also contended that freight charges are excessively billed. However, respondent did

not dispute the fact that it is not liable to pay to the petitioner amounts claimed under four invoices referred to above. On account of certain minor differences between the petitioner and respondent relating to reconciliation of accounts, this Court felt that parties should sit together and reconcile their accounts and arrive at the actual amount due and payable by respondent to petitioner so as to enable this Court to pass further orders in the matter. Pursuant to same, petitioner and respondent have held a conference on 06.05.2013 for reconciliation of accounts. Thereafter matter was listed on 04.06.2013 and plea of the respondent that there has been 'extra billing' or 'twice billing' was examined by this Court and by Order dated 04.06.2013 said contention came to be negatived for the reasons assigned therein. However, to afford one more opportunity to the respondent to pay the amounts due and payable to petitioner as reconciled and admitted by it, which was to the tune of ₹ 4,20,562/-, further date was given to the respondent to make payment. However, said admitted dues have not been paid by the respondent.

6. Sri.Arun Srikumar, Learned Counsel appearing for respondent has now taken a stand contrary to the stand taken in the statement of objections by raising a plea that alleged debt due to the petitioner by respondent is time barred. He contends that invoices were raised by the petitioner during September, October and November, 2008 and present petition has been filed in 2013 and as such debt in question is barred by limitation. Elaborating

his submissions he contends that alleged acknowledgement of debt from respondent to petitioner by e-mail dated 06.04.2010 is not duly signed by respondent and as such it cannot be construed as an acknowledgement of debt since it does not satisfy the criteria prescribed under Section 18 of The Limitation Act, 1963. Hence, he contends that petitioner is not entitled to recover the amount alleged to be due from respondent.

7. Per contra, Learned Counsel for petitioner submits that respondent has never disputed the liability and having admitted that amounts are due by it to petitioner through e-mails, it cannot now contend contrary to its own admission. He prays for rejection of said plea and ordering for winding up of respondent-Company. It is no doubt true that consent does not confer jurisdiction to revive the limitation. In the instant case the question of limitation though having been raised for the first time without laying foundation either in the reply notice or in statement of objections, it could have been brushed aside outright but on account of said contention being a legal plea, same has been entertained by this Court and answered.

8. Having heard the Learned Advocates appearing for the parties and on perusal of Annexures appended to the Company-Petition as well as examination of the plea put forward by respondent Counsel, I am of the considered view that following point would arise for my consideration:

“Whether e-mail/s acknowledging the debt would constitute a valid and legal acknowledgement of debt though not signed as required under Section 18 of the Limitation Act?”

9. In order to examine the said contention, it would be necessary to extract Section 18 of the Limitation Act and same is extracted herein below:

“18. Effect of acknowledgement in writing:-

- (1) Where, before the expiration of the prescribed period for a suit or application in respect of any property or right, an acknowledgement of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgement was so signed,*
- (2) Where the writing containing the acknowledgement is undated, oral*

evidence may be given of the time when it was signed; but subject to the provisions of the Indian Evidence Act, 1872 (1 of 1872), oral evidence of its contents shall not be received.

Explanation – For the purposes of this section—

- (a) an acknowledgement may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come or is accompanied by a refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to set-off, or is addressed to a person other than a person entitled to the property or right;*
- (b) the word “signed” means signed either personally or by an agent duly authorised in this behalf; and*

(c) *an application for the execution of a decree or order shall not be deemed to be an application in respect of any property or right."*

10. Section 18 does not provide that acknowledgement has to be in any particular form or to be express. Even a statement which, if literally construed, does amount to an acknowledgement, may be sufficient, if it implies an admission of liability. A narrow interpretation should not be put on what constitutes acknowledgement under Section 18. An acknowledgement is an admission by the debtor to the creditor indicating that he owes money to the creditor. The acknowledgement requires to be examined in the light of surrounding circumstances by an admission that the writer owes a debt. Generally speaking, a literal construction of the statement on which the acknowledgement is sought to be founded should be given. If there is an admission of fact of which the liability in question is a necessary consequence, it should be taken as an acknowledgement. The term '**acknowledgement**' has to be construed in its plain literary sense. In Oxford Dictionary II Edition, it has been defined as under:

"acknowledgement" – acceptance of the truth or existence of something; recognition of the importance or quality of

something; the expression of gratitude or appreciation for something; the action of showing that one has noticed someone or something; a letter confirming receipt of something."

In Black's Law Dictionary 9th Edition, it has been defined as :

*"**acknowledgement**" – a recognition of something has been factual; an acceptance of responsibility; the act of making it known that one has received something; a formal declaration made in the presence of an authorised officer, such as a Notary public, by someone who signs a document and confirms that the signature is authentic.*

*"**acknowledgement of debt**" – recognition by a debtor of an existence of a debt; an acknowledgment of debt interrupts the running of prescription."*

If the intention of the parties is to acknowledge a pre-existing debt within the period of limitation, then it is an acknowledgment under the Limitation Act, 1963.

An unconditional acknowledgement implies a promise to pay because that is the natural inference if there is no other contrary material.

11. In the background of these contours when the statutory provisions of Section 18 is examined, sub-Section (1) of Section 18 would indicate that where before the period prescribed for initiating a suit or application in respect of any property or right would expire and an acknowledgement of such liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, a fresh period of limitation would commence from the time when the acknowledgement was so signed.

12. Petitioner has undisputedly raised four invoices on 09.09.2008, 31.10.2008 and 01.11.2008 (2 nos.). Respondent does not dispute that it is not liable to pay the petitioner amounts due under these invoices. Since the company petition in question has been filed on 10.01.2013 respondent has now raised a plea with regard to limitation by contending that acknowledgement of debt by the respondent does not satisfy the criteria prescribed under Section 18 of the Limitation Act and claim is barred by limitation since it is not claimed within three years from the date on which it became due. Though such a plea has not been raised in the statement of objections, it is examined in the background of the contention now raised by the Learned Counsel. In the e-mail dated 14.01.2010 sent by respondent to petitioner it has

been admitted by the respondent that non settlement of amounts due by it to the petitioner is on account of its funds having been tied up. Yet again, in the e-mail dated 06.04.2010 it has been specifically admitted and accepted by the respondent to the following effect:

“I refer to your xxx with Mr.Ramesh. As explained to you, we are in a position to make a commitment of settling our dues progressively starting from this month. We will make the first payment between 10th-15th of this month and clear all your reconciled dues by end of May”.

(emphasis supplied by me)

13. Respondent having admitted to the said effect has now contended that it is not an acknowledgement of debt in the eye of law since it is not duly signed by the respondent and as such respondent is now attempting to take umbrage under Section 18 of the Indian Limitation Act, 1963. Said contention is liable to be rejected for reasons more than one. Respondent does not dispute that on 14.01.2010 at 5.50 P.M it has forwarded to the petitioner an e-mail intimating thereunder the reasons for not settling the dues of the petitioner. Likewise respondent also does not dispute about e-mail forwarded by it to the petitioner on

06.04.2010 at 4.30 P.M. whereunder it has assured the petitioner of settling the dues *“progressively starting from the said month”*. The said acknowledgement cannot be held as not satisfying the criteria prescribed under Section 18 of the Limitation Act, 1963. It has to be held that it is a valid acknowledgement of debt for the reasons stated herein below.

14. Section 18 of the Limitation Act prescribes that acknowledgement of liability if made in writing before the expiration of the prescribed period, a fresh period of limitation has to be computed from the time when the acknowledgement was so signed. Thus, essential requirements of a valid acknowledgement under Section 18 of the Limitation Act, 1963 are:

- (a) It must be in writing;
- (b) Must be signed by the party against whom such right is claimed;

The word ‘writing’ employed in Section 18 refers to paper based traditional manual writing.

15. However, the Information Technology Act, 2000 (hereinafter referred to as ‘IT Act, 2000’ for brevity) provides for legal recognition for transactions carried out by means of

electronic data/electronic communication which involve the use of alternatives to paper based methods of communication and storage of information. The IT Act, 2000 came in to force with effect from 17.10.2000. On account of advanced technology taking giant steps and the business transactions being conducted through the use of digital technology and communication systems, said Act came into force. It also requires to be noticed that on account of the business community as well as individuals increasingly using computers to create, transmit and store information in the electronic form instead of traditional paper documents and for facilitating e-commerce and e-governance, the above said Act came into force. It would be necessary to note the *Statement and Objects of IT Act, 2000* for better understanding of the said enactment and the relevancy of its application to the facts on hand and for answering the point formulated herein above. It reads as under:

“New communication systems and digital technology have made dramatic changes in the way we live. A revolution is occurring in the way people transact business. Businesses and consumers are increasingly using computers to create, transmit and store information in the electronic form instead of traditional paper documents. Information stored in electronic

form has many advantages. It is cheaper, easier to store, retrieve and speedier to communicate. Although people are aware of these advantages, they are reluctant to conduct business or conclude any transaction in the electronic form due to lack of appropriate legal framework. The two principal hurdles which stand in the way of facilitating electronic commerce and electronic governance are the requirements as to writing and signature for legal recognition. At present many legal provisions assume the existence of paper based records and documents and records which should bear signatures. The Law of Evidence is traditionally based upon paper based records and oral testimony. Since electronic commerce eliminates the need for paper based transactions, hence to facilitate e-commerce, the need for legal changes have become an urgent necessity. International trade through the medium of e-commerce is growing rapidly in the past few years and many countries have switched over from traditional paper based commerce to e-commerce.

2. xxx

3. *There is need for bringing in suitable amendments in the existing laws in our country to facilitate e-commerce. It is, therefore, proposed to provide for legal recognition of electronic records and digital signatures. This will enable the conclusion of contracts and the creation of rights and obligations through the electronic medium. It is also proposed to provide for a regulatory regime to supervise the Certifying Authorities issuing Digital Signature Certificates. To prevent the possible misuse arising out of transactions and other dealings concluded over the electronic medium, it is also proposed to create civil and criminal liabilities for contravention of the provisions of the proposed legislature.*

4. *With a view to facilitate Electronic Governance, it is proposed to provide for the use and acceptance of electronic records and digital signatures in the Government offices and its agencies.*

This will make the citizens interaction with the Government offices hassle free.

5. *It is also proposed to make consequential amendments in the Indian Penal Code and the Indian Evidence Act, 1872 to provide for necessary changes in the various provisions which deal with offences relating to documents and paper based transactions. It is also proposed to amend the Reserve Bank of India Act, 1934 to facilitate electronic fund transfers between the financial institutions and banks and the Bankers' Books Evidence Act, 1891 to give legal sanctity for books of account maintained in the electronic form by the banks.*

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Electronic Mail, most commonly referred to as, is a method of exchanging digital messages from one person to another person or from an author to recipient. Modern e-mail operated across

internet by computer net work and it is based on store and forward modem. E-mail is an electronically transmitted correspondence between two or more persons. Thus, any communication between the sender and the recipient would result in privity of transaction. Some of the provisions which have relevance to the word 'e-mail' under IT Act, 2000 are extracted herein below:

“2. Definitions. – (1) In this Act unless the context otherwise requires, -

(b) “addressee” – means a person who is intended by the originator to receive the electronic record but does not include any intermediary;

(r) “electronic form”, with reference to information, means any information generated, sent, received, or stored in media, magnetic, optical, computer memory, micro film, computer generated micro fiche or similar device;

(t) “electronic record” means data, record or data generated, image or sound stored, received or sent in electronic form or micro film or computer generated micro fiche.

(v) *“information” includes data, message, text, images, sound, voice, codes, computer programmes, software and databases or micro film or computer generated micro fiche.*

(za) *“originator” means a person who sends, generates, stores or transmits any electronic message; or causes any electronic message to be sent, generated, stored or transmitted to any other person but does not include an intermediary.*

4. Legal recognition of electronic records.—

Where any law provides that information or any other matter shall be in writing or in the typewritten or printed form, then, notwithstanding anything contained in such law, such requirement shall be deemed to have been satisfied if such information or matter is —

(a) *rendered or made available in an electronic form; and*

*(b) accessible so as to be usable
for a subsequent reference.*

Section 4 of The IT Act, 2000 provides that if information or any other matter is to be in writing or in the typewritten or printed form, then, notwithstanding anything contained in such law, the requirement is deemed to have been satisfied if such information or matter is rendered or made available in an '*electronic form*' and same is accessible to be used for a subsequent reference.

16. It requires to be noticed that on IT Act, 2000 coming into force from 17.10.2000, the Indian Evidence Act, 1872 also correspondingly came to be amended and certain provisions of the Evidence Act has also undergone changes by Act 21 of 2000. The word "**evidence**" as defined under Section 3 interpretation clause, has undergone Change and Clause (2) is substituted and it reads as follows:

"Evidence.- "Evidence" means and includes –

- (1) all statements xxx oral evidence;*
- (2) all documents including electronic records produced for the inspection of the Court, such documents are called documentary evidence.*

Another insertion to Section 3 of the Evidence Act was made, whereunder certain expressions having the meanings assigned to them in the IT Act, 2000 also came to be inserted and they read as under:

“the expressions “Certifying Authority”, electronic signature, Electronic Signature Certificate, “electronic form”, “electronic records”, “information”, “secure electronic record”, “secure digital signature” and “subscriber” shall have the meanings respectively assigned to them in the Information Technology Act, 2000 (21 of 2000).”

17. The word “sign” or “signed” employed in explanation (b) to Section 18(2) has not been defined under the Limitation Act, 1963. Explanation merely says “signed” means either personally or by a agent duly authorised in this behalf. It requires to be noticed that even under Section 3(56) of the General Clauses Act, 1897 the word “sign” has not been defined but has its extended meaning with reference to a person who is unable to write his name to include mark with its gramatical variation and cognate expressions. Undisputedly, an e-mail is a communication addressed to a definite person and it means a person who is intended by ‘originator’ to receive such electronic record as per

Section 2(b) of IT Act, 2000 and the 'originator' would mean a person who sends or transmits any electronic message to any other person as defined under Section 2(za) of IT Act, 2000. Thus, if an acknowledgement is sent by a 'originator' to the 'addressee' by e-mail, without any intermediary, it amounts to electronic communication by e-mail which is an alternative to the paper based method of communication. This mode of transaction is legally recognised under Section 4 of the IT Act, 2000 .

18. The very preamble of IT Act, 2000 would indicate that it has been enacted to provide legal recognition for transactions which would be carried out by use of electronic data as an alternative to traditional paper based communications. The necessity to introduce the said Act can be noticed from the preamble of IT Act, 2000 and the introduction would be complete answer to the issue on hand and it reads as under:

“The Act to provide legal recognition for transactions carried out by means of electronic data interchange and other means of electronic communications, commonly referred to as “electronic commerce”, which involve the use of alternatives to paper-based methods of communication and storage of information, to facilitate electronic filing of documents with the Government agencies and further to amend the Indian Penal Code, the Indian Evidence Act, 1872,

the Banker's Books Evidence Act, 1891 and the Reserve Bank of India Act, 1934 and for matters connected therewith or incidental thereto;"

19. Order V of Code of Civil Procedure prescribes the mode and procedure for issue and service of summons. Rule 9 of Order V came to be substituted by Act 22/2002 and under the amended provision namely sub-Rule (3) of Rule 9 of Order V, enables the Court to issue summons to the defendant by delivering or transmitting a copy thereof addressed to the defendant or his agent apart from other modes prescribed therein and also by means of fax message or *electronic mail service*.

20. In view of the fact that digital technology and electronic communication system becoming part of day to day transactions and the use of computers have resulted in the traditional paper documents giving way to the utilisation of advanced technology and as such the electronic commerce eliminates the need for paper based transaction and keeping in mind the fact that India was a signatory to the United Nations' Commission on International Trade Law, it adopted the modern law on electronic commerce in 1996 and to revise the laws as per modern laws and to bring in suitable amendments to the existing laws to facilitate e-commerce, e-governance. Hence, the IT Act, 2000 was enacted. Thus, keeping the statement of objects and reasons with which the IT Act, 2000, came into force, the above referred statutory provisions have to be understood so as to achieve its purpose and

not to dilute it resulting in such interpretation defeating the purpose of the IT Act,2000 for which it was enacted.

21. A harmonious reading of Section 4 together with definition clauses as extracted hereinabove would indicate that on account of digital and new communication systems having taken giant steps and the business community as well as individuals are undisputedly using computers to create, transmit and store information in the electronic form rather than using the traditional paper documents and as such the information so generated, transmitted and received are to be construed as meeting the requirement of Section 18 of the Limitation Act, particularly in view of the fact that Section 4 contains a non obstante clause. Since respondent does not dispute the information transmitted by it is in electronic form to the petitioner by way of message through the use of computer and its network as not having been sent by it to the petitioner, the acknowledgement as found in the e-mails dated 14.01.2010 and 06.04.2010 originating from the respondent to the addressee namely, petitioner, such e-mails have to be construed and read as a due and proper acknowledgement and it would meet the parameters laid down under Section 18 of the Limitation Act, 1963 to constitute a valid and legal acknowledgement of debt due.

22. For the reasons aforesaid and in view of the discussion made herein above, I am of the considered view that

point formulated herein above requires to be answered by holding that an acknowledgement of debt by e-mail originating from a person who intends to send or transmit such electronic message to any other person who would be the '*addressee*' would constitute a valid acknowledgement of debt and it would satisfy the requirement of Section 18 of the Limitation Act, 1963 when the originator disputes having sent the e-mail to the recipient.

23. This Court having already held by Order dated 04.06.2013 that on reconciliation of accounts respondent has admitted the debt due to the petitioner is at ₹ 4,20,562/- and respondent having been granted sufficient time to pay the said amount and even after granting sufficient time, respondent having not paid the admitted outstanding amount it would clearly indicate that respondent is unable to pay its admitted debt to the petitioner-creditor. At this juncture it requires to be noticed that respondent in its reply dated 29.12.2012 Annexure-P has admitted as under:

“2. It is true that my client is using your client’s services for exporting goods and it is also agreed that my client is due to pay some due amount to your client, but it is not the amount as stated in your notice. a sum of Rs.4,39,313/-.”

(emphasis supplied by me)

This admission on the part of the respondent when read along with the acknowledgement by e-mails would clearly indicate that there is an acknowledgement of debt.

24. In that view of the matter I do not find there is any justifiable ground to grant any further adjournment to the respondent to make payment. Hence, petition is admitted. Petitioner is permitted to take out advertisement in “the Hindu”, English newspaper and “Vijaya Karnataka”, newspaper notifying the hearing date as 30.07.2013. Advertisement to be published on or before 16.07.2013.