

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

**Dated 11<sup>th</sup> May, 2012**

**Petition No.471(C) of 2011**

M/s Wire and Wireless India Ltd. & Anr.	...Petitioners
Vs.	
M/s Anil Cable Network	...Respondent

**Petition No.470(C) of 2011**

M/s Wire and Wireless India Ltd. & Anr.	...Petitioners
Vs.	
M/s Rannson Cable Network	...Respondent

**BEFORE:**

**HON'BLE MR. P.K.RASTOGI, MEMBER**

For Petitioner	:Mr.Tejveer Singh Bhatia, Advocate
For Respondent	:None

**JUDGEMENT**

These petitions have been heard together as the facts and circumstances are similar in nature and are filed by the same petitioner for the recovery of the outstanding subscription charges from the respondents.

2. In spite of service of notice, the respondents did not appear. Therefore, these petitions were heard ex-parte.

**Petition No.471(C) of 2011**

3. The Petitioner No. 1 is a MSO operating in cable network business operations in all over India including Delhi and New Delhi areas. The Petitioner No. 2 is the distributor of the petitioner No. 1 and is authorised by petitioner no. 1 to run and manage the cable network business of the petitioner no. 1 in the area of Ashok Vihar and its adjoining areas in New Delhi.

4. The petitioner has submitted that the petitioner no. 2 entered into a franchisee agreement with the respondent on 05.05.1996 on behalf of petitioner no. 1 for supply of signals of various broadcasters to the respondent.

From May 1996 onwards, the respondent had been availing signals provided by the petitioners and was consistently making defaults in payment as against the invoices raised. However, after December 2008 the respondent completely stopped paying the petitioners against any invoices raised from time to time till January

2009. After this, the respondent migrated to other MSO without clearing the outstanding dues to the petitioners.

5. As the petitioner did not get the due amount, it sent a letter dated 4.12.2010 to the respondent through petitioner's legal counsel wherein it was informed that the respondent was liable to pay an amount of Rs. 6,14,267/- against outstanding subscription charges as on 4.12.2010. The respondent did not reply to the said letter and also has not cleared the outstanding dues till date.

6. Again on 8.6.2011, another letter was issued to the respondent demanding the outstanding amount of Rs. 6,14,267/- .

7. In view of the above submission, the petitioner prayed this Tribunal to pass an :

(a) order / decree in favour of the petitioners and against the respondent for an amount of Rs. 6,14,267/- being the outstanding amount due as subscription charges from the respondent as on date for the cable services received by the respondent from the petitioners.

(b) An order awarding pendentilite interest @ 18% on the above mentioned due of Rs. 6,14,267/-.

(c) Pass an order awarding cost to the petitioners.

8. The petitioner has filed a copy of the agreement which was executed on 05.05.1996 between the petitioner no. 2 and the respondent.

The terms of this agreement was valid till such time clause 9 of the agreement was valid. Clause 9 of the agreement reads as below :

**"9. TERMINATION**

*This Agreement shall be terminated in the following circumstances.*

*Breach :*

*If any party fails to comply with any of the terms and conditions of this Agreement, and such failure if capable of remedy, is not rectified within a reasonable time of receipts of a written notice of such failure from the other party.*

*Insolvency :*

*If the network and / or the Franchisee go into liquidation either compulsory or voluntary (save for the purpose of reconstruction or amalgamation) or if a receiver is appointed in respect of the whole or any part of their assets.*

*Non – payment of charges :*

*If the franchisee either continuously defaults in making require payments to network or goes bankrupt network shall have alien over his networks or may stop providing the singals to the franchisee depending upon the network's discretion.*

*Notice :*

*This agreement can be terminated by either party by giving 3 months notice on breach of any of the above mentioned clauses."*

9. This shows that the agreement will continue till it is terminated by one of the parties. As no party had disconnected the signals till January 2009, the agreement was subsisting till then.

10. The petitioner has submitted copies of the invoices for the period 1.4.2007 to 1.1.2009. It has submitted a copy of the ledger account with respect to the respondent showing outstanding dues. Some copies of the collection receipts have also been annexed with this petition.

The statement of ledger account of the petitioner has been perused and it is found that closing outstanding amount of Rs.6,14,267.00 is payable by the respondent to the petitioner as on 01.01.2009.

11. The petitioner has filed affidavit of its witness Mr. V. Suresh Kumar, Sr. Manager Legal working with the petitioner company, who has exhibited the copy of the agreement between the petitioner No. 2 and the respondent and copies of the invoices raised by the petitioner

on the respondent, copies of the some collection receipts and statement of ledger account.

12. Another witness Mr. Mukesh Verma, Director of the Petitioner No. 2 also filed its affidavit wherein it had stated that the invoices were delivered to the respondent.

13. The issue for my consideration is whether outstanding amount for the period prior to 3 years before filing of this petition will be covered by the Law of Limitation.

According to the learned counsel for the petitioner, the ledger account shows that the respondent was paying the subscription amount sometimes by cheques and sometimes by cash. The last amount it has paid to the petitioner by way of cash on 23.12.2008, which tantamounts to acceptance of the outstanding amount. Therefore, according to Mr. Bhatia, the learned counsel appearing for the petitioner, the law of limitation is not applicable in this case.

14. In my view, the law of limitation will be applicable in this case. The limitation period is 3 years. This period can be got over only in

case where account is mutual, open and current. In this case, the payment was made only by the respondent.

15. In this petition, ledger statement has been filed for the period starting from 16.4.1999 to 1.1.2009. The total outstanding against the respondent is Rs. 6,14,267/- . This petition has been filed by the petitioner on 05.12.2011. Therefore, any outstanding amount for the period prior to December 2008 will be covered by the law of limitation. The outstanding amount at the end of November 2008 was Rs. 5,14,041/-. Therefore, the respondent is liable to pay an amount of Rs. 6,14,267/- - 5,14,041/- = 1,00,226/- .

16. Accordingly, I allow the amount of Rs. 1,00,226/- may be recovered from the respondent alongwith pendentialite interest and future interest @ 9% per annum from the respondent.

### **Petition No. 470(C) of 2011**

17. In this petition, it was submitted that the petitioner no. 2 entered into a franchisee agreement with the respondent on 13.02.1999 on behalf of petitioner no. 1.

From February 1999 onwards, the respondent had been availing cable signals provided by the petitioners till January 2009. The respondent migrated to other competing MSO without clearing the outstanding dues to the petitioners.

18. According to the petitioners, the statement of accounts of the petitioner reflects the outstanding dues of Rs. 5,32,028/- as on date against the respondent. It sent a communication dated 4.12.2010 to the respondent through its legal counsel wherein it was informed to the respondent that the respondent was liable to pay an amount of Rs. 5,32,028/-. A reminder was also sent on 8.6.2011.

19. The petitioner has filed a copy of the agreement which was executed on 13.02.1999 between the petitioner no. 2 and the respondent.

The terms of this agreement was valid till such time clause 9 of the agreement is valid. That means the agreement would continue till it is terminated by one of the parties. As no party disconnected the signals till January 2009, the agreement was subsisting till then.

20. This petition has been filed on 05.12.2011. Any outstanding for the period prior to December 2008 will be covered by the Law of Limitation.

21. According to the statement of account of the petitioner, the total amount will be reduced by the amount of outstanding at the end of November 2008 i.e. 4,92,140/- . Therefore, the petitioner is entitled for principal amount of Rs. 39,888/- (Rs. 5,32,028/- -Rs. 4,92,140/-).

22. Accordingly, I allow the amount of Rs. 39,888/- may be recovered from the respondent alongwith pendentialite interest and future interest @ 9% per annum from the respondent.

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**(P.K. Rastogi)**  
**Member**

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