

**TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL**

**NEW DELHI**

**Dated : September 18, 2012**

**Petition No.14(C) of 2012**

Kable First Devangere Pvt. Ltd.

...Petitioner

Vs.

M/s Star Vision

...Respondent

**BEFORE:**

**HON'BLE MR. JUSTICE S.B. SINHA, CHAIRPERSON  
HON'BLE MR.P.K. RASTOGI, MEMBER**

For Petitioner : Mr.Vineet Bhagat, Advocate

For Respondent : Ms.Vandana Jaisingh, Advocate

**J U D G M E N T**

1. The Petitioner is a Multi Service Operator.

The Respondent is a Local Cable Operator attached to the Petitioner's network.

2. The Petitioner has filed this petition praying for recovery of a sum of Rs.13,79,102/- with interest @ of 24% per annum from the Respondent.

3. The Petitioner admittedly by reason of a joint venture agreement agreed to take over the network of the Respondent. Allegedly it had thereafter become the link operator of the Petitioner.

4. The Petitioner filed a petition against the respondent amongst others before this Tribunal which was marked as Petition No.436(C) of 2010 claiming, inter alia, for a declaration that the action of the Respondents No.2,5,6,9 and 10 therein discontinuing the signals of the Petitioner and switching off its network by migrating to its competitor is illegal and contrary to TRAI Regulations.

5. The Respondent, inter alia, raised a contention therein that it had already shifted to another MSO. This Tribunal permitted the Petitioner to withdraw the petition with leave to file separate petitions.

6. In this petition, the Petitioner has claimed for the following reliefs:

“(i) Restrain the Respondent to not to move to any other MSO without complying with the Regulations;

(ii) Direct the Respondent No.1 to pay the Petitioner a sum of Rs.1,379,102 (Rupees Thirteen Lakhs Seventy Nine Thousand One hundred and Two only) along with an interest @24% per annum from the date the various amounts became due till realization;

(iii) Direct the Respondent to pay a future Subscription Charges regularly to the Petitioner by

entering into a Subscription Agreement  
with Petitioner;

The basic fact of the matter is not in dispute.

7. The Petitioner contends that the Respondent had been taking supply of signals of the channels of various broadcasters upto October, 2010.

The Respondent, however, denies and disputes his signature in the subscription agreement.

8. We have noticed heretobefore that the Petitioner by reason of a joint venture agreement took over the network of the Respondent. According to the Petitioner such a plea has been raised with a view to deny the Petitioner its lawful dues.

9. According to the Petitioner invoices were being sent regularly which the Respondent refused to accept.

10. The Respondent, however, in its reply raised a contention that this petition is barred under the principles of Res Judicata. It has, furthermore, denied and disputed that it had been taken supply of signals from the Petitioner from November, 2010 and only with a view to harass the Respondent it had been sending invoices and as such the same were not being accepted. The Petitioner, according to the Respondent, had committed fraud and cheated it by not making him a shareholder in the company and, inter alia, on that

ground the Respondent stopped taking supply of signals from the Petitioner.

11. The Respondent contended that it had been taking signals from a multi service operator who is having a 'smooth connectivity of Star and Zee channels' and the Petitioner does not have the said channels.

12. In view of the rival contentions of the parties the following issues were framed by an order dated 8.2.2012:

1. "Whether the Respondent has been receiving signals from the Petitioner after October, 2010?
2. If the answer of Issue No.1 is affirmative, whether the Respondent can be directed to pay to the Petitioner a sum of Rs. 1,379,102/- along with an interest @ 24% per annum?
3. If the answer thereto is in affirmative, whether the Respondent can be directed to pay a further subscription charges regularly to the Petitioner?
4. Whether the Respondent has made the payments to the Petitioner as per the Subscription Agreement dated 2.6.2009 signed between the parties?
5. Whether any Subscription Agreement was signed by the Respondent with the Petitioner?
6. Whether the Respondent can be directed to not to move to any other MSO without complying with the Regulations?
7. Whether the Respondent can be directed to pay the amount outstanding as on and before October

2010?

8. Whether the Petitioner is entitled to the relief of restraining the Respondent from joining to any other MSO?
9. Whether the Petition is maintainable?
10. To what relief, if any, the petitioner is entitled to?"

13. In support of their respective contentions, the parties hereto have adduced oral evidence.

The Petitioner examined one Kailasam P.; whereas the Respondent examined its proprietor Shri Shivyogi Prasad.

Both the said witnesses have been cross-examined and we will deal with their depositions at an appropriate stage.

14. Mr. Bhagat, learned counsel appearing on behalf of the Petitioner would contend:

- (1) This Tribunal in terms of Section 73 of the Indian Evidence Act is entitled to compare the signatures of the Petitioner on the joint venture agreement and the subscription agreement and if so done, it would be evident that the subscription agreement had also been executed by the Respondent.
- (2) Malafide on the part of the Respondent would be evident from the fact that although it had been taking supply of signals from the Petitioner's network it has switched over to

another MSO without complying with the provisions of the Telecommunication (Broadcasting & Cable Services) Inter-connection Regulations, 2004

- (3) The Petitioner has served with a demand notice and a statement of account as also the notices issued by its lawyer and from the statement of account filed by the Petitioner it would be evident that it had been paying a sum of Rs.40,000/- per month.

14. Ms. Vandana Jaisingh, learned counsel appearing on behalf of the Respondent, on the other hand, would urge:

- (1) This Petition is not maintainable in its present form.
- (2) The Respondent having already switched over to another MSO from November, 2010, no decree can be passed in favour of the Petitioner as prayed for or otherwise, keeping in view the fact that it filed forged agreement.
- (3) In any event a part of purported dues claimed by the Petitioner is barred under the law of limitation.

15. Before, however, advertent to the respective contentions of the parties we may notice that the purported agreement was valid for a period of six months; having been entered into on or about 3.6.2008.

16. By reason of the said agreement, the subscription fee payable by the Respondent was Rs.50,000/- per month. The Petitioner used

to raise invoices for a sum of Rs.58,150/-. The previous outstandings were also being mentioned in the said invoices.

17. However, from the envelopes which were sent under Registered Post with Acknowledged Due, it appears that the Respondent had been refusing to accept the same.

18. The Petitioner has submitted a statement of accounts for the period 1.4.2008 and 31.12.2011; from a perusal whereof it would appear that diverse amounts used to be paid from April, 2008 to March, 2009. From April, 2009, however, except for the month of April, 2010, the Respondent had not made any payment.

The subscription fees were paid upto October, 2010.

In December, 2010 it had paid a sum of Rs.80,000/-.

19. The Respondent was served with a demand notice for a sum of Rs.1,90,000/- as on 31.10.2010. By a letter dated 4.11.2010, a legal notice was also served on him.

20. A demand notice was again sent on 23.11.2010 claiming a sum of Rs.6,45,002/- as on 31.10.2010 enclosing therewith a statement of account.

21. On or about 23.11.2011, the Respondent through his lawyer sent a reply to the Petitioner's letter dated 4.11.2010 raising, inter alia, a contention that all dues have been paid; while denying the fact that any agreement had been entered into by and between the parties. The Petitioner served a notice under Clause 4.1 of the

Regulations on 31.1.2011, when the earlier petition was pending before this Tribunal.

22. The said petition, as noticed heretobefore, was permitted to be withdrawn on 18.8.2011.

23. Another legal notice was served on the Respondent in terms of a letter dated 7.10.2011, whereto the Respondent sent a reply through his advocate on or about 20.10.2011.

24. One of the questions which would arise for consideration in this petition is as to whether a part of the claim is barred under the law of Limitation.

25. We have noticed heretobefore the statement of accounts. Admittedly the last payment made by the Respondent was in the month of December, 2010.

26. The Respondent has accepted the supply of signals till the month of September, 2010.

The Petitioner however, claimed the subscription charges from April, 2008.

27. This petition has been filed on or about 6.1.2012. The Petitioner prima facie is entitled to recover the purported dues from January, 2009 and not prior thereto.

28. Mr. Bhagat, however would contend that from the statement of account it would appear that the Petitioner had never paid the entire subscription amount and having regard to the fact that in the

invoices not only the current charges but also the past dues had clearly been mentioned and any payment made subsequent to the service of notice would be deemed to be part payment of the dues and, thus, the claim is not bared under the law of limitation.

No such case has been made out by the Petitioner.

29. The question as to whether the relationship between the parties had come to an end from October, 2010 being the principal dispute, we have to consider the same in some details.

We shall advert thereto a little later.

30. Section 73 of the Indian Evidence Act reads as under:

“73. Comparison of signature, writing or seal with others admitted or proved.—In order to ascertain whether a signature, writing or seal is that of the person by whom it purports to have been written or made, any signature, writing, or seal admitted or proved to the satisfaction of the Court to have been written or made by that person may be compared with the one which is to be proved, although that signature, writing, or seal has not been produced or proved for any other purpose.

The Court may direct any person present in Court to write any words or figures for the purpose of enabling the Court to compare the words or figures so written with any words or figures alleged to have been written by such person.

[This section applies also, with any necessary modifications, to finger- impressions.]”

31. In T.P.Mani vs. Krishnan CRP PD No.106 of 2006 the Madras High Court has held that the Court has the requisite jurisdiction to compare the disputed signatures of a party to the lis.

32. Although, the power of a Court or Tribunal in this regard cannot be disputed, it is also well settled that the same would ordinarily not be taken recourse to in view of the fact that the Court should not assume the role of an expert. We have, however, compared the signatures of the Respondent by way of an exceptional measure and find that the signatures appearing in the reply filed by the Respondent as also signatures appearing in his deposition are similar as that of three signatures appearing on the first page of the subscription agreement as also on the last page.

33. The Petitioner relies upon the agreement dated 3.6.2008. It was supposed to have entered into by and between the distributor of the Petitioner and the Respondent. We assume for the sake of argument that the said purported agreement bears the signature of the Petitioner.

34. From a perusal of the said agreement it would clearly go to show that the name of the distributor in the agreement which is said to have been entered into the said agreement has not been mentioned.

35. The purported agreement contains a signature but how and in what capacity the signature on behalf of the distributor has been put is also not known.

36. The said agreement, therefore, cannot be said to have been proved. The Petitioner's witness also does not prove the signature

of the signatory of the said agreement and/or the capacity of the distributor. No distributorship agreement has also been produced to show that the distributor of the Petitioner was entitled to enter into an agreement with the Respondent.

37. The Petitioner in support of its case solely relied upon the statement of account. The said statement of account is not admissible in evidence in terms of Section 34 of the Indian Evidence Act. In *Khambalia Municipality & Anr. v. The State of Gujarat and another*, AIR 1967 1058 it is stated:

“6..... It is clear from a bare perusal of the section that no person can be charged with liability merely on the basis of entries in books of account, even where such books of account are kept in the regular course of business. There has to be further evidence to prove payment of the money which may appear in the books of account in order that a person may be charged with liability thereunder, except where the person to be charged accepts the correctness of the books of account and does not challenge them.”

38. A decree cannot be based on the basis of a statement of account alone. Even the books of accounts maintained in ordinary course of business would not be sufficient for a court to pass a decree in a suit for recovery of the amount, when there exists a large number of controversies between the parties.

39. Despite the fact that the Respondent, according to the Petitioner, was a defaulter, in the statement of account some sort of discounts were being given termed as “temporary discount

given". It has not been disclosed as to on what basis, such discounts had been granted.

40. It may be placed on record that whereas in the legal notice served upon the Respondent, a sum of Rs.1,90,000/- as on 31.10.2010 was said to be due, in the notice dated 23.11.2010 a sum of Rs.6,45,002/- was said to be due as on 31.10.2010.

41. How there can be so much discrepancy in the two notices cannot be conceived. It goes to show that even otherwise the statement of account produced by the Petitioner does not reflect the correct state of affairs vis-a-vis the entries made in the books of accounts.

42. The Petitioner is a limited liability company incorporated and registered under the Indian companies Act. It must, therefore, be maintaining its books of accounts. No reason has been assigned as to why the books of accounts and in particular, the ledger account has not been produced.

43. Moreover, although the agreement provided for subscription fee for a sum of Rs.50,000/- from the invoice dated 12.8.2011 it appears that the bill was raised for a sum of Rs.47,291 . Similar is the position with regard to the bill dated 12.7.2011 and other invoices whereupon reliance has been placed by the Petitioner.

44. Moreover, our attention has been drawn by Ms. Vandana Jaisingh to some invoices issued by Kable First Davangree Pvt. Ltd.

wherein the subscription charges was being billed for Rs.40001/- which amount was being paid on regular basis to the Petitioner vis-à-vis a statement made by the PW-1 in the following terms:

“Q. You have been raising invoices upon the respondent same amount for the years of 2008 upto October, 2010.

A. It is correct. Upto December, 2010.”

45. It has been accepted by the said witness that apart from the agreement of 2009, which was valid for a period of six months only and which could be renewed for a further period of six months, no other or further agreement had been entered into by and between the parties hereto. If the Petitioner was serious to continue the relationship with the Respondent in terms of Clause 4A of the Regulations, it should have insisted on entering into an agreement in writing.

46. The relationship between the parties having started in the year 2008 it does stand to any reason, as to why agreements at regular intervals had not been entered into.

47. In view of the fact that no reliance can be placed on the statement of account filed by the Petitioner and particularly having regard to the fact that admittedly the Respondent has switched over to the network of another MSO, we do not find any reason to allow the petition in view of the fact the agreement itself has not

been proved showing the amount of subscription fee payable thereunder.

48. Except for the two admitted invoices, the service of other invoices has also not been proved.

It is true that the Respondent has refused to accept some invoices, but the same are in respect of various months in 2011 that is after the Respondent severed the relationship with the Petitioner.

49. The petition is dismissed. However, in the facts and circumstances of this case, there shall be no order as to costs.

**(S.B. Sinha)**  
**Chairperson**

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

**September 18, 2012**  
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