

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

Dated 9th July, 2014

Petition No. 189(C) of 2013

M/s KAL Cables Pvt. Ltd., Chennai

...Petitioner

Versus

Mr. R. Selvaraj

Proprietor

M/s Gomathi Cables, Trichy

...Respondent

BEFORE:

HON'BLE MR. JUSTICE AFTAB ALAM, CHAIRPERSON

HON'BLE MR. KULDIP SINGH, MEMBER

For Petitioner

: Mr. Ajay Kumar, Advocate

For Respondent

: None

ORDER

By Aftab Alam, Chairperson – M/s Kal Cables Pvt. Ltd., is a company incorporated under the provisions of the Companies Act, 1956 and is working as a multi-system operator. It has filed this petition against the respondent, R. Selvaraj, who is running a proprietorship concern under the name and style of M/s Gomathi Cables as a local cable operator, for recovery of Rs.1,59,910/- as dues of monthly subscription fees.

The respondent did not appear despite service of notice and hence, the petition has proceeded against it *ex parte*.

According to the petitioner, the respondent entered into a “Franchisee Agreement” with it which was to remain in force for a period of 7 years from 3 June 2011, the date of its execution by the two sides. Under the agreement, the respondent was to receive certain TV channels from the petitioner in consideration of payment of Rs.65,759/- as monthly subscription fee.

It is further the case of the petitioner that in terms of the agreement, the petitioner continuously provided signals to the respondent’s network till September 2011 and the respondent continuously enjoyed the signals of TV channels from the petitioner’s network upto September 2011. During this period, the petitioner was regularly raising invoices for payment of the monthly subscription fee but the respondent was quite irregular in making payments and as a result, the outstandings accumulated to Rs.1,59,910/- as on September 2011.

The petitioner sent demand notices and reminders but of no avail. Finally, the petitioner was compelled to file this petition for recovery of its dues.

No reply is filed on behalf of the respondent to controvert the statements and allegations made in the petition.

The petitioner examined as its witness one, J. Rajesh, who is working as the General Manager (Operations) with the petitioner company. The witness fully

supported the petitioner's case. He identified the "Franchisee Agreement" dated 3 June 2011 which is marked as Exhibit PW-1/2. He also identified the monthly invoices raised on the respondent which are marked as Exhibits PW-1/3(1) to PW-1/3(37). The statements made by the witness in paragraphs 6 and 7 of his affidavit are relevant and are reproduced herein below:

"6. That the respondent on 03/06/2011, entered into a franchisee agreement/subscription agreement with the petitioner for distribution of petitioner's signals in the areas mentioned herein above, on the monthly lump sum payment of Rs.65,750/-. This relationship between the parties continued till September 2011. The petitioner continuously provided signals from its network to the respondent till September 2011. So, as per this agreement between the parties the respondent was mandated to pay to the petitioner, monthly subscription charges of Rs.65,750/- excluding taxes in advance, on or before 10th day of every calendar month, as per clause 1(b) of the subscription agreement dated 03/06/2011.

7. That on the basis of aforesaid agreement, the respondent continuously enjoyed the signals of TV channels from the petitioner network upto September 2011 and during this period, the petitioner was continuously raising and serving invoices upon the respondent on regular basis. But the respondent was irregular in making payment of monthly subscription charges (Copy of monthly invoices along with proof of service are enclosed with the petition as Annexure P-3 collectively. The same may be exhibit Ex.PW1/3(1) to PW1/3(42) respectively)."

He further stated that the respondent was irregular in making payments and defaulted on several invoices and as a result, dues accumulated against it. The witness further stated that the petitioner by its reminder dated 8 November 2011 (marked as Exhibit PW-1/5) demanded from the respondent, the outstanding subscription amount of Rs.1,59,910/- which had become due and payable as on 30

September 2011. The Respondent did not reply to the reminder. The Petitioner then sent a legal notice dated 16 April 2012 (marked as Exhibit PW-1/6) demanding arrears of subscription amount of Rs.1,59,910/- along with interest @ 18% per annum. In answer to the legal notice, the petitioner received a reply dated 24 April 2012 (marked as Exhibit PW-1/7) from the respondent's lawyer. In the reply, there was a denial of any relationship between the respondent and the petitioner and it was also denied that the respondent had executed any agreement with the petitioner, hence, there was no question of making any payment by the respondent to the petitioner. The witness stated that the petitioner then by its letter dated 4 May 2012 (marked as Exhibit PW-1/8) controverted the statements made by the respondent in the letter of 24 April 2012. The witness also identified a copy of the statement of accounts which is marked as Exhibit PW-1/4.

The case of the petitioner is fully supported by oral and documentary evidences that remain completely unchallenged and uncontroverted before the Tribunal. The denial of any relationship and the denial of having executed any agreement with the petitioner as contained in Exhibit PW-1/7 is of no avail in view of the "Franchisee Agreement" dated 3 June 2011 which is signed by the respondent and which is produced and duly proved by the reliable evidence before the Tribunal.

There is no reason not to accept the petitioner's claim.

We accordingly allow the petitioner's claim and hold the petitioner entitled to a decree for the sum of Rs.1,59,910/- along with interest @ 18% from 1 October, 2011 to 15 July 2013, the date of filing of the petition before the Tribunal and @ 9% from 16 July 2013 till the date of realization.

Ordered accordingly.

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(Aftab Alam)
Chairperson

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(Kuldip Singh)
Member

/sks/