

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

Dated 19th November, 2014

Petition No. 296(C) of 2013

KAL Cables Pvt. Ltd., Chennai ...Petitioner
Vs.
Anjali Video Vision, T.N. ...Respondent

Petition No. 297(C) of 2013

KAL Cables Pvt. Ltd., Chennai ...Petitioner
Vs.
Star Vision, T.N. ...Respondent

Petition No. 298(C) of 2013

KAL Cables Pvt. Ltd., Chennai ...Petitioner
Vs.
Rajan Cables, T.N. ...Respondent

Petition No. 299(C) of 2013

KAL Cables Pvt. Ltd., Chennai ...Petitioner
Vs.
Bharathi Cable (Win Vision), T.N. ...Respondent

Petition No. 300(C) of 2013

KAL Cables Pvt. Ltd., Chennai ...Petitioner
Vs.
Udhyam Cables, T.N. ...Respondent

Petition No. 301(C) of 2013

KAL Cables Pvt. Ltd., Chennai ...Petitioner
Vs.
Mani Cable, T.N. ...Respondent

Petition No. 302(C) of 2013

KAL Cables Pvt. Ltd., Chennai	...Petitioner
Vs.	
Panasai Pass Time, T.N.	...Respondent

Petition No. 303(C) of 2013

KAL Cables Pvt. Ltd., Chennai	...Petitioner
Vs.	
Sri Vignesh Cable, T.N.	...Respondent

Petition No. 304(C) of 2013

KAL Cables Pvt. Ltd., Chennai	...Petitioner
Vs.	
National Cable, T.N.	...Respondent

Petition No. 305(C) of 2013

KAL Cables Pvt. Ltd., Chennai	...Petitioner
Vs.	
Visual Point, T.N.	...Respondent

Petition No. 306(C) of 2013

KAL Cables Pvt. Ltd., Chennai	...Petitioner
Vs.	
Sri Lakshmi Sat Links, T.N.	...Respondent

Petition No. 307(C) of 2013

KAL Cables Pvt. Ltd., Chennai	...Petitioner
Vs.	
Sri Kannan Cable, T.N.	...Respondent

BEFORE:

HON'BLE MR.JUSTICE AFTAB ALAM, CHAIRPERSON
HON'BLE MR. KULDIP SINGH, MEMBER

For Petitioner : Mr. Ajay Kumar, Advocate
 For Respondents : Mr. K.K.S. Krishnaraj, Advocate
 Mr. Muthukrishnan, Advocate

ORDER

By Aftab Alam, Chairperson – M/s Kal Cables Pvt. Ltd., the petitioner, is a multi-system operator and distributor of television channels, operating in Thanjavur District of Tamil Nadu. It has filed this batch of 12 petitions, each against a sole proprietorship concern, operating as cable operator, from whom the petitioner seeks recovery of different sums of money as dues of monthly subscription fee. As all the 12 cases are based on similar facts, with the exception of the amounts of money claimed and the dates of execution of the agreements, all the cases were heard together and are being disposed of by this common judgment. For the sake of convenience, the relevant facts pertaining to the 12 cases are summarized in a tabular form which is reproduced below:

Sr. No.	Petition no.	Name of the Respondent	Date of Agreement with page no.	Duration of Agreement	Date till the signals were supplied	The amount due as on 31.07.2011	State of account (pg. no.)
1	2	3	4	5	6	7	8
1.	296(C)/13	Anjali Video Vision	10.11.2011 (Pg. no.11)	7 years.	31.07.2011	Rs.8,23,184/-	Pg.39
2.	297(C)/13	Star Vision	22.04.2011 (Pg. no.11)	7 years.	31.07.2011	Rs.13,12,165/-	Pg.40

3.	298(C)/13	Rajan Cables	22.12.2010 (Pg. no.10)	7 years.	31.07.2011	Rs.93,167/-	Pg.38
4.	299(C)/13	Bharathi Cable (Win Vision)	23.04.2011 (Pg. no.10)	7 years.	31.07.2011	Rs.3,69,591/-	Pg.37
5.	300(C)/13	Udhyam Cables	08.12.2010 (Pg. no.10)	7 years.	31.07.2011	Rs.1,62,385/-	Pg.38
6.	301(C)/13	Mani Cable	22.04.2011 (Pg.no.10)	7 years.	31.07.2011	Rs.1,46,920/-	Pg.37
7.	302(C)/13	Panasai Pass Time	03.12.2010 (Pg.no.10)	7 years.	31.07.2011	Rs.5,69,241/-	Pg.38
8.	303(C)/13	Sri Vignesh Cable	30.12.2010 (Pg.no.11)	7 years.	31.07.2011	Rs.2,10,843/-	Pg.38
9.	304(C)/13	National Cable	28.04.2011 (Pg.no.11)	7 years.	31.07.2011	Rs.1,41,052/-	Pg.39
10.	305(C)/13	Visual Point	19.01.2011 (Pg.no.11)	7 years.	31.07.2011	Rs.1,55,503/-	Pg.39
11.	306(C)/13	Sri Lakshmi Sat Links	03.12.2010 (Pg.no.11)	7 years.	31.07.2011	Rs.95,857/-	Pg.37
12.	307(C)/13	Sri Kannan Cable	11.01.2011 (Pg. no.10)	7 years.	31.07.2011	Rs.1,57,525/-	Pg.37

From the above table, it would appear that the subscription agreements with the 12 cable operators (respondents in the 12 cases) were executed on different date in the years 2010 and 2011. All the agreements were for a period of 7 years from the respective dates of their execution. Clause 1(c) of the agreement dealt with the subscription fee and in each case a certain sum multiplied by the number of respondent's subscribers was fixed as the monthly subscription fee. Clause 1(c) of the agreement in petition no.296(C) of 2013 is cited below by way of sample:

“That the Franchisee as of this date shall pay a sum of Rs.74.50 per subscriber on the current declared highest pay channel points which is currently about 868. The Franchise fee will be determined as per the latest declared/revised pay channel points at a given point of time on mutually agreeable terms.”

In all cases the petitioner terminated the supply of signals to the respondents on the same date, 31 July 2011 as on or about that time, the State sector multi-system operator, ARSU, came on the scene and pushed aside the private operators.

It is the case of the petitioner that the respondents were irregular in payment of their monthly subscription fees under their respective agreements and defaulted in the monthly payments and as a result arrears of subscription fee became due from them. The respondents did not pay their respective dues despite reminders and legal notices and hence, the petitioner was constrained to file these petitions before the Tribunal.

In response to the notices issued by the Tribunal, the respondents in each case appeared and filed their respective replies. The replies of the respondents contained nothing more than bald denials. However, none of the respondents in his/its reply denied execution of the agreement.

None of the respondents chose to lead any evidence and all the respondents were content by simply cross-examining the petitioner's witness very briefly.

The petitioner in support of its case, examined one Rajesh, who is serving as General Manager(Operations) with the petitioner company. In his deposition, he fully supported the petitioner's claims against all the respondents. He identified and proved the subscription agreements executed by the respondents in each of the cases. He also identified and proved the monthly invoices and the statement of accounts in each case. He also identified the reminders and the legal notices sent to the respondents. The witness's deposition in petition no.296(C) of 2013 is cited below by way of sample:

"4. That the petitioner company is a multi system operator in Thanjavur District of Tamil Nadu. The present petition has been filed by the petitioner through me, against the respondent (who is a cable operator) for the recovery of outstanding subscription charges amounting to Rs.8,23,184/- which became due against the respondent on account of consuming signals from the petitioner's headend, in the areas mentioned in the schedule attached to the renewed franchisee agreement dated 10.01.2011. Copy of this franchisee agreement dated 10.01.2011 is already on record and placed before this Tribunal as Annexure P-1 along with the petition. The same may be exhibit as Ex. PW1/2.

5. xxxxxxxx

6. That the respondent on 10.01.2011, renewed its franchisee Agreement/Subscription Agreement with the petitioner for distribution of petitioner's signals in the areas mentioned herein above, for the subscriber base of 868 for fixed subscription charges @ Rs.74.50/- per subscriber per month. Total monthly subscription charges payable under this agreement comes out to be Rs.1,82,766/- per month. This relationship between the parties continued till 31st July, 2011. The petitioner continuously provided signals from its network to the respondent till

31.07.2011. So, as per this agreement between the parties, the respondent was mandated to pay to the petitioner, monthly subscription charges of Rs.1,82,766/- excluding taxes in advance, on or before 10th day of every calendar month, as per clause 1(b) of the Subscription Agreement dated 10.01.2011.

7. That on the basis of aforesaid agreement, the respondent continuously enjoyed the signals of TV channels from the petitioner network up to 31st July, 2011 and during the 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 o service are enclosed with the petition as Annexure P-3 collectively. The same may be exhibit Ex. PW1/3(1) to PW1/3(21) respectively).

8. That the erratic and defaulted payment by the respondent has accumulated to an outstanding of Rs.8,23,184/- (Rs. Eight Lakh Twenty Three Thousand One Hundred and Eighty Four only). (Copy of statement of account is enclosed with the petition as Annexure P-4, the same may be exhibit as Ex.PW 1/4).”

He made same or similar statements in all the other cases.

There was a very brief and perfunctory cross-examination of the petitioner's witness on behalf of each of the respondents. In the cross-examination, nothing has come that might be of any help to the respondents.

On a careful consideration of the materials on record and the evidence adduced by the petitioner, both documentary and oral, we accept the petitioner's claims and allow all the 12 petitions.

The office is directed to draw up separate decrees against each of the respondents in the sums mentioned in column 7 of the table given above. The decretal amounts will also carry interest @ 9% per annum from the date of filing of the petitions to the date of actual payment.

There shall be, however, no order as to costs.

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(Aftab Alam)
Chairperson

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(Kuldip Singh)
Member

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