

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

Dated 29th October, 2014

Petition No. 428 (C) of 2012

Taj Television (India) Pvt. Ltd.	.....Petitioner
Versus	
Kailash Cable Network Pvt. Ltd.	.....Respondent

Petition No. 429 (C) of 2012

Taj Television (India) Pvt. Ltd.	.....Petitioner
Versus	
SR Cable TV Pvt. Ltd.	.....Respondent

Petition No. 430 (C) of 2013

Taj Television (India) Pvt. Ltd.	.....Petitioner
Versus	
SAI Cable	.....Respondent

Petition No. 431 (C) of 2013

Taj Television (India) Pvt. Ltd.	.....Petitioner
Versus	
Varadraj Cable Networks (Belgaum)	.....Respondent

Petition No. 432 (C) of 2013

Taj Television (India) Pvt. Ltd.	.....Petitioner
Versus	
International Cable TV Network	.....Respondent

BEFORE:

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

For Petitioner : Mr. Upender Thakur, Advocate
for Singh & Singh Law Firm LLP

For Respondent : None

ORDER

By Aftab Alam, Chairperson – Taj Television (India) Pvt. Limited, the petitioner, is a broadcaster/content aggregator and acts as a distributor of sports channels viz. Ten Sports, Ten Golf, Ten HD, Ten Action, and Ten Cricket. It has filed this batch of 5 petitions, each against a Multi System Operator from whom the petitioner seeks recovery of different sums of money as dues of monthly subscription fees. None of the 5 multi system operators, respondents in this batch of petitions, appeared despite service of notice. Hence, all the petitions in the batch were proceeded *ex parte*.

As all the 5 cases are based on similar facts, with the exception of the amounts of money claimed and the dates of execution and the expiry of the agreements, all the 5 petitions were heard together and are being disposed of by this common order.

For the sake of convenience, the relevant facts pertaining to the 5 petitions are arranged in a tabular form which is reproduced below:

sl no.	Petn. No.	Name of Respondent	Date of Agreement	Subscription agreement expired on	date of demand notice	Date of notice under clause 4.1 / 6.1	Date of notice under clause 4.3 / 6.5	supply of signals disconnected on	Claimed amount/dues as on/amount mentioned in statement of accounts	Rate of Interest on amount claimed	statement of Account -PG no.	Witness deposition- Pg no.
1	2	3	4	5	6	7	8	9	10	11	12	13
1	428 C of 2013	Kailash Cable Network Pvt Ltd	24.08.12	31.03.13	22.10.13	21.05.13	08.06.13	08.07.13	543427/30.06.13/543427	18%	41-44	Sandeep Panwar (Pg 1, Para 2)
2	429 C of 2013	S.R.Cable TV Pvt Ltd	31.12.10	31.03.11	11.02.13 & 14.03.13 & 22.10.13	Nil	Nil	06.09.13	2743180/31.07.13/2743180	18%	37-40	Sandeep Panwar (Pg 1, Para 2)
3	430 C of 2013	SAI Cable	30.10.10	30.09.11	22.10.13	03.01.13	22.01.13	13.02.13	888293/31.01.13/888293	18%	32-35	Sandeep Panwar (Pg 1, Para 2)
4	431 C of 2013	Varadraj Cable Network	01.09.12	31.03.13	22.10.13	12.04.13	26.04.13	22.05.13	640219/22.05.13/640219	18%	30	Sandeep Panwar (Pg 1, Para 2)
5	432 C of 2013	International Cable TV Network	16.05.12	31.03.13	22.10.13	12.04.13	26.04.13	22.05.13	804332/22.05.13/804332	18%	39-42	Sandeep Panwar (Pg 1, Para 2)

As may be seen from the above table, the petitioner's claim relates to periods far beyond the dates of expiry of the agreements in each of the five cases. In the petitions, however, there is no explanation as to how and why the supplies of signals to the defaulting respondents were continued long after the expiry of the subscription agreements. As a matter of fact, there is no averment in any of the petitions that the petitioner supplied signals to the respondents during the currency of the agreements and continued to supply signals to the respondents even after the expiry of the agreements on the basis of any oral agreement or understanding. There is no averment that the respondents received the petitioner's signals and put the signals to profitable use by re-transmitting the petitioner's signals to their

respective subscribers. Though in each of the petitions, copies of monthly invoices and statements of accounts are enclosed but those are hardly of any help in the absence of a positive statement that signals were supplied by the petitioner to the respondents during the period of the agreements and even after the expiry of the agreements, the respondents received the signals willingly and used the signals to their benefit by re-transmitting them to their subscribers.

The fatal omissions in the petitions are later sought to be covered-up in the evidence led on behalf of the petitioner. In support of its claims, one Mr. Sandeep Panwar working as the Assistant Vice-President (Legal) with the petitioner was examined as its witness.

Mr. Panwar made identical deposition in all the 5 cases, besides another case being petition no.427(C) of 2013. In his deposition in all the 6 cases, he stated as under:

“2. I state that the petitioner has continued to provide supply of its TV channel signals to the network of the respondent even after the expiry of the aforesaid subscription agreement(s) until the deactivation of the petitioner’s network on 14.12.2010, only on the assurance of the respondent that it will continue to make payment towards monthly subscription fee and further, will come forward for the negotiation to renew the agreement(s). I state that the petitioner has time to time raised invoices on the respondent not only for payment of monthly subscription fee but also for the payment towards old outstanding dues payable to the petitioner. Copies of invoices are exhibited as EXHIBIT PW ½ (Colly).”

Here it needs to be noted that the petitioner's evidence (examination-in-chief) was filed on affidavit as per the practice followed by the Tribunal. If the examination-in-chief of the witness were to take place in the court, the counsel would not have been allowed to put any question to elicit answers from the witness about facts that are nowhere stated in the pleadings. The statement made by the witness in the affidavit has absolutely no factual basis in the petition filed by the petitioner. We may further note that the affidavit of the witness is dated 8th May 2014. Before that date, some other similar petitions filed by some other petitioner had come up for hearing and the glaring omissions were pointed out. The affidavit that was filed thereafter clearly tries to cover-up the flaws in the petition.

It may also be noted that Mr. Panwar made the same statement in petition no.427(C) of 2013 in which the disconnection of signals had taken place before the expiry of the subscription agreement. It is, therefore, clear that in his depositions, he made parrot like statements without much caring for the truth. No reliance can be placed on his deposition.

For the aforesaid reasons, we decline to take into account the statement made in the affidavit filed on behalf of the petitioner.

In the aforesaid circumstances, we are unable to see how the petitioner can get the decree for the amounts claimed by it in all the five petitions or for that matter even for any lower amount.

We see no merit in the petition. It is accordingly dismissed with cost quantified at Rs.25,000/- for wasting the time of the Tribunal. A receipt showing payment of cost (to be paid in the name of Drawing & Disbursing Officer, TDSAT) to the Mediation Centre of the Tribunal must be filed within two months from today.

.....
(Aftab Alam)
Chairperson

.....
(Kuldip Singh)
Member

sks