

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

Dated 7th April, 2015

Petition No. 165(C) of 2014

M/s KAL Cables Pvt. Ltd., Chennai ...Petitioner

Versus

M/s Durga Cable Network, T.N. ...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. The respondent is a partnership firm and is engaged in the business as a local cable operator in the name M/s Durga Cable Network. The petitioner has filed this petition against the respondent for recovery of Rs.1,10,661/- as dues of monthly subscription fee.

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 subscription agreement with it which was to remain in force for a period of 7 years from 12 October 2010, the date of its execution by the two sides. Under the agreement, the respondent was to receive certain TV channels from the petitioner on payment of Rs.39,786/- (excluding taxes), calculated @ Rs.111/- on the fixed subscriber base of 349.

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 2 September 2011 and the respondent continuously enjoyed the signals of TV channels from the petitioner's network upto 2 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.1,10,661/- as on 2 September 2011.

The petitioner sent demand notices and reminders but failed to realize its dues from the respondent. 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 subscription agreement dated 12 October 2010 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(58). 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 12/10/2010, entered into a franchisee agreement/subscription agreement with the petitioner for distribution of petitioner’s signals in the areas mentioned herein above, for the fixed subscriber base of 349 @ per subscriber per month. Thereby total monthly subscription charges were fixed as per this agreement was Rs.39,786 per month. This relationship between the parties continued till 2nd September 2011. The petitioner continuously provided signals from its network to the respondent till 2nd September 2011. So, as per this agreement between the parties the respondent was mandated to pay to the petitioner, monthly subscription charges of Rs.39,786/- excluding taxes in advance, on or before 10th day of every calendar month, as per clause 1(b) of the subscription agreement dated 12/10/2010.

7. That on the basis of aforesaid agreement, the respondent continuously enjoyed the signals of TV Channels from the petitioner network upto 2nd 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(58) 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 3 November 2011 (marked as Exhibit PW-1/5) demanded from the respondent, the outstanding subscription amount of Rs.1,54,545/- which had become due and

payable as on 30 September 2011. In reply to the reminder, the respondent requested the petitioner to reverse the billing for the month of September 2011 on account of its migration to M/s Tamil Nadu Arasu Cable Corporation. The petitioner acceded to the request and sent reminders for payment of its arrears of subscription charges amounting to Rs.1,10,661/- but the respondent did not care even to reply to the reminders. The petitioner then sent a legal notices dated 6 June 2012 (marked as Exhibit PW-1/6) and 30 January 2014 demanding arrears of subscription amount of Rs.1,10,661/- along with interest @ 18% per annum but that too remain unanswered. He 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. There is, therefore, 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.1,10,661/- along

with interest @ 18% from 1 October 2011 to 21 March 2014, the date of filing of the petition before the Tribunal and @ 9% from 22 March 2014 till the date of realization.

Since the petition has proceeded *ex parte*, there shall be no order as to costs.

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(Aftab Alam)
Chairperson

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(Kuldip Singh)
Member

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