TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL
NEW DELHI

DATED 11th FEBRUARY, 2010

Petition Nos. 222(C) of 2009

Hathway Space Vision …….. Petitioner

Vs.

Ranjeet Mathur …….. Respondent

BEFORE :

HON'BLE MR. JUSTICE S.B. SINHA, CHAIRPERSON
HON'BLE MR. G.D. GAIHA, MEMBER

For Petitioner : Mr. Arun Kathpalia, Advocate
Mr. Nasir Husain, Advocate

For Respondent : Mr. Sharath Sampath, Advocate
Mr. Navin Chawla, Advocate

O R D E R

1. The present petition has been filed by the petitioner against the threatened illegal action of the Respondent of migrating from the network of the Petitioner to another competing MSO without complying with the

mandatory provisions of clause 4 of the Interconnect Regulations and without clearing the outstanding dues and arrears of the Petitioner amount to Rs. 53.16546 lakhs.

2. Petitioner M/s. Hathway Space Vision is a partnership firm and are providing cable TV signals. The Petitioner firm is registered under the Provision of Section 3 of the Cable Television Networks (Regulations) Act, 1995 (hereinafter referred as "Cable Television Act"). The petitioner primarily acts as a Multi Systems Operator (hereinafter referred to as "MSO") and is engaged in the business of reception and distribution of satellite television, broadcast signals and other electronic signals primarily to various distributors, franchises, local cable operators and sub-link operators and also directly to individual subscribers on its own and on behalf of its subsidiaries/affiliates/associates/joint venture companies/firm for re-transmission to the local cable operators and their ultimate subscribers. The petitioner receives and redistributes several satellite television channels which comprise packages or bouquets popularly known Star Television Bouquet, the Sony Entertainment Television Bouquet, the Zee Bouquet etc.

3. The petitioner claims to have a long standing relationship with the respondent, who is a Director of the company known as Space Vision Cabletel Private Limited which company is a partner of the Petitioner firm.

The other two partners of the partnership firm namely Intere and Binary are also companies which are wholly owned subsidiary companies of Hathway Cable and Datacom Limited. The petitioner claims that since the year 2006 disputes and differences arose between the partners of the petitioner firm in relation to accounts of the firm as well as other managerial disputes and all such disputes were referred to Arbitration before the Sole Arbitrator Mr. Justice S.P. Bharucha (Retd.).

4. The petitioner has claimed that the arbitration is still pending as on 8th October, 09 when the petition has been filed. The respondent has submitted while replying to the petition that the arbitration award has already been given by the Hon'ble Arbitrator vide his orders dated 14th September, 2009 in which the claims as well as counter claims of the parties have been dismissed by the Hon'ble Arbitrator. The respondent also claims that the parties had made claims as to dues of feed charges as claimed in the present petition as well. A copy of the award dated 14.09.2009 has been annexed with the MA 141/2009 filed by the respondent.

5. The petitioner in his reply to MA 141/2009 filed by respondent has denied that the petitioner failed to mention the Arbitral award dated 14.09.2009 with any malafide intention or otherwise. The petitioner has claimed that it

had mentioned about the pending arbitral proceeding before a sole Arbitrator in Mumbai. Since the petition as filed by the petitioner in this Tribunal was drafted in Mumbai and sent to Delhi office well before the passing of the Arbitral award dated 14.9.2009 and, therefore, the contents of the Award were not mentioned, inadvertently for updating the petition. The petitioner has further submitted that it was not a party to the arbitration proceeding and, therefore, the question of petitioner making a claim in the arbitration proceeding does not and cannot arise. The petitioner has furthermore claimed that the relief sought for in the present petition was also not the subject matter of the arbitral proceedings and was not decided by the Arbitrator at all. It is claimed that the said arbitration proceeding was *interse* the partners of the Petitioner firm, where the petitioner was not a party and the present petition has been filed by the Petitioner as an MSO against the respondent in the capacity as an independent cable operator who is obtaining feed signals from the petitioner. The petitioner would contend that the prayers before the arbitral claim as mentioned below are for the period prior to 2006 while the claim in the present petition is post 2007 and the petitioner has not prayed for recovery of Rs. 38.26969 lakhs for the period from Jan, 2007 in the arbitration proceeding before Justice Bharucha as alleged. The petitioner has specifically referred to the prayers made in the arbitration proceedings which are related to the cable casting business by the partners.

"(d)(i) the particulars of the operators of the said firm, including the sub-operators therefore setting out the names and other details, connectivity and the accounts of each of them as also the amounts collected from each of them by either cash or cheque since inception of the said firm till date hereof;

(e) That an appropriate award/order and/or direction be passed against the Respondent, its directors, office bearers to pay over to the said firm all amounts retained by them pursuant to disclosure made as per prayer.

(h) that an appropriate award/order and/or direction be passed against the Respondent, its directors, office bearers, agents and servants to pay over to the said firm the following amounts being amounts payable by them to the said firm which they have siphoned off from the said firm or otherwise have wrongfully deprived to the said firm together with interest at the rate of 24% p.a. from such date as this Hon'ble Forum shall deem fit till payment and/or realization as follows:

(i) a sum of Rs. 74,17,787/- (Rupees Seventy Four Lacs Seventeen Thousand Seven Hundred Eighty Seven only) as per the Particulars of Claim, Exhibit "G" hereto, being the amount not deposited with the said firm but collected by the Respondent on account of Feed charges, etc. including Service Tax;

(ii) a sum of Rs. 59,40,448/- (Rupees Fifty Nine Lacs Forty Thousand Four Hundred Forty Eight only) as per the Particulars of Claim, Exhibit "H" hereto, being the amount Feed charges which the Respondent have collected from LJCN Operator, for which the said firm is liable to pay; to UCN by virtue of the arrangements referred to in paras 10 above, including Service Tax;

(iii-a) a sum of Rs.4,48,800/- (Rupees Four Lacs Forty Eight Thousand Eight Hundred only) as per the Particulars of Claim, Exhibit "I-i" hereto, being the amount not deposited with the account of the said firm by the Respondent on account of transaction with Dakshin Media Gaming Pvt. Ltd.;

(iii-b) IN THE ALTERNATIVE to prayer (iii-a) above :

a sum of Rs.4,48,800/- (Rupees Four Lacs Forty Eight Thousand Eight Hundred only) as per the Particulars of Claim, Exhibit "I-ii" hereto, being the amount payable by the Respondent to the said firm due to loss caused to the said firm on account of its failure to collect the amount offered by Dakshin Media Gaming Pvt. Ltd.;

(iv) a sum of Rs.59,32,913/- (Rupees Fifty Nine Lacs Thirty Two Thousand Nine Hundred Thirteen only) as per the Particulars of Claim, Exhibit "J" hereto being the loss suffered by the said firm on account of not hiking the rates as permitted due to increase in

Cable Television charges, which ought to have been increased in the normal course of business;

(v) a sum of Rs.50,00,000/- (Rupees Fifty Lacs only) as per the Particulars of Claim, Exhibit "K" hereto, being the undisclosed income and/or such other sums as may be discovered pursuant to prayers of disclosure sought herein,

(vi) a sum of Rs. 50,00,000/- (Rupees Fifty Lacs only) as per the Particulars of Claim, Exhibit "L" hereto, on account of placement fees not collected and/or illegally pocketed;

(vii) a sum of Rs.3,52,16,866/- (Rupees Three Crores Fifty Two Lacks Sixteen Thousand Eight Hundred Sixty Six only) as per the Particulars of Claim, Exhibit "M" hereto, being the Feed charges payable by the directors of the Respondent to the said firm which are not paid over to the said firm;

(viii) a sum of Rs. 40,00,000/- (Rupees Forty Lacs only) as per the Particulars of Claim, Exhibit "N" hereto, being the amount as misappropriated and/or the amounts or such amount as discovered to have been misappropriated pursuant to the disclosure as sought for herein;

(ix) a sum of Rs. 25,00,000/- (Rupees Twenty Five Lacs only) as per the Particulars of Claim, Exhibit "O" hereto, being the amount of bad debts as estimated to have been written off unauthorized by the Respondent or such amount as disclosed;"

6. The respondent has pleaded that neither in the petition nor in the arbitral proceeding there is any mention of the period for which the dues are claimed and since the petitioner maintains the books of accounts and hence it cannot claim separate amounts for separate periods on its own volition. It is further denied by the respondent that the petitioner has not prayed for recovery of Rs. 38.26969 lakhs for the period from Jan, 2007 in the arbitration proceedings and, therefore, the present petition is not maintainable and liable to be dismissed as per the principles of Res Judicata.

7. The respondent has pleaded that the petitioner in the said proceedings before the arbitrator has claimed feed charges due from the respondent; hence the petitioner cannot claim the same feed charges in a completely separate proceeding and that too after concealing the fact of the previous proceeding coming to a logical conclusion. There is a mention of a claim at (h) (vii) before the learned Arbitrator as above for Rs. 3,52,16,866/- which is termed as the feed charges payable by the directors of the respondent to the said firm and which have not been paid over to the said firm. The petitioner has categorically claimed it has not prayed for recovery of Rs. 38,26,969/- lakhs for the period Jan, 2007 in the arbitration proceeding before Justice Bharucha, as alleged.

8. The respondent has further raised a point that the petitioner had no authority to file present petition for and on behalf of the partnership. In this context the respondent has quoted a case law AIR 1936 Calcutta 353 of M.C. Ghose and R.C. Mitter, JJ during arguments (Bhadreswar Coal Supply Co. Vs Satis Chandra Nandi and Co. and Ors.). It has been decided in this case that :

> "It is open to a partner of a firm consisting of several partners to institute a suit in the name of the firm although the other partners refuse to join in the suit. The partners refusing to join are not necessary parties in the sense that they should be named in the cause title and served with summons of the suit. In describing the cause title of such suit the name of the plaintiff should be the name of the firm only without addition of the name of the partner suing although addition of such name does not matter in the least. The question as to whether the partner bringing the suit should have given an indemnity to the other partner, for bringing a suit in their name, is a matter between them: *Seal and Edgelow v. Kingston, 1908 2 KB579, Rel. on."*
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> The learned Judges have finally concluded that :
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> "The suit could proceed accordingly in the name of the firm with its carriage in the hands of Manik Lal Roy. We accordingly allow the appeal, set aside the judgment and decree of the Court of appeal

below and remand the case to the Court so that the plea of the payment raised by the defendants may be considered"

9. The respondent has further pleaded that the petitioners have withheld the fact that there is a petition filed before the Hon'ble High Court of Bombay being Arbitration Petition No. 184 of 2009 and that the next date of hearing is sometime in the month of January, 2010 once the Court reopens after the vacations. It is further submitted that the said arbitration petition is filed by the two partners of the Petitioner firm namely Binary Technology Transfers Private Limited and Hathway Internet Satellite Private Limited against the third remaining partner namely Space Vision Cable Network Private Ltd., however all three form the petitioner herein and the said petition has been filed by the petitioner without taking any sort of authority from the third partner. It has been furthermore submitted by the respondent that the said arbitration proceeding was filed against the partner viz. Space Vision Cable Network Private Ltd. alleging breaches committed by the aforesaid partner and therefore a relief has been prayed for appointment of court receiver for ensuring the collection of feed charges and subscription charges from the LCOs and the subscribers connected to the firm. In this context, therefore, the respondent is not liable to pay any amount for any period to the petitioners and this petition is liable to be dismissed on the above ground. It has been furthermore pleaded that the present dispute is between the partners and their internal accounting and

dues which does not fall within the jurisdiction of this Hon'ble Tribunal. It is accepted that the petitioner is a MSO, and it is denied that the petitioner has filed the present petition against the respondent in the capacity of an independent cable operator who is obtaining feed signals from the petitioner. It is further denied by the respondent that this is a dispute between the MSO and LCO who are both service providers since the dispute is only related to the internal accounting between the partners.

10. We have gone through the arbitral award given by Justice Bharucha, Sole Arbitrator. The arbitral award is between the following :

1. Hathway Internet Satellite Pvt. Ltd.
2. Binary Technology Transfers Pvt. Ltd. ……. Claimants

And

1. Space Vision Cable Network Pvt. Ltd…… Respondent

11. After deliberating upon various claims and counter claims filed by the parties, the learned Arbitrator has finally passed order as follows :

> "A partnership rests upon the bedrock of mutual trust and confidence. It is crystal clear from the Statement of Case that the Claimants do not have the slightest confidence or trust in their partner, the Respondent. The Counter Claim makes it clear that the Respondent has little confidence in the Claimants. The continuance

of the partnership between the Claimants and the Respondent is, therefore, a travesty that cannot be encouraged. No court or arbitral tribunal may give directions that will enable such a partnership to continue.

Even otherwise, it is for the partners to manage the affairs of the partnership and not for a court or arbitral tribunal to direct how this should be done. The Deed of Partnership, in clause 13, provides for a committee of the partners' nominees to manage the affairs of the partnership. What are sought by prayer (c) of the Statement of Claim are directions detailing the manner in which the committee should function. It would be inappropriate, in the best of situations for a court or arbitral tribunal to give such directions. They would certainly, be most inappropriate in the circumstances of the present case.

Prayers (d) onwards of the Statement of Claim seek manifold details, taking of particular accounts and payment into the partnership funds of various large sums of money. The Counter Claim makes somewhat similar claims.

It is, to the Tribunal's mind, clear that no special case is here involved and that the general rule should be followed. As MacClean, CJ, said in the case quoted above*(Bhut Nath Das Malakar vs. Girish*

Chandra Banerjee, 11 Cal WN 311), when the Claimants think that the Respondent has not been treating them properly, their proper remedy is to apply for dissolution of the partnership and to have its accounts taken on the basis of willful default. In response, the Respondent may also seek accounts on the basis of willful default. If it then be found that the Respondent has cheated the Claimants, or vice versa, the court (or arbitral tribunal) can deal with that.

I affirm the view that I had prima facie taken, namely, that the Claimants, even if they establish the allegations made in the Statement of Claim, cannot secure the reliefs they prayed for. The claim made by the Claimants in the Statement of Claim must, therefore, be dismissed. For much of the same reasons, the Counter Claim must also be dismissed.

I, accordingly, make the following Award:

The Claim is dismissed.

The Counter Claim is dismissed.

There shall be no order as to costs."

12. As a matter of fact the learned Arbitrator has not gone into the merits of claims and counter claims and has finally made an order dismissing the claims in the statement of claim as well as counter claims. The learned Arbitrator has also proposed since the claimants think that the respondent

has not been treating them properly, their proper remedy is to apply for dissolution of the partnership and to have its accounts taken on the basis of willful default.

In regard to the proceeding of the Arbitration Petition no. 184 of 2009 which has been filed before the Hon'ble High Court of Bombay, it is obvious that the two partners of the petitioner firm namely Binary Technology Transfers Private Limited and Hathway Internet Satellite Private Limited against the third remaining partner namely Space Vision Cable Network Private Ltd. as it appears from the rejoinder filed by the respondent in its Miscellaneous Application no. 139 of 2009 that the arbitration petition has been filed in the Bombay High Court is in regard to the breaches committed by the aforesaid partner and for appointment of court receiver for ensuring the collection of fee charges and subscription charges from the LCOs and the Subscribers connected to the firm. It has also been submitted that there are no feed charges which are due and the respondent has not to pay any amount for any period to the petitioner. The petitioner's case is that it has submitted invoices in a CAS area exactly according to the charges to be paid by the subscriber as annexed with the invoices in the petition. The amounts are, therefore, not in dispute as claimed by the petitioner and the invoices for two different periods i.e Jan, 2009 and May, 2009 appeared to be in accordance with the signals being provided in the CAS area. These invoices are based upon the customer

registration forms from all the end users on the basis of the details of the pay channels subscribed by such subscribers. The invoices are reflecting the subscription charges of the amounts to be paid as per the customer registration forms of the previous month. The invoices have been raised as per the records of the subscriber management system maintained by the petitioner and the payments are also made to the broadcasters accordingly. The petitioners have claimed that the invoices have been continuously raised on the respondent. As per the Regulations the old outstanding has been mentioned by the petitioner in each invoice. The petitioner on the basis of these records has claimed Rs. 38.26963 lakhs as outstanding towards signal feed charges. The petitioner has also admitted that it has not maintained accounts in the normal course of the business because it has a close and long standing relationship with the respondent. On 12.01.2009 the petitioner has also addressed a letter of the outstanding to the respondent whereby the total outstanding of Rs.32.88877 lakhs as on 31.12.2008. The respondent has not paid any heed to it. The respondent has not even bothered to give a reply to the legal notice. The letter dated 12.01.2009 has been annexed with the petition, however, the proof of delivery as claimed to have been annexed with the letter, is not available in the petition.

The respondent here in this case is a Director in the company but he is not a shareholder. The main contention of the respondent is that claims and

counter claims have been dismissed by the learned Arbitrator and a petition filed by the petitioner in the Hon'ble High Court of Bombay bearing No. 184 of 2009 is still pending and therefore, the present petition is not sustainable. Another ground taken by the respondent is that the dispute is between partners which do not fall within the ambit of this Tribunal.

13. Order 7 Rule 11 (d) of the Code 7 Civil Procedure reads as under :

> " 11(d) Where the suit appears from the statement in the plaint to be barred by any law."

From a bare perusal of the aforementioned provision, it is absolutely clear that the suit must be barred by any statute. The purported award of the Arbitral Tribunal is not enforceable in law. Merit of the matter has not been gone into therein. Even otherwise, it was not in the petition. Dispute before us and before the learned Arbitral Tribunal are absolutely different and distinct.

The Arbitral Tribunal, even otherwise, in view of the decision of this Tribunal in Aircel Digilink India Ltd. Vs. UOI & Anr. had no jurisdiction in the matter which is pending before us.

If the learned Arbitral Tribunal had no jurisdiction, its award is a nullity.

Any order, it is well settled, which has been passed without jurisdiction would be a nullity. [See Chief Justice of Andhra Pradesh and Ors. Vs. L.V.A. Dixitulu and Ors. AIR 1979 SC 193).

In Administrative Law by Sir William Wade on the subject of doctrine of ultra vires in regard to the jurisdiction, the following observation has been made :

> "Any administrative act or order which is ultra vires or outside jurisdiction is void in law, i.e. deprived of legal effect. This is because in order to be valid it needs statutory authorization, and if it is not within the powers given by the Act, it has no legal leg to stand on. The court will then quash it or declare it to be unlawful or prohibit any action to enforce it. The terminology here depends to some extent on the remedy granted. 'Quashing' is used in connection with the remedy of certiorari. A declaratory judgment is an alternative remedy with similar effect; it declares the offending act to be a nullity in law. Prohibition of execution may be an order of prohibition (a prerogative remedy) or an injunction. But these technicalities make no difference to the legal result; an act found to be outside jurisdiction (ultra vires) is void and a nullity, being destitute of the statutory authority without which it is nothing.
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> Once the court has declared that some administrative act is legally a nullity, the situation is as if nothing had happened. In this way the unlawful act or decision may be replaced by a lawful one. If a compulsory purchase order is quashed as being ultra vires, there is nothing to prevent another order being made in respect of the same land, provided that it is done lawfully. Thus a public authority or tribunal is often given *locus poenitentiae* and is able to correct an

error by starting afresh – something which it might otherwise be unable to do."

It may be that ultimately the petition will fail, but as it makes out a cause of action, no case has been made out to reject the petition at this stage.

Merit of the matter, except in a very exceptional case can be gone into while determining an application under order 7 Rule 11 of the code of Civil Procedure.

At this stage the Tribunal will have to proceed on the basis that the allegations made in the petition are correct. The matter might have been different, had the petition even if given face value and taken to be correct in its entirety would have disclosed no cause of action. It is now also well known that inter se dispute between the parties would by itself be not a bar for initiating a proceeding against a third party.

We, therefore, are of the opinion that no case has been made out for exercising our jurisdiction under Order VII Rule 11(d) of the Code of Civil Procedure.

The respondent is directed to file a reply to the main petition within four weeks and rejoinder thereto may be filed within two weeks thereafter.

…….J
(S.B. Sinha)
Chairperson

…….
(G.D. Gaiha)
Member