

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

DATED 28th MAY, 2010

PETITION No.11(C) OF 2009

Hathway Space Vision ... Petitioner
Versus
Chari Cable Vision ...Respondent

PETITION No.13(C) OF 2009

Hathway Space Vision ... Petitioner
Versus
Ashtavinak Cable ...Respondent

PETITION No.16(C) OF 2009
(With M.A. No. 72 OF 2009)

Hathway Space Vision ... Petitioner
Versus
Ashish Vision ...Respondent

BEFORE:

**HON'BLE MR. JUSTICE S.B.SINHA, CHAIRPERSON
HON'BLE MR.G. D. GAIHA, MEMBER
HON'BLE MR. P.K.RASTOGI, MEMBER**

For Petitioner : Mr. Arun Kathpalia,
Advocate

Mr.Nasir Husain, Advocate

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

JUDGEMENT

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S.B.Sinha

These three petitions involving common questions of law and fact were taken up for hearing together and are being disposed of by this common judgment. The petitioner is a multi system operator (MSO). It inter alia carries on its business of re-transmitting signals of various channels transmitted by various broadcasters to the local cable operators (LCOs).

The petitioner is a registered partnership firm registered under the Indian Partnership Act, 1932. The respondents are proprietary concerns. They are Local Cable Operators (LCOs).

At the outset, we may notice that the firm of the petitioner consists of three partners, namely, Space Vision Cable Network Pvt. Ltd. (Partner No. 1), Binary Technology Transfers Pvt. Ltd. (Partner No. 2) and Hathway Internet Satelite Pvt. Ltd. (Partner No. 3).

According to the petitioners, there exists internal dispute between the partners of the petitioner firm wherein partner no. 1 is on the one side and partners no. 2 & 3 are on the other side.

The petitioner contends that the subscription agreements entered into by and between the parties herein is with the partner no. 1 and they have not been made available to the petitioners herein.

These petitions have been filed inter alia for recovery of sums of Rs. 2,04,935/- in P. No.11(C) of 2009, Rs.3,36,907/- in P. No.13(C) of 2009 and Rs. 10,34,163/- in P. No.16(C) of 2009.

It has also prayed for an order restraining the respondent(s) from switching/migrating from the petitioner MSO to any other competing MSO without clearing its dues and complying with the regulations.

Whereas in Petitions No. 11(C) of 2009 and 16(C) of 2009, the terms and conditions of the agreement are said to be the same, the terms on which the petitioner and the respondent in P. No. 13(C) of 2009 entered into an agreement are different. However, the respondents in these cases seek to rely upon some terms which are not available in the second agreement. It is not in dispute that the area in question is a CAS area. It is also not in dispute that subscriber management system (SMS) is in place. The invoices which have been issued by the petitioners allegedly disclosed the number of subscribers. CRF form has also been issued by the respondent. The petitioner in support of its case relied upon the invoices, the ledger account as also notices issued by it.

The petitioner contends that along with the invoices, the list of subscribers, the details whereof have been provided by the operators themselves, are annexed, from a perusal whereof, it would appear that the number of subscribers is not in dispute.

The respondents, however, on the other hand, contend:-

- (i) That the petitioner has not produced the copy of the subscription agreement deliberately;
- (ii) No. proper reconciliation of accounts had taken place in so far as—
 - (a) The statement of accounts produced by the petitioner is not in order;
 - (b) Certain sums which have been paid have not been deleted;

- (c) The parties had entered into an agreement for rendering services by way of internet in terms whereof the respondent was entitled to internet commission which should be adjusted against the present dues;
- (d) Under the said agreement, the minimum commission of Rs.100 per subscriber was to be given but had not been given;
- (e) The invoices filed by the petitioner are fabricated having not correctly reflected in the revenue share to which they are entitled to and the invoices have never been served on them.

Mr. Arun Kathpalia, the learned counsel appearing on behalf of the petitioner would contend:-

- (i) The respondent having admitted that an agreement had been entered into pursuant whereto they had been receiving feed charges and their liabilities having not been disputed, this petitioner must be held to have proved its case in as much as it has sufficiently been established that the same are not in the custody of the petitioners but in the custody of the Space Vision; and
- (ii) In any event, nothing turns out on production or non-production of the agreement and, as, there was no reason as to why the respondents themselves could not have produced the same;
- (iii) Evidently, the respondents are getting protection from the Space Vision;
- (iv) So far as alleged non-reconciliation of the accounts is concerned, it was urged that the petitioner was not a party to the agreement in relation to ISPs, namely, Hathway Cable and Datacom Pvt Ltd, in terms whereof, the petitioner is merely a confirming party, on the basis whereof, no contractual obligations have been cast upon the petitioner, as would be evident from the terms of the ISP agreement dated 20.10.2001. The petitioners were to adjust the commission in respect of the said ISP agreement provided a requisition is received from the operator and not otherwise. The petitioner is not concerned with the internal dispute between the respondents and the said Hathway Cable and Datacom Pvt. Ltd.

- (v) So far as the defence of the respondents that they have signed the requisition forms in blank is concerned, no evidence having been placed on record by the respondent to that effect; the petitioner's job was merely giving effect to the requisition slip.
- (vi) Invoices have been prepared on the basis of the informations furnished by the respondents themselves and the contention of the respondent is not that the details furnished thereunder are not correct, being a CAS area.

Mr. Navin Chawla, the learned counsel appearing on behalf of the respondent, on the other hand, would urge:-

- (i) The petitioner was bound to give due credit to the commission on the basis of the ISP agreement;
- (ii) The evidence adduced on behalf of the petitioner is different from the case made out in the pleadings;
- (iii) The respondents are not concerned with the inter se dispute amongst the partners of the petitioner firm. No explanation has been offered as to why only these invoices had been filed and that too prior to and after the first invoice and furthermore no proof of delivery thereof has been furnished, no reliance can be placed thereupon.
- (iv) Adjustment of the internet commission will not be based on the requisition form but an internal matter between the petitioners and the Hathway Cable and Datacom Pvt. Ltd. Comparison between the invoices and the accounts would clearly go to show that there exists a lot of discrepancies and, thus, there is absolutely no reason as to why they should be relied upon.
- (v) The said Hathway Cable and Datacom Pvt.Ltd. is merely a cloak and this Tribunal should lift the corporate veil.
- (vi) The witnesses examined on behalf of the petitioner being the employees of the company, it does not lie in the mouth of the petitioner to contend that it had no contractual obligation in terms of the ISP agreement.

(vii) The claim of the petitioner being based on only the books of accounts, the same in absence of any other evidence, would not be admissible in view of the provisions contained in Section 34 of the Indian Evidence Act. Reliance in this behalf has been placed on *Narandas Morardas Galiwala Vs. S.P.A.M. Papammal* [AIR 1967 SC 333].

The petitioner in para 1 of the petition proceeded on the basis that the respondent intended to migrate to another MSO.

In the petition, no contention has been raised with regard to its inability to adjust ISP commission. The petitioner in sub para (iv) of para 5 has clearly stated:-

“Accordingly as per the invoice, the Respondent is liable to pay such advance sums as mentioned by the Petitioner as per the monthly invoice. It is hereby submitted that the Petitioner while raising the invoice takes into account deduction of 25% of subscription revenue to be retained by the Respondent of the Pay Channel revenue as notified by TRAI. The invoices are raised on the basis of the subscription management system (SMS) maintained by the Petitioner and payments are also made to the Broadcasters accordingly.”

No case, therefore, was made out that the petitioner was not in possession of the agreement. In sub para (v) of para 5, it has clearly been accepted that the respondents were liable to pay the agreed subscription fee upon deduction of 25% margin to be retained by it.

In para (d) it was stated—

“On these terms, the Respondent was receiving the signals as the Local Cable Operator from the Petitioner. It is hereby submitted that though a copy of the said agreement is presently not available with the petitioner, the parties have continuously acted upon and have been acting upon the said agreement since 1st January, 2007. The Petitioners have

continuously raised the invoices on the Respondent. The Respondent has also made some part payments against the said invoices which are reflected in the ledger for the period from April 2007 to December 2008.”

It has only now been contended that that the copy of the agreement is with the third partner and, thus, not available. Yet again, in sub para (g) at page 7 it has been contended as under:-

“In addition to the subscription of signals as agreed under the Agreement, the Respondent have also entered into an Internet Service Provider Agreement (ISP Agreement) with Hathway Cable & Datacom Private Limited (HCDPL – who is partner of the Petitioner Registered Firm) for assisting the distribution of Internet Services of the HCDPL. Under the aforesaid ISP Agreement the Respondents are entitled for 20% of Net Access Revenue for 20% of Net Access Revenue in consideration of the services rendered by Respondent under the ISP Agreement. Considering the huge outstanding payable by the Respondent to the Petitioner, an agreed tri partite understanding and arrangement was arrived between Petitioner, Respondent and HCDPL. As per the said understanding and arrangement the consideration payable to the Respondent by HCDPL under the ISP Agreement is deducted/adjusted from the Cable TV outstanding payable by the Respondent to the Petitioner. A separate requisition form is signed between the parties for such each and every adjustment transaction by which the Respondent has unconditionally agreed to such adjustment. The said adjustments are also reflected in the Ledger Copy of the Petitioner. Copy of the said ISP Agreement dated 20th October 2001 is annexed hereto and marked as Annexure PP-3”. Copy of one of a Sample Requisition Form is annexed hereto and marked as Annexure “P-4”. Petitioner craves leave to refer to and rely upon the compilation of such Requisition Forms, if any, at the time of hearing.”

It would, therefore, appear that adjustments of the ISP Commission were to be made and requisition form is merely the authority of the respondent. HDPCL was thus not required to give any requisition form and the respondents were merely to sign the same. The petitioner, although alongwith its petition has annexed the internet agreement, it has not annexed any subscription agreement. There is, thus, absolutely no reason as to why the accounts were not to be reconciled. We may notice that in response to the legal notice, the respondent had stated in details about its case and called upon the petitioners to furnish up-to-date internet accounts from the inception of the agreement till 05.03.2001.

It is in the aforementioned factual matrix, we may notice the order of this Tribunal dated 9.2.09 as under:-

“Mr.Navin Chawla alleges that there are some discrepancies in the copies of accounts submitted by the petitioner along with the petition. Let both parties sit together to reconcile the accounts. Mr.Chawla submits that whatever is found due from the respondent after reconciliation of accounts, the respondent will pay. He also agrees that in the meanwhile, the respondent will not migrate to any other MSO. Both parties agree that copies of the internet account shall be handed over by the counsel for the petitioner to counsel for respondent within two days and the first meeting for the purpose of reconciliation of accounts shall be held within one week from today followed by other meetings, if so required.”

A bare perusal of the said Order would, therefore, clearly show that the petitioner did not raise any objection with regard to its inability to adjust the accounts. In fact, it was agreeable therefor. No plea had also been raised that the petitioner's liability arises only when a requisition form is received and not otherwise. We may furthermore notice that the respondent had brought to this Tribunal's attention, the non-compliance on the part of the petitioner, to furnish accounts. It was in the aforementioned situation it was directed that :-

“Counsel for respondent submits that the petitioner once again failed to hand over all the internet account as per the order dated 9.2.09 nor whatever has been given to him on 19.2.09 is eligible. He has given a format on which he wants the petitioner to give the accounts to counsel for the petitioner who has promised to give a copy of the account to respondent on that basis, if it is possible, within a week from today. After checking of the account, let the parties have a meeting to reconcile the account on 4.3.09 in the office of the petitioner at Mumbai at 11:00 a.m.

Reply to the petition be filed by the respondent within two weeks thereafter. Petitioner may file rejoinder thereto within further two weeks.

Counsel for the respondent submits that the respondent will not migrate to any other MSO without complying with the regulations.”

It, however, stands admitted that no protest was made in regard to the contention of the respondent before this Tribunal. For the first time, however, the petitioner in its letter dated 03.03.2009 took a different stand by seeking to interpret this Tribunal’s Order stating—

“We refer to the Order dated 9th February 2009 passed by the Hon’ble Tribunal for submitting the Internet account maintained by Hathway Cable & Datacom Private Limited (HCDPL). As per the Order of Hon’ble TDSAT, the Petitioner had requested HCDPL and obtained copy of Internet account from HCDPL. The same was duly served upon your Advocate Mr. Navin Chawla vide out letter dated 19.02.2009.

As per the order of TDSAT dated 23.02.2009 our counsel informed the Tribunal that the Petitioner would provide the copy of the account in the format provided by your counsel “if it is possible”. Attached herewith is a tabulated sheet

containing the information as required by you to the extent it is possible us to furnish. Please acknowledge receipt. Since the aforesaid internet account as well as statement are maintained by HCDPL has at our request fixed an appointment to their office at Saria Software Park, Plot No. 369, Marol Maroshi Road, Near Marol Maroshi Bus Depot, Andheri (East), Mumbai – 400058. Today at 5.00 p.m. You may contact Mr. Jagdish Narkar, at Mobile No. 9892900424.”

It is true that a reply was given to the respondent by a letter dated 5.3.09, stating—

“In the attached statement you have provided Subscriber Commission (SC COMM)) below then to Rs. 100/- per month, per subscribers which is clear breach of the Clause No. 5.1 of the ISP Agreement in which clearly undertakes that Hathway shall pay 20% of the Access Revenue Received by Hathway or Rs. 100/- per subscriber per month whichever is more.

It submits that the modem or router is compulsory to avail your internet services. In the said statement you have not provided the status or commission on the hardware of each customer which is also the breach of the ISP Agreement. Clause No. 5.3 in which you have committed that Rs. 1000/- on Modem and Rs. 2000/- on Router and Rs. 500/- on rental.

You have also not furnished Rs. 250/- by way of the registration commission (RAG COMM) on every customers which is also breach of the clause No. 5.3 of the ISP Agreement in which you have clearly committed that Hathway shall pay Rs. 250/- per internet subscriber registration.

It is, furthermore, not in dispute that the petitioner through its Director, stated as under:-

“Vide Dated 18.03.2009 meeting was attended by me at the Sarla Software Park, Marol, Andheri for reconciliation of Internet Accounts.

I would like to place on record that inspite of repeated calling by Mr. Rajesh, Mr. Jagdish Narker not came to attend the meeting. The meeting was attended by Mr. Rajesh Vaidhyanathan, Mr. Aashish Patel, Mr. Bhaskar Parab, Mr. Ashok Chari, Mr. Vipul Shah and myself.

In the above meeting Mr. Rajesh have not given any clarification on the discrepancies of the Internet accounts infact Mr. Rajesh also agreed that the Internet Account is not proper and incomplete. Mr. Rajesh has promised to give all the correct internet accounts within three days in the proper format as attached.

Further, I would like to bring your kind notice that as per the Court’s Order, till the internet accounts is not settle we are unable to collect the firm’s collection.

I request you to please furnish the proper accounts as of Internet commission and I also enclosed the minutes send by the operator, which are fact and correct.”

Whereas the petitioner contends that the same would demonstrate collusion between the respondent and the third petitioner; according to the respondent, this would go to show that clarifications had not been furnished in the said meeting by the petitioners who were authorized so far.

It, however, appears that the respondent through an e-mail, categorically stated that in the meeting the difficulties in relation to the non-receipt of the internal details are creating difficulties. The petitioner by a letter dated 19.3.09 sought to clarify the position stating that one Mr. Bipul Shah (the witness examined on behalf of the respondent) claimed himself to be the representative of the

cable operators, whereas Mr. Vivekanand Rao represented the Space Vision Cablenet Pvt Ltd, being one of the partners of the petitioner apart from the owners of the respondent concerned was present. Therein it was stated—

“Mr. Rajesh Vaidyanathan, of Hathway Cable & Datacom Private Limited who is aware and is looking after the Internet Commission payable to the cable operators was present and took part in the reconciliation.

We must further place on record that the reconciliation commenced at 4.45 p.m. and lasted till 5.50 p.m. Full and complete reconciliation of the Internet accounts to your satisfaction was done in compliance of the order of the Hon'ble Tribunal.”

In that letter also, the petitioners did not state that they were not liable to given accounts therefor.

The petitioner, however, protested thereagainst by a letter dated 11.4.09 addressed to Shri Vivekanand Rao, which is in the following terms:-

“ The subject matter in relation to which you have addressed this letter (which though is not stated but can be implied from the contents) relates to the petitions that the firm has filed against certain cable operators for recovery of admitted dues payable by these operators to the firm. It is the purported defence and so called case of the Respondents, namely the cable operators that internet commissions have been incorrectly adjusted and that HCDPL is purportedly not giving information on the same.

By your letter it appears that you are canvassing the case of the respondents i.e. the cable operators. Your actions are deplorable to say the least.

We have spoken to Mr. Rajesh of HCDPL who has informed us that the allegations made by you in your letter pertaining to him and your recording of what transpired at the meeting 18th March, 2009 are untrue and incorrect.

We must point out to you that any and all communications on behalf of the firm of which we are partners should be made in the bonafide interest of the firm. The admission on your part of the inability to collect the firms collection is noted however you attempting to relate your inability to the so called non settlement of internet accounts is completely erroneous. So far as the letters dated 18th March, 2009 addressed by Ashtavinayak cable and Ashish vision are concerned, we shall on behalf of the firm arrange to reply to them as you and your co-directors of Space Vision Cabletel Private Limited are actively colluding with these cable operators to bring financial ruin to the firm in which we have invested huge amounts of money.

As regards the payment of commission to the Operators are concerned, please note that we have been informed by HCDPL that ISP Commission are being appropriately adjusted/paid to the Operators as per the agreed terms. At this crucial stage of Litigation it is your duty to concentrate upon the recovery and to assist us in taking action against such defaulting operators and not to create any such impediments which may hamper the Firm's collection."

Even in the said letter, the petitioner did not state that the internet accounts were not to be given. The respondents by their letter dated 21.3.09 and e-mail dated 25.3.09 asked for complete details of the internet account. It is, however, of some significance to notice that the witness of the petitioner, Shri Kanishka Singh, in his evidence by way of affidavit, annexed along with these affidavits and furnished a large number of invoices, the statement of accounts for the period April, 2006 to October, 2009 and the statement of internet accounts along with operators' commission reports for the period December, 2009. It is also relevant to notice the stands of the respondent in its reply when it has categorically been stated that Shri Ranjit Mathur is the Director of the Petitioner No. 1 and

Sanjay Singh was the employee of the petitioner, were the authorized representatives. It was, therefore, urged that the petitioners had deliberately been withholding the internet accounts.

In its rejoinder, the petitioner sought to make improvements in its case where, inter alia, it was stated for the first time—

“The subscription agreement was executed between the Petitioner Hathway Space Vision and the Respondent whereas the adjustment of Internet commission was specifically agreed by and between the Respondent and Hathway Cable & Datacom Limited by signing a separate requisition form in which Petitioner was merely a confirming party who has no role to play as regards the rights and obligations of the Parties.”

It was furthermore stated—

“In reply to para D : The contents of this para are denied save and except that are matters of record and explicitly admitted elsewhere. It is submitted that as per the order of this Tribunal dated 09.02.2009 the Petitioner agreed to provide the details of Internet accounts, in the specific format demanded by the Respondent, only if it is possible. As already stated provision of Internet account is an issue needs to be addressed between Hathway Cable and Datacom Ltd. and the Respondent. In spite of this fact the Petitioner obtained the accounts from Hathway Cable and Datacom Ltd. and furnished the same to the Respondent. The Petitioners state that they have inadvertently made a statement which states that HCDL is a partner of the Petitioner Firm. In fact HCDL the holding company of Partner No. 2 and Partner No. 3 which are private limited companies and are wholly owned subsidiaries of HCDL.”

The companies registered under the Indian Companies Act, 1956 were the partners and the fully owned companies.

The petitioner has examined Jagdish Narkar as well as Mr. Kanishka Singh. Both in their affidavits, they categorically admitted to be the employees of the HDPCL.

It is in the aforementioned backdrop of events, we may also take into account the discrepancies in the invoices pointed out by the respondent. We are referring to those invoices vis-à-vis the statement of account only in relation to Petition No. 11(C) of 2009, to avoid bulk. We may, however, at the outset, notice that the petitioner sought to raise a contention by way of explanation to the discrepancy in the invoices vis-à-vis the statement annexed therewith, inter alia, on the contention that in all cases, 25% commission was not to be given as some of the subscribers were taking a package known as Dhoom package wherefor, the amount of subscription fee payable was much less than the charges on a-la-carte basis, although the number of channels required to be re-transmitted in terms thereof were much more.

Date of Invoice	Amount	25% revenue charges shown in the invoice	Actual amount to be given as 25% revenue share
01.07.2008 (pg. 161)	Rs. 14,323.71	Rs. 3,581	Rs. 3,581/- (including one dhoom package)
01.08.2008 (pg. 164)	Rs. 30,330.81	Rs. 5,446.97	Rs. 7,582.70
01.10.2008 (pg. 170)	Rs. 13,405	Rs. 3,351.25	Rs.3,351.25 (no dhoom packages)
01.11.2008 (pg. 173)	Rs. 27,753.39	Rs. 3,330	Rs. 6, 938.34
01.12.2008 (pg.176)	Rs. 24,097.26 (inclusive of	Rs. 3,618.51	Rs. 6,024.31

	dhoom package charges)		
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The invoices annexed with the rejoinder being at pages 161 – 179 do not seem to have taken into account that 25% commission required to be given as would appear from the following discrepancies.

According to the petitioner, a cluster of channels known as Dhoom Package were to cost Rs. 3000/- and the same was given to the respondent only for Rs. 1600/-. Even if that contention is taken into consideration, the same is also not correct as would appear from the following:-

Date of Invoice	Amount as per invoice as monthly charges	25% revenue charges shown in the invoice	Amount in invoice after deducting the dhoom packages	25% Revenue share on the deducted amount
01.07.2008 (pg.161 r/w 163)	Rs. 14,323.71	Rs. 3,581	Rs. 12,690 (deducting 1 Dhoom Package)	Rs. 3,172.50
01.08.2008 (pg.164 r/w 165 & 166)	Rs.30,330.81	Rs. 5,446.97	Rs. 12,680.00 (deducting 5 Dhoom Packages)	Rs.3,170.00
01.09.2008 (pg. 167 r/w 169)	Rs. 21,058.55	Rs. 3,260	Rs. 13,014.45(deducting 5 Dhoom Packages)	Rs. 3,253.61
01.10.2008 (pg. 170)	Rs.13,405	Rs.3,351.25	No Dhoom Package	N.A.
01.11.2008 (pg. 173 r/w 174 & 175)	Rs. 27,753.39	Rs. 3,330	Rs. 14, 853.71 (deducting 8 Dhoom Packages)	Rs. 3,713.42
01.12.2008 (pg. 176 r/w 177, 178 & 179)	Rs. 24,097.26	Rs. 3,618.75	Rs. 14,475	Rs. 3,618.75

It, furthermore, appears that all the invoices, apart from the one for the month of August, 2008 are on the net amount of Dhoom Package, i.e., Rs. 1644.71 or there-about. However, in the month of August, 2008, the full amount of Rs.3212.42 or there-about has been shown. A credit adjustment of Rs.9670.32 had not been taken into account. Our attention has been drawn to the evidence of Mr. Kanishka Singh in cross examination, from a perusal whereof, it would appear that he was unable to explain a lot of discrepancies as would appear from the following:—

“After CAS was notified various cable operators bifurcated their address into two to save service tax.

(Witness was shown page 19, 63 and 152) I will have to see which of the addresses is correct.

It is incorrect to suggest that the invoices are false and have been fabricated only for the purpose of this petition.

All invoices are generated on the basis of CRF received by the petitioner. The same can be verified from the annexure attached to the invoice which sets out the name of each subscriber and his billing.

(Witness was shown page 162) This is the annexure to the invoice which contains the names of the subscribers and the amount billed to them. The Software billing refers to the amount payable by the customer for the pay channels.

The petitioner has copies of all the CRF which are received by it however, the same are in the office of petitioner.

Vol – Verification and activation of channels can be done only on the basis of the CRF.

If there is any discrepancy in the invoice raised by the petitioner the respondent as well as other cable operators can approach Mr. Glen Jacinto, who is Manager Accounts of the Petitioner.

No communication was made about the write off for the sum of Rs. 46952/- to the respondent.

No communication about availing the benefit of the write off on immediate payment of Rs. 136926/- was made to the respondent.

The communication was made only to the third partner Space Vision Cabletel Pvt. Ltd.

Dhoom package is a cluster of 62 pay channels. The a-la-carte rate of this package would be around Rs. 3300/- however, the same was given to the respondent for Rs. 1800/- inclusive of service tax.

It is mentioned on the CRF that the Dhoom package is an annual package and the same is exclusive of the 25% revenue share to the respondent.

Illustratively Mr. Kamlesh Jain (page 163) receives the Dhoom package.

Apart from Dhoom package all amounts shown at pages 162-163 are inclusive of the 25% revenue share.

(The witness was shown page 164) The 25%\$ revenue share i.e. Rs. 5446.97 is the amount exclusive of the Dhoom Package.

(The witness was shown page 161) The debited amount at page 161 namely 1075.81 is not reflected in the ledger account at page 181.

(The witness was shown page 164 & 165) Q. Why is the credit amount of Rs. 9670.32 not the same as the one shown in the invoice as Rs. 30811.58 at page 164.

The amount of Rs. 30811.58 is consolidated credit amount given to the operators.

The credit amount of Rs. 30811.58 shown in the invoice shown at page 164 is not reflected in the ledger statement at page 181.

Witness was shown page 167 and asked whether the amount of Rs. 8018.60 has been shown in the statement of account.

No. These credit or debit entries reflected in the invoices are start up charges and relate to cases where the subscriber opts for some pay channel at the end of the month. These start up charges get reversed/adjusted in the next billing cycle. They are therefore, not reflected in the statement of account. The explanation given by me can be shown from the original books of accounts.

The ledger filed is the original account as well the book of accounts.

Credit of Rs. 20,000/- shown against the entry dated 28.08.2007 is included the other credits amount of Rs. 30811.58 at page 164. The same is not reflected in the amounts received column as there might be some problem with the operating system.

(The witness was shown page 173) In case any customer gets deactivated during the month for which advance subscription has already been charged the same is given credit to in the bill for the next month as the system automatically identifies and calculates the start up charges.

There is no entry in the amount received column of the invoices as there may be a system problem however, credit for the same has been given.

The petitioner has explained the invoices to the respondent.

I did not do it. However, the operation team and local accountant Mr. Glen Jacinto explained the same.

Details of the various sub-heads of the invoice are in the system and the same can be produced. If the cable operator demands for these details I have provided the same.

(The witness was shown page 89 to 91) except the documents on record there is no other document provided.”

The explanation sought to be offered by Mr. Kanishka Singh that the discrepancies can be explained with reference to the books of accounts cannot be accepted as the same had not been produced. He accepted that there may be a system problem but according to him, it was explained to the respondent by Mr. G, Jukinto, who, for reasons best known to the petitioner, had not been examined. In his cross examination, which took place on 27.1.10, he admitted that in his affidavit he has wrongly stated in para 10 of his affidavit that 15% commission is to be given, is wrong as the commission was to be given at the rate of 20%. According to the said witness, a

written intimation was given to the respondents that the percentage of commission would be reduced from 20% to 15% and the minimum guarantee of 100 would also be withdrawn, but a copy thereof has not been filed. It is also of some significance to notice that the petitioner raises a contention that it was merely to give due credit for the commission in terms of the request as it had no contractual liability. Be that no contractual liability under the ISP agreements, it could not have reduced the percentage of commission or withdrew the minimum guarantee. On a question as to whether if he can show any payment in the ledger account, in regard to the minimum guarantee or 20% of the gross revenue, the witness pointed out to the entry dated 28.2.2004 marked separately as Exhibit 'A' but although according to him, the amount of Rs.10,846/- had been collected as per details given by the respondent, he had failed to give the break up thereof stating that the same can be produced. He also was unable to answer as to why the said break-up had not been filed in the proceeding. According to him, the operator used to ask for the internet commission for being adjusted against the cable subscription charges on the basis of the requisition slip, which we have noticed heretofore, was not a plea which was originally taken. We may, for the aforementioned purpose, notice certain glaring discrepancies:-

Date of Invoice	Heads in the invoice and amounts	Corresponding date of entry in the Statements of Accounts (pg. 181)	Amounts mentioned in the Statement of Accounts
01.07.2008 (pg. 161)	Charges – Rs. 16,098.02 Debits – Rs. 1,075.81	15.07.2008	Rs. 16,094 No reflection of debits in the SOA
01.08.2008 (pg. 164)	Charges – Rs. 34,173.60	15.08.2008	Rs. 23,418
	Rev. Share – Rs. 5446.97 Other credits – Rs. 30,811.58 Amount Recd. – Zero	28.07.2008	Rs. 5,211 No reflection of other credits in the SOA Rs. 20,000/-
01.09.2008 (pg. 167)	Charges – Rs. 23,710.37 Debits – Rs. 8,018.60	15.09.2008	Rs. 23,661 No reflection of debits in the SOA
01.10.2008 (pg. 170)	Charges – Rs. 15,110.91	15.10.2008	Rs. 15,062/-

01.11.2008 (pg. 173)	Charges – Rs. 31,187.84	15.11.2008	Rs. 31, 184
	Other Credits Rs. 8,018.60	30.11.2008	Shown as Rs. 1,952
01.12.2008 (pg. 176)	Charges – Rs. 24,097.26 Rev. Share – Rs. 3618.75	15.12.2008	Rs. 27,076 Rs. 4,067

We may, for the purpose of this case, proceed on the basis that the contention of the respondent that they used to sign the blank requisition slips may not be correct. It would, however, appear that the statement of account for internet commission annexed by the petitioner would show a large number of credits, the details whereof, cannot be verified without undertaking a reconciliation process and cross-referencing the same with the customers' details.

It is true that the petitioner being a partnership firm, it is a separate business entity. It is entitled to have a separate accountant. It may also be true that in the ISP agreement, the petitioner is merely a conforming party and no contractual obligation arises thereunder. But there cannot be any doubt or dispute that the petitioner has raised certain pleas as for example, the marks of issuance of the requisition slip which is not part of the agreement. If the petitioner was not to have any role to play even as a conforming party, we fail to see any reason why it was made a party to the agreement itself.

The parties make certain arrangements which have been worked out. If before this Tribunal, it had agreed to provide details of the internet agreement, the very fact that the petitioner was not to give any credit in terms of the agreement, would clearly go to show that the parties entered into certain understanding which was beyond the agreement.

Submission of Mr.Kathpalia that in the petition, the inter se dispute between the parties was not necessary to be stated cannot be accepted. We may also assume that the respondents are being supported by the first partner of the petitioner firm with whom the

partners 2 & 3 being the petitioners herein, but by a reason thereof, the petitioner cannot get rid of the admission made by it that it was bound to give credit for the commission.

Although we are of the opinion that in the facts and circumstances of the case, the submission of Mr.Chawla that the corporate veil of HDPCL be lifted, it being not a petitioner before us, but it may be relevant to note that the petitioner even do not have any headend.

We, therefore, are of the opinion that the parties shall reconcile their accounts, wherever it is applicable, in the light of the observations mentioned herein.

We reiterate that the concerned respondents are entitled to adjustment of the commission payable to the respondents.

Subject thereto and other observations made hereinbefore, we direct that the parties reconcile their accounts.

Any amount found to be due to one party from the other shall be paid within a period of four weeks therefrom.

In view of the fact that the parties were at variance on their respective liabilities, we award no interest. However, in the event no payment is made within the aforementioned period, interest at the rate of 12% shall become payable from the said date till realization.

These Petitions are disposed of with the aforementioned directions without any order as to costs.

We, however, grant liberty to the parties to approach us, if any doubt in regard to the reconciliation of account crops up.

....., J
(S.B.Sinha)
Chairperson

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(G. D. Gaiha)
Member

.....
(P.K. Rastogi)
Member