

Office of the Electricity Ombudsman

(A Statutory Body of Govt. of NCT of Delhi under the Electricity Act, 2003)

B-53, Paschimi Marg, Vasant Vihar, New Delhi – 110 057

(Phone No.: 32506011, Fax No.26141205)

Appeal No. F. ELECT/Ombudsman/2014/608

Appeal against the Order dated 19.09.2013 passed by CGRF–
BRPL in CG.No.695/2012.

In the matter of:

M/s Kay Kay Corporation - Appellant

Versus

M/s BSES Rajdhani Power Ltd. - Respondent No.1

Shri Harvinder Singh - Respondent No.2

Present:-

Appellant: Shri Mukul Dhawan, advocate, attended on
behalf of the appellant, Shri Deep Mohan Singh.

Respondent: Shri B. N. Jha, Asst. Vice President, and Shri Ashish
Verma, Advocate, attended on behalf of the BRPL.
Shri Harvinder Singh was present in person alongwith
advocate, Shri Bhagwati Prasad,

Date of Hearing: 13.05.2014, 21.05.2014, 16.07.2014

Date of Order : 27.08.2014

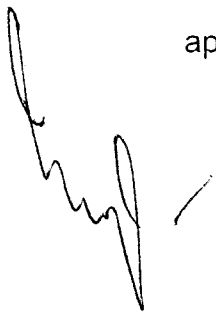
ORDER NO. OMBUDSMAN/2014/608

This is an appeal filed by Shri Deep Mohan Singh against an order of
the Consumer Grievance Redressal Forum – BSES Rajdhani Power Ltd.
(CGRF-BRPL) dated 19.09.2013 concluding that M/s Kay Kay Corporation
was a partnership firm, with two original partners Ms. Iqbal Kaur and

Mr. Kishan Singh who both have died. It was held the firm is still continuing through the legal heirs of both the partners as the partnership deed was neither revoked nor cancelled and, hence, ordering the successors, Shri Deep Mohan Singh and one Shri Harvinder Singh, to pay the pending dues bill of about Rs.6.1 lakhs on 50 : 50 basis by both. This amount represents the pending dues after setting aside the misuse amount which the CGRF has not found payable out of the total bill of Rs.23.5 lakhs approximately raised against the company.

The matter was heard on 13.05.2014, 21.05.2014 and again on 16.07.2014. During the pendency of the proceedings Shri Harvinder Singh sought to join the proceedings before the Ombudsman as the CGRF had asked him to pay the dues even though he was not a party before it. This was allowed.

From the facts on records, it is seen that both Shri Deep Mohan Singh and Shri Harvinder Singh had filed declarations/undertakings before the DISCOM in 2008 and 2006/2007 respectively, undertaking to pay all the energy charges and other charges resulting from the increase in load applied for of the connections at the premises viz. C-222, Mayapuri, Phase II, New Delhi-110064, which was also the premises from which M/s Kay Kay Corporation earlier operated. Both the declarations/ undertakings mentioned the same address and Shri Deep Mohan Singh's undertaking was made on behalf of M/s Kay Kay Corporation. The prima facie conclusion of the CGRF, therefore, that these two brothers are the successors of the erstwhile owners of M/s Kay Kay Corporation (both now deceased) seemed to be plausible and asking them to pay 50% of the pending dues, perhaps, appeared to be the appropriate remedy.



However, it is worth pointing out that the CGRF is not the correct authority to decide whether an existing partnership continues to survive or has now ceased to exist. Ordinarily, any partnership firm would cease to exist on the death of its original partners and, following appropriate legal remedies, the relatives of the deceased partners would inherit the assets and either continue to use them jointly or divide them as per their mutual consent and agreement. If they continue to occupy the same premises they would have to inform the DISCOM accordingly to allow demarcation of their respective areas in the records of the DISCOM. Segregation of the electrical connections serving their respective areas and getting their names recorded against the correct connection would follow. Many of these steps appear not to have been taken although the High Court Order dated 22.10.2002 in Suit No.159/98, a partial copy of which is available in the CGRF file (pages 121-125), specifies the partnership stands dissolved from 07.07.1997. The observation of the CGRF that the partnership M/s Kay Kay Corporation continues to exist flies in the face of this.

It is also noticed that Shri Harvinder Singh was made liable to pay dues without being made a party by the CGRF which is not correct. The DISCOM could have demarcated the areas being occupied by both parties in their records and isolated the pending dues from each other in order to avoid confusion over billing/payments. Instead one consolidated bill was issued to one person only leading to the case before the CGRF. **The order of the CGRF is, therefore, set aside insofar as the 50 : 50 direction to pay dues is concerned.**

It appears that both parties are now paying their respective current dues for their respective connections released in 1981 & 2002. However, the present issue concerns dues which were said to have accumulated in the past on which there is no agreement among the two brothers on what liability falls


on each. In the light of the dissolution noted above of M/s Kay Kay Corporation, and in the absence of any mutual agreement between the two brothers, it is not open to the CGRF to pass orders for payment of pending dues on a 50 : 50 basis as the actual ratio reflecting the situation on the ground in terms of division of assets, separate consumption etc. may be different.

The DISCOM is now required to take cognizance of the High Court order and other documents to try to arrive at the respective share, in the pending dues, of Shri Deep Mohan Singh and Shri Harvinder Singh, in consultation with both and issue separate demands to both.

The DISCOM shall place the result of the above exercise before the CGRF, to whom the case is remanded for further hearing, **within one month of this order**, so that a final determination of their respective pending dues can be made. Both persons shall be parties to further proceedings and, thus, Shri Harvinder Singh be made Respondent No.2. It is noted that Shri Deep Mohan Singh has informed this office in writing that he is willing to pay his estimated share for the period from 2006 to 29th September, 2008, the relevant date of the Amnesty scheme order. He states he is willing to pay half of the disputed demand bill which, he claims, amounts to Rs.1,33,048/-. This willingness may be acted upon immediately. Further, Shri Deep Mohan Singh and Shri Harvinder Singh are free to determine what, according to their own interpretation, is their respective share of the past disputed dues and deposit that amount with the DISCOM to show their bonafides which were asserted before the Ombudsman also. Till the conclusions of the proceedings no disconnection of electricity will be done and both Shri Deep Mohan Singh and Shri Harvinder Singh will continue to pay their past disputed dues as noted above, as well as any current dues. However, if during the above process the brothers are able to come to a mutual settlement and so inform the

DISCOM or the CGRF, the matter can be settled on that basis. **The order of the CGRF that with the applicant having availed of the Amnesty scheme, no further misuse charges accrued is correct and is not set aside.**

With the above orders the appeal is disposed off.


(PRADEEP SINGH)
Ombudsman

27th August, 2014

