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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

RESERVED ON –14.10.2024
% ***PRONOUNCED ON -24.12.2024***

\+ O.M.P. (COMM) 396/2019, I.A. 13233/2019, I.A. 19283/2022

QUADRANT TELEVENTURES LIMITED .....Petitioner

Through: Mr. Akhil Sibal, Sr. Adv. with Mr. Yashvardhan, Mr. Nikhil Y. Chawla, Mr. Gyanendra Shukla, Ms. Kritika Nagpal, Mr. Pranav Das, Advs.

versus

ATC TELECOM INFRASTRUCTURE PVT. LTD. & ANR. .....Respondents

Through: Mr. Rajshekhar Rao, Sr. Adv. with Mr. Manish Jha, Ms. Shalini Sati Prasad, Mr. Zain Maqbool, Ms. Mehrunissa Anand, Mr. Arsh Rampal, Advs. for R-1.

CORAM:
HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

DINESH KUMAR SHARMA,J :

1. The present petition has been filed under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter "the A&C Act") challenging the Award dated 25.05.2019 (hereinafter "impugned award") passed by the Ld. Sole Arbitrator whereby the Ld. Sole Arbitrator has allowed the claims of Respondent No. 1 and rejected the counter-claims of the

petitioner.

2. Briefly stating, the facts of the present case are that Essar Commvision Limited, being the predecessor-in interest of the Petitioner, was awarded the BSO license in the year 1997 for the Punjab service area. Thereafter, New Telecom Policy (NTP) was announced in 1999, which allowed the licensees to migrate from a Fixed License Fee regime to a Revenue Sharing Regime and the licenses to be granted for an initial period of 20 years extendable by an additional period of 10 years. In November 2003, Union of India on the recommendation of the sector Regulator, Telecom Regulatory Authority of India (hereinafter referred to as TRAI) introduced the Unified Access service (UAS) licensing regime, permitting an access service provider to offer both fixed and/or mobile services under the same license, using any technology and also gave an option to the existing operators to either continue under the present regime or migrate to the new UAS License in the existing service area.
3. The Petitioner's license originally a Basic Service Operation (BSO) license was converted to UASL in November 2003 to continue to provide wireless services in the already allocated/contracted spectrum and permitted to operate in the same service area in which it was already operating. However, the effective date of the UASL was to run from original date i.e. 30.09.1997 and not 14.11.2003 on which the UASL was executed between the Petitioner and the DoT.
4. A Master Service Agreement dated 18.05.2006 was executed between HFCL Infotel Ltd. (the erstwhile name of the Petitioner) and Tata Teleservices Ltd. A MSA was executed between Quipo Telecom Infrastructure Ltd. & HFCL Infotel Ltd. (the Petitioner herein) was

executed on 20.11.2007. Another MSA was executed between Datacom Solutions Pvt. Ltd. (erstwhile name of Videocon Telecommunications Ltd., Respondent No. 2 herein) and Quippo Telecom Infrastructure Ltd. An Addendum Agreement dated 22.01.2009 was executed between Datacom Solutions Pvt. Ltd. and Quippo Telecom Infrastructure Ltd. to QTIL MSA dated 01.11.2008 regarding Clause 1.4.1 of the said MSA. Another MSA was executed between Wireless-TT Info Services Ltd. and Datacom Solutions Pvt. Ltd. on 14.08.2009 ("WTTIL MSA"). An Addendum Agreement dated 20.05.2010 was executed between VTL and Quippo Telecom Infrastructure Ltd. to MSA dated 01.11.2008 whereby the Petitioner was included as a Party under the QTIL MSA dated 01.11.2008 and all the obligations and the benefits arising out of MSA dated 01.11.2008 were made be applicable and available to Petitioner for GSM sites in Punjab Circle.

5. An Addendum Agreement dated 20.05.2010 was executed between VTL (Respondent No. 2), WTTIL & HFCL (the Petitioner herein) whereby the Petitioner was included as a Party under the WTTIL MSA dated 14.08.2009 and all the obligations and the benefits arising out of MSA dated 14.08.2009 were made applicable and available to Respondent No. 1 for GSM sites in Punjab Circle. An Addendum Agreement dated 27.12.2010 was executed between Viom Networks Ltd., (Respondent No.1), Respondent No.2 and the Petitioner. Viom Networks Ltd., Viom Infra Networks (Maharashtra) Ltd., Respondent No. 2. and the Petitioner entered into a MOU dated 12.12.2011 to settle certain disputes that had arisen. Supplementary agreement was executed between the parties to settle the disputes on 12.09.2013.

6. Since the period of the UASL held by the Petitioner was due to expire in September 2017, the Petitioner requested the DOT to allow it to use the GSM spectrum for a period of twenty years from the date of allocation of GSM spectrum (i.e. from the period 10.09.2008 to 09.09.2028) for Punjab circle. The Petitioner also vide letter dated 09.11.2015 asked the DOT for an extension of the license of Punjab Circle so as to make it co-terminous for the period of which allocation to use the newly acquired GSM spectrum was given in 2008. DoT refused to allow the use of GSM spectrum for the period (10.09.2009 to 09.09.2028) vide letter dated 18.11.2015. DOT again refused the extension of UASL vide letter dated 01.12.2015.

7. Aggrieved by the aforesaid, the Petitioner filed Telecom Petition No. 56 of 2016 before the Ld. Telecom Disputes Settlement & Appellate Tribunal inter alia challenging the aforesaid actions of the DOT and seeking continuation of its license. The aforesaid petition is still pending adjudication. The Petitioner sent the communication dated 02.01.2017 to Respondent No.1 intimating it about the closure of its GSM services w.e.f. 15.02.2017. Respondent No. 1, after the receipt of the letter dated 02.01.2017 sent a letter raising claims w.r.t the alleged unpaid invoices and the exit penalty. The Petitioner made a payment of Rs. 2,52,75,603.27/- as also acknowledged by Respondent No.1, as the full and final payment to Respondent No. 1 for all services rendered by Respondent No. 1 to the Petitioner.

8. Ld. Sole Arbitrator was appointed by this Court vide order dated 06.09.2017 in a petition filed by Respondent No. 1 under Section 11 of the A&C Act being Arb. P. No. 563/2017.

9. On 25.05.2019, Ld. Arbitrator published the impugned award and allowed the claims of respondent no.1. Ld. Arbitrator passed the award on 25.05.2019 in favor of ATC Telecom Infrastructure Pvt. Ltd., accepting its claims and rejecting the counter-claims raised by Quadrant Televentures Ltd. The findings were based on a detailed analysis of the contractual terms, evidence, and legal submissions. Regarding ATC's claim for unpaid invoices amounting to ₹19.85 crore, Ld. arbitrator concluded that these invoices were valid and enforceable under the agreements. The arbitrator held that ATC had provided sufficient evidence of services rendered, including documentation substantiating its claims. Quadrant's defense, alleging overpayment and a final settlement of dues, was found unsubstantiated, as Quadrant could not produce evidence to support its contention. Ld. arbitrator noted that the payment of ₹2.52 crore made by Quadrant was not intended to cover all outstanding dues but was a partial payment, as confirmed by ATC's records.

10. On the exit penalty claim of ₹58.11 crore, Ld. arbitrator ruled that Quadrant had breached the lock-in period obligations stipulated in the MSAs by prematurely vacating telecom sites. Ld. arbitrator emphasised that the lock-in clauses were clear and enforceable, requiring the Quadrant to pay penalties equivalent to the charges for the unexpired term. Quadrant's argument that the termination was due to regulatory compulsion caused by the Department of Telecommunications' (DoT) refusal to extend its Unified Access Service License (UASL) was rejected. Ld. arbitrator noted that the agreements did not include any provision exempting Quadrant from its contractual obligations in case of

regulatory issues. Furthermore, Ld. arbitrator accepted ATC's calculations of the exit penalties, finding them consistent with the terms of the agreements and supported by evidence.

11. Quadrant's counterclaims and jurisdictional objections were also dismissed. Ld. arbitrator held that the dispute was commercial in nature, arising from private agreements, and did not involve regulatory or statutory issues that would necessitate adjudication by the Telecom Disputes Settlement & Appellate Tribunal (TDSAT). Ld. arbitrator further stated that Quadrant failed to prove any violation of natural justice or procedural impropriety during the arbitration process.
12. In conclusion, the arbitrator found Quadrant liable for both the unpaid invoices and the exit penalties. The award directed the Quadrant to pay the full amounts claimed by ATC, amounting to ₹77.96 crore (₹19.85 crore for unpaid invoices and ₹58.11 crore as exit penalties)**,** along with applicable interest. The findings underscored ATC's compliance with the agreements and Quadrant's failure to honour its financial obligations.
13. Sh. Akhil Sibal, Learned senior counsel for the petitioner, submitted that the arbitrator lacked jurisdiction to adjudicate the dispute, citing the Telecom Disputes Settlement & Appellate Tribunal (TDSAT) as the exclusive forum for resolving disputes between telecom service providers and infrastructure providers. The Ld. Senior counsel asserted that since the dispute arose under a telecom licensing framework regulated by the Telecom Regulatory Authority of India (TRAI) Act, 1997 and the matter should have been referred to TDSAT instead of arbitration. The Ld. Senior counsel relied on Sections 14 and 15 of the TRAI Act**,** which confer exclusive jurisdiction to TDSAT to adjudicate

disputes between telecom service providers and infrastructure providers like ATC, accordingly the arbitrator incorrectly assumed jurisdiction over the dispute, which should have been adjudicated by TDSAT as per the statutory framework governing the telecom sector. Reliance has been placed upon ***Reliance Infratel Ltd. v. Etisalat DB Telecom Pvt. Ltd.*** *[Petition 75/2012, TDSAT]*.

14. It was further submitted that the petitioner had made a full and final settlement of all outstanding dues with ATC, amounting to ₹2.52 crore**.** Quadrant asserted that ATC had acknowledged receipt of this payment, which should have been sufficient to close any financial obligations. However, the arbitrator, according to the petitioner, erred in accepting ATC's claims for ₹19.85 crore in unpaid invoices, as there was no clear evidence to substantiate these demands. The Ld. Senior counsel further argued that ATC's invoices were either inflated or unsupported by proper documentation, and therefore, the arbitrator's acceptance of these invoices was a misapprehension of the facts.

15. The petitioner also challenged the exit penalties imposed for prematurely vacating telecom sites before the expiry of the lock-in period. Quadrant contended that the termination of services was forced by regulatory compulsion, specifically the DoT's refusal to extend the petitioner's UASL license**.** The Ld. Senior counsel emphasised that this regulatory decision was beyond its control and should have been considered a valid exemption from the lock-in period penalties. The Ld. Senior counsel pointed out that the agreements between the parties did not provide for penalties in cases where termination was due to external factors such as government or regulatory actions. The Ld. Senior counsel argued that

the arbitrator failed to appreciate the regulatory context of the dispute and the public policy considerations involved, particularly in light of the DoT's actions that led to the cessation of services.

16. Furthermore, the Ld. Senior counsel argued that the arbitral award was contrary to public policy**,** particularly because it failed to consider the natural justice principles. The Ld. Senior counsel claimed that the arbitrator did not give adequate weight to its evidence, including the detailed correspondence and payments made to ATC over the years. The Ld. Senior counsel argued that the award was based on a perverse appreciation of the evidence, where the arbitrator ignored crucial documents and did not properly evaluate the terms of the MSAs. This, according to the petitioner, rendered the award unreasonable and inconsistent with the legal and contractual framework between the parties.

17. Additionally, Quadrant submitted that the award violated the principles of fairness and transparency**.** The Ld. Senior counsel contended that despite presenting a clear and valid defence**,** the arbitrator's findings were one-sided and failed to address critical issues raised by Quadrant regarding the payment history**,** contractual obligations, and the lack of jurisdiction**.** The Ld. Senior counsel argued that such an award was unjust and against the public interest, particularly in light of the DoT's refusal and the regulatory challenges that led to the discontinuation of services.

18. Ld. Senior Counsel for the petitioner submitted that the Ld. arbitrator had misinterpreted the terms of the contract, especially the clauses relating to the lock-in period and the exit penalty. Ld. Senior Counsel

emphasised that Clause 2.4 of the Supplementary Agreement dated 12.09.2013 specifically addressed the issue of the lock-in period in the event of non-renewal of the license and regulatory issues. It stipulated that if Quadrant's UASL license was not renewed, the lock-in period penalties would be absorbed by Respondent No. 2 (Videocon Telecom Ltd.). Therefore, Quadrant argued that the arbitrator's failure to consider this clause was a material error. It was also submitted that Clause 1.6 of the MSA dated 01.11.2008 states that in case of termination due to regulatory action (like the DoT's refusal to extend the UASL), no penalty is due. It was argued that the Ld. arbitrator did not consider this provision, which should have absolved Quadrant from the exit penalties imposed by ATC.

19. Learned senior counsel for the petitioner, while disputing the exit penalty of ₹58.11 crore imposed by ATC for prematurely vacating telecom sites before the expiry of the lock-in period, submitted that the termination of services was forced by the DoT's refusal to extend Quadrant's UASL license, and therefore, the exit penalty should not be enforced due to the force majeure circumstances. Clause 10.6.2 of the MSA dated 14.08.2009 provided for exemption from penalties in cases of regulatory actions. Ld. Senior Counsel argued that the arbitrator wrongly interpreted this clause and held Quadrant liable for penalties despite the regulatory issue. It was submitted that the DoT's refusal to extend the UASL was a valid external cause for termination, which should have been considered by the arbitrator, as it falls within the scope of contractual force majeure. Learned senior counsel for the petitioner submitted that the petitioner had already settled all dues with ATC by

making a full and final payment of ₹2.52 crore in January–February 2017. ATC's acknowledgement of the settlement in their correspondence. Clause 6.1 of the MSA, outlined the process for the settlement of outstanding invoices, and no further claims were made by ATC post-payment.

20. It was further submitted that the ₹19.85 crore claim for unpaid invoices raised by ATC was unsupported by evidence, as ATC failed to provide proper documentation or detailed calculations for this amount. Ld. Senior Counsel contended that the arbitral award was against public policy due to the misapplication of contract terms and failure to adhere to principles of fairness. It is submitted by the Ld. Senior Counsel for the petitioner that the Ld. arbitrator had not properly considered the documents and evidence provided by the petitioner, which led to an unreasonable award. Specifically, the contract clauses that exempted the petitioner from penalties due to regulatory actions were ignored. Reliance is placed upon ***ONGC v. SAW Pipes Ltd.*** (2003) 5 SCC 705**,** to assert that penalties under a contract must be genuine pre-estimates of loss, not punitive. It is argued that the termination was due to DoT's refusal (an external cause), the penalties could not be justified. Reliance was placed upon ***Ssangyong Engineering & Construction Co. Ltd. v. NHAI*** (2019) 15 SCC 131, wherein it was inter alia held that an arbitral award should be set aside only in cases of jurisdictional errors or public policy violations. Reliance was also placed upon ***Food Corporation of India v. Assam State Coop. Marketing & Consumer Federation Ltd.*** *[Appeal (civil) 2259 of 1999]*, to emphasize that the acknowledgment of debt extends the limitation period, suggesting that ATC's claim was

time-barred or should have been adjusted against earlier payments made by Quadrant.

SUBMISSIONS ON BEHALF OF RESPONDENTS

21. Mr. Raj Shekhar Rao, Ld. Senior Counsel appearing on behalf of Respondent No. 1 submitted that ATC had initiated the arbitration against Quadrant and Videocon Telecommunications Limited under various other Agreements, the Master Infrastructure Provisioning Agreement dated 14.08.2009 ("MSA"). It is submitted that ATC was providing telecom infrastructure facilities and services to Quadrant, a telecom operator in Punjab. On failure of Quadrant to pay the outstanding amounts in terms of the MSA and premature exit from ATC's sites without paying exit charges, the disputes arose and were referred to Ld. Sole Arbitrator.

22. Ld. Senior Counsel submitted that the Ld. Arbitrator, by a detailed and reasoned award—after recording the evidence of both parties—allowed the claims of ATC. Ld. Senior Counsel further submitted that the Ld. Arbitrator, after extensively dealing with all the issues framed and giving elaborate reasons in support of its findings, allowed all the claims except Claim E, i.e., the Claim for reimbursement of municipal charges. It was also submitted that out of the total awarded amount, approximately Rs. 20 Crores (Claim A) is towards the outstanding monthly charges and power & fuel/diesel charges. To this, there is no substantial challenge by Quadrant in the present Petition, except that a part of it was barred by limitation. Learned senior counsel for the respondent submitted that while allowing Claim A, Ld. Arbitrator has inter-alia held that in the light of the overwhelming evidence supporting

the Claimant's case and the lack of evidence to back any contentions made by the Respondent, the tribunal decided issue No. 1 in favour of the Claimant.

23. Learned senior counsel for the respondent no.1/ATC also submitted that it is well-established law that the interpretation of contracts falls within the exclusive domain of the arbitrator and hence the supervising court cannot interfere with that interpretation. It was submitted that Section 34 of the Arbitration Act does not contemplate 'misinterpretation of contract' as one of the grounds for challenging an arbitral award and an Arbitral Tribunal is legitimately entitled to take the view which it holds to be correct after considering the material before it and interpreting the provisions of the agreement, and if the arbitral tribunal does so, its decision has to be accepted as final and binding.

24. The learned senior counsel submitted that the disputes relating to the merits of this case cannot be investigated by this Court in view of Explanation 2 of amended Section 34, which specifically bars the Court from going into the merits of the dispute. Section 34 of the Act authorizes a very narrow jurisdiction to set aside the arbitral tribunal's award. The court does not act as if it were an appellate court, revisiting the evidence and undertaking an extensive factual review of the merits of the dispute with the mandate to cure or correct errors.

25. Mr. Raj Shekhar Rao, Ld. Senior Counsel appearing on behalf of Respondent No. 1 also submitted that the Arbitral Tribunal rejected the submission of Quadrant that the arbitration clauses provide that lock-in penalty cannot be levied by ATC in case Quadrant is either unable to obtain an extension of its operating license or unable to continue its

business for reasons beyond its control. Non-renewal/non-extension of license by DOT amounts to frustration of contract; therefore, no lock-in penalty was liable to be paid by Petitioner. It was submitted that the tribunal held that there is nothing in the Agreement to suggest that QTL was to be absolved from payment of lock-in charges if it failed to obtain the telecom license by 29.09.2017. If that were the intention, a clause to that effect would have been added by the Parties. Indeed, it is clear from the background of the case that any waiver of the lock-in charges was possible only upon an explicit request and agreement to that effect. Therefore, it was submitted that the tribunal's finding that the lock-in charges are very much valid and applicable in favor of the Claimant and payable by Respondent No. 1 correct.

26. Ld. Senior Counsel also submitted that the tribunal in para 230 of the Award, held that the Respondent, being the party in breach, has not led any evidence to show that no loss has resulted. On the other hand, the Claimant has led evidence, on its part, to demonstrate that it could not find any new tenancies, even after making considerable efforts for the same.
27. Learned senior counsel further submitted that the tribunal, in para 233 of the Award, has held that the agreements, and the provision on lock-in charges especially, were negotiated on an arms-length basis between parties who were of equal standing and properly advised, as a genuine pre-estimate of loss, and that it is not in the nature of a penalty, contrary to the argument of Respondent No. 1.
28. Further in respect to the contention of the petitioner that the award of Exit Fee is against the express terms of agreements between parties and

the tribunal erroneously applied the business efficacy test, and the lock-in charges are in the nature of damages payable on the breach. Learned senior counsel had submitted that Clause 10.5 of the WTTIL MSA provided that in case Quadrant was to exit during the lock-in period, it was liable to pay the IP Fee for the residual period of the lock-in for the sites as provided in the MSA. It was submitted that Quadrant was not liable to pay the Lock-in charges only in case of termination due to default or breach on the part of Claimant/ATC.

29. Learned senior counsel also submitted that it is not the case of Quadrant that the MSA was terminated due to default or breach by ATC. Clause 15.2 of the WTTIL MSA, in fact, fastens absolute liability upon Quadrant to pay for the lock-in charges in case of early exit as it provided that in no case Datacom shall be relieved from its obligation under Clause 10.5 of this Agreement. Learned senior counsel for the respondent no.1 also submitted that Quadrant's case is that it exited from the sites of ATC due to non-extension of their license, however the license was to expire only on 29 September 2017, still Quadrant decided to discontinue the GSM services prematurely in January 2017 only due to financial unviability of the business.

30. Learned senior counsel also submitted that the primary liability of Quadrant to pay the lock-in charges was not extinguished by merely having ATC agree to VTL absorbing the unexpired lock-portion of the lock-in period of the existing tenancies of Quadrant. Learned senior counsel submitted that it was always the intention of the parties that the liability of Quadrant for lock-in charges would remain in case of premature exit by the Quadrant. It was submitted that the Quadrant in

the present case is akin to a principal debtor and Respondent No. 2 (VTL), a guarantor, and had joint and several liabilities towards the payment of exit fee. Therefore, the failure of VTL to absorb the tenancies of Quadrant for the reason of their discontinuation of the telecom services in 2016 makes Quadrant liable to pay for the lock-in charges.

31. Learned senior counsel submitted that the payment of lock-in charges is not a payment for a breach of the MSAs, but it is a payment that becomes due on the occurrence of an event other than a breach of contract. Without prejudice to the aforesaid, it was submitted that Clause 10.5 of WTTIL MSA read with Clause 2.4 of the Supplementary Agreement is a genuine pre-estimate of loss suffered by ATC in case of early exit of the MSA by Quadrant. Reliance was placed upon ***ONGC vs. SAW Pipes*** (Supra), and ***Construction and Design Services vs. DDA***, (2015) 14 SCC 263 wherein it was inter-alia held that there exist certain contracts where loss may be presumed, even without proof and burden would be on the party in breach to show how no loss has resulted from the breach. Quadrant did not lead any evidence in this regard. To the contrary, ATC has led evidence to show that despite its best efforts to secure new tenancies, it failed to do so.
32. Learned senior counsel submitted that the parties did not seek to completely absolve QTL from payment of lock-in charges, if it failed to obtain the telecom licenses by 29 September 2017 as no such claim was inserted into the contracts/agreements.
33. Further in respect to the contention of the petitioner that the finding in the Award on invoices is not based on any evidence and is also against

the law of limitation and specific terms of the Contract and pleadings, the learned senior counsel for the respondent no. 1 submitted that the payments made by Quadrant were not commensurate with the services provided by ATC vide specific invoices, but as per Quadrant's own convenience. Though the payments were required to be made by Quadrant within seven days of raising the invoices as per the terms stipulated in the MSA, the same was not adhered to by Quadrant. Part payments were made by Quadrant towards unpaid invoices. The dealings between the parties continued and did not terminate with providing one service, and thus, the services got united with one another and formed one continuous demand which kept on being carried forward from year to year till the last invoice was raised. Thus, it all formed one cause of action and could not be divided. The nature of transactions as well as the payments made and the conduct of Quadrant would show that the payments were made on account of outstanding invoices and if that was so, the last payment was to be taken as the date for calculation of limitation as per Article 14 read with Section 19 of the Limitation Act. Learned senior counsel submitted that the only conclusion comes out to be that the period of limitation commenced from January 2017 when the last payment of Rs. 2.52 crore was made.

34. Further, with respect to the contention of the petitioner that the dispute cannot be adjudicated via arbitration in view of the exclusive jurisdiction of the TDSAT it was submitted that this issue has already been decided by the Delhi High Court in favor of ATC in the matter of ***Viom Networks Pvt Ltd. vs. Videocon Telecommunications Limited*** [O.M.P.(I) (COMM.) 95/2016] and the judgments cited by Quadrant on

this point have all been considered by the High Court in the above matter and rejected.

35. Learned senior counsel submitted that the arbitrator is the ultimate authority when it comes to the facts and evidence in a case. It was emphasised that findings based on these factors cannot be challenged in a Section 34 petition, unless there are clear violations of jurisdiction or public policy. He argued that the interpretation of the terms of the contract is also within the exclusive domain of the arbitrator and cannot be revisited by the court under Section 34 unless the decision is perverse.

36. Learned Senior counsel submitted that Section 34 of the A&C Act, is designed to limit judicial intervention in arbitral awards. Learned senior counsel submitted that it is a settled proposition that the court does not sit as an appellate tribunal over the arbitrator's decision. Reliance was placed upon ***Ssangyong Engineering*** *(Supra)*, wherein it was inter-alia held that an arbitral award should not be interfered with merely because an alternative view is possible.

37. Learned senior counsel submitted that the petitioner's challenge focused primarily on facts and evidence and sought to re-interpret the contractual terms. However, as per the settled law, such an approach is beyond the permissible scope of interference in a Section 34 petition. The arbitrator had based his award on a detailed examination of both documentary evidence and oral testimonies. It was further submitted that the petitioner had claimed that the Supplementary Agreement (SA) of 12.09.2013 absolved them from the exit penalties for the unexpired lock-in period. Respondent No. 1, however, argued that Clause 2.4 of the SA did not

absolve the petitioner from these penalties. The clause was specifically drafted to protect Respondent No. 1's interests, as the petitioner had defaulted on previous payments, amounting to ₹70.88 crores as admitted dues at the time of signing the agreement.

38. Learned senior counsel further submitted that the petitioner and Videocon Telecom Ltd. (VTL) had agreed jointly to resolve their disputes and settle the outstanding dues under the SA. In this context, Clause 1.4-1.6 of the SA mandated that the petitioner and VTL were jointly responsible for making the payments for the lock-in period. Respondent No. 1 firmly argued that the failure of the petitioner to extend the telecom license did not provide a regulatory exemption from the contractual obligation to pay exit penalties for the unexpired lock-in period and Ld. arbitrator rightly held that the petitioner's failure to obtain the license extension was an internal failure and not a Force Majeure event that could justify a waiver of penalties. In support of its claim, Respondent No. 1 referenced testimonies and cross-examinations of witnesses like Mr. Deepak Khanna and Mr. Munish Bansal, which were crucial in establishing the factual and contractual context for the dispute. Learned senior counsel submitted that the petitioner's attempt to discredit these pieces of evidence was found to be without merit by the arbitrator. Reliance is placed upon ***Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd.*** (2019) 20 SCC), wherein the court emphasised that an arbitrator's interpretation of a contract should not be lightly interfered with. Further, reliance was placed upon ***Associate Builders v. DDA*** (2015) 3 SCC 49, wherein it was inter-alia held that the court can

only intervene in an arbitral award if it is found to be arbitrary or grossly unjust

FINDING & ANALYSIS

39. Section 34 of the A&C Act, as contained in Chapter VII 'Recourse Against Arbitral Award' provides limited grounds for setting aside an award. Under Section 35 (2) (a) an award can be set aside only if the petitioner establishes on the basis of the record of the arbitral tribunal that a party was under some incapacity or the arbitration agreement was not valid under the law to which the parties have subjected it or under the law for the time being in force. The award can also be set aside if the petitioner establishes that the petitioner was not given the proper notice of the appointment of an arbitrator or the arbitral proceeding or was otherwise unable to present his case. The award can also be set aside if it is established that the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submissions to arbitration or if it contains a decision on matters beyond the scope of the subject matter in dispute. The petitioner can also challenge the impugned award if the composition of the arbitral tribunal or arbitration procedure was not in accordance with the agreement of the parties or if the court finds that the subject matter of the dispute was not capable of settlement by arbitration under the law for the time being or the arbitral award is in conflict with the public policy of India. The explanation I appended to Section 34 (2) of the A&C Act clarifies for the avoidance of any doubt that an award is in conflict with the public policy of India only if the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or Section 81 of the A&C Act or it is in

contravention of the fundamental policy of Indian law, or it is in conflict with the most basic notions of morality or justice. Explanation 2 further clarifies that for the avoidance of doubt, the test as to whether there is a contravention of the fundamental policy of law shall not entail a review on the merits of the dispute. Section 34 (2) (a) of the A&C Act provides that an award in domestic arbitration can also be set aside if the court finds that the award is vitiated by patent illegality appearing on the face of the record. However, it provides that an award shall not be set aside merely on the grounds of an erroneous application of the law or by re-appreciation of evidence. Thus, the grounds available for challenging and setting aside the award as provided in Section 34 (2) and Section 34 (2) (a) of the A&C Act are limited.

40. It is also necessary to refer to Section 5 of the A&C Act, which provides that the judicial intervention should be minimal. Before proceeding further, it is advantageous to refer to Section 28 of the A&C Act. Section 28 (2) of the A&C Act provides that the arbitral tribunal shall decide *ex aequo et bono* or as *amiable compositeur* only if the parties have expressly authorised it to do so. The bare reading of this makes it clear that the arbitrator is bound to pass an award only in accordance with the terms of the contract. The principle of equity is generally not brought in only except if the parties authorised the arbitrator to do so. Section 31 sub-section (3) of the A&C Act also provides that arbitral award shall state the reasons upon which it is based unless the parties have agreed that no reasons are to be given. Thus, the arbitral award must contain the reasons. The scope of exercising jurisdiction under Section 34 of the A&C Act provides that the intention of the legislature is to minimise the

supervisory role of the courts. The endeavour of the legislature is to make arbitration responsive and effective to a contemporary requirement as an alternative dispute redressal mechanism. It is no longer *resintegra* that while dealing with the objections under Section 34 of the A&C Act a court does not sit in appeal over the arbitral award and the jurisdiction to interfere can only be on the well-settled limited grounds.

41. In ***ONGC Ltd. vs. Saw Pipes Ltd.*** (Supra) it was inter alia held that the award would be set aside if it is contrary to (a) fundamental policy of Indian law, or (b) the interest of India: or (c) justice or morality; or (d) in addition, if it is patently illegal. It is also a settled proposition that the illegality must go to the root of the matter. In case of illegality being trivial in nature the award cannot be set aside on the ground of being against the public policy. An award can be set aside if it shocks the conscience of the Court. Reliance can be placed upon ***MMTC Limited vs. Vedanta Limited*** (2019) 4 SCC 163. In ***K. Sugumar v. Hindustan Petroleum Corporation Ltd***. (2020) 12 SCC 539 it was inter alia held that there is the highly constricted power of the civil court to interfere with an arbitral award for the reason that if parties have chosen to avail an alternate mechanism for dispute resolution, they must be left to reconcile themselves to the wisdom of the decision of the arbitrator and the role of the court should be restricted to the bare minimum. It was further inter alia held that Interference will be justified only in cases of commission of misconduct by the arbitrator which can find manifestation in different forms including exercise of legal perversity by the arbitrator. In ***Dyna Technologies (P) Ltd.*** (Supra), it was inter alia held that arbitral awards should not be interfered with in a casual and

cavalier manner, unless the Court comes to a conclusion that the perversity of the award goes to the root of the matter without there being a possibility of alternative interpretation which may sustain the arbitral award. It is a settled proposition that the mandate under Section 34 of the A&C Act is to respect the finality of the arbitral award and the party autonomy to get their dispute adjudicated by an alternative forum as provided under the law. It has also been held by the constitutional courts that if there are two plausible interpretations of the terms and conditions of the contract, then no fault can be found, if the learned Arbitrator proceeds to accept one interpretation as against the other. In regard to the interpretation of the contract in ***Parsa Kente Collieries Limited v. Rajasthan Rajya Vidyut Utpadan Nigam Limited*** AIR 2019 SC 2908, it was inter alia held that an Arbitral Tribunal must decide in accordance with the terms of the contract but if a term of the contract has been construed in a reasonable manner, then the award ought not to be set aside the ground there could be any other interpretation. It was further inter alia held that construction of the terms of a contract is primarily for an Arbitrator to decide unless the Arbitrator construes the contract in such a way that it could be said to be something that no fair-minded or reasonable person could do.

42. It is also a settled proposition that errors of fact cannot be corrected by the court while exercising the jurisdiction under Section 34 of the A&C Act as it does not sit in appeal over the award. In ***Parsa Kente Collieries Limited*** (supra) it was further inter alia held that a possible view by the Arbitrator on facts has necessarily to pass muster as the Arbitrator is the ultimate master of the quantity and quality of evidence to be relied upon

when he delivers his arbitral award. It was further observed that thus an award based on little evidence or on evidence which does not measure up in quality to a trained legal mind would not be held to be invalid on this score. Reliance can also be placed upon ***NHAI v. ITD Cementation (India) Ltd.***, (2015) 14 SCC 21 and ***SAIL v. Gupta Brother Steel Tubes Ltd.***, (2009) 10 SCC 63. The view was reiterated in ***Dyna Technologies (P) Ltd.*** (supra) wherein it was inter alia held that the courts should not interfere with an award merely because an alternative view on facts and interpretation of contract exists. It was reminded that the court should defer to the view taken by the Arbitral Tribunal even if the reasoning provided in the award is implied unless such an award portrays perversity unpardonable under Section 34 of the A&C Act. In ***South East Asia Marine Engg. & Constructions Ltd. [SEAMAC Limited] v. Oil India Ltd***. AIR 2020 SC 2323, it was inter alia held that the courts should not interfere with an award merely because an alternative view on facts and interpretation of the contract exists. In ***UHL Power Company Ltd. Vs State of Himachal Pradesh*** 2022 INSC 202, it was inter alia held that if the view taken by the arbitrator regarding the interpretation of the relevant clauses is both possible and plausible, then merely because another view could have been taken, it can hardly be a ground to interfere with the Arbitral award. Thus, the perusal of Section 34 of the A&C Act along with the judgments as discussed above it is clear that the scope of the jurisdiction while entertaining a challenge against the arbitral award is very limited.

43. Learned counsel for the petitioner in regard to the jurisdiction under Section 34 of the A&C Act has relied upon P***atel engineering Ltd. V.***

North eastern electric Power corporation ltd. (2020) 7 SCC 167; ***South East Asia Marine engineering & constructions Ltd.*** **v.** ***Oil India Ltd.*** (2020) 5 SCC 164***; PSA Sical Terminals Pvt. Ltd.*** **v.** ***Board of trustees of V.O. Chidambranar Port Trust Tuticorin & Ors.*** 2021 SCC OnLine SC 508; ***BCCI V. Deccan Chronicle Holdings Ltd*** 2021 SCC OnLine Bom 834*;* ***Vishal Engineers & Builders*** **v.** ***Indian Oil Corporation Limited*** 2011 SCC OnLine Del 5124; ***ONGC V. Saw Pipes Ltd. (Supra).*** In regard to Section 21 of the A&C Act, the petitioner has relied upon ***State of Goa v Praveen Enterprises*** (2012) 12 SCC 581. In regard to the law on penalty clauses in contracts the petitioner has relied upon ***Cavendish Square Holding BV v. Makdessi*** [2015] 3 WLR 1374. In regard to consumer liability, the petitioner has relied upon ***The Amalgamated Electricity Company Ltd. v. The Jalgaon Borough Municipality*** [1975] 2 SCC 508.

44. The primary challenge being put up by the petitioner assailing the impugned award is that the learned arbitrator has wrongly awarded Rs.58.11 Crores towards exit charges plus interest. Learned senior counsel for the petitioner has emphasized that the impugned award is in the teeth of clause 2.4 of the supplementary agreement. Learned senior counsel for the petitioner has submitted that the petitioner had to exit as the license was not renewed by the Department of Telecommunications ("DOT"). Learned senior counsel for the petitioner has also submitted that the learned arbitrator has not taken into account clause 7 of the Master service agreement dated 20.11.2007 between Quipo Telecom Infrastructure Ltd. & HFCL Infotel Ltd. It has further been submitted that the learned arbitrator has not taken into account clause 1.6 of

passive infrastructure sharing agreement dated 01.11.2005 between Datacom Solutions Pvt. Ltd. and Quippo Telecom Infrastructure Ltd.. Learned senior counsel for the petitioner has submitted that in the impugned award through the learned arbitrator referred to clause 10.1 to 10.5 of the Master Infrastructure Provisioning agreement (master agreement) dated 14.08.2009. However, Ld. Arbitrator completely ignored clause 10.6 which provided that either party may terminate this Master without incurring any liability in case either of the Party is being winded up or ceases to carry on its business, including on account of Datacom's failure/inability to obtain extension of its Operating License. Learned senior counsel has also argued that without prejudice the above contentions, the impugned award is also contrary to Section 74 of the Contract Act since damages under Section 74 require proof of loss and such proof can be dispensed with if the loss is impossible to prove.

45. Learned senior counsel has also argued that exit fees are in the nature of damages and respondent no.1 was mandated by law to prove the same by way of evidence which it has failed to do. Reliance was placed upon ***Kailash Nath Associates v DDA & Anr.*** (2015) 4 SSC 136, wherein it was inter alia held that compensation under Section 74 is contingent upon demonstrating actual damage or loss caused by the contract breach. Learned senior counsel has submitted that in this it was also inter alia held that the mere existence of a liquidated damages clause is insufficient and actual quantifiable loss must be definitively proven. Learned senior counsel has submitted that it was further inter alia held that compensation is not automatic but requires substantive evidence of damage. In regard to the law on penalty clauses in contracts learned

senior for the petitioner has relied upon ***Cavendish Square Holding BV v. Makdessi*** [2015] 3 WLR 1374. In this case, it was inter alia held that a clause is not a penalty if it serves a legitimate business interest and is not out of proportion to that interest. It emphasised that the focus should be on whether the clause imposes a detriment disproportionate to any legitimate interest of the innocent party in enforcing the contract. Learned senior counsel has also relied upon ***The Amalgamated Electricity Company Ltd. v. The Jalgaon Borough Municipality*** [1975] 2 SCC 508**.**

46. Mr. Rajshekhar Rao, learned senior counsel for the respondent while opposing this contention has relied upon ***Ssangyong Engg*** **(Supra).** Learned senior counsel has submitted that in ***Ssangyong Engg (Supra).,*** the apex court inter alia held that 2015 amendments to the A&C Act, narrow the grounds for challenging arbitral awards, particularly under the "public policy of India" clause, which now only includes "fundamental policy of Indian law" and "justice or morality." Learned senior counsel submits that these amendments aim to reduce court interference in arbitration, thereby speeding up proceedings. Learned senior counsel has further submitted that the new ground for challenge "patent illegality" covers fundamental legal errors beyond the misapplication of the law. Learned senior counsel has further submitted that it was further inter alia held that mere contravention of substantive law is no longer grounds for setting aside an award. However, failure to provide reasons for an award or unreasonable contract interpretation can be grounds for challenge based on "patent illegality." Mr. Rajshekhar Rao, learned senior counsel for the respondent submitted that in the

present case learned arbitrator has given sufficient reasons in the impugned award. Learned senior counsel has also relied upon ***Dyna Technologies (P) Ltd.*** (Supra) to emphasize the point that the courts must give respect to the finality of the award and party autonomy.

47. Learned senior counsel submits that Unlike appellate jurisdiction, Section 34 mandates deference to the Arbitral Tribunal's view, even if an alternative interpretation exists, unless the award is unreasonably perverse. Learned senior counsel submits that it was emphasised that frequent interference would undermine the commercial purpose of opting for alternative dispute resolution. Learned senior counsel has further relied upon ***Associate Builders*** (Supra) and has submitted that in this case, it was inter alia held that an award that shocks the conscience of the court or is deemed unreasonable could be challenged. Learned senior counsel submitted that errors in law, such as unreasonable misinterpretations of the contract, may result in the award being overturned. It was further inter alia held in this case that courts typically defer to the arbitrator's interpretation unless it is clearly irrational. Learned senior counsel has further relied upon ***MMTC LTD. V. Vedanta Ltd.*** (2019) 4 SCC 163 to emphasise that the challenge to the award is limited to specific grounds, such as violations of the fundamental policy of Indian law, patent illegality, or conflicts with justice or morality and these grounds include contraventions of substantive law, judicial precedents, natural justice principles, and Wednesbury reasonableness. It was inter alia held in ***MMTC LTD.*** (Supra) that following the 2015 amendment, "public policy" violations now encompass fraud, corruption, or significant illegality but exclude mere errors of law or

reappreciation of evidence. Learned senior counsel has also relied upon ***National Highways Authority of India v. ITD Cementation India Ltd.*** **(2015) 14 SCC 21** *(supra) to emphasise that the* interpretation of contract terms is primarily for the arbitrator, who may adopt a reasonable view based on the material before them. Learned senior counsel has also relied upon ***Konkan Railway Corpn. Ltd v. Chenab Bridge Project*** (2023) 9 SCC 85 wherein it was inter-alia held that the focus under Section 34 is limited to checking if the arbitral tribunal's view is perverse or arbitrary, not to reinterpret contracts. Learned senior counsel has further relied upon ***Union of India v. M/s D.N. Revri & Co. & Ors***. (1976) 4 SCC 147 in which it was inter-alia held that a contract should be interpreted to give effect to its purpose rather than invalidate it, adopting a common-sense approach over strict legal rules. Learned senior counsel has further relied upon ***Nabha Power Ltd. v. Punjab SPCL & Anr*** (2018) 11 SCC 508 wherein it was inter-alia held that the principle of implied terms in contracts is based on ensuring business efficacy, meaning terms are implied to reflect the presumed intentions of the parties and make the transaction workable. Learned senior counsel has submitted that in ***Nabha Power Ltd. (Supra),*** it was further inter alia held that implied terms in contracts are those that are not expressly stated but are necessary to give business efficacy to the agreement. It was further emphasised that for a term to be implied, it must be reasonable, equitable, and so obvious that it goes without saying and is capable of clear expression and should not contradict any express term of the contract. Learned senior counsel has also relied upon ***Kailash Nath Associates*** (supra) to emphasise that even in this case reliance was

placed upon ***ONGC Ltd. v. Saw Pipes Ltd***.*(Supra)* to emphasise that reasonable compensation must be awarded, whether or not actual loss is proven, provided it is not a penalty or unreasonable. It was further inter alia held that pre-estimated damages, if genuine, are enforceable without proof of actual loss. Learned senior counsel has further submitted that it was inter alia held that proof of actual loss is not mandatory when damages are difficult to quantify, provided the pre-estimate is reasonable. Learned senior counsel has further relied upon ***ONGC Ltd. v. Saw Pipes Ltd*** *(supra)* to emphasise that liquidated damages stipulated in the contract, if reasonable and not penal, can be enforced without proof of actual damages, especially when the contract explicitly states them as a genuine pre-estimate. Learned senior counsel has relied upon ***Construction and Design Services V. Delhi Development Authority*** (2015) 14 SCC 263. In respect to the objection raised as to the debt being barred by the limitation Learned senior counsel has relied upon ***Asset Reconstruction Co. (India) Ltd. Bishal Jaiswal & Anr***. (2021) 6 SCC 366**;** ***Dena Bank v. C. Shivakumar Reddy,*** (2021) 10 SCC 330; ***DSC Ltd. v. S.P. Singla Constructions (P) Ltd.,*** 2018 SCC OnLine Del 12690 **and** ***Gannon Dunkerley & Co. Ltd. v. Zillion Infraprojects (P) Ltd,*** 2023 SCC OnLine Del 4815. Learned senior counsel has submitted that the award cannot be considered as irrational or perverse or based on no evidence.

48. The discussion made hereinabove makes it explicit that the court while hearing the challenge of an award under Section 34 of the A&C Act does not in appeal over the award. The arbitrator is considered to be the final arbiter of the facts. The award can only be challenged on the

limited grounds as set up in Section 34 of the A&C Act. The jurisdiction under section 34 of the Act is entirely different from the appellate jurisdiction. Thus, the court in this jurisdiction cannot reappreciate the evidence led before the trial court. The court also cannot substitute its own view with the view taken by the arbitrator, if view taken by the arbitral tribunal is reasonable and plausible. The court cannot sit with a microscope in his hand to assess the correctness of the award. The award is only required to have passed the test of being in sync with 'the public policy of India' which now includes "fundamental policy of Indian Law", and "justice and morality". The court is also required to see that the impugned award should not be patently illegal. Thus, in order to see that whether the tribunal has not violated any of the conditions as mentioned above it is necessary to examine the impugned award.

49. The arbitral tribunal was constituted pursuant to the arbitration petition No.6/2015 *ATC Telecome Infrastructure Private Ltd. vs. Quadrant Televentures Ltd. and Anr.* under Section 11 of the A&C Act. Learned Tribunal on the basis of the pleadings of the parties including counter and counterclaim, framed the following issues on 02.06.2015:

> *1. Whether the Claimant is entitled for an Award of a sum of Rs. 13,22,73,649/- and Rs.6,63,21,775 towards the outstanding Monthly charges and Power fuel/Diesel charges respectively? OPC*
>
> *2. Whether the Claimant is entitled for an Award of a sum of Rs.1, 93,73,703/- towards the Billed Interest (calculated upto Feb. 2016 and Rs. 41,65,852.99/-(calculated for the period March 1, 2016 to*

March 31, 2017) towards the Unbilled Interest. OPC

3. Whether the Claimant is entitled for an Award of interest at the rate of 1.5% over and above the applicable SBI PLR per annum on delayed payment for the period 1st April 2017 till the payment is made? OPC

4. Whether the Claimant is entitled for an Award of a sum of Rs.58.11 Crores towards exit charges in accordance with Clauses 2.2, 2.3, and 2.4 of the Supplementary Agreement dated 12 September 2013 along with interest @ 15% p.a. from February 2017? OPC

5. Whether the Claimant is entitled for an Award of a sum of Rs. 42,99,759/- along with interest 18% p.a. till payment is made, towards the recurring Municipal Charges and property taxes? OPC

6. Whether the Claimant is entitled to cost of litigation and arbitration expenses? OPC

7. Whether the Claimant is entitled to penderit-lite and future interest on the claimed amounts? If so at what rate? OPC

8. Whether the disputes under the present proceedings are not arbitrable in view of Section 14 of the Telecom Regulatory Authority of India Act, 19977 OPD

9. Whether the Respondent No. 1 is entitled to recover from the Claimanta sum of Rs 26,52,910/-on account of outages? OPD

10. Whether the Claimant failed to maintain the requisite SLAV Quality of Service under the MSAS / Agreements, as alleged? if no whether the Respondent is entitled to recover from the Claimant a

sum of Rs. 8.40 Crores? OPD

11. Whether the Respondent No. 1 is entitled to recover from the Claimant a sum of Rs.55,65,315/- on account of deposit made by the Respondent No. 1 with the Claimant? OPD

12 Whether the Respondent No. 1 is entitled to recover from the Claimant a sum of Rs.35.09 crores on account of excess energy invoices from the Claimant? OPD

13. Whether the Respondent No. 1 is entitled to recover from the Claimantla Sum of Rs. 57, 14,96,144,57/-on account of equipment installed at the tower site of the Claimant? OPD

14 Whether the Respondent No.1 is entitled to recover interest till the date of filing of its counter claims? it so from which dates and at what rate? OPD\ 15. Whether the Respondent No.1 is entitled to recover from the Claimant pendente lite and future interest on the sum awarded in its favour? If so at what rate? OPD

16. Whether the Respondent No.1 is entitled to costs of the arbitration as well as the costs for the proceedings under Section 9, appeal arising therefrom and Section 11 conducted before the Hon'ble Delhi High Court?

OPD

50. It is pertinent to mention that Corporate Insolvency Resolution Process was initiated against Videocon Telecommunication Limited (Respondent No.2 in the present matter) by the NCLT vide an order dated 08.08.2018 in Company Petition (IB) No.1 (MB) of 2018. The NCLT declared a moratorium under Section 14 of the Insolvency and Bankruptcy Code, 2016. As a result, the arbitration proceeding against

Respondent No.2 was adjourned sine die. During the arbitration proceedings, the claimant examined three witnesses, namely Nitin Kohli (CW1), Sachin Jain (CW2), and Sudhir Prasad (CW3). Respondent No. 1 examined two witnesses, i.e., Mohnish Bansal (RW1) and Deepak Khanna (RW2). Perusal of the impugned award indicates that the learned arbitrator captured the commercial agreement between the parties and the claim of the claimant. The learned arbitrator also captured the petitioner's case and a counter claim in detail. The findings of the learned arbitral tribunal on the issues were given as follows:

(i) Learned Arbitral first dealt with issue no.(viii) whereby it was claimed by the petitioner that the present proceedings were not arbitrable in view of Section 14 of Telecom Regulatory Authority of India (TRAI) Act, 1997. An application under Section 16 of the Act was also filed by the petitioner. Learned arbitral tribunal discussing the arguments being raised by both the parties and took into account the relevant provisions of the Indian Telegraph Act, 1885 and TRAI, Learned arbitral tribunal also took into account the applicability of the judgment delivered in ***Viom Network Limited***, AIR 2014 Delhi 31 and it was noted that in *Viom Network Limited had taken into account the judgment passed by the Apex court and TDSAT order dated 10.04.2012 in* ***Reliance lnfratel v. Etisalat DB Telecom Ltd****., Petition 75 of 2012*. It is pertinent to mention here that Civil Appeal No. 6459 of 2012 against the said judgment is pending before the Hon'ble Supreme Court, however, the TDSAT judgment has not been stayed. It was also noted that appeal against VIOM Network is also pending

however no stay has been granted. The petitioner has challenged this finding in view of Section 14 of 15 of TRAI Act, 1997 stating the license held by petitioner is a license within the meaning of section 4 of Indian Telegraph Act, 1885. It was stated that both the parties were service providers as defined under Section 2 (e) and (j) of the TRAI and mere existence of an arbitration clause in the MSAs cannot exclude the exclusive jurisdiction of TDSAT Mere existence of an arbitration clause in the MSAs cannot exclude the exclusive jurisdiction of TDSAT. Reliance was also placed upon ***Union of India v. Tata Teleservices (Maharashtra) Ltd.,*** (2007) 7 SCC 517, ***Cellular Operators Association of India & Ors. V. Union of India & Ors.,*** (2203) 3 SCC 186, ***Vimal Kishore Shah & Ors. V. Jayesh Dinesh Shah & Ors.***, (2016) 8 SCC 788, ***Dhulabhai v. State of M.P.,*** AIR 1969 SC 78 and Hon'ble TDSAT in ***Reliance Infratel v. Etisalat DB Telecom Ltd.***, Petition No. 75 of 2012. However, the perusal of the impugned award indicates that all these provisions were considered threadbare by the learned arbitrator. It was specifically noted that Section 2 (e) requires a licensee to provide specified telecommunications services, which is also defined under Section 2(k). It was noted that the claimant are in the in the business of providing a limited number of services, i.e., arranging the land for erection of telecom towers; erecting the towers; civil construction work; installation of Diesel Generators sets; arranging and establishing shelters; electricity connection; and operation and maintenance of telecom towers. It was noted that thus these do not fall under the definition of telecommunication services, as a result of

which the Claimant cannot be considered a licensee under the TRAI Act. Given the scope of jurisdiction under Section 34 of the Act and the reasoned finding of the learned arbitrator this court does not find any reason to interfere in this issue.

(ii) The petitioner has also challenged the finding of the award on the ground that there was no arbitration clause in the Supplementary Agreement dated 12.09.2013 under which the dispute arose between the parties. It was also submitted that the arbitration proceedings were not invoked under the supplementary agreement. Reliance was placed upon ***Seth Thawardas Pherumal v. Union of India***, AIR 1955 SC 468, and ***Duro Felguera, S.A. V. Gangavaram Port Limited***, (2017) 9 SCC 729. It was also submitted that the arbitration proceedings were not invoked in the supplementary agreement. This issue was also threadbare discussed by the learned arbitrator. Learned arbitral tribunal noted that supplementary agreement is a a "supplement" to the previous agreements between the parties, these being the WTTIL MSA and the QTIL MSA. Clause 4.1 of the supplementary agreement was referred to and it was noted that there there is no need to have a separate arbitration clause for every SA, as it is understood that the arbitration clause in the MSA will apply to any disputes arising out of the SA as well. Reliance was placed upon ***Chloro Controls India Private Ltd. vs Severn Trent Water Purification Inc. &Ors***. *(2013)* 1SCC 461 wherein it was inter alia held that in cases where there is a parent agreement and several ancillary agreements, the intention of parties to refer disputes to arbitration must be given effect to, even if some of the ancillary agreements do not reiterate the

arbitration clause. Learned arbitral tribunal rightly rejected the contention and this court do not find any ground to interfere in the same.

(iii) Learned tribunal dealt with the issue no. 1 regarding entitlement of the claimant for an award of a sum of Rs. Rs.13,22,73,949/ and Rs.6,63,21,775 towards the outstanding Monthly charges and power and fuel/diesel charges respectively. Learned tribunal after duly noting all the contentions of petitioner including the ground of limitation. Learned tribunal after noting the different clauses of the WTTIL MSA agreed with the claimant respondent that the invoices have clearly been not paid. Learned tribunal took into account the notice issued by the petitioner under Rule 30 of the Companies Act in which listed the Claimant as its creditor on its books and its records, thus establishing that there were payments still due as of 12 December 2016. The learned tribunal took into account the testimony of RW1 in detail. On the ground of limitation the reliance was placed upon ***Ashok Parshad* vs. *Mahalakshmi Co. Ltd.***, *2013 SCC Del 3629*, and inter alia held that the claim for the invoices has been made well within time, and no bar of limitation applies. The petitioner has challenged this finding on the ground award has been passed without any reason whatsoever. Learned senior counsel submitted that the award impugned is unreasonable and the judgment of ***Ashok Parshad*** (supra) is not applicable to the facts of the present case. It was submitted that Section 19 of the Limitation Act has no applicability to the facts of the present case and the invoices that were beyond the period of three years from the date of reference of arbitration were

time-barred as the payment was from invoice to invoice. It was submitted that the invoices were not proved by respondent no.1. The petitioner also stated that the learned tribunal did not take into account that payment of Rs.2,52,75,603.27 was made by the petitioner as a full and final settlement of the account. However, the perusal of the record indicates that the payments made by the petitioner did not commensurate with the services provided by the respondent vide specific invoices, but as per Quadrant's own convenience. It has to be taken into account that though the payments were required to be made by Quadrant within seven days of raising the invoices as per the MSA, but, the petitioner made the part payments towards unpaid invoices. The dealings between the parties continued and did not terminate with providing one service. There is force in the contention of the respondent that the services got united with one another and formed one continuous demand which kept on being carried forward from year to year till the last invoice was raised. and Thus, it all formed one cause of action and cannot be fragmented. The court does not find any defect in the finding of the learned tribunal that the period of limitation commenced in January 2017 when the last payment of Rs.2.52 crore was made. In this regard reference can also be made to the supplementary agreement dated 12.09.2013 Annexure 3 of the said supplementary agreement which contains detail of the current outstanding relating to the IP Fees and PF. It is also pertinent to refer to the communication dated 13.09.2017 sent by the petitioner to the Deputy Director, Ministry of Corporate Affairs which is for shifting of registered office from Maharashtra to Punjab. In its

communication, the petitioner stated that the claim of the respondent of Rs.16.36 crores up to 31.12.2016 is the same pending for reconciliation between both companies and can be taken up separately. Thus court considers that the learned tribunal has passed the reasoned award regarding this issue and there is not reason to interfere in the same. The finding regarding issue no. 2, 3 and 7 regarding build interest and unbuild interest are consequential and the perusal of the finding indicates that the same has been passed with due reasons.

(iv) The finding of the tribunal regarding issue no. 4 regarding exit charges is the most contentious issue being raised by the parties. Perusal of the impugned award indicates that the learned tribunal has taken into account the various clauses of the WTTIL MSA. It was noted that under clause 3 (iv) it was specifically agreed that the respondent would not seek any further recover of lock in charges on account of premature exit of respondent no.2 from sites of the claimant in future. It was noted that even after signing the MOU the respondent failed to make timely payments as a result of which by 31.09.2012 the outstanding due was Rs.70.88 crores. In 2013 the respondent sought a premature exit from 1107 sites for which the demand note towards lock-in charges for Rs.86.06 crores was raised. This led to the signing of the supplementary agreement dated 12.09.2013 to resolve the outstanding issue between the parties. In the SA, the outstanding amount of INR 70.88 Crores is under the Agreements on account of IP Fees and bills for power and fuel reimbursement. It was agreed to extend the lock-in period since

31.03.2013, in consideration of which the respondent claimant agreed to waive off claims for lock-in charges for 1107 sites exited by Respondent No. 2. However, the claimant exited from all the sites of the petitioner on 06.03.2017. It was noted under the SA that the petitioner agreed to extend the lock-in period till 31.03.2020. The contention of the claimant was that respondent no.1 had exited from the site not because their license was not extended but because of financial problems. It was noted that the license was expiring on 29.09.2017 whereas the petitioner decided to discontinue GSM service in Punjab in January 2017 itself. The contention of the claimant that clause 2.4 would have become relevant only if the petitioner's license was not renewed, however he discontinued its business much before the license expiration date. Learned tribunal after taking into account the contention of the claimant/respondent and the law laid down in ***Nabha Power Ltd.*** *(Supra)*, ***Cavendish Square Holding BV*** *(Supra)*; and ***Construction and Design Services vs. Delhi Development Authority*** (2015) 14 SCC 263 allowed the claim. The contention of the claimant was also dealt with in detail besides taking into account clause 10 of the MSA clauses 2.2, 2.3 and 2.4 of the SA. The learned tribunal also relied upon the judgment in ***Indiabulls Property P. Ltd. v. Treasure World Developers P. Ltd.*** 2014 SCC OnLine Bom 4768, ***Food Corporation of India & Ors. v. Babulal*** *Agrawal* (2004) 2 SCC 712 and inter-alia held an under:

> *"218. The nature of the agreement between the parties embedded in the MSA, as shown by the language of Clause 10 extracted above, is clearly that of a commercial bargain and understanding. This is foundational to the MSA and essentially*

operates as a commercial bargain on the part of the Claimant obligating the Respondent to fulfil its promises. Respondent No. 1 does not deny that there is a provision for the payment of lock-in charges, which is also a relevant factor. " 219. Additionally, it is important to recall the circumstances in which the lock-in charges came about in the first place. The SA was executed in the backdrop of a large outstanding amount due on the part of Respondent No. 1 and Respondent No. 1, which was piling up over the months. 6oth the Respondents had consistently failed to perform their obligations under the MSAS. and outstanding towards IP Fees and bills for power and fuel reimbursement had piled up. The Respondents then approached the Claimant in September 2013 to enter into the SA, to modify some of the terms and conditions of the MSAs. In that SA, they undertook to pay all the agreed outstanding due to the Claimant, while categorically acknowledging that an outstanding was due. Respondents also acknowledge liability towards the lock in charges of Rs.80.Q6 crores in view of premature exit of VTL from 1107 Sites.

220. The final SA that took shape involved an agreement whereby the Respondents agreed to make part payments of the total outstanding amount to Claimant on a monthly basis over six (6) months and also agreed to clear other dues. The Claimant also agreed to forego the amount towards the lock-in charges in consideration of the Respondents providing the Tenancy Commitment and increase in lock-in Period (under Cl. 2.1 & 2.2 of the SA).

221. The Tribunal especially notes the construction of the clauses in the SA, and the fact that Clause 2.3 of the SA was contingent upon or related in any way to Clause 2.4 of the SA. A plain reading of this shows that the liability of the Respondents regarding increase in lock in period and providing additional tenancy was absolute, and was not related to the circumstance of QTL obtaining the extension of its license.

222. Here, the decision of The Union of India v. D.N. Revri & Co. and Ors.: (1976) 4 sec 147, is relevant, where the court said:

"7. It must be remembered that a contract is a commercial document between the parties and it must be interpreted in such a manner as to give efficacy to the contract rather than to invalidate it. It would not be right while interpreting a contract, entered into between two lay parties, to apply strict Rules of construction which are ordinarily applicable to a conveyance and other formal documents. The meaning of such a contract must be gathered by adopting a common sense approach and it must not. be allowed to be thwarted by a narrow, pedantic and legalistic interpretation ..... "

223. It is important that there must be some business sense in the interpretation of a commercial contract, and any such interpretation must be purposive, rather than anything to the contrary. Here, the 'five condition test' is relevant. In Nabha Power Limited vs. Punjab State Power Corporation Limited and Anr. [supra], the Supreme Court referenced this test, which says that for an implied condition to be read into the contract including the 'business efficacy' test, the following conditions are required to be satisfied: (1) reasonable and equitable; (2) necessary to give business efficacy to the contract; (3) it goes without saying, i.e., The Officious Bystander Test; (4) capable of clear expression; and (5) must not contradict any express term of the contract.

224. Applying these conditions to the present case, the Tribunal finds that it is only reasonable and equitable for lock-in charges to be applied by the Claimant, especially in view of the past performance of the Respondents. The lock-in charges were important and necessary to give business efficacy to the contract, as without these, the Claimant would be left without any remedy, and a large outstanding date against their account, to their loss. To anyone reading the contract, a lock-in makes logical sense, to protect the Claimant's interests. The clause was clearly worded, as accepted by the Respondent No.

1, and did not contained any other term of the contract. Thus, in this context, the lock-in charges remain valid.

225. It is also useful to consider why lock-in charges are important in the first place. They are not arbitrary demands made by one party against another. Besides acting as a security of sorts for a premature exit, the lock-in charges also cover the costs that are invested by parties. In the present case, the Claimant invested both time and money to prepare the sites and make them ready for use by the Respondents. The sites had to be technically and structurally suited for installation, and all taxes and dues pertaining to the land had to be paid to various authorities before they could actually be used by the Respondents. The Claimant had to undertake a host of measures to ensure that the Respondents could enjoy uninterrupted and peaceful use of the sites, for the duration of the agreement. Therefore, lock-in charges are essential to cover all these costs that the Claimant has previously already incurred in anticipation of the use of the sites by the Respondents.

226. Respondent No. 1 contends that the lock-in charge is effectively a payment for a breach of the MSAs, but the Tribunal disagrees and finds that the lock-in is in fact a payment that becomes due on the occurrence of an event other than a breach of contract. Support for this is found in Cavendish Square Holding BV v. Tala El Makdessi [supra], where it was held:

" ..... if the contract does not impose (expressly or impliedly) an obligation to Perform the act, but simply provides that, if one party does not perform, he will pay the other party a specified sum, the obligation to pay the specified sum is a conditional primary obligation and cannot be a penalty."
227. Similarly, in Amalgamated Electricity Company Ltd. v. Jalgaon Borough Municipality [supra], it was held that:
"where a minimum guaranteed charge was stipulated in the contract, it had to be viewed in the context of the contractual arrangement and enforced."

228. Both these judgements clearly establish that this lock-in charge was provided for payment due upon non-performance of an act. It is not in the nature of a penalty, but is a minimum guaranteed charge stipulated as such in 'the contract. The Claimant is claiming for nothing other than what it is due under the contract.

229. Further, the Tribunal notes that the agreement is constructed in a way such that if it is terminated before it was due to be terminated, it leads to a loss for the Claimant. The decision of the Delhi High Court in Satya Narain Sharma HUF v. Ashwani Sarees Pvt. Ltd. [supra] is relevant, where it was held:

"29 . ... Since this agreement contains three years lock-in period clause, I am of the view that the defendant cannot be allowed to terminate the lease before expiry of the lock-in period of three years provided in the lease agreement. Hence the termination of the lease by the defendant through its reply dated 05.06.2008 is invalid and the same is not sustainable in law. In case the defendant wants to vacate the suit premises before the expiry of the lock-in period then it is under a contractual obligation to pay the rental for the period until the expiry of lock-in period i.e. upto 14.11.2010. The defendant, in my view, has rendered itself liable to pay rent in respect of the suit premises to the plaintiff.

... Since the defendant admittedly did not pay any rent after March, 2008, it is liable to pay rent at the agreed rate of Rs 3 lakh per month plus taxes and interest for the delayed period as agreed in the lease agreement till the expiry of the three years lock-in period provided in the lease agreement."

230. Even if it is assumed that the claim is one for damages and compensation, there are some damages that are impossible to prove. This was held in both ONGC vs. SAW Pipes [supra]and Construction and Design Services vs. DDA [Supra], where the Court said that are certain contracts where loss may be presumed, even without proof; and burden would be on the party in breach to show how no loss has resulted from the breach. The Tribunal notes that the case at hand is one such case, and finds that the Respondent, being the party

in breach, has not led any evidence to show that no loss has resulted. On the other hand, the Claimant has led evidence, on its part, to demonstrate that it could not find any new tenancies, even after making considerable efforts for the same. The market for tower operators being a niche market, makes it difficult to find readily-available customers, as stated by CW-3. The demand for telecom tower depends on the larger business plans of telecom operators which involves a complex network of roll-out plans and decisions of market focus, etc. If there is any sluggishness in the demand of telecom operators, there is a direct impact on the revenue growth potential of tower companies. The Claimant, it has been shown, even offered heavy discounts to telecom operators, but was unable to secure tenancies on vacated sites. and the towers remained unoccupied.

231. Respondent No. 1 has also tried to argue that the lock-in charges were akin to a penalty, and that Clause 10.5 of the WTTIL MSA/Clause 2.2 of SA was penal in nature. The argument is that the lock-in charge was inserted to discourage the Respondent from terminating the contract. However, the Claimant argues that the lock-in was to cover a situation of ·early termination, not a breach of contract, as contended by Respondent No. 1. Thus, the lock-in charge was due to be paid upon the occurrence of premature termination, not the breach of the MSA. The circumstance of premature termination is, according to the Tribunal, clearly a circumstance other than the breach of the contract.

232. The Tribunal believes that Respondent No. 1 is merely attempting to find a way out of · genuine and legitimate liability under the lock-in charge, despite repeatedly, and on multiple different occasions, admitting and acknowledging that the lock-in charge existed. Indeed, under Clause 3(a) of the MoU of 12

December 2011, the Respondent explicitly sought a one-time waiver of the lockin charge for 705 sites, and specifically agreed that it would not seek or request a further waiver of lock-in charges in the future. It also agreed that any further request for such a waiver, if made at all, would be in the strict

and limited context of the exit clause of the agreements. Again, under Clause 1.3 of the SA, the Respondent agreed that an outstanding of Rs 86.06 crore was due as lockin charge against their early exit from 1107 sites, but this claim was waived in (In lieu of tenancy commitment and increase in lock-in period under Clause 2.2 and 2.3 of the SA.

233. In the context of these circumstances, therefore, the Tribunal is clear that the agreements, and the provision on lock-in charges especially, were negotiated on an arms-length basis, between parties who were of equal standing, and properly advised, as a genuine pre-estimate· of loss, and that it is not in the nature of a penalty, contrary to the argument of Respondent No. 1.

234. In K.P. Subbarama Sastri v. K.S. Raghavan [supra], the Supreme Court has held that clauses for liquidated damages that are "in terrorem" are not enforceable. These clauses are "in terrorem" when "the real purpose for which the stipulation was incorporated in the contract was that by reason of its burdensome or oppressive character it may operate in terrorem over the promiser so as to drive him to fulfil the contract, then the provision will be held to be one by way of penalty." In Such cases, the sum provided for in the clause has no connection with the damages likely to be sustained on a breach. Other cases

that make the same point include Ultratech Cement Ltd. vs. Sunfield Resources Pty. Ltd., (2017) 7 Born CR 133, and Hindusthan Paper Corp. vs. M/s Wellbrines Chemicals Pvt. Ltd.., (2002) 3 Cal LT 114, in which it was held that "the essence of the liquidated damages is a genuine and reasonable pre-estimated damages. In order to acquire the character of penalty, the sum stipulated must be proved to be extravagant and unconscionable."

235. In the light of this discussion, the Tribunal finds that the provision for lock-in charges was inserted and provided for as a matter of business efficacy, and by way of an additional protection. As the Claimant has contended Clause 2.4 was entered by the Claimant to have an additional safeguard to protect its interest in giving up huge amount of Rs. 80.66

Crores. There is nothing in the Agreement to suggest that QTL was to be absolved from payment of lock-in charges if it failed to obtain the telecom license by 29.09.2017. If that were the intention, a clause to that effect would have been added by the Parties. Indeed, it is clear from the background of the case that any waiver of the lock-in charges was possible only upon an explicit request and agreement to that effect. Therefore, the Tribunal finds that the lock-in charges are very much valid, and applicable in favour of the Claimant, and payable by Respondent No. 1.

236. Accordingly, the Tribunal finds Issue No. 4 in favour of the Claimant. Interest is claimed from 1 February 2017 @15% per annum, but this is granted instead @ 12% per annum."

51. The petitioner has challenged this finding on the ground that the learned arbitrator has not taken into account clause 7 of QTIL MSA and clause 1.6. Clause 7 of the Master services agreement dated 20.11.2007 and clause 1.6 of the passive infrastructure sharing agreement dated 1.11.2008. Learned senior counsel has also submitted that learned arbitrator took into account clause 10 of master infrastructure provisioning agreement dated 14.8.2009 but surprisingly only clause 10.1 to 10.5 were taken into account and clause 10.6 was totally ignored which provided that there would be no liability if the parties cease to carry out its business on account of Datacom failure/inability to obtain an extension of its operating license in violation of clause 2.4 which provided that notwithstanding clause 2.2 in case QTIL's license is not renewed by the license expiration date. The tenancy of QTIL's then-existing sites which had been taken from VIOM shall cease to continue from the license expiration date aggregate unexpired portion of the lock-in period (all

in one) of the then-existing tendency of the QTIL shall be observed by the WTTL (R2) based on mutual agreement between the parties, by addition of new tendency or by extending the lock-in period of all or agreed selected sites or by both. The plea of the petitioner is that thus in clause 2.4 it was acknowledged that the petitioner's license was to expire on 29.9.2017 and post such expiration the petitioner's tendency shall cease to continue and such tendency were to be brought by respondent no. 2 and not the petitioner. It was submitted that therefore clause 2.4 was to prevail over clause 2.2. It was submitted that business efficacy test was wrongly applied by the learned arbitrator.

52. The findings, as discussed above, makes it clear that the learned tribunal has taken into account various clauses of agreement between the parties. It may be reiterated at the cost of brevity that the arbitrator is the final arbitor of the facts and is entitled to interpret the terms of the contract. The interpretation of a contract falls within the domain of the arbitrator, and such an interpretation can only be set aside if such is patently illegal or perverse. The question is as to whether the court, while hearing the challenge against the impugned award under section 34 of the act, can go into a threadbare examination of the various clauses of the agreement between the parties so as to find out whether the finding arrived on by the learned arbitrator is correct or not. I consider that such an extensive exercise by this court in the present jurisdiction is not permissible. The court has to only see whether the interpretation as on arrived by the arbitrator could be arrived by any prudent person or just not perverse. It may also be reiterated while interpreting the term of a contract, the court cannot substitute its own

view with the view of the arbitrator if it based upon logic and reason.

53. However, in order to satisfy the judicial conscience, this court has gone through the various clauses of the agreement between the parties. Clause 10.5 of WTTIL MSA provides that petitioner would not be liable to pay the lock-in charges only in case of the termination due to default or breach on the part of the claimant ATC. Similarly, clause 15.2 of WTTIL MSA vested the absolute liability upon the petitioner to pay for the lock-in charges in case of early exit as it provided that in no case Datacom shall be relieved from its obligation under clause 10.5 of this agreement. The contention of the respondent that in fact petitioner exited due to within court "financial unviability" and not because of expiration of license cannot be brushed aside on the ground that the petitioner exited in January 2017 whereas the license was valid till 29.9.2017. Clause 2.4 also provides that in case of premature exit, the claim of the respondent does not vanish or extinguish. It was merely agreed upon by the parties that the same will be absorbed by respondent no. 2. Thus, it can also be termed as joint and several liability.

54. It is also to be noted against respondent no.2, IBC proceedings have been initiated, and in such a case, the claimant cannot be left high and dry. Commercial contracts are entered into between the parties for the purpose of business, and such terms of the contract have to be interpreted in sync with the business efficacy rules. It is also to be noted that terms of terms are to be read in conjunction with each other and no term can be read in isolation. In the statement of claim filed by respondent, the respondent claimant filed the calculation showing the

lock-in charges in terms of clause 10.5 for each of the site as annexure C22 it is relevant to see that in cross examination of CW1 conducted on 31.8.2018, there is no question put as to C22 for the correctness of the same. Only a question was put to CW1 that did the claimant have the right to respondent no. 2 to absorb the aggregate unexpired portion of the lock-in period in months of the then existing tenancy of QTL. CW1 replied that since respondent no. 2 already closed its business by selling its spectrum to Airtel in 6 circles in May 2016, no such communication was sent. Similarly, in the cross examination of CW2 Sachin Jain no cross-examination was done regarding this issue. As per the cross-examination CW3 conducted on 10 September 2018, the respondent continued to have a lot of towers unoccupied within for long time despite the efforts by the company to get new tenants. It is also a matter of record that there is no clause which could absolve the petitioner form lock-in charges in case it fails to obtain telecom license by 29 September 2017. There is nothing on record to suggest that learned arbitrator has not considered the material before it or has considered the material which not on the record. This court does not have power to review or reappreciate the factual matrix of the case or correctness of the interpretation of the terms of the contract between the parties. It is also a settled proposition that in commercial contract between the parties, the court should not interfere into the same unless any finding of the learned Arbitrator is excessive. The Court considers that the finding arrived on learned tribunal does not call for any interference. The contention of the learned senior counsel for the petitioner that clause 10.6 has not been considered is also not

sufficient to set aside a reasonable award. Even at the cost of brevity, it can be reiterated that all the terms have to read *ejusdem generis.*

55. Learned tribunal has also awarded the cost in favour of the claimant. Counter claim being raised by the petitioner were rejected with a detailed and speaking order. It is also pertinent to mention here that the petitioner had not led any evidence to show that no loss has resulted whereas the claimant respondent has pleaded that it could not find any new tenancy even after making considerable efforts for the same. Thus, the discussion made herein above demonstrates that the award is based on a judicial approach, fairness, reasonableness and objectivity. The arbitrator being the ultimate master of the fact and key evidence and it is the settled proposition that the findings based on facts and evidence cannot be disturbed under section 34 of the act. It may also be reiterated that the construction of the term of a contract falls within the exclusive domain of the arbitrator. This court considers that the real test while deciding the petition under section 34 of the A&C Act is that if on perusal of the impugned award the court finds that it has been passed on no evidence or is patently illegal or it is irrational or irrelevant factor has been taken into account, while ignoring vital evidence only then the court should interfere into the award. If the award is logical based on the reliable evidence, then there is no jurisdiction to interfere into the same. Under the concept of "patent illegality" the interference can be made only if there is a contravention of substantive law, failure to provide reason for the award and misinterpretation of contractual terms. However, the court considers that in the present case none of

theconditionsis present. Thus, in view of the discussion made herein above, the petition is dismissed.

56. No order as to costs.

DINESH KUMAR SHARMA, J

DECEMBER 24, 2024
Rb/ht