

## **B.C.Satish Kumar vs M/S.Atria Convergence & on 27 July, 2015**

IN THE COURT OF THE XIX ADDL. CITY CIVIL &  
SESSIONS JUDGE AT BANGALORE CITY: (CCH.18)

Dated this 27th day of July, 2015.

Present

SMT.K.B.GEETHA, M.A., LL.B.,  
XIX ADDL. CITY CIVIL & SESSIONS JUDGE,  
BANGALORE CITY.

A.S.NO.11/2007

APPLICANT/ B.C.Satish Kumar,  
PETITIONER/ Major,  
PLAINTIFF : Erstwhile Proprietor of  
M/s.Shabharish Cable Links  
No.4, Lakshmi Temple Road,  
Ramamurthy Nagar,  
Bangalore-560 016.

(By Sri.P.B.Raju,Advocate)

-VS-

RESPONDENTS 1. M/s.Atria Convergence &  
/DEFENDANTS : Technologies(P) Ltd.,  
No.99A/113A, Manoroyanapalya,  
R.T.Nagar, Bangalore-560 032.  
(A Private company incorporated  
under the Indian Companies Act  
and represented by its M.D.)

2. M/s.Atria Broad and Band  
Services(P) Ltd.,  
No.99A/113A, Manoroyanapalya,  
R.T.Nagar, Bangalore-560 032.  
(A Private company incorporated  
under the Indian Companies Act  
and represented by its M.D.)

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3. Sri.G.Raghavendra Rao,  
Sole Arbitrator, No.18, 2nd Cross,  
Retired District Judge,  
Sanjayanagar,  
Bangalore-560 094.

( R.1 & R.2 - Sri.K.S.M.Advocate)

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#### JUDGMENT

The applicant has filed this petition under S.34 of Arbitration & Conciliation Act (hereinafter referred as the Act) to set-aside the arbitral award dtd:14/12/2006 and for such other reliefs.

2. By virtue of Rules framed by the Hon'ble High Court of Karnataka vide Gazette Notification No.RPS.1/99 HCLC, Bangalore, dated 30th July, 2001, the applicant/petitioner herein is referred as "plaintiff" and the respondents are referred to as "defendants".

3. On 16/1/2004, Sri.Raghavendra Rao, District Judge was appointed as Sole Arbitrator as per S.11 of the Arbitration & Conciliation Act by the Hon'ble High Court of Karnataka and directed him to act as Conciliator to settle the disputes by negotiations and to act as arbitrator only if conciliation fails. Accordingly, said arbitrator made efforts to settle the dispute and parties appeared before arbitrator on 27/3/2004; up to 19/12/2004 as per the request of both parties, the case was posted for negotiations, settlement, but ultimately there was no settlement and arbitration proceedings commenced from 8/1/2005. Claimants have filed their claim statement on 8/1/2005 and the respondent filed his counter on 12/2/2005. The power of attorney holder of claimants has filed his affidavit evidence on 9/8/2005 and he was cross-examined partly; then re-examined on 16/8/2005. In rebuttal, the respondent has filed his affidavit on 31/8/2005 by way of evidence and cross-examined on 29/10/2005. Both parties have filed their written arguments and even their counsels submitted oral arguments on 22/7/2006. In the meanwhile, on 16/6/2005, parties have arrived at compromise regarding 1st claim of the claimants and it was settled as admitted before the tribunal and thus, the arbitration proceedings were confined only in respect of claim Nos.2 to 4.

4. The plaintiff was respondent before the Tribunal and defendants were claimants before arbitrator. For the sake of convenience, the said Arbitral Tribunal will be referred as 'Tribunal' and the parties will be referred with their original ranks as 'claimants' and 'respondent' in this suit.

5. The case of claimants before Tribunal in nutshell is that they are in the business of developing, installing and operation infrastructure to deliver brand-band services like multiple connections and entertainment services including cable T.V., internet and other allied services. Claimant No.2 is the sister company of 1st claimant. 1st claimant has installed a modern control room with high quality equipments to receive and distribute cable T.V.Signals and internet services. It has constructed a fiber optic backbone for supplying high quality T.V.Signals, maintaining international standards to the viewers of Bangalore. It has a large work force which includes qualified engineers and technicians to monitor and to maintain equipments, antennas, receivers etc., and it distributes cable T.V. Signals and other services to the subscribers by tying up with the existing cable T.V. Operators by way of Joint Venture. The claimants and the respondent after several rounds of discussion, entered into a Memorandum of Understanding on 20/6/2001 agreeing to form the joint venture

company in which the 2nd claimant shall hold 51% share and the respondent 40% share and in consideration of the acquisition of 51% share, the respondent shall be paid 51% of the value of business of the respondent. The business of the respondent shall be valued, a sum equivalent to the average monthly subscription charges collected from each subscriber by the operator/respondent during the preceding 13 months period as multiplied by the subscriber base on 20/6/2001. Respondent also agreed to transfer the running business as an on going concern including its assets, business, goodwill, etc., and the subscribers being serviced by them shall be called National Cable Links excluding liabilities to the newly formed joint venture company. The respondent agreed to merge their cable net work and the operations with the joint venture company with the existing subscribers and agreed to make Joint Venture Company solely responsible for providing service higher-to provide by respondent. Accordingly, respondent shall not obtain and distribute cable T.V. Signals or other services by any other company except services by the claimants. Claimants further contended that 1st claimant has invested huge amount in building infrastructure for receiving cable T.V. Signals from the Satellite land, redistribute it to the subscribers and also invested Rs.9,04,175/- towards up-gradation and they spent huge amount to draw optic fiber line from the control room at R.T.Nagar to respondent's place in Ramamurthynagar to provide Cable T.V. Signals. They paid Rs.3,70,000/- towards acquiring 51% share in the business of respondent as per Memorandum of Understanding by way of calculation of number of subscribers multiplied by average subscription per subscriber per month and as per valuation agreed for 13 months, the total value of business is Rs.7,36,320/-. It is their further case that respondent remitted a sum of Rs.4,23,075/- from January 2002 to December 2002; subsequently, respondent has short-remitted the monthly subscription with a view to cheat the claimants. It is further contended that because, it is their obligation to maintain the cable network by attending to the complaints, to enable the subscribers to get continuous service and the 1st claimant is also paying costs to the pay channels like Star T.V., etc. The claimants further contended that the respondent has obtained services from M/s.Hathway Cable Data Com(P) Limited in utter violation of the terms of Memorandum of Understanding and therefore, they have filed A.A.No.25/2003 before City Civil Court and obtained an order of injunction on 12/6/2003 restraining the respondent from taking cable T.V. Signals from any other services except through the claimants and inspite of it, respondent failed to obey the order of injunction and thus, they have sustained loss. Hence, prayed for issuance of direction to respondent to hand over the network i.e., Shabaraeesh Network and day to day administration including collection of cable T.V. subscription from subscribers as per the terms of said Memorandum of Understanding and to restrain the respondent from interfering in day to day administration of Shabareesh Cable Network from December 2004 and to award a sum of Rs.1,00,000/- every month; and to award interest at 24% p.a. compounded every 3 months from the date of petition till realization of the dues.

6. The respondent filed his objections to the claim petition before the Tribunal, wherein, he admitted about the execution of Memorandum of Understanding dtd:20/6/2001, but contended that these claimants have not adhered to the letter and spirit of the agreement and because of their acts of omissions, he is deprived of his livelihood and Memorandum of Understanding is not a concluded contract. It is the respondent who had obtained all the necessary licence and statutory requirements for the operation of the network. The subscribers are free to choose any operator, they desire having regard to uninterrupted service and quality of transmission. He has provided the list

of customers and their addresses, but claimants have fabricated the audit report. He further contended that claimants are due a sum of Rs.8,30,484/- towards 51% of the share as contemplated under Memorandum of Understanding and the computation arrived by the claimants is not proper. The claimants ought to have made technical up gradation and they have to collect monthly subscription and pay 40% of the same with guaranteed minimum of Rs.27,140/- to the plaintiff/respondent. But claimants have paid only Rs.3,70,000/- instead of Rs.8,30,000/- and they are still due a sum of Rs.4,60,000/-. He further contended that they have handed over the network to claimants w.e.f. 7/11/2001. The signals beamed by the claimants were not satisfactory and thus, subscribers failed to make payment and some of them migrated to other service provider seeking quality resulting in loss of monthly subscription. He further contended that the letter correspondences produced by claimants are fabricated for the purpose of proceedings. Because of the poor and inadequate transmission, cable TV signals, huge subscription consisting of sports loving citizens refused to pay subscription for the entire month, if there was no telecast of a particular sport, namely Cricket Match resulting in fall in revenue. The Memorandum of Understanding was unilateral and thus claimants were advised to rescind it and filed Caveat Petition before City Civil Court and when the Caveat was not in force, the claimants disconnected the transmission of all the channels and therefore, the complaint is lodged before the jurisdictional police. There was no short remittance or non-remittance of monthly subscription amounts. Thus, he claims Rs.8,41,140/- towards guaranteed amount at the rate of Rs.27,140/- p.m. and the balance 51% share amount of Rs.4,60,000/- and thus, prayed for counter- claim of Rs.13,01,340/- and prayed for dismissal of claim petition before the arbitrator.

7. Based on these pleadings, the Tribunal has framed the following points for determination:-

- 1) Whether the Claimants prove that they and the Respondent entered into Memorandum of Understanding for a Joint Venture in regard to the business of Cable Net-work as detailed in the Memorandum of Understanding dated 20th June, 01, at Exhibit.C.1?
- 2) Whether the Claimants prove that the Respondents committed breach of the terms of Memorandum of Understanding and deprived their share of profit/proceeds in regard to the Joint Venture business?
- 3) Whether the Claimants are entitled to the amount of Rs.23,70,105/- for the period ending 30th June, 2005 in view of the Respondent having handed over Shabarish Cable Links Network to the Management of the first Claimant w.e.f. 1.7.05?
- 4) Whether the Claimants are entitled to the interest at 24% p.a., compounded quarterly on the amount claimed from the date it became due till payment?
- 5) Whether the Respondents prove that they are entitled to a sum of Rs.8,41,340/- towards guaranteed amount of Rs.27,140/- for a period of 31 months and a sum of Rs.4,60,000/- towards acquisition of 51% share in the interest as prayed for?

6) What award?

8. On behalf of claimants, PA holder who is Vice- President of 1st claimant company was examined, got marked Ex.C.1 to Ex.C.22 and closed their side before Tribunal. On behalf of respondent, respondent was examined as RW-1 and closed his side before Arbitral Tribunal. Both sides have filed their written arguments before the Tribunal.

9. After examining the oral and documentary evidence put forth before the Tribunal, the Tribunal has passed the award by partly allowing the claim of the claimants by holding that claimants are entitled for a sum of Rs.14,06,256/- due as on December 2004 with interest at 16% p.a. on said amount from the date of claim till payment and also respondent shall pay a sum of Rs.53,100/- p.m. from January 2005 to the June 2005 and rejected the counter-claim of respondent.

10. Aggrieved by the said award, respondent filed this suit.

11. The grounds of claim petition are that the Tribunal failed to appreciate that the claimants have not adhered to their terms and conditions stipulated in Memorandum of Understanding dtd:20/6/2001; the Tribunal did not accept the statement of the respondent; did not look in to the documents and failed to notice that it is the act of omission and commission of the claimants which resulted in deprivation of the livelihood of the respondent; the Tribunal failed to appreciate that the claimants have not any exclusive or irrevocable licence to use the cable net work that belonged to the respondent; the Tribunal failed to appreciate the background and the features peculiar to the issue; the Tribunal failed to notice the entire frame work etc., subscribed, paid and was built and established by respondent; the claimants were only service providers and it was not appreciated by the Tribunal properly; Tribunal failed to appreciate that the subscribers would not be compelled to any one particular service provider and the respondent who is only the agent and have no control over the subscribers; the computation arrived by the Tribunal is not proper; the Tribunal failed to appreciate that the respondent has only 700 subscribers and the multiplier was 24 months and not 14 months and thus additional share amount was not paid by the claimants; the Tribunal failed to appreciate that the claimants have not spent the sprucing amount; the Tribunal failed to appreciate that the defendant had to generate the bills and collect the same from the subscribers w.e.f. 1/10/2001 and on 7/11/2001 the entire net work under taken was handed over to the claimants; the Tribunal failed to appreciate the signals beamed by claimants were far away from satisfaction and claimants were not possessing necessary infrastructures and modern equipments; the Tribunal erred in relying on the documents produced by the claimants and not receiving the documents produced by the respondent; the Tribunal failed to appreciate the fact that for 2 months i.e., for December and January, there was no service from claimants but false claim was filed and injunction was obtained; the Tribunal committed error in awarding and directing payment of Rs.53,100/- p.m. to be payable by respondent; claimants have sold entire net work to SITI Cable and thus proceedings are not maintainable; the Tribunal failed to appreciate that it is a clear case of a big corporate entity coercing and stuffing out a small businessman; the Tribunal has only narrated the case of both the parties and no specific finding is given as to how the claim of the claimants is established; the Tribunal has committed an error is disbelieving the contentions of the affidavit that the claimants had lured the respondent from entering into Memorandum of Understanding dated 19/9/2001 and

it is unilateral one; the fact of entering into compromise would not discredit the averment made in the affidavit. The Tribunal has misread and misconstrued the answers given in the cross-examination. The impugned order of the Tribunal is illegal, contrary to law and suffers from serious legal and factual infirmities. Hence prayed for setting-aside the arbitral award.

12. After service of notice of this arbitration suit, claimants appeared and filed their objections wherein they contended that the suit is not maintainable in law and on facts. They denied all the averments made in the plaint against them. But admitted about the existence of Memorandum of Understanding between parties, arbitral proceedings and production of documents by them. They further contended that the Tribunal is having authority to interpret the agreement; mental process of the Tribunal cannot be questioned in this court. The Tribunal has not exceeded its jurisdiction nor traversed beyond the scope of agreement. The Tribunal has heard the parties, considered the evidence/documents produced in the case and applied its mind in proper perspective and thus, the award passed by the Tribunal is valid in law and cannot be set-aside by the court. The quality or quantity of the evidence adduced before the Tribunal cannot be gone into by this court and it has no power to substitute its own reasons that were given by the Tribunal. The respondent failed to provide any proof as contemplated under Section 34 of the Act to challenge the award. This is not an appeal and thus, this court cannot substitute its conclusion in place of one reached by the arbitrator. The decision of Tribunal is final in respect of dispute between the parties and it cannot be challenged on the ground that Tribunal has come to its conclusion and or failed to appreciate the facts. The arbitrator has given detailed reasons for arriving conclusion. Hence, prayed for dismissal of suit with exemplary costs.

13. After appearance of both parties, the respondent has produced all the proceedings carried before the Tribunal. He has produced claim statement of claimants/defendants; petition filed by them under Section 9 of Arbitration & Conciliation Act; application under Order XXXIX R.2-A CPC, objections to the claim petition; application for amendment of claims statement; compromise petition filed by parties, cross-examination by counsel for plaintiff/respondent, written arguments filed by them, common orders passed on 18/3/20015.

14. Both sides have filed their written arguments several times. Heard arguments of both sides.

15. From the above facts, the issues that arise for consideration are:-

1) Whether the plaintiff proves the arbitral award satisfies any of the ingredients enumerated under Section 34(2)(a) & (b) of Arbitration & Conciliation Act?

2) Whether the arbitral award dtd:14/12/2006 passed by the Arbitral Tribunal is to be set-

aside?

3) What Order?

16. Findings of this court on the above issues are:-

Issue No.1:- In Negative;

Issue No.2:- In Negative;

Issue No.3:- As per the final order for the following:-

REASONS ISSUE No.1

17. The plaintiff has filed this suit under Section 34(2) of the Arbitration & Conciliation Act (herein after referred as the "Act"), on various grounds to set-aside the award dtd:14/12/2006.

18. The admitted facts are that claimants and respondent entered into memorandum of understanding on 20/6/2001 agreeing to form the Joint Venture Company in which, the 2nd claimant shall hold 51% share, respondent shall hold 49% share and claimants shall pay 51% of the value of business to respondent. The claimants agreed to distribute net working cable T.V.Signals covering Ramamurthy Nagar and surrounding locality in Bangalore City wherein subscribers of respondent are situated. The business of the respondent shall be valued a sum equivalent to the average monthly subscription charges collected from each subscriber during preceding 13 months multiplied by the subscriber base as on 20/6/2001. Respondent shall transfer running business including his assets, business, goodwill to the newly formed Joint Venture Company at pre-determined value.

19. The claims of claimants were mentioned in Claim Nos.I to IV in the arbitral award. It is not in dispute between the parties that after commencement of arbitration, the 1st claim was settled between the parties through negotiations and the compromise; and settlement of parties regarding 1st claim was admitted before the Tribunal on 16/6/2005.

20. Under said settlement, the parties have compromised in respect of claim No.I of the claimants and accordingly, respondent handed over the Shabhareesh Cable Networks for day-to-day administration, collection of subscription of Cable TV from subscribers of Shabareesh Cable Networks as per terms of Memorandum of Understanding dtd:20/6/2001 and accepting the same, the tribunal has passed an order restraining respondent from interfering with the day-to-day administration of Shabareesh Cable Network including collection of cable TV subscription from subscribers.

21. Thus, only claim Nos.II to IV are decided by the Tribunal and finding of Tribunal on these claims is to be looked into. Hence, looking into these claims No.II to IV is required. The claim Nos.II to IV are as follows:-

Claim No.II:- The claimants prayed for award of RS.20,51,505/- i.e., the amount due from respondent as on December 2004.

Claim No.III:- The claimants prayed for award of Rs.1,00,000/- every month from the date of claim petition till realization.

Claim No.IV:- The claimants prayed for interest at 24% p.a. compounded every 3 months on the amount claimed by them.

22. The Tribunal awarded Rs.14,06,256/- as the amount due as on December 2004 to claimants pertaining to II claim.

23. The Tribunal awarded RS.53,100/- p.m. from January 2005 till the end of June 2005 shall be payable to claimants regarding III claim.

24. Regarding IV claim, the Tribunal awarded interest at 16% p.a. only on the 2nd claim amount i.e., i.e., on Rs.14,06,256/-.

25. The respondent has made counter-claim of Rs.13,01,340/- and further direction to pay a sum of Rs.27,140/- p.m. on or before 10th of every month and the Tribunal has rejected this counter-claim.

26. It is not in dispute that both parties entered in to Memorandum of Understanding on 20/6/2001. Under said Memorandum of Understanding, respondent agreed to associate with the claimants for availing technical expertise, utilization of its modern infrastructure facilities and both claimants and respondent were agreed to associate by way of joint venture. The respondent agreed to transfer all his assets, business rights, good- will, net work connections including liabilities to the newly formed company called as "Joint Venture Company" in which the claimants would hold 51% share. The terms were also mentioned that when the claimants shall pay 51% of this share value and how this 51% is to be calculated. It is also mentioned that how both claimants and respondent shall share the revenue of the newly formed Joint Venture Company. The share of claimants would be 51% and share of respondent would be 49%, but respondent is entitled for 40% gross revenue collected by way of subscription. It is further agreed between parties that the Joint Venture Company shall be responsible for providing all services to the subscribers and shall exclusively distribute the services. The arbitration clause is also there in the Memorandum of Understanding stating that in the case of disputes, controversies or differences that may arise between parties, those disputes, controversies and differences shall be finally settled by the arbitrator and the arbitration shall be held in Bangalore.

27. The fact raised by the respondent's counsel is that the calculation made by the tribunal is hypothetical one and not based on facts.

28. Based on this Memorandum of Understanding only, the parties entered into agreement. As per the evidence adduced by both parties before the Tribunal, there was smooth running of this joint venture company for a considerable period of time i.e., till commencement of this arbitration.

29. Based on this Memorandum of Understanding and audit report, 51% share value was determined by the tribunal. Thus, its finding is based on the facts of the case and not on hypothetical



grounds as argued by learned counsel for respondent.

30. As per the admission of respondent before the tribunal while giving evidence; as per documents produced by claimants, the tribunal came to the proper conclusion regarding quantum of amount payable to claimants. He has fixed rate of interest at 16% p.a. As per S.31(7)(b) of the Act, a sum directed to be paid by an arbitral award shall, unless the award otherwise directs, carry interest at the rate of 18% p.a. from the date of the award to the date of payment.

31. In the instant case, the tribunal has awarded interest at 16% only on a sum of Rs.14,06,256/- and not on the monthly payment of Rs.53,100/-. Hence, even the interest charged by the tribunal is in accordance with law and not against any of the provisions of law in force in India.

32. It is also an admitted fact that respondent has received Rs.3,70,000/- from the claimants towards 51% of the said share amount. It is the contention of respondent that however, said amount received by him is not the actual 51% of his share. However, in the cross-examination before the Tribunal, he admitted that he never raised any objection that he has not received the amount of 51% share. Based on said evidence, the Tribunal held that respondent has received the actual amount of 51% share. Hence, the above finding of the Tribunal is not against natural principles of law; not opposed to public policy.

33. The further contention of claimants is that respondent has obtained services from M/S.Hathway Cable Data.Com(P) Ltd., in utter violation of terms of memorandum of understanding. Respondent indirectly admitted that he had taken services from M/S.Hathway Cable Data.Com(P) Ltd.

34. Respondent in the cross-examination before the Tribunal admitted that there were discussions before entering into memorandum of understanding. Hence, his contention in the objection statement that claimants lured him to enter into memorandum of understanding and it is unilateral one is not accepted by the Tribunal. This conclusion of Tribunal is the judicious appreciation of evidence.

35. It is the further contention of claimants that respondent on his part remitted a sum of Rs.4,23,075/- from January 2002 to December 2002 as monthly subscriptions, but, subsequently, respondent has remitted the lesser amount as monthly subscription to cheat the claimants and to show it, they have produced the audit report based on the information provided by the respondent. Respondent contended that said audit report is a fabricated document. However, he has not produced materials before the Tribunal to say that it was fabricated document. Hence, rightly, the Tribunal believed the audit report to come to the conclusion, which is not arbitrary one and based on judicious reasoning.

36. In the cross-examination before the Tribunal, respondent admitted that he was collecting and paying subscription amount to the claimants from the date of memorandum of understanding. Hence, his evidence that for first six months of memorandum of understanding, signals were not given by claimants could not be accepted and accordingly, the Tribunal disbelieved his said evidence.

37. The further contention of respondent is that signals sent by claimants were not satisfactory and hence, several subscribers have not paid the subscriptions due. However, respondent has not produced any material before the Tribunal to prove that signals being sent by claimants to respondent were not satisfactory. In the cross-examination before the Tribunal, the respondent admitted that he has not made any written communication to claimants on this point except letter dated 27.02.03 as per Ex.C.15 (i) (a) i.e., only after commencement of dispute between parties.

38. On the other hand, the claimants have produced materials before the Tribunal that respondent has taken signals from M/S.Hathway Cable Data.Com(P) Ltd., and respondent has not paid subscription charges collected by him to claimants. Relying on such evidence, the Tribunal hold that the signals taken by respondent from M/S.Hathway Cable Data.Com(P) Ltd., is in violation of terms of memorandum of understanding and respondent has not paid the subscription charges collected by him to claimants and thereby committed breach of terms of memorandum of understanding. This finding of the Tribunal is based on oral and documentary evidence adduced before it and a judicious decision based on proper appreciation of evidence.

39. Claimants have produced materials before the Tribunal that they have spent huge amount for up-gradation of the technology and for to draw optic fiber line from their control room at RT Nagar to respondent's place in Ramamurthy Nagar to provide T.V.Signals to the net-work of respondent.

40. The Tribunal relied upon all the documents produced by claimants, because, there were no reasons to disbelieve them and respondent has not produced any materials before Tribunal to prove that those documents are inadmissible in law. Under these circumstances, the documents produced by claimant before Tribunal and relied by the Tribunal is a judicious decision.

41. The claimants have produced several documents i.e., the letter correspondence between them and respondent before Tribunal; in one of those letters as per Ex.C.8 dated 10.05.02, claimants clearly stated that they have paid Rs.3,70,000/- out of Rs.3,75,520/- towards 51% share; they have paid Rs.3,02,000/- towards improvement of cable amplifiers cables etc. In Ex.C.16, letter dated 16.03.03, claimants stated that they spent Rs.9,04,175/- towards up-gradation of technology. After receipt of these letters, the respondent has not replied to them in writing and thereby, the Tribunal admitted those documents and relied on the contents of those documents, which is also a judicious act of the Tribunal.

42. The respondent in cross-examination before the Tribunal admitted that his relationship with claimants was cordial till the dispute arose. Under these circumstances, the Tribunal believed the documents and oral evidence produced by claimants, because, there was no written communication from respondent's side to claimants to deny those documents.

43. Respondent's counsel further contended that the tribunal failed to appreciate the fact that the signal provider shall give signals or not, the cable operator has to transmit the signals to the net users. However, this submission of respondent's counsel is not correct for the reason that there is specific agreement between parties that respondent shall not take signal beams from any one other than the claimants. Hence, when the contract is otherwise, the above arguments of learned counsel

for respondent is not at all acceptable one.

44. Next point argued by respondent's counsel is that the tribunal failed to notice that in the nature of Memorandum of Understanding of present case, finding fault only with one of the parties by tribunal is illegal. However, considering the evidence before the Tribunal, he arrived at the conclusion that respondent is under fault. There is no apparent error in arriving said conclusion by the Tribunal. Hence, it cannot be a ground to set-aside the award.

45. Respondent's counsel further contented that in the present case, in the nature of Joint Venture of the present kind, wherein the first party receives broadcasting signals from the broadcaster and in turn supplies the same to the second party for onward transmission to the end users. It is clear that there are four parties, who are involved, namely, the regional broadcaster and the signal provided on behalf of the first party, claimant and the applicant who is a cable networking persons and the consumers together on the other hand. In such circumstances, where the signal provider categorically alleges that signals which he had received from the broadcaster has in turn been supplied to the cable operator and that the cable operator in turn has forwarded these signals to these end-users and receive monies.

The claimant had to demonstrate:

(a) Receipt of signals from the broadcaster for the said period and payment made by the claimants to the broadcaster.

(b) Supply of signals by the claimants to the applicant herein, byway of meter readings, charges towards electricity etc.

(c) Prove that the applicant herein have received such signals and have transmitted the same to end-users and have received money, by examining subscribers/end users.

(d) Non-fulfillment of any of the above points by claimant is evident from the evidence on record. "

46. This aspect is properly dealt by Tribunal while passing the award. He examined in detail and in length the evidence adduced by both parties. There is categorical admission made by respondent in his cross- examination that he was collecting subscription and paying to claimants. Then, claimants have proved their contention that they were sending signals and were receiving by the subscribers of respondent. Based on such admissions, the tribunal arrived at the conclusion. Hence, the above aspect raised by respondent is also not correct.

47. Respondent contended that the net-working of claimants was taken over by SITI Cable Net-work and thus, proceedings are not maintainable. However, to substantiate this fact, respondent's counsel has not produced any material before this court. This contention was not taken before the Tribunal. Hence, the above contention of respondent is not proved by him. Considering all the above oral and documentary evidence in proper perspective, the Tribunal passed the award.

48. Respondent admitted in his cross-examination before the Tribunal that he received materials for up gradation of net-work and thereby, admitted Ex.C.23 - series of Xerox copies of receipts. Except 3 receipts, all other receipts bear the signature of respondent. Based on said evidence, the Tribunal held that respondent has received the actual amount of 51% share and it is respondent who had committed breach of agreement and claimants. Hence, the above finding of the Tribunal is not against natural principles of law; not opposed to public policy.

49. As per the terms of the memorandum of understanding, the claimants appointed the auditor and as per the audit report, claimants received Rs.4,20,075/- from respondent. Not only that as per Ex.C.7, the cable T.V. subscription receivable from respondent for January 2002 to December 2004, the Tribunal arrived at the figure that what is the amount due to the claimants.

50. It is the specific contention of respondent that Tribunal has not considered the agreement in letter and spirit. However, he has not produced any material before this court to show that there is such mistake found in arbitral award. It is the further contention of respondent that tribunal has not looked into the documents produced by the respondent. However, as per the award, the respondent has not at all produced any documents before the tribunal. Even before this court, the respondent was not able to show that which documents were produced by him before the tribunal and which of those were not looked into by the tribunal. Hence, this point is also not proved by the respondent.

51. It is to be noted here that as stated above, the court cannot look into each and every factual aspect dealt by arbitral tribunal to say whether its interpretations were correct or not. Because it is the exclusive domain of the tribunal to decide those facts. If there is any error of law, or patent error on facts, or the Tribunal has not drawn the inference ought to be drawn, then the court can look into said aspect and set-aside the award to that extent. Almost, all the grounds raised by respondent are pertaining to factual aspects. But those grounds do not reveal that there is patent error of appreciation of facts or law by the Tribunal.

52. The learned counsel for respondent vehemently submitted that admittedly claim up to December 2002 was given up, but it was not noticed by the tribunal, because, tribunal relied on Ex.C.5 to C.13 which relates to said period. But, the Tribunal considered this aspect and deducted the amount claimed by claimants. Hence, said argument of learned counsel for respondent on this point not acceptable one. The Tribunal not only relied upon Ex.C.5 to Ex.C.13 but also other documents to arrive at 51% share of claimants. Hence, merely, because, the Tribunal relied on these documents, it cannot be said that it exceeded its limit.

53. The court can interfere with the award passed by the Tribunal only when any one of the ingredients of S.34(2) & (3) of the Act are fulfilled. Hence, reading of Said Section is very important. It reads as follows:-

S.34:- Application for setting aside arbitral award:-

(1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section(3).

(2) An arbitral award may be set aside by the Court only if -

(a) the party making the application furnishes proof that -

(ii) a party was under some incapacity; or

(iii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or

(iv) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(v) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission of arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration:

Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or

(vi) the composition of the arbitral Tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provisions of this Part from which the parties cannot derogate, or , failing such agreement, was not in accordance with this Part; or

(b) the Court finds that -

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force; or

(ii) the arbitral award is in conflict with the public policy of India.

Explanation:- Without prejudice to the generality of sub-clause(ii) of clause(b), it is hereby declared, for the avoidance of any doubt, that an award is in conflict with the public policy of India if the making of the award was induced or affected by fraud or corruption or was in violation of Section 75 or Section 81.

3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under Section 33, from the date on which that request had been disposed of by the arbitral Tribunal:

Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter."

54. The award is passed on 14/12/2006. The suit is filed on 12/3/2007. Hence, the suit filed on 12/3/2007 is well within the period of limitation as per S.34(3) of the Act.

55. As per Section 34(2)(i) of the Act, if there is any incapacity of party to participate in the arbitration proceedings, then the court can set-aside the award. Under Section 34(2)(ii) of the Act, if the arbitration agreement is not valid under the law to which the parties have subjected to, then the court can set-aside the award. It is not the case of respondent that he was under some incapacity or arbitration agreement was invalid. Hence, the 1st two ingredients of S.34 (2) (a) of the Act are not fulfilled.

56. Under Section 34(2)(iii) of the Act, the court can set aside the award if proper notice of the appointment of arbitrator or of the arbitral proceedings were not given to the party.

57. On perusal of the award, this court found that sufficient opportunity was given to both sides and on 9/8/2005 and on 16/8/2005 i.e., on 2 hearing dates, PW-1 was cross-examined in length by respondent's counsel. Appointment of arbitrator was within the knowledge of respondent and he has not raised any objections for it. Hence, even the 3rd ingredients of Section 34(2)(a) is also not fulfilled.

58. Under Section 34(2)(a)(v), if the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement between the parties, then the court can set-aside the award. However, that is also not the contention taken by respondent at any point of time.

59. The learned counsel for respondent vehemently submitted arguments that Section 34(2)(a)(iv) of the Act is attracted to the present case. According to him, the tribunal dealt with dispute not contemplated by or not falling within the terms of the submission to arbitration and the decision of tribunal in the award is beyond the scope of the submission to arbitration. Hence, arbitral award is to be set-aside.

60. The counsel for respondent relied on the citation reported in (2003) 8 Supreme Court Cases 154 in "Bharat Coking Coal Ltd., v/s Annapurna Construction", their Lordships held as under:-

"(A) Arbitration Act, 1940 - Ss.13, 14, 15, 16, 17, 30(a) and 39 - Jurisdiction of arbitrator - Scope - Grounds for setting aside award - Arbitrator's jurisdiction, held, is confined to the four corners of the contract - He cannot ignore the provisions of the contract, otherwise he would be acting without jurisdiction - In the present case, contract work agreement providing for completion of the specified work within the stipulated time - Agreement stipulating payment for additional work was given by the specified officer and the claim was submitted within the specified time-limit -

Contractor seeking and the principal extending the time-limit for completion of the work from time to time - Without taking into consideration the said stipulations arbitrator awarding payment to the contractor for the alleged additional work done - Moreover, arbitrator allowing the contractor's claim to compensation for escalation in prices of materials during the extended time-limit, without considering whether the work really could not be completed within the time-limit as initially fixed or whether the extension was sought for on some condition and whether the same was justifiable or not - He failing to advert to relevant provisions of the agreement and the correspondence passed between the parties, for that purpose - In such circumstances, held, the award amounted to misdirection in law and could be interfered with by Supreme Court - On the facts and circumstances of the case and particularly because the matter related to pure interpretation of the agreement deed which gave rise to question of law, the matter instead of being remitted to arbitrator, referred to a retired High Court Judge - Arbitration and Conciliation Act, 1996, Ss.16 and 34 - Constitution of India, Art. 136 - Interference in arbitration matters."

"(B) Arbitration Act, 1940 - Ss.13 and 30(c) - Jurisdiction of arbitrator - Error within jurisdiction and error in excess of jurisdiction - Distinction between, pointed out - Arbitration and Conciliation Act, 1996, S.16."

61. The counsel for respondent further relied on the citation reported in AIR 1975 SC 1259 in "K.P.Poulose v/s State of Kerala and another" wherein, their Lordships held as under:-

"(A) Arbitration Act(1940), S.30(a) -

Setting aside of award - Misconduct -

What amounts to - Arbitrator ignoring the material documents - Arbitrator held misconducted the proceedings." AIR 1973 Ker 237, Reversed.

Misconduct under Section 30(a) has not a connotation of moral lapse. It comprises legal misconduct which is complete if the Arbitrator on the face of the award arrived at an inconsistent conclusion even on his own finding or arrives at a decision by ignoring very material documents which throw abundant light on the controversy to help a just and fair decision." (para 6)

62. The counsel for respondent further relied on the citation reported in AIR 1987 Delhi 134 in "College of Vocational Studies v/s S.S.Jaitely" wherein, their Lordships held as under:-

Arbitration Act (1940), Ss.30 and 39

- Agreement for construction of building with arbitration clause - Arbitrator to give reasons for award if amount exceeded certain sum - Arbitrator giving only conclusions but not reasons for his findings though award exceeded specified amount

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Arbitrator misconducts himself and arbitration proceedings - Findings also perverse - Entire award set aside."

63. This court relies on the citation reported in (1989) 2 SCC 38 in "M/s.Sudarsan Trading Company v/s Government of Kerala and another" wherein, their Lordships held as under;-

"Arbitration Act, 1940 - Section 3 - Misconduct - Excess of jurisdiction - Ground of, for setting aside award - Different from the ground of error apparent on the face of the award - Award in excess of jurisdiction is open to judicial review by appreciating evidence not appearing on the face of the award and in appropriate case award liable to be set aside by court - But in case of award within jurisdiction, mode of exercise of the jurisdiction is not open to judicial review - In such case court cannot interpret the contract and taken another possible view."

64. In all the above said citations, it is specifically held that if the Tribunal exceeded its jurisdiction or on the face of the record, came to a wrong conclusion, then the court can interfere with the award. The above discussion clearly reveals that on oral and documentary evidence produced before it, the Tribunal properly appreciated them and came to the right conclusion. Hence, the Tribunal has not done misconduct and thus, interference on the award is not required.

65. The counsel for respondent further relied on the citation reported in AIR 2004 SC 651 in "M/s.Sathyanarayana Brothers(P) Ltd., v/s Tamil Nadhu Water Supply and Drainage Board" their Lordships held as under:-

"(A) Arbitration Act (10 of 1940), S.30 - Award - Setting aside of -

Jurisdiction of arbitrators - Challenge as to

- Arbitration proceedings concluded before two arbitrators - Both parties participated therein without any objection

- Thereafter, all matters referred to umpire, there too parties submitted to proceedings before umpire - Objection that under agreement, dispute was to be referred to arbitration of three persons, one be nominated by contractor, second by Governor of State and third independent person selected by other two persons so nominated - Raised for first time in appeal before Supreme Court - Not tenable as it is contradicts own action of parties."

"(B) Arbitration Act (10 of 1940), S.30 - Award - Setting aside of -

Contractor filed application before arbitrators for summoning document, namely, "handing over" note prepared by Chief Engineer of Project in official discharge of duties - No orders passed on it - Before umpire also effort was made to get document on record for perusal but said request was not accepted - Said note contained relevant facts and information regarding questions involved in case - Its perusal or consideration could not be shut out on meek ground that department was not bound



by it or on ground of confidentiality - Thus, non-production of it, would vitiate award given by umpire."

66. The above discussion reveals that respondent has not produced any documents before the Tribunal to say that documents produced by him were not appreciated by the Tribunal. Hence, the above ruling is not helpful to the respondent.

67. The counsel for respondent further relied on the citation reported in AIR 1981 Delhi 374 in "M/s.Bhai Sardar Singh & Sons, New Delhi v/s New Delhi Municipal Committee and another" wherein, their Lordships held as under:-

"(A) Arbitration Act(10 of 1940), Section 30

- Error of law apparent on face of award -

Non-speaking award passed by arbitrator and neither any document nor any evidence incorporated in award - Award cannot be said to be vitiated by an error of law apparent on its face."

68. The above discussion reveals that there was no error of law apparent on face of the award. The learned counsel for respondent has not pointed out that which law was violated by the Tribunal. Hence, the above ruling is not helpful to the respondent.

69. The counsel for claimant Nos.1 and 2 relied on the citation reported in AIR 1987 SC 81 in "M/s.Hindustan Tea Company v/s M/s.K.Sashikant & Co., and another" wherein, their Lordships held as under:-

"Arbitration Act (10 of 1940), S.30 - Award - Setting aside of - Award cannot be set aside on ground that arbitrator reached wrong conclusion or he failed to appreciate facts."

70. The learned counsel for the claimant Nos.1 and 2 further relied on the citation reported in AIR 1989 SC 890 in "M/s.Sudarsan Trading co., v/s The Govt.of Kerala and another", wherein, their Lordships held as under:-

"(A) Arbitration Act (10 of 1940), S.30 - Award - Setting aside of - Reasons for making award not given by arbitrator - Court cannot interfere with the award. "

"(B) Arbitration Act(10 of 1940), SS.13, 30 - Award - Powers of arbitrator -

Interpretation of contract is a matter for arbitrator - Amounts awarded by Arbitrator by taking particular view of the contract - Court cannot substitute its own decision."

71. The learned counsel for the claimant Nos.1 and 2 further relied on the citation reported in AIR 1997 SC 1324 in "B.V.Radha Krishna v/s Sponge Iron India Ltd.", wherein, their Lordships held as

under:-

"(A) Arbitration Act (10 of 1940), S.30 -

Interference with award - High Court cannot substitute its own view in place of Arbitrators view - High Court cannot examine matter as a regular appellate Court."

72. The learned counsel for the claimant Nos.1 and 2 further relied on the citation reported in (2009) 6 SCC 414 in "G.Ramachandra Reddy & Company v/s Union of India and another" wherein, their Lordships held as under:-

"(A) Contract and Specific Relief -

Construction/Interpretation of contract - General principles - Construction when warranted - Held, contract warrants construction when its terms are vague and ambiguous - Respondent inviting tender for certain construction work - Appellant submitting its tender but in the forwarding letter adding certain conditions -

Respondent initially rejecting those conditions but subsequently, in its letter of acceptance of tender, stating that the said letter itself, the tender enquiry, appellant's tender as well as its forwarding letter would be sole repository of contract -

Disputes arising in respect of propriety of appellant's claim made in terms of the said added conditions - In such circumstances, the conditions in question not having been categorically rejected by respondent, held, contract warranted construction - Contract Act, 1872 - Ss.10 and 37 - Arbitration Act, 1940 - Ss.14, 17,30 and 39 - Arbitration and Conciliation Act, 1996 - S.34."

"(B) Arbitration Act, 1940 - Ss.30 and 39 - Interpretation of contract by arbitrator

- Scope of interference with, by court -

Case law discussed - Interference not warranted merely because court could take a different view - Contract Act, 1872 -

Ss.10 and 37 - Arbitration and Conciliation Act, 1996 - S.34"

73. In all the above said rulings, their Lordships clearly held that the court while exercising jurisdiction under S.34 of the present Act, i.e., under S.30 of the previous Arbitration Act, 1940 cannot substitute its own reasoning and the conclusion of arbitrator was wrong. The above said facts are even upheld in the recent judgment reported in (2012) 1 SCC 594 in "P.R.Shah, Shares and Stocks Brokers Pvt.Ltd., v/s B.H.H.Securities Pvt.Ltd.," wherein, their Lordships held as under:-

"C. Arbitration and Conciliation Act, 1996 - Ss.34 and 16 - Appreciation of evidence by court - When impermissible - Held, court cannot sit in appeal over aware by reassessing or reappreciating evidence to find out whether different decision could be arrived at against findings of arbitral tribunal in absence of grounds under S.34."

74. This court relies on the citation reported (2003) 5 SCC 705 in "Oil & Natural Gas Corporation Ltd., v/s Saw Pipes Ltd.," wherein, their Lordships held as under:-

"(B) Arbitration & Conciliation Act, 1996 - Ss.34(2)(a)(v), 24, 28 and 31(3) -

Court's power under S.34(2)(a)(v), to interfere with the award - Scope - An award contrary to substantive provisions of law or the provisions of the Arbitration and Conciliation Act or against the terms of contract held, would be patently illegal - Hence, would be subject to interference under S.34(2)(a)(v) - Respondent contractor entering into a contract with appellant ONGC to supply pipes of specified description by the specified date - Terms of contract entitling ONGC to recover damages at the stipulated rate for delay, if any, in supply of the goods and further stating the same to be agreed and genuine pre-estimate of damages and not as penalty - Further, the terms of contract authorizing ONGC to deduct the amount of such damages from the contractor's bill - Moreover, the terms of contract while providing for payment of interest on delayed payments, specifically stating that no interest would be paid on disputed claims - At a subsequent stage, at the contractor's request, ONGC extending the time for the supply of the goods subject to the condition that ONGC would recover the agreed stipulated damages - ONGC deducting the amount of the damages accordingly - Contractor disputing such deduction before Arbitral Tribunal - Arbitral Tribunal holding the deduction to be wrongful on the ground that ONGC had failed to establish that it had suffered any monetary loss, and directing the same to be refunded together with interest - Such an award, held, violative of S.28(2) & (3) and totally unjustified - Hence, set aside under S.34(2) - Further held, in respect of situations where it was impossible to assess or prove damages, the specified terms of contract itself had made a provision in consonance with S.73 and 74 of Contract Act - Contract Act, 1872, Ss.73 & 74."

"(F) Arbitration & Conciliation Act, 1996 - S.34(2)(b)(ii) - Jurisdiction of the court to set aside arbitral award under -

Phrase "public policy of India" meaning and scope - Held, should be given a wider and not a narrower meaning - Hence, the court can set aside the award if it is ; (i) contrary to (a) fundamental policy of Indian law; or

(b) the interest of India; or (c) justice or morality; or (ii) is patently illegal or (iii) is so unfair and unreasonable that it shocks and conscience of the court - However, illegality of a trivial nature can be ignored -

Further held, non-incorporation of exhaustive grounds by the legislature for challenging the award in contrast to Ss.68 to 70 of English Arbitration Act or the object of speedy disposal of disputes, held, did not have the effect of limiting the jurisdiction of the court to set aside a patently illegal award

- Interpretation of Statutes - Liberal construction - Applied - Purposive interpretation -Applied to a phrase not defined in the Act - Arbitration Act, 1940, Ss.23 and 28 - UNCITRAL Model Law, Art.34."

75. This court relies on the citation reported in (2014) 9 SCC 263 in "Oil and Natural Gas Corporation Limited v/s Western Geco International Limited), wherein, the phrase 'Public Policy of India is further analyzed and their Lordships held as under:-

"Arbitration and Conciliation At, 1996 - S.34(2)(b)(ii) - "Public Policy of India" - "Fundamental policy of Indian Law' as a ground to set side arbitral award in ONGC, (2003) 5 SCC 705 - what is - Juristic principles to be strictly followed by arbitrators, laid down - Held, expression "fundamental policy of Indian Law"

includes all such fundamental principles that provide basis for administration of justice and enforcement of law in India.

-Elaborating on expression "fundamental policy of Indian Law", held three distinct and fundamental (but non- exhaustive\_ juristic principles that are to be followed in every determination either by court or any authority including an arbitrator, that effects right and obligations of parties or leads to any civil consequences are: (i) duty to adopt judicial approach, (ii) compliance with principles of natural justice, particularly, application of mind to the attendant facts and circumstances while taking a view one way or the other, (iii) that the decision is not perverse or so irrational that no reasonable person would have arrived at the same i.e., the Wednesbury principles would be applicable - This would include the situations where in the facts of a case, the case is proved and the arbitrators failed to draw an interference which ought to have been drawn, or, an inference on the face of it is untenable resulting in miscarriage of justice."

76. In all the above said citations, their Lordships held that if the finding of the Tribunal was apparently incorrect and he failed to draw inference which he ought to have been drawn, then, the court can interfere on his award.

77. In the instant case, learned counsel for respondent submitted that no admissible documents were produced by the claimants before the Tribunal to say that respondent has committed breach of the agreement and claimants have not committed breach of agreement. Even then, the Tribunal passed award. However, as already discussed above, the claimants have produced audit report of respondent from March 2001 to May 2001 i.e., prior to the agreement and also produced the receipts for having spent amount for up gradation of the cable link and these receipts were admitted by respondent in his cross-examination. Hence, the arguments of learned counsel for respondent that the Tribunal ought to have drawn inference that claimants have not proved their case cannot be accepted as correct. Hence, interference on the award is not required.

78. While discussing on facts, this court clearly held that the Tribunal has partly awarded the claim No.II to IV of the claimants and not exceeded its limit. Only the disputes referred to the Tribunal were dealt with and not otherwise. Thus, the arbitral award has not exceeded its limit and it has not

dealt with the dispute which is not contemplated or not fallen within the terms of the submission to it and its decision is not beyond the scope of the submission to arbitration. Hence, this court holds that S.34(2)(a)(iv) of the Act was not fulfilled. Hence, the arguments of learned counsel for respondent noted in para 59 on this point is also not acceptable one.

79. The court can set-aside the arbitral award under Section 34(2)(b)(i) if the subject-matter of the dispute is not capable of settlement by arbitration under the law for time being in force. However, in the instant case, the subject-matter of the award is only regarding the dispute between the collection of subscription amount by respondent and T.V. signals from satellite, and net- working to the subscribers of respondent which is capable of settlement by Arbitration. Hence, this ingredient is also not fulfilled.

80. The last but not the least ingredient of S.34(2)(b)(ii) of the Act is the arbitral award is in conflict with the public policy of India.

81. As discussed in length in the above 2 citations relied by this court (2003) 7 SCC 396 and (2006) 11 SCC 181, in the above said cases, their Lordships clearly held that if the award is contrary to (a) fundamental policy of Indian law or (b) the interest of India or (c) justice or morality or (ii) if it is patently illegal. That illegality must go to the root of the matter and if it is, then it can be held that the award is held against the public policy. Then, the award can be set-aside if it is so unfair or unreasonable that it shocks the conscience of the court. In the above said ruling (2014) 9 SCC 263, it is held that fundamental policy of Indian law is a ground to set- aside the arbitral award. The expression "fundamental policy of Indian Law" includes all such fundamental principles that provide basis for administration of justice and enforcement of law in India.

82. In the above said citation, elaborating the expression "fundamental policy of Indian Law", held three distinct and fundamental but non-exhaustive juristic principles that are to be followed in every determination either by court or any authority including an arbitrator, that affects right and obligations of parties or leads to any civil consequences are: (i) duty to adopt judicial approach, (ii) compliance with principles of natural justice, particularly, application of mind to the attendant facts and circumstances while taking a view one way or the other,

(iii) that the decision is not perverse or so irrational that no reasonable person would have arrived at the same. This would include the situations where in the facts of a case, the case is proved and the arbitrators failed to draw an inference which ought to have been drawn, or, an inference on the face of it is untenable resulting in miscarriage of justice."

83. The above discussion reveals that the inference drawn by the Tribunal is not perverse and it is based on sound reasoning. Hence, interference on this award does not arise.

84. The learned counsel for respondent submitted that the conclusion arrived by the tribunal was contrary to the admitted facts, because both parties admitted that the claimants shall not claim up to December 2002, but only based on the earlier documents, the tribunal passed the award and hence, its award amounts to misconduct.

85. In this regard, he relied on the citation reported in AIR 1991 Punjab & Haryana 258 in "State of Punjab v/s M/s.Chahal Engg.& Co.," wherein, their Lordships held as under:-

"(A) Arbitration Act (10 of 1940), S.30 - Award - Setting aside of -

Misconduct - Arbitrator allowing claims without considering nature of contract - conclusion arrived at by arbitrator was contrary to admitted facts - Award liable to be set-aside."

86. In the instant case, as already discussed above, to decide 51% share of claimants, the tribunal relied on the audit report and other documents and they are previous to December 2002, they are to be relied upon to decide this fact. Hence, there is no misconduct from the tribunal as alleged by the learned counsel for respondent.

87. The learned counsel for respondent further relied on the citation reported in AIR 1965 SC 214 wherein, their lordships held that if limitation are said by the parties to the action of the arbitrator, then what are the primary duties of the arbitrator are explained in the said ruling.

88. In the instant case, all the disputes, controversies arise between the parties shall be referred to the arbitrator as per Memorandum of Understanding and accordingly, claims of claimants were referred and even counter-claim of respondent was also made. Hence, the above said ruling is also not helpful to the respondent.

89. The counsel for applicant relied on the decision reported in AIR 1987 Calcutta 126 in "West Bengal Industrial Infra-Stricture Development Corporation v/s M/s.Star Engineering Co.," wherein, their Lordships held as under:-

"(C) Arbitration Act (10 of 1940), S.30 -

Award - Mistake of fact due to non-

application of mind - Arbitrator adjusting counter-claim against claimant's claim - In fact, there was no counter-claim referred to Arbitrator - Held, in entertaining imaginary counter-claim, there was non- application of mind and award has to be set-aside."

90. In the instant case, there is no mistake of fact and respondent's counsel has not pointed out any non- application of mind by the tribunal to say that the award is not in accordance with the provisions of the act. Hence, the above ruling is not helpful to respondent.

91. The learned counsel for the respondent vehemently submitted that the documents produced by respondent were not looked into by the tribunal and hence, the award is to be set-aside. In this regard, he relied on the citation reported in AIR 1995 Delhi 82 in "Kuldip Kumar Suri v/s Delhi Development Authority and others" wherein, their Lordships held as under:-

"(A) Arbitration Act (10 of 1940), S.30 -

Award - Failure of arbitrator to consider effect of certain material documents - Award suffers from error apparent on face of record - Remitted back to arbitrator for reconsideration."

"(B) Arbitration Act (10 of 1940),S.29 -

Interest - Award of pendente lite interest by arbitrator - Not illegal."

"(C) Arbitration Act (10 of 1940). S.30 -

Award - Possibility of reaching different conclusion on basis of material before Arbitrator - But the view taken by Arbitrator on the claim was one of the possible views - High Court declined to interfere with findings of Arbitrator."

92. As already discussed above, the respondent's counsel has not shown to this court what document he has produced before the tribunal and what was not looked into by the tribunal. As per the award, it is crystal clear that the respondent has not produced any documents before the tribunal and even before this court; he has not produced the documents. Under these circumstances, this ruling is not helpful to respondent.

93. Respondent's counsel further relied on the citation reported in AIR 1982 Delhi 134 wherein their Lordships held that the arbitrator shall give reasons if the award exceeds particular sum. In the instant case, as already discussed above, the award passed by the tribunal does not exceed the amount claimed by the claimants. But it is less than the amount claimed by them. Hence, this ruling is also not helpful to respondent.

94. In the instant case, tribunal has not exceeded its jurisdiction and has not ignored the contract between the parties, only based on Memorandum of Understanding, the award is passed. Hence, rulings relied by the respondent's counsel in AIR 1981, Delhi 374, and (2003) 8 SCC 154 are not applicable to the present case.

95. The above discussion clearly reveals that respondent has not produced any material before this court to show that the award suffers from any of the mistakes as narrated in S.34(2)(1) (a) & (b) of the Act. Hence, this court cannot interfere on the award passed by the Tribunal. Accordingly, issue Nos.1 and 2 are answered in negative.

### ISSUE No.3

96. In view of findings on issue Nos.1 and 2, this court proceeds to pass the following:-

ORDER Suit is dismissed with costs.

(Dictated to the Judgment Writer, transcribed and computerized by her, corrected and then pronounced by me in the open Court on this the 27th day of July, 2015).

(K.B.GEETHA) XIX ADDL.CITY CIVIL & SESSIONS JUDGE, BANGALORE CITY.

GVU/-