IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 17 TH DAY OF OCTOBER, 2026

PRESENT

THE HON'BLE MRS. JUSTICE ANU SIVARAMAN

AND

THE HON'BLE MR. JUSTICE VENKATESH NAIK T

COMMERCIAL APPEAL NO.403 OF 2022

BETWEEN:

ITI LIMITED
A COMPANY INCORPORATED UNDER
THE COMPANIES ACT, 1956,
HAVING ITS REGISTERED ADDRESS AT:
ITI BHAWAN, DOORAVANINAGAR,
BENGALURU - 560 016,
REPRESENTED BY ITS AUTHORISED SIGNATORY,
SMT. R. VASANTHI, AGED ABOUT 54 YEARS,
GENERAL MANAGER OPERATIONS.

...APPELLANT

(BY SRI ARVIND KAMATH, ADDITIONAL SOLICITOR GENERAL OF INDIA,
ALONG WITH SRI RAGHURAM CADAMBI, ADVOCATE)

AND:

1. ALPHION CORPORATION
IN THE STATE OF DELAWARE,
HAVING ITS CORPORATE HEADQUARTERS AT:
196, PRINCETON HIGHSTOWN ROAD,
PRINCETON JUNCTION, NJ 08550,
UNITED STATES OF AMERICA,
REPRESENTED BY ITS DIRECTOR.

2. HON'BLE MR. JUSTICE AJIT PRAKASH SHAH (RETD.)
HAVING HIS ADDRESS AT:
F-15, HAUZ KHAS ENCLAVE,
NEW DELHI - 110 016.

...RESPONDENTS

(BY SRI SAMRAT NIGAM, SENIOR COUNSEL, FOR
SRI ASHOK KUMAR AGARWAL, SMT. GAURIKA SOOD,
SRI SIDDHANT S. DARIRA AND SRI ARUN GOVINDRAJ,
ADVOCATES, FOR R-1)

THIS COMMERCIAL APPEAL IS FILED UNDER SECTION 37(1)(C) OF THE ARBITRATION AND CONCILIATION ACT, 1996, READ WITH SECTION 13(1A) OF THE COMMERCIAL COURTS ACT, 2015, PRAYING TO SET ASIDE THE ORDER DATED 09.09.2022 IN COMMERCIAL SUIT NO.1 OF 2022 PASSED BY THE LEARNED SINGLE JUDGE OF THIS HON'BLE COURT, AND CONSEQUENTLY, TO SET ASIDE THE ARBITRAL AWARD DATED 07.10.2021 PASSED BY THE ARBITRAL TRIBUNAL.

THIS COMMERCIAL APPEAL HAVING BEEN HEARD AND RESERVED ON 14.08.2026, COMING ON FOR PRONOUNCEMENT, THIS DAY, ***VENKATESH NAIK T. J.,*** PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MRS. JUSTICE ANU SIVARAMAN
and
HON'BLE MR. JUSTICE VENKATESH NAIK T

CAV JUDGMENT

(PER: HON'BLE MR. JUSTICE VENKATESH NAIK T.)

This appeal is filed by the appellant/Indian Telephone Industries Limited (ITI) challenging the judgment passed by the learned Single Judge in Commercial Suit No.1 of 2022 disposed on 09.09.2022, wherein the learned Single Judge dismissed the commercial suit filed by the appellant and confirmed the award passed by the Arbitrator.

2. The present proceedings arise out of the disputes between Alphion Corporation/respondent No.1/claimant and ITI Limited/appellant/plaintiff before the Arbitral Tribunal. For the sake of convenience, Alphion

Corporation and ITI Limited is referred to as Alphion and ITI, respectively.

3. Alphion Corporation, a company engaged in the development, manufacture and supply of telecommunications products and in providing related after-sales services, particularly in the field of fibre-optic and broadband access technologies, entered into a Technical Collaboration Agreement dated 26.10.2007 (TCA) with ITI with the objective of jointly exploring and pursuing business opportunities in India. Under the TCA, Alphion and ITI agreed to collaborate in the manufacture, marketing, sale, installation, commissioning and maintenance of specified telecommunications products, including projects undertaken for public telecommunications entities such as Bharat Sanchar Nigam Limited (BSNL) and Mahanagar Telecom Nigam Limited (MTNL) and other mutually agreed telecom service providers worldwide. The arrangement contemplated joint participation in tenders and procurement opportunities. Alphion was principally responsible for ensuring that the

products proposed to be supplied complied with the applicable tender requirements and technical specifications, whereas ITI was responsible for assembly and manufacture of the products for their eventual marketing and supply. For this purpose, Alphion granted ITI non-exclusive, non-transferable and non-sublicensable licence. Along with the TCA, a side letter dated 26.10.2007 was also executed, whereby Alphion and ITI would jointly participate in negotiations, clarifications and other processes arising from tenders in which they participated. The arrangement was particularly significant because ITI, being a public sector undertaking, was eligible to avail itself of the Reservation Quota (RQ) and Tender Quota (TQ) in respect of tenders, which are issued by other public sector undertakings.

4. Pursuant to the aforesaid arrangements, BSNL issued a tender dated 14.03.2008 for supply of equipment relating to its Next Generation Passive Optical Network/GPON project. In which, Alphion and ITI jointly participated in accordance with the TCA. Although ITI was

declared as the L3 bidder, by virtue of its status as a public sector undertaking, it became entitled to participate in the RQ and TQ. The tender also contemplated maintenance and repair of the equipment after supply, for which the successful bidder was required to undertake an Annual Maintenance Contract (AMC), with AMC charges becoming payable after expiry of the warranty period. Pursuant to the tender process, BSNL issued Advance Purchase Orders dated 23.02.2009 and 08.04.2009, which were subsequently confirmed by Purchase Orders dated 11.05.2009 and 03.07.2009. In connection with these orders, a tripartite agreement was entered into between Alphion, ITI and BSNL, under which the TCA was acknowledged and the parties agreed to comply with the terms of the Purchase Orders. The arrangement also contemplated an escrow mechanism, whereby payments received from BSNL were to be deposited into an escrow account and distributed between Alphion and ITI in accordance with their respective entitlements. The equipment was thereafter supplied and the maintenance

obligations under the AMC were undertaken. There was no substantial dispute regarding the actual supply of equipment or execution of the project; the dispute primarily concerned the repair and maintenance charges attributable to the TQ and RQ orders inasmuch as though invoices raised by Alphion, ITI did not make payment.

5. Alphion raised invoices claiming amounts allegedly due to it and asserted an entitlement of 34.50% of the invoice value, excluding applicable taxes. According to Alphion, despite repeated demands and reminders, ITI failed to pay the amounts claimed, resulting in invocation of the arbitration clause contained in the agreement between the parties. ITI consented to the appointment of an Arbitrator, but contended that it was unable to make payment of the dues because BSNL had itself failed to release the amounts allegedly payable to ITI. ITI further contended that the dispute could not be effectively and comprehensively adjudicated without the presence of BSNL, particularly since the TCA, the tripartite arrangement and the Purchase Orders formed part of one

interconnected commercial transactions. ITI, therefore, sought to bring BSNL within the arbitral proceedings and proposed that the dispute be adjudicated by a sole Arbitrator, while maintaining that it should not be saddled with the financial liability in circumstances where the corresponding amounts had not been released by BSNL.

6. The arbitration proceedings were taken forward and on the Arbitrator being appointed, a claim petition was filed on the ground that the amounts were due and payable by ITI to Alphion. Alphion filed its statement of claim seeking recovery of the amounts allegedly payable by ITI. In its statement of defence, ITI admitted the execution of the relevant agreements and substantially acknowledged its liability towards Alphion, but explained its inability to discharge the liability on the ground that, BSNL had not released the corresponding amounts. ITI thereafter filed an application seeking the impleadment/joinder of BSNL as a party to the arbitration. ITI relied upon the tripartite agreement involving Alphion, ITI and BSNL and contended that the various agreements

and transactions were interconnected and could not be considered in isolation. According to ITI, BSNL's participation was necessary for a complete and effective determination of the dispute, particularly since the non-payment by BSNL was the reason for ITI's inability to pay Alphion. ITI also stated that it had taken steps to recover the outstanding amounts from BSNL, but had been unsuccessful. It was, therefore, contended that the impleadment of BSNL would enable the Tribunal to comprehensively examine the entire transactions and determine the respective liabilities of the parties.

7. Alphion opposed the application for joinder contending that the arbitration had been invoked pursuant to the arbitration agreement between Alphion and ITI alone and that BSNL was not a party to the arbitration agreement forming the basis of the reference. Alphion contended that the dispute referred to arbitration was confined to the contractual obligations between Alphion and ITI and that ITI could not avoid its payment obligations by relying upon the alleged failure of BSNL to

make payment. It was further argued that the scope of the arbitral reference could not be enlarged by introducing BSNL as a third party, when there was no arbitration agreement between Alphion and BSNL. When arguments were heard on ITI's application for joinder, the Tribunal did not decide the application separately at that stage and indicated that the issue could be considered along with the final adjudication, particularly as the matter had already been listed for final arguments. The Arbitral Tribunal framed points for determination and the matter was adjourned for final arguments and Arbitrator passed impugned award as well as an order dealing with ITI's application for joinder of BSNL.

8. The Tribunal ultimately rejected ITI's application for impleadment/joinder of BSNL holding that BSNL was not a party to the arbitration agreement on the basis of which the reference had been made. The Tribunal held that ITI's contention that BSNL's impleadment would assist in arriving at a comprehensive and effective decision was, by itself, insufficient to compel BSNL to participate in an

arbitration to which it had not consented. The Tribunal further held that merely because the transactions between Alphion, ITI and BSNL were commercially connected or arose out of related agreements, such connection did not confer upon BSNL a right or obligation to participate in the arbitration between Alphion and ITI. Consequently, the arbitral proceedings were confined to the disputes arising between Alphion and ITI. Aggrieved by the decision of the Tribunal, ITI preferred Commercial Suit No.1 of 2022 before the learned Single Judge of this Court challenging the award passed by the Tribunal. The learned Single Judge dismissed the said commercial suit and upheld the award passed by the Tribunal. Aggrieved by the dismissal of Commercial Suit No.1 of 2022, ITI/the appellant has preferred the present appeal.

9. We have heard Sri Arvind Kamath, learned Additional Solicitor General of India, along with Sri Raghuram Cadambi, learned counsel for the appellant/ITI, and Sri Samrat Nigam, learned senior counsel appearing for Sri Ashok Kumar Agarwal,

Smt. Gaurika Sood, Sri Siddhant S. Darira and Sri Arun Govindraj, learned counsel for respondent No.1/Alphion.

10. Sri Arvind Kamath, learned Additional Solicitor General of India appearing for the appellant/ITI, has vehemently contended that the learned Single Judge erred in dismissing the commercial suit without examining the objections raised by the appellant within the scope and parameters of Section 34 of the Arbitration and Conciliation Act, 1996 (for short, 'the Act'). He contended that the learned Single Judge travelled beyond the award and made independent observations regarding the nature and composite character of the transactions, while failing to adequately examine the fundamental objection of the appellant that the Arbitral Tribunal had exceeded the scope of the reference. Placing reliance on ***Vidya Drolia and Others v. Durga Trading Corporation*** reported in ***(2021) 2 SCC 1***, he submits that the jurisdictional findings of the Arbitral Tribunal are not immune from judicial scrutiny and that Section 34 of the Act enables a Court to examine whether an award deals with disputes

not contemplated by, or falling outside, the submission to arbitration.

10(a). He further contended that the claim relating to Comprehensive Repair Charges did not arise under the Technical Collaboration Agreement (TCA), which constituted the basis for invocation of arbitration between the parties. The TCA neither provided for payment of Comprehensive Repair Charges nor imposed any independent obligation upon the appellant to recover such amounts from BSNL. The said claim, in substance, arose out of separate contractual arrangements, namely, the Tender, Purchase Orders, AMC Agreements, Tripartite Agreement and the subsequent Modus Operandi, all of which involved BSNL. It is, therefore, submitted that the Tribunal could not have adjudicated upon or fastened liability in respect of obligations arising outside the contract forming the subject-matter of the arbitral reference. In this regard, reliance is placed on ***MSK Projects India (JV) Limited v. State of Rajasthan and Another*** reported in ***(2011) 10 SCC 573***, wherein the

Hon'ble Apex Court has held that an Arbitral Tribunal derives its jurisdiction from the reference and cannot travel beyond its terms or enlarge the scope of the dispute referred to it. He submits that while an error in construing the terms of a contract may fall within the jurisdiction of the Arbitrator, an adjudication concerning matters outside the contract or the reference constitutes a jurisdictional error. He, therefore, contended that the finding of the Tribunal holding the appellant liable for failure to recover the amounts from BSNL was beyond the scope of the TCA and the reference to arbitration.

10(b). He further contended that BSNL was a necessary party for the complete and effective adjudication of the dispute. The liability concerning Comprehensive Repair Charges and the obligations arising under the Tender, Purchase Orders and AMC arrangements were directly connected with BSNL. The appellant had consistently sought the impleadment of BSNL and had made its consent to participate in the arbitral proceedings conditional upon BSNL being impleaded. However, the

application seeking impleadment was not effectively decided until the conclusion of the arbitral proceedings, thereby depriving the appellant of an effective opportunity to establish its defence.

10(c). Placing reliance on ***Gaurav Dhanuka and Another v. Surya Maintenance Agency Pvt Ltd and Others*** reported in ***(2023) 7 HCC (Del) 53***, ***Ajay Madhusudan Patel and Others v. Jyotindra S. Patel and others*** reported in ***(2025) 2 SCC 147*** and ***Chloro Controls (India) (P) Ltd. v. Severn Trent Water Purification Inc and Others*** reported in ***(2013) 1 SCC 641***, he submits that a non-signatory may, in appropriate circumstances, be joined to arbitral proceedings, where the agreements are inextricably interconnected, the transactions are composite in nature, there exists direct commonality of the subject-matter, and the non-signatory has a direct and substantial involvement in the performance of the underlying contractual arrangement. Therefore, he contended that the various agreements in the present case were required to be read together to

ascertain the respective rights and obligations of the parties and that, having itself observed that the transactions formed part of a composite arrangement, the learned Single Judge could not have sustained the rejection of the appellant's application seeking impleadment of BSNL without examining whether its presence was necessary for a complete and effective adjudication.

10(d). He further contended that the Arbitral Tribunal, by holding the appellant liable for failure to recover the amounts from BSNL, created an obligation which was not traceable to the TCA or any other contractual stipulation binding the appellant and the respondent. The Tribunal effectively proceeded on the basis of alleged negligence and equitable considerations, though the parties had not authorised the Tribunal to decide the dispute as *amiable compositeurs* or *ex aequo et bono (it means, a dispute is decided based on fairness, equity and good conscience rather than a strict application of rigid legal rules)* under Section 28(2) of the Act.

10(e). Placing reliance on ***Ssangyong Engineering and Construction Company Limited v. National Highways Authority of India (NHAI)*** reported in ***(2019) 15 SCC 131***, he contended that an Arbitral Tribunal cannot create a new contract between the parties or impose an obligation which was never agreed upon. He further contended that an alteration or addition to the contractual bargain cannot be foisted upon an unwilling party and that an award creating obligations dehors the contract may amount to a violation of the fundamental principles of justice.

10(f). Placing reliance on ***Patel Engineering Limited v. North Eastern Electric Power Corporation Limited*** reported in ***(2020) SCC OnLine SC 466***, he contended that an award may be interfered with on the ground of patent illegality where the view taken by the Arbitrator is perverse, irrational, not a possible view, or where the construction placed upon the contract is one which no fair or reasonable person could have adopted.

10(g). He further contended that the contractual arrangement between the parties was on a back-to-back basis under which payment to the respondent was dependent upon the corresponding receipt of payment from BSNL. In the absence of receipt of the relevant amounts from BSNL, the appellant could not have been independently held liable for the Comprehensive Repair Charges. He contended that the Tribunal failed to appreciate the commercial and contractual structure governing the transactions and instead imposed an independent liability upon the appellant contrary to the agreed arrangement between the parties.

10(h). He further contended that the arbitral proceedings were vitiated by placing reliance upon principles of foreign law, particularly American law, without such law having been pleaded or proved by the evidence. Placing reliance on ***Hari Shanker Jain v. Sonia Gandhi*** reported in ***(2001) 8 SCC 233***, he contended that foreign law is not a matter of which Indian Courts

take judicial notice and is required to be pleaded and established as a question of fact through appropriate evidence. Therefore, reliance upon unproved foreign law by the Arbitral Tribunal was contrary to the statutory requirement that the dispute be adjudicated in accordance with the applicable substantive law and the fundamental policy of Indian law.

10(i). He further contended that the learned Single Judge made certain adverse observations regarding the nature of the transactions, including observations suggestive of fraud or impropriety, while nevertheless sustaining the arbitral award. Such observations were inconsistent with the conclusion reached by the learned Single Judge and ought to have resulted in a closer examination of the validity and sustainability of the arbitral award.

10(j). He further contended that the appellant could not be non-suited on the ground that the interlocutory orders or jurisdictional objections of the Arbitral Tribunal

were not independently challenged during the pendency of the arbitration proceedings. Placing reliance on ***SBP & Co. v. Patel Engineering Limited and Another*** reported in ***(2005) 8 SCC 618***, he contended that, unless an independent statutory remedy is available under Section 37 of the Act, a party aggrieved by an order passed during the arbitral proceedings is required to await the final award and may thereafter raise its grievances in proceedings under Section 34 of the Act. The principles emerging from ***Easy Trip Planners Ltd v. One97 Communications Limited*** reported in ***2022 SCC OnLine Del 2186*** are also relied upon to contend that judicial intervention during the pendency of arbitral proceedings is confined to rare and exceptional circumstances and that the statutory remedy available after passing of the award cannot ordinarily be bypassed. Thus, he contended that the objections concerning the rejection or non-consideration of the impleadment application and the jurisdiction of the Tribunal were rightly available to be urged while challenging the final award under Section 34

of the Act. He further contended that the learned Single Judge failed to properly consider the written submissions, contractual defences and jurisdictional objections advanced by the appellant before the Arbitral Tribunal. He contended that the objections relating to the scope of reference, jurisdiction of the Tribunal, non-impleadment of BSNL and the conditional nature of the appellant's consent to arbitration went to the root of the matter and required independent consideration. Insofar as any issue relating to limitation arises, reliance is placed on ***S. Shivraj Reddy (Died) through his Legal Heirs and Another v. Raghuraj Reddy and Others*** reported in ***2024 SCC OnLine SC 963*** and contended that, where a proceeding is *ex facie* barred by limitation, the Court is under a statutory obligation to consider such bar notwithstanding the absence of a specific plea. On all these grounds, he prays to allow the appeal.

11. *Per contra*, Sri Samrat Nigam, learned senior counsel for respondent No.1/Alphion, has contended that, the present appeal under Section 37 of the Act is not in

the nature of an ordinary civil appeal and that the scope of interference under Section 37 of the Act is narrower than that under Section 34 of the Act. The learned Single Judge, by a well-reasoned judgment, has upheld the arbitral award and no ground is made out for interference within the limited parameters of Section 37 of the Act. He contended that the Court exercising jurisdiction under Section 37 of the Act cannot re-appreciate the evidence or examine the correctness of the view taken by the Arbitral Tribunal, as if it were exercising ordinary appellate jurisdiction. Where the view taken by the Arbitral Tribunal is a possible view based on the material on record, the same cannot be interfered with merely because another view is possible. Reliance is placed on the judgments of the Hon'ble Apex Court in ***Punjab State Civil Supplies Corporation Limited and Another v. Sanman Rice Mills and Others*** reported in ***2024 SCC OnLine SC 2632***, ***Bombay Slum Redevelopment Corporation Pvt. Ltd. v. Samir Narain Bhojwani*** reported in ***(2024) 7 SCC 2018***, ***Associate Builders v. Delhi Development***

Authority reported in ***(2015) 3 SCC 49***, and ***M/s. Dyna Technologies Pvt. Ltd. v. M/s. Crompton Greaves Limited*** reported in ***(2019) 20 SCC 1***.

11(a). He further contended that the present proceedings arise out of an International Commercial Arbitration as respondent No.1-Alphion is incorporated and based in the United States of America. Consequently, the ground of patent illegality contemplated under Section 34(2A) of the Act is not available in respect of an International Commercial Arbitration. The grounds urged by the appellant, therefore, have to be examined within the restricted parameters applicable to Section 34 of the Act and, more particularly, Section 37 of the Act thereof. He contended that most of the grounds urged in the appeal are substantially a reiteration of the objections already raised before the learned Single Judge in the proceedings under Section 34 of the Act, which have been considered and rejected by a detailed and reasoned judgment.

11(b). Insofar as the observations made by the learned Single Judge regarding the manner in which the appellant secured the tenders are concerned, the learned senior counsel would submit that such observations have no bearing upon the arbitral award or the actual determination made by the Arbitral Tribunal and are, at the highest, obiter observations. He contended that the appellant had, in fact, benefited from the technical expertise and collaboration of the respondent and that the appellant did not possess the requisite technical capability to independently fulfil the tender requirements.

11(c). He further contended that the appellant cannot now challenge the jurisdiction of the Arbitral Tribunal on the ground that the arbitration proceedings were invoked under an incorrect agreement or that the dispute fell outside the scope of the arbitration agreement. The appellant did not raise any such objection before the Arbitral Tribunal in the manner contemplated under Section 16 of the Act. The notices invoking arbitration clearly referred to Clause 19 of the Technical Collaboration

Agreement and to the disputes relating to unpaid Annual Maintenance Charges. The appellant, in its response, did not dispute the applicability of the arbitration clause and, on the contrary, agreed to the nominated arbitrators. The appellant also participated in the arbitral proceedings and consented to the substitution of the learned sole Arbitrator upon the demise of the original Arbitrator, without raising any objection to the jurisdiction of the Arbitral Tribunal. Having failed to raise the jurisdictional objection at the stage contemplated under Section 16 of the Act, the appellant cannot be permitted to raise the same for the first time in proceedings under Section 34 of the Act or in the present appeal under Section 37 of the Act. Such conduct amounts to waiver within the meaning of Section 4 of the Act. He places reliance on the judgment of the Hon'ble Apex Court in ***M/s. Vidyawati Construction Company v. Union of India***, reported in ***(2025) 5 SCC 347***.

11(d). He further contended that the Technical Collaboration Agreement was the principal or parent

agreement between the parties and that the subsequent agreements were executed in furtherance of the arrangements contemplated there under. The Commercial Understandings, Tripartite Agreement, Modus Operandi Agreement and other subsequent agreements were ancillary arrangements giving effect to the commercial understanding between the parties. The arbitration clause contained in the Technical Collaboration Agreement is of wide amplitude and covers disputes arising out of or in connection with the agreement, including disputes relating to its existence, interpretation, performance and termination. The dispute concerning payment of Comprehensive Repair Charges, therefore, squarely arises out of and in connection with the Technical Collaboration Agreement. Reliance is placed on the judgment of the Hon'ble Apex Court in ***Tarapore and Company v. Cochin Shipyard Ltd., Cochin and Another*** reported in ***(1984) 2 SCC 680***, in support of the wide construction of an arbitration agreement. It is further contended that even a claim described as one in tort would not, by itself, fall

outside the scope of a sufficiently wide arbitration clause. Reliance is placed on ***Gemini Bay Transcription Pvt. Ltd. v. Integrated Sales Service Ltd and Another***, reported in ***(2022) 1 SCC 753***.

11(e). He further contended that the Technical Collaboration Agreement itself contains provisions relating to payment as well as after-sales services and, therefore, the obligation of the appellant to make payment to the respondent for the services rendered arises from the said agreement. The subsequent agreements merely prescribe the modalities for facilitating such payment. The tender documents, Purchase Orders and Annual Maintenance Contracts were entered into between BSNL and the appellant and did not create any contractual obligation on the part of BSNL towards the respondent. The respondent was neither the bidder nor a contracting party under the tender and, therefore, its contractual claim was enforceable against the appellant under the Technical Collaboration Agreement.

11(f). As regards the impleadment of BSNL, the learned senior counsel further contended that BSNL was not a necessary or proper party to the arbitration proceedings. There was no arbitration agreement between the respondent and BSNL. The Technical Collaboration Agreement containing the arbitration clause was between the appellant and the respondent. The tender and subsequent contractual arrangements between BSNL and the appellant could not create an arbitration agreement between BSNL and the respondent. The Tripartite Agreement did not alter the contractual relationship between the appellant and the respondent, but merely provided for an escrow mechanism. He further contended that the Arbitral Tribunal had considered the application seeking impleadment of BSNL and rejected the same by a reasoned order. The said determination was not challenged by the appellant in the proceedings under Section 34 of the Act and had, therefore, attained finality. The appellant cannot seek to challenge such determination directly in an appeal under Section 37 of the Act. Even

otherwise, BSNL could not have been compelled to participate in the arbitration in the absence of an arbitration agreement binding it to the respondent.

11(g). Learned senior counsel further contended that the appellant's reliance upon ***Chloro Controls (India) (P) Ltd v. Severn Trent Water Purification Inc. and Others***, reported in ***(2013) 1 SCC 641***, is not applicable in the present case. The said decision recognises exceptional circumstances in which a non-signatory may be brought within the ambit of an arbitration agreement, particularly where the non-signatory is intrinsically connected with the performance of the agreement or is otherwise bound by the arbitration arrangement. In the present case, BSNL's performance was not necessary for the performance of the appellant's contractual obligations towards the respondent, or would BSNL be bound by the arbitral award. BSNL was also not part of the same group of companies as the appellant. Hence, no case was made out for its impleadment. He further contended that the appellant's consent to arbitration was unconditional.

Though the appellant suggested that, the BSNL ought to be impleaded, it nevertheless agreed to the appointment of an Arbitrator and did not make its consent to arbitration clause upon the impleadment of BSNL. Such a contention was also not raised before the Arbitral Tribunal. Having participated in the arbitral proceedings without protest, the appellant cannot subsequently contend that the Arbitral Tribunal lacked jurisdiction.

11(h). On the question of liability, the learned senior counsel contended that the liability of the appellant to pay the respondent was independent and was not contingent upon receipt of payment from BSNL. There is no provision in the agreement between the parties which make the appellant's liability to pay the respondent conditional upon its first receiving payment from BSNL. If the parties intended to make receipt of payment from BSNL a condition precedent, such a stipulation ought to have been expressly incorporated in the agreement. He further contended that the expression "back-to-back" occurring in the Technical Collaboration Agreement cannot be

construed as making the respondent's entitlement to payment dependent upon actual receipt of payment by the appellant from BSNL. The relevant provisions were intended to regulate the manner in which the amounts received from the customer were to be passed on to the respondent, after accounting for the agreed margin of the appellant, and also to secure the amounts received from BSNL. The escrow mechanism similarly operated as a security arrangement and did not extinguish or postpone the independent contractual liability of the appellant.

11(i). He further contended that the contractual arrangement specifically contemplated a margin in favour of the appellant from the Comprehensive Repair Charges, with the balance being payable to the respondent. The Annual Maintenance arrangements were expressly contemplated under the Technical Collaboration Agreement and the respondent had duly performed its obligations relating to repair and maintenance services. Having obtained the benefit of the services rendered by the respondent, the appellant cannot avoid its contractual

liability merely by relying upon the alleged non-payment by BSNL. He further contended that the appellant has not placed any material to demonstrate that it had taken effective steps against BSNL for recovery of the amounts allegedly due from BSNL. Mere correspondence or demands made to BSNL cannot absolve the appellant of its contractual obligation towards the respondent. The Arbitral Tribunal, after considering the contractual provisions and the material on record, has rightly rejected the contention that payment to the respondent was conditional upon receipt of payment from BSNL.

11(j). He further contended that the interpretation of the contractual provisions is primarily within the domain of the Arbitral Tribunal. Once the Arbitral Tribunal has considered the relevant contractual terms and arrived at a possible interpretation, the Court exercising jurisdiction under Sections 34 and 37 of the Act cannot substitute its own interpretation merely because another interpretation may also be possible. The findings of the Arbitral Tribunal in the present case have also been affirmed by the learned

Single Judge. Such concurrent findings further narrow the scope of interference in an appeal under Section 37 of the Act. Reliance is placed on ***National Highways Authority of India v. Hindustan Construction Company Limited*** reported in ***(2024) 6 SCC 809*** and ***Rashtriya Ispat Nigam Ltd. v. Dewan Chand Ram Saran***, reported in ***(2012) 5 SCC 306***.

11(k). He further contended that the quantification of the amount awarded was not seriously disputed by the appellant and that the claim was contractual in nature, arising directly from the obligations undertaken between the parties. The Arbitral Tribunal, upon consideration of the contractual documents, pleadings and material on record, awarded the amount payable to the respondent. The findings do not suffer from perversity, patent illegality, violation of the fundamental policy of Indian law or any other ground warranting interference under Section 34 of the Act, much less under Section 37 of the Act.

11(l). As regards limitation, the learned senior counsel contended that the claim is well within limitation and that the question of limitation in the present case involves appreciation of various documents and facts and is, therefore, a mixed question of law and fact. The claim is saved by Sections 18 and 19 of the Limitation Act, 1963.

11(m). He further contended that the Modus Operandi Agreement entered into between the parties constituted an acknowledgment of the subsisting jural relationship and the liability of the appellant towards the respondent. Such acknowledgment gives rise to a fresh period of limitation under Section 18 of the Limitation Act. 1963. Reliance is placed on ***Khan Bahadur Shapoor Freedom Mazda v. Durga Prasad Chamaria and Others***, reported in ***1961 SCC OnLine SC 147,*** and ***Food Corporation of India v. Assam State Cooperative Marketing & Consumer Federation Ltd and Others***, reported in ***(2004) 12 SCC 360***, wherein the scope and effect of acknowledgment of liability under

Section 18 of the Limitation Act, 1963, have been considered. He further contended that correspondence between the parties and BSNL relating to the Annual Maintenance Charges continued thereafter and that the appellant had also made part payments towards the Annual Maintenance Charges. Such part payment attracts Section 19 of the Limitation Act, 1963, and gives rise to a fresh period of limitation. The arbitral proceedings having been invoked within the prescribed period calculated from the last such payment, the claim cannot be said to be barred by limitation. He further contended that the appellant had not raised the plea of limitation either before the Arbitral Tribunal or in the proceedings under Section 34 of the Act. Determination of the question would require consideration of several documents and factual circumstances, and therefore, the same cannot be examined for the first time in proceedings under Section 37 of the Act. Reliance is placed on ***National Highways Authority of India v. Raghuram Suvarna and Another*** reported in ***2021 SCC OnLine Kar 15918,*** and ***Banarsi***

Das v. Kanshi Ram and Others reported in ***AIR 1963 SC 1165***.

11(n). Learned senior counsel further contended that the appellant is, in substance, seeking a re-appreciation of the evidence, re-examination of the contractual terms and substitution of the findings recorded by the Arbitral Tribunal with its own interpretation. Such an exercise is impermissible under Section 34 of the Act and, with greater force, in an appeal under Section 37 of the Act. The Arbitral Tribunal has acted within the scope of the arbitration agreement, considered the contractual documents and the material placed before it, and recorded cogent and reasoned findings. The learned Single Judge has also independently considered the objections raised by the appellant and has rightly declined to interfere with the award. The award cannot be characterised as perverse, contrary to public policy or violative of the fundamental policy of Indian law merely because the Arbitral Tribunal rejected the appellant's interpretation regarding the

payment obligation or declined to implead BSNL. Hence, he prays to dismiss the appeal.

12. We have carefully considered the submissions advanced by the learned Additional Solicitor General of India for the appellant and the learned senior counsel for the respondent, the material placed before the Arbitral Tribunal, the impugned award and the judgment passed by the learned Single Judge.

13.The principal questions which arise for consideration are whether the Arbitral Tribunal travelled beyond the scope of the arbitration agreement; whether the non-impleadment of BSNL vitiates the arbitral proceedings; whether the Tribunal imposed an obligation upon the appellant dehors the contractual arrangement; and whether the award suffers from any infirmity warranting interference under Sections 34 and 37 of the Arbitration and Conciliation Act, 1996.

14. At the outset, it is imperative to bear in mind the limited scope of this Court’s jurisdiction in an appeal under

Section 37 of the Arbitration and Conciliation Act, 1996. In view thereof, it is necessary to examine the scope and ambit of Section 37 of the Act, which reads as follows:

> ***"37. Appealable orders.***
>
> *(1) [Notwithstanding anything contained in any other law for the time being in force, an appeal] shall lie from the following orders (and from no others) to the Court authorised by law to hear appeals from original decrees of the Court passing the order, namely:*
>
> *[(a) refusing to refer the parties to arbitration under section 8;*
> *(b) granting or refusing to grant any measure under section 9;*
> *(c) setting aside or refusing to set aside an arbitral award under section 34.]*
>
> *(2) An appeal shall also lie to a Court from an order of the arbitral tribunal,-*
>
> *(a) accepting the plea referred to in sub-section (2) or sub-section (3) of section 16; or*

(b) granting or refusing to grant an interim measure under section 17.

(3) No second appeal shall lie from an order passed in appeal under this section, but nothing in this section shall affect or take away any right to appeal to the Supreme Court."

15. The present proceedings are not an ordinary first appeal in which this Court can re-appreciate the entire evidence or substitute its own interpretation of the contractual terms for that of the Arbitral Tribunal. The Court is required to examine whether the learned Single Judge has committed any error in declining to interfere with the award within the parameters prescribed under Section 34 of the Act. The jurisdiction under Section 37 of the Act is consequently narrower, particularly where the learned Single Judge and the Arbitral Tribunal have concurrently taken a possible view on the contractual dispute. The Hon'ble Apex Court has repeatedly emphasised that an arbitral award is not liable to be

interfered with merely because another interpretation of the contract is possible. Hence, it is just and necessary to analyse Section 34 of the Act, which reads as follows:

> ***"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 [establishes on the basis of the record of the arbitral tribunal that]-*
>
> *(i) a party was under some incapacity; or*
>
> *(ii) 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

(iii) 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

(iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to 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

(v) 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 provision 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 1.- For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if,-

(i) the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81; or

(ii) it is in contravention with the fundamental policy of Indian law; or

(iii) it is in conflict with the most basic notions of morality or justice.

Explanation 2.- For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.]

[*(2-A) An arbitral award arising out of arbitrations other than international commercial arbitrations, may also be set aside by the Court, if the Court finds that the award is vitiated by patent illegality appearing on the face of the award:*

Provided that an award shall not be set aside merely on the ground of an erroneous application of the law or by re-appreciation of evidence.]

(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.

(4) On receipt of an application under sub-section (1), the Court may, where it is appropriate and it is so requested by a party, adjourn the proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of arbitral tribunal will eliminate the grounds for setting aside the arbitral award.

[(5) An application under this section shall be filed by a party only after issuing a prior notice to the other party and such application shall be accompanied by an affidavit by the applicant endorsing compliance with the said requirement.

(6) An application under this section shall be disposed of expeditiously, and in any event, within a period of one year from the date on which the notice referred to in sub-

section (5) is served upon the other party.]"

16. In the present case, the dispute between the parties cannot be considered in isolation from the Technical Collaboration Agreement dated 26.10.2007. The said agreement constituted the principal commercial arrangement under which the parties agreed to collaborate for pursuing business opportunities, including manufacture, supply, installation, commissioning and maintenance of the products. The subsequent tender, Purchase Orders, Annual Maintenance arrangements and the tripartite arrangement were entered into in furtherance of the commercial transactions contemplated between the appellant and the respondent. The mere fact that BSNL was a party to certain subsequent arrangements does not, by itself, sever the contractual relationship between the appellant and the respondent. The Tribunal was, therefore, justified in examining the subsequent arrangements for determining the rights and obligations arising between the parties.

17. The first contention of the appellant is that the Tribunal travelled beyond the scope of the reference and adjudicated a claim which did not arise under the Technical Collaboration Agreement. Reliance has been placed on the judgment of the Hon'ble Apex Court in ***Vidya Drolia*** cited supra. The said decision does not advance the case of the appellant. The principle that questions of jurisdiction are amenable to judicial scrutiny cannot be disputed. However, the existence of such power of scrutiny does not mean that every interpretation placed by the Arbitral Tribunal upon the arbitration agreement or the underlying contract becomes open to reconsideration by the Court. In the present case, the Tribunal was called upon to determine the respondent's claim for payment arising from the commercial arrangement between the parties. It did not adjudicate an independent dispute between the respondent and BSNL. The mere consideration of the subsequent arrangements for determining the appellant's liability cannot be equated with assumption of jurisdiction over BSNL.

18. The reliance placed on ***MSK Projects India (JV) Limited*** cited supra is equally not applicable. The proposition that the Arbitral Tribunal cannot travel beyond the terms of the reference is well settled. However, the question in the present case is whether the Tribunal, in determining the appellant's liability under the contractual arrangement, actually travelled beyond the reference. On examination of the award, the answer must be in the negative. The Tribunal was required to determine whether the appellant was liable to make payment towards the Comprehensive Repair Charges claimed by the respondent. In deciding that question, the Tribunal considered the Technical Collaboration Agreement and the connected contractual documents. Such consideration of related documents for interpreting and implementing the principal agreement cannot be characterised as adjudication of a dispute beyond the reference.

19. The reliance on ***Gaurav Dhanuka*** and ***Ajay Madhusudan Patel*** cited supra also cannot assist the

appellant. The appellant seeks to rely upon these decisions to contend that a non-signatory can, in appropriate circumstances, be joined where the agreements are interconnected and form part of a composite transaction. However, the question before this Court is not merely whether the agreements are commercially connected. The material question is whether BSNL was a necessary party for determination of the contractual claim between Alphion and ITI. The answer is clearly in the negative. The Tribunal could determine the appellant's liability towards the respondent without adjudicating upon any independent right or liability of BSNL. Consequently, the mere commercial connection between the agreements does not make BSNL a necessary party.

20. The appellant next relies on ***Chloro Controls (India) (P) Ltd.*** cited supra to contend that BSNL ought to have been impleaded as a non-signatory to the arbitration. There is no quarrel with the proposition that, in exceptional circumstances, a non-signatory may be brought within an arbitration agreement where the facts

and circumstances establish a sufficiently close relationship with the contractual arrangement and the intention of the parties so warrants. However, the said principle cannot be applied mechanically merely because different agreements arise out of the same commercial transactions. In the present case, the respondent seeks enforcement of its contractual claim against the appellant alone. BSNL is neither sought to be made liable under the award nor the Tribunal is required to adjudicate any independent claim against BSNL. There was also no arbitration agreement between the respondent and BSNL. Therefore, the exceptional circumstances contemplated in ***Chloro Controls (India) (P) Ltd.*** cited supra are not established in the present case.

21. It is also significant that the Tribunal had considered the application seeking impleadment of BSNL and rejected the same. The appellant did not establish before the learned Single Judge that the said determination resulted in any prejudice which affected the ultimate adjudication of the claim. The appellant

participated in the arbitral proceedings and allowed the Tribunal to adjudicate the dispute. The contention that BSNL's presence was indispensable therefore appears to be an attempt to convert a dispute concerning the interpretation and performance of the contract into a jurisdictional objection.

22. The appellant has further relied on ***Ssangyong Engineering and Construction Co. Ltd.*** and ***Patel Engineering Limited*** cited supra to contend that the Tribunal could not create a new contractual obligation and that an award suffering from patent illegality or perversity could be interfered with. The principles stated in those decisions are undoubtedly well settled. However, they have no application to the facts of the present case in the manner suggested by the appellant. The award in question is one arising out of an International Commercial Arbitration. Section 34(2A) of the Act provides the additional ground of patent illegality appearing on the face of the award, expressly applies to arbitrations other than International Commercial Arbitrations. The Hon'ble Apex

Court in ***Patel Engineering Limited*** cited supra itself has recognised that the ground of patent illegality under Section 34(2A) of the Act is not available in an International Commercial Arbitration. Even otherwise, the Tribunal has not created a new contract between the parties. It has interpreted the contractual documents and determined whether the appellant was liable to make payment to the respondent for the services rendered. The respondent's claim was not founded upon a purely equitable obligation imposed by the Tribunal. The Tribunal considered the Technical Collaboration Agreement, the subsequent arrangements and the conduct of the parties and came to the conclusion that the appellant's liability was not made conditional upon actual receipt of payment from BSNL. Such interpretation of the contract falls within the domain of the Arbitral Tribunal. Merely because the appellant advances a different interpretation of the expression “back-to-back” cannot constitute a ground for setting aside the award.

23. The contention that the appellant's liability was conditional upon receipt of payment from BSNL also cannot be accepted. If receipt of payment from BSNL was intended to constitute a condition precedent to the appellant's liability towards the respondent, such a condition ought to have been clearly incorporated in the contractual arrangement. The Tribunal, upon examining the relevant documents, has found that no such condition existed. The appellant has not demonstrated that the said interpretation is one which no reasonable or fair-minded person could have adopted. Therefore, the finding cannot be characterised as perverse or irrational.

24. The further reliance on ***Hari Shanker Jain*** cited supra is also of no assistance. The said decision lays down the principle that foreign law is a matter of fact and ordinarily has to be pleaded and proved. However, the appellant has not demonstrated that the impugned award was founded upon an unproved proposition of foreign law which materially affected the adjudication of the contractual claim. In the absence of demonstrating such

prejudice or a finding based exclusively upon an unproved rule of foreign law, the general proposition stated in the said decision cannot be invoked to invalidate the award.

25. The contention that the Tribunal proceeded on the basis of principles of American law without proper pleading or proof, therefore, does not furnish a ground for interference. The appellant has to establish that the alleged reliance upon foreign law has resulted in an award contrary to the applicable substantive law or has materially affected the ultimate conclusion. Mere reference to principles of foreign law, without demonstrating its decisive and impermissible application to the contractual liability between the parties, is insufficient.

26. The reliance on ***SBP & Co., and Easy Trip Planners Ltd.*** cited supra also does not advance the appellant's case. Those decisions principally recognise the legislative policy of minimal judicial intervention during the pendency of arbitral proceedings and the availability of an appropriate remedy against the arbitral award after its

conclusion. ***Easy Trip Planners Ltd.*** cited supra reiterates that, in circumstances specifically contemplated under Section 37 of the Act, an aggrieved party ordinarily has to await the final award and raise its grievance in proceedings under Section 34 of the Act. The said proposition, however, does not mean that every objection relating to an interlocutory order must necessarily result in setting aside the final award. The appellant was required to demonstrate that the alleged non-consideration of its application for impleadment of BSNL caused such fundamental prejudice as to vitiate the award. No such prejudice has been demonstrated. The Tribunal ultimately considered the question and rejected the application for impleadment. The appellant, therefore, cannot succeed merely by relying on the procedural proposition that such an objection could be raised after the final award.

27. We also find no merit in the contention that the learned Single Judge's observations regarding the manner in which the appellant secured the tender would render the judgment unsustainable. Even assuming that certain

observations made by the learned Single Judge were unnecessary or went beyond what was required for deciding the commercial suit/petition under Section 34 of the Act, such observations would not by themselves constitute a ground to set aside the arbitral award. What is material are the operative conclusion and the reasons upon which the learned Single Judge declined to interfere with the award. The impugned observations, even if treated as obiter, do not affect the validity of the ultimate decision.

28. The contention regarding limitation, as noticed from the submissions, also cannot be permitted to reopen the entire arbitral adjudication at the stage of the present appeal. The respondent has contended that the question of limitation is a mixed question of law and fact and has relied upon acknowledgment and part payment under Sections 18 and 19 of the Limitation Act, 1963. It is further pointed out that the appellant did not raise the plea of limitation either before the Arbitral Tribunal or before the learned Single Judge. The appellant has not

demonstrated that the claim was *ex facie* barred *so* as to warrant interference for the first time in a proceeding under Section 37 of the Act.

29. On the contrary, the authorities relied upon by the respondent support the approach adopted by the learned Single Judge. The conduct of the appellant is also relevant. The appellant agreed to the appointment of the arbitrator and participated in the arbitral proceedings. It did not establish that its consent to arbitration was legally made conditional upon the impleadment of BSNL. Having participated in the proceedings, it cannot, merely because the award has gone against it, seek to recast its earlier conduct as an absence of consent to arbitration. The respondent has rightly relied upon Section 4 of the Act and the principle of waiver in support of this contention. The judgment in ***M/s. Vidyawati Construction Company*** cited supra also emphasises the importance of timely invocation of jurisdictional objections under the statutory scheme.

30. The respondent's reliance on ***Tarapore and Company*** cited supra also reinforces the principle that an arbitration clause of wide amplitude is to be given its proper contractual meaning and that a party which has participated in arbitration cannot lightly seek to defeat the arbitral process by subsequently questioning the jurisdiction which it had accepted. The decision arose under the Arbitration Act, 1940, and therefore cannot be mechanically applied to the present statutory framework; nevertheless, the principle concerning the effect of the parties conduct and the scope of the arbitration agreement is relevant.

31. Likewise, ***Gemini Bay Transcription Pvt. Ltd.*** cited supra does not support the appellant's attempt to restrict the arbitration clause by artificially separating the contractual obligations arising out of the same commercial arrangement. The question has to be determined by reference to the language of the arbitration agreement and the substance of the dispute. In the present case, the respondent's claim is fundamentally a claim for payment

arising out of the contractual relationship between the appellant and the respondent and not a claim seeking recovery from BSNL.

32. ***National Highways Authority of India v. Hindustan Construction Company Ltd***. cited supra is consistent with the limited scope of judicial review over the arbitral award. The Court exercising jurisdiction under Sections 34 and 37 of the Act is not sitting in appeal over every finding recorded by the Tribunal. Unless the award falls within the statutory grounds for interference, the autonomy of the arbitral process has to be respected.

33. In ***Rashtriya Ispat Nigam Ltd.*** cited supra, the Hon'ble Apex Court emphasised that interpretation of contractual terms is primarily within the province of the Arbitral Tribunal and that the Court should not substitute its own interpretation where the interpretation adopted by the Tribunal is a possible one. The same principle assumes greater significance in the present case because the

learned Single Judge has already examined the objections raised against the award and declined to interfere.

34. We are, therefore, unable to accept the submission that the Tribunal exceeded its jurisdiction merely because while determining the respondent's claim against the appellant, it considered the tender, Purchase Orders, Annual Maintenance arrangements and the Tripartite Agreement. These documents formed part of the factual and contractual background of the dispute. Consideration of such documents does not amount to assuming jurisdiction over BSNL. The ultimate determination was confined to the rights and liabilities of Alphion and ITI.

35. Equally, the appellant has not demonstrated that the award is contrary to the fundamental policy of Indian law, in conflict with the most basic notions of morality or justice, or otherwise falls within any of the limited grounds available for interference under Section 34 of the Act. The challenge substantially seeks reconsideration of the

contractual interpretation adopted by the Tribunal and re-appreciation of the material on record. Such an exercise is impermissible.

36. The distinction between a permissible jurisdictional challenge and an impermissible challenge to the merits of an award must be maintained. Where an Arbitral Tribunal adjudicates a dispute which the parties agreed to refer and interprets the contractual documents placed before it, an error, if any, in interpretation does not by itself justify judicial substitution of the Tribunal's view. In the present case, the appellant has not established that the Tribunal decided a dispute wholly outside the arbitration agreement. At the best, the appellant seeks another interpretation of the contractual arrangement. That is not sufficient for interference under Sections 34 and 37 of the Act.

37. We also find considerable force in the submission of the learned senior counsel for the respondent that the present appeal is essentially an attempt to re-argue the

objections already considered by the learned Single Judge. The learned Single Judge has declined to interfere with the award after examining the objections raised by the appellant. The appellant has not demonstrated any patent jurisdictional error or perversity in the reasoning of the learned Single Judge warranting exercise of the appellate jurisdiction under Section 37 of the Act.

38. Thus, upon an overall consideration of the matter, we hold that:

i. *The dispute adjudicated by the Arbitral Tribunal arose out of the contractual relationship between the appellant and the respondent and was within the scope of the arbitration agreement;*

ii. *BSNL was neither a necessary nor an indispensable party for determination of the contractual claim between the appellant and the respondent;*

iii. *The Tribunal's interpretation that the appellant's liability towards the respondent was not conditional*

upon actual receipt of payment from BSNL constitutes at least a possible view of the contractual arrangement, and

iv. *The appellant has failed to establish that the award suffers from any ground contemplated under Section 34 of the Act warranting interference, and in the absence of any such ground, the jurisdiction of this Court under Section 37 of the Act does not permit re-appreciation of the evidence or substitution of the Tribunal's interpretation with another possible interpretation.*

39. For the aforesaid reasons, we find no error in the judgment passed by the learned Single Judge refusing to interfere with the arbitral award. The appellant has failed to demonstrate that the award suffers from any jurisdictional error, violation of the fundamental policy of Indian law or any other infirmity recognised under Section 34 of the Arbitration and Conciliation Act, 1996. The grounds urged in the present appeal essentially seek a re-

appreciation of the contractual documents and substitution of the view taken by the Arbitral Tribunal, which is impermissible within the limited scope of Section 37 of the Act. The appeal is devoid of merit and is liable to be dismissed. Accordingly, we proceed to pass the following

O R D E R

i. Commercial appeal is ***dismissed***.

ii. The judgment dated 09.09.2022 passed by the learned Single Judge in Commercial Suit No.1 of 2022 is affirmed. The arbitral award is consequently upheld.

iii. No order as to costs.

In view of the dismissal of the appeal, pending interlocutory applications, if any, shall stand dismissed.

Sd/-
(ANU SIVARAMAN)
JUDGE

Sd/-
(VENKATESH NAIK T)
JUDGE

KVK