

IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
Original Side

Present: - Hon'ble Mr. Justice Subhendu Samanta.

IN THE MATTER OF
AP-COM 135 of 2024 (Old AP 698 of 2016)
Future Market Networks Ltd.
Vs.
Laxmi Pat Surana & Anr.

For the Petitioner : **Mr. S.N. Mookherjee, Ld. Sr. Adv.,**
Mr. Rishad Medora, Adv.,
Mr. Naman Chowdhury, Adv.,
Ms. Pooja Chakrabarti, Adv.,
Mr. Aritra Deb, Adv.,
Mr. Sagnik Aditya, Adv.,

For the respondents : **Mr. Laxmi Pat Surana (In person)**

Reserved on : **07.03.2025**

Judgment on : **19.09.2025**

Subhendu Samanta, J.

1. This is an application u/s 34 of the Arbitration and Conciliation Act, 1996 filed by Future Market Networks Limited, challenging an award dated May 19th, 2016 passed by Learned sole Arbitrator Mr. Syama Prosad Sarkar in an arbitration proceeding between respondent Laxmipat Surana (claimant in the arbitration) and predecessor in interest of the petitioner and respondent No. 2 herein.
2. By filling the present application the petitioner has challenged the award on 04 grounds. They are--

1. License fee for entire lock-in period i.e. August 11, 2008 to July 31, 2013 for a sum of Rs. 13,26,56,751.

2. Loss of interest on security deposit for a sum of Rs. 50,00,000; and loss of income on account of additional license fees for a sum of Rs. 3,95,50,500.
 3. Electricity charges for a sum of Rs. 14,68,762.
 4. Water Charges for a sum of Rs. 11,70,000.
3. Petitioner also challenges the award to the extent that counter claims of the petitioner for cost of diesel for a sum of Rs. 3,30,23,904/- and for infrastructure for a sum of Rs. 21,00,00,000/- having been allowed.
 4. Submission by the petitioner on Point No. 1 :- Mr. S.N. Mookherjee, Ld. Senior Advocate, for Petitioner contends Learned Arbitrator has erroneously awarded the license fees for entire lock-in period of 5 years, commencing from August 11, 2008 to July 31, 2013, for a sum of Rs. 13,26,56,751/-, when in fact, license fees could only have been awarded for the period of August 11, 2008 to March 2012 for a sum of Rs. 8,96,14,514/- as the possession of the premises was admittedly given up by the Petitioner to the Claimant in April 2012. Therefore, no loss could have been suffered by the Claimant from April 2012 to July 31, 2013 and no damages could have been awarded on such account. Thus, an excess amount of Rs. 4,30,42,237 has been awarded in the award on account of license fees for the period April 2012 to July 31, 2013.
 5. Mr. Mookherjee further contended agreement was terminated by letter dated 31st October, 2011, such termination was accepted

by the respondent No. 1 by his letter dated December 19th, 2011, and the respondent No. 1 also exercised lien form of goods and materials stored in the premises. Petitioner submits that having received possession of the premises there cannot be any loss suffered by claimant on account of license fee for compliance lock in period being April 2012, to July 31st, 2013.

6. Petitioner further submits, following termination of the agreement, the Sub-Sub- licensees inducted by the petitioner under Clause 17 of the supplementary agreement dated June 14th , 2008, were paying rent directly to the banker of respondent No. 1 and such arrangement was accepted by the claimant. The petitioner further submits no proof of damage had been proved by the Respondent No. 1 in the instant case, in fact, it was the finding of the Learned Arbitrator that claimant received benefit in view of the fact that the sub-sub-licensees were making direct payment to claimants banker. Petitioner submits there is no finding in the Award that the Petitioner suffered any damage. Thus, no liquidated damages could have been awarded for such period where, in fact, no loss has been pleaded or proved by the claimant. Petitioner submits Proof of loss is a sine qua non for award of damages, whether liquidated or unliquidated and the same also applies to agreements containing a lock in period.
7. In support of his contention Mr. Mookherjee cited following decisions of Hon'ble Supreme Court in :-

i) Kailash Associates Vs. Delhi Development Authority & Anr. (2015) 4 SCC 136

ii) M/s. Auto Craft Engineers Vs. Akash Automobiles Agencies Private Limited.

8. It is further argued by the petitioner that the award has therefore been passed in ignorance of binding precedents and is contrary to the fundamental policy of Indian Law and thus liable to be set aside u/s 34(2)(b)(ii) of the Arbitration and Conciliation Act, 1996.

9. In support of their contention petitioner cited following decisions:-

i) Associate Builders Vs. Delhi Development Authority (2015) 3 SCC 49

ii) Ssangyong Engineers Vs. National Highway Authority of India (NHAI) (2019) 15 SCC 131

10. Submission of respondent (Laxmi Pat Surana in person) on point No. 1:- Mr. Surana Submits that Learned Arbitrator has awarded license fee for 5 years lock-in period clearly holding, in paragraph 30 of the Award, that while issuing the termination letter dated October 31, 2011 (page/348-350, Vol-3) the Petitioner did not give 30 days written notice in terms of the agreement and held that the said letter complaining the breach was a peremptory termination. Mr. Surana submits the admission of the Claimant's claim is neither perverse nor patently illegal nor against the law laid down by the Superior Court nor against the fundamental policy of Indian law nor

contrary to public policy of India nor suffers from the vice of justice or morality nor against the contractual terms nor contrary to the provisions of law. He submits claim has been admitted by the Ld. Arbitrator with full application of mind. Mr. Surana Submits Arbitrator is bound to respect the terms of the contract, according to legal precedent, if a tenant breaks a lease agreement during a lock-in period, the tenant is obligated to pay the rent for the remaining period of the lock-in term, as the "balance rent" is considered a pre-estimated loss by the landlord. Mr. Surana submits this principle has been upheld by several courts in the country and have also held that such a clause in a lease agreement as a valid and enforceable. Similarly, if a reasonable amount is contemplated by the parties to be the compensation payable upon a breach of the agreement, actual loss need not be proved.

11. In support of his contention Mr. Surana cited decision of Hon'ble Supreme Court passed in **ONGC VS. Shaw Pipes (2003) 5 SCC 705.**
12. Mr. Surana further submits that there are two types of damages (a) Liquidated (b) Unliquidated. As per the crystallised legal position, sum ascertained as liquidated damages in the contract is not in the nature of penalty, but is a pre-estimate of loss estimated by the parties likely to be suffered by a party in the event of breach of contract by the other party. Mr Surana further submits since the execution of the agreement is not in dispute, the onus would be on the Petitioner to demonstrate

that the relevant clause providing for payment of license fee (liquidated damages) in the event of the sub-licensee determining the sub-license within the lock-in period, is a penalty that would fall foul of the Contract Act, He argued- It would be the Petitioner's obligation to establish what the Respondent No.1 (Claimant) could have done to mitigate its damages and the consequential reduction, if at all, of the Petitioner's liability as to liquidated damages knowing fully well that the Petitioner was admittedly in wrongful occupation of the premises. Mr. Surana submits Learned Arbitrator has awarded the license fee for the 5 year lock-in period as per agreed rate of license fee between the parties stated in the agreement since the termination letter, in accordance with paragraph 30 of the Award, was not issued in accordance with the provisions of agreement. Such claim being in the nature of liquidated damages, the Claimant was not required to prove the same more so when the Petitioner was admittedly in wrongful occupation of the premises even after passing of an Interim Award on 8th April, 2013 on an unequivocal consent of the Petitioner to deliver vacant khas and peaceful possession of the premises in terms of prayer (b) of the Claimant's application for Interim Award. He argued Vacant khas and peaceful possession was never delivered by the Petitioner, there is neither any evidence nor any record on the Arbitral Tribunal for delivery of possession. In terms of Clause 22 of the Agreement only vacant, khas and peaceful delivery of possession is recognised.

13. Heard the Learned Counsel for the parties perused the written notes of argument has placed by the parties. To justify the point raised by the petitioner. It is required to be set out. Paragraph 30 and 31 of Arbitral award-

30. It is not difficult to appreciate as to why such a clause was inserted in the agreement. A project of such magnitude, as undertaken by the Claimant, contemplated huge initial investment. It was, therefore, reasonable for the Claimant to safeguard his interest to a reasonable measure. Mr. Saha's argument to the effect that many a warning and prior notice of Claimant's various breaches had been served in the past, though true, cannot, in any event, be viewed as compliance with requirement of Clause 31. Under the said Clause, unless a 30 day prior notice was served on the Claimant licensor, in accordance with provisions of Clause 31 of the agreement, complaining of breach committed by the Claimant, giving an opportunity to the latter to have the same rectified within the period, the Respondents, in any event, remained liable to pay the license fee for a period of 5 years rendering the controversy over the actual tenure referred to above irrelevant. In absence of such prior notice, the Respondents remained liable to pay the license fees to the Claimant for the entire period of 5 years, regardless of termination at an earlier point of time.

I therefore, hold that the 5 years lock-in period was attracted since the Respondent (PRIL) as sub-licensee did not give to the licensee (the Claimant) 30 day written notice of such breach giving an opportunity to the latter to have the same rectified by end of the said notice period. Letter dated 31st October, 2011 of the Respondents complaining the breach was a peremptory termination.

14. The above observations of Learned Arbitrator has materialised in paragraph 42 to 45 regarding calculation of license fee. The paragraph 42 to 45 set out hereinunder for better appreciation.

42. On the basis of aforesaid discussion as to parameters of calculating license fees; I hold that the Respondents were liable to pay lease rent for the period from 11th August, 2008 till termination of the agreement on 31st October, 2011 i.e. 39 months for the total chargeable area of 109021 sq. ft. in the sum of Rs.8,35,48,243.20 /- calculated on the following basis:

a) License fee for 36 months @ Rs.19.50 per sq. ft. Rs. 7,65,32,742.00/-

b) License fee for 3 months @ Rs.21.45 per sq. ft. Rs. 70,15,501.20/-

	Total	liability	Rs.
			8,35,48,243.20/-

43. In course of his argument, Ld. Counsel for the Respondents, however, conceded that his clients were liable to be pay licence fees till March, 2012. This

submission, I presume, was made on the footing that possession of scheduled premises not being made over to the Claimant until say 14th April 2012. In the view I have taken is, it cannot be correct. I have held earlier that the liability to pay rent must ends on 31st October, 2011 when the agreement was terminated. The Claimant was, however, free to make claim on the basis of mesne profit, should he had chosen to file a suit for eviction and mense profit, but for the purpose of calculation of licence fees, such possible claim has to be ignored.

44. However, having regard to the fact that the Respondents terminated the agreement within the 5 years lock-in period without serving a 30 day prior notice, as required by Clause 31 of the agreement, the Claimant would be entitled to the lease rent for residue of 5 year lock-in period i.e. till 31st July, 2013 covering 21 months calculated at the rate of Rs.21.45p. per sq. ft. Accordingly, the Claimant would be entitled to an additional rent of Rs.4,91,08,507.80/-.

45. In the premises, the total liability of the Respondents for License fee was for a sum of Rs. 13,26,56,751/- (Rs. 8,35,48,243.20/- + 4,91,08,507.80/-).

15. Basic objection of the petitioner against the award for granting license fee in the lock in period is that the claimant has not or proved pleaded loss or damages suffered by him during such lock in period. Hence the same cannot be awarded legally.

16. In **Kailsah Nath Associates (supra)**, is a suit for specific performance of contract, the Single Judge of High Court's order of refund of earnest money on the ground that "respondent did not suffer any loss" has reached to the Hon'ble Apex Court wherein the Hon'ble Supreme Court has held that Set out **Paragraph 43,43.1.**
17. In **Kailsah Nath Associates (supra)** the Hon'ble Supreme Court in dealing with refund of earnest money by a bidder has overruled the view of Hon'ble Division Bench who set aside the order of Single Judge, holding the proof of loss is not required to recover earner money. In dealing with such issues the Hon'ble Supreme Court is of view that proof of loss has already been proved as the respondent was sold the same land to the third party at about three and half times price of estimated cost. In the present case the agreement itself stipulates regarding 5 years lock- in period, both the parties are agreed about such conditions, so in my view the fact situation of **Kailsah Nath Associates (supra)** is not similar to that of the present agreement between the parties.
18. In **M/s Autocraft Engineers**, an ex-party award passed by a sole arbitrator was under challenge before Hon'ble Apex Court. It is admitted by the parties in **M/s Autocraft Engineers (Supra)** that award in lock in period in respect of the property in question was already occupied by previous tenants. The petitioner never took possession of the suit property for a single day and evidence suggests that respondent suffered no loss

during the lock in period. The premises was already occupied by the previous licensee who running the show room of Mahindra Jeep and continued to occupy the said premises.

19. In the present case it has been pleaded by the petitioner that Sub-Sub- licensees are in possession, after the petitioner has vacated the premises; it has further been pleaded that such Sub-Sub-licensees are directly paying rent to the banker of the claimant. Such fact was not categorically admitted by the Learned Arbitrator in the entire proceeding. I have gone through the award impugned wherein the argument and submission of the parties were recorded and it has been categorically admitted that instead of interim award on 8th April 2013, petitioner could not delivered vacant, khas and peaceful possession of the premises to the claimants. Reasons are numerous but facts suggests that the learned Arbitrator has held that as the petitioner failed to terminate the agreement within 05 years lock in period without serving 30 days prior notice, as required by Clause 31 of the agreement, the Learned Arbitrator awarded lease rent for entire 05 years lock in period.
20. Let me consider whether the observation of Learned Tribunal is not sustainable within “public police of India” or “fundamental policy of Indian Law”. Hon’ble Supreme Court in **Ssangyong**, in dealing with an arbitral award passed by majority of the arbitral tribunal has set aside of award on ground of being against “most basic notions of justice”. In the case of **Ssangyong Engineering and construction Company Limited (Supra)** two

out of three members of arbitral tribunal, by their award held that new circular could be applied to the cases as it was within contractual stipulations. It has been held by Hon'ble Supreme Court that the majority of arbitral tribunal created new contract for the parties by applying the unilateral circular and by substituting a workable formula under the agreement by another formula de-hors the agreement. Further, it has been held by the Hon'ble Supreme Court that the circular itself expressly stipulated that it cannot apply unless the contractor furnished an undertaking/affidavit that the price adjustment under the circular was acceptable to them. Thus it has been observed by the Hon'ble Apex Court that this is being the case of "fundamental principles of justice" had been breached clearly such a course of conduct would be contrary to the fundamental principles of justice as followed in this country and shocks the conscience of the court.

21. In the present case the Learned Arbitrator has passed the award on license fees according to the terms of the agreement, it has not travelled beyond the agreement. There may be certain other views according to the petitioner. Moreover, there may be some other end findings on the basis of the evidence on record, which an appellate court may determine, but in the present facts and circumstances of this case the observation of Learned Tribunal is not such exceptional that can shocks the conscience of the court by infraction of fundamental notions or principle of justice. It appears to me that the learned arbitrators has

construed the contract in fair mind as reasonable person and not wonders outside the contract. Thus, in my view he commits no error.

22. Under the above observations the first ground raised by the petitioner appears to me not meritorious, award by the Learned Arbitrator on point No. 1 appears to me justified.
23. Submission by the petitioner on point No. 2 :- Mr. Mookherjee Learned Counsel, for the petitioner submits that the Learned Arbitrator has erroneously awarded loss of interest on security deposit for a sum of Rs. 50,00,000/- and loss of income on account of additional license fees for a sum of Rs. 3,95,50,500/- although the same is contrary to and also outside the terms of the Agreement executed between the parties read with the Supplemental Agreement dated June 14, 2008.
24. Mr. Mookherjee further submits that Clause 17 of original Agreement stood amended by the Supplementary Agreement dated June 14, 2008, whereby the Petitioner was allowed to induct third party sub-licensees into the licensed premises. There was no stipulation of payment of any additional security deposit or additional license fee to the Respondent No. 1 herein and further, there was no documentary proof to reflect any contrary understanding between the parties was on record before the Learned Arbitrator.
25. Mr. Mookherjee submits that the reliance of the Respondent no. 1 on the letter dated May 13, 2008 [@page 584, Vol. IV of the Compilation of Documents] and the letter dated February

27, 2009 is misplaced as the aforesaid letters do not establish any understanding for payment of any additional security deposit or additional license fee to the Respondent No. 1.

26. Mr. Mookherjee contended that the Learned Arbitrator has thus erroneously awarded the aforementioned two claims de hors the Agreement(s) between the parties and the Award to such extent is not only contrary to the fundamental policy of Indian law as it fails to consider Sections 91 and 92, the Indian Evidence Act, 1872 and is also patently illegal as it is de hors the contract and bad in law and is thus liable to be set aside under Section 34(2)(b)(ii) and Section 34(2-A) of the Arbitration and Conciliation Act, 1996

27. Submission by the respondent on point No. 2 :- Mr. Laxmi Pat Surana (in person) submits that Additional License Fee and Security Deposit claims are based on the permission granted to the Petitioner for further sub-licensing 30% of the total space sub-licensed i.e. roughly 30,000 sq ft to third parties in consideration of making over additional rent over and above what the Petitioner is paying to the Claimant i.e. Rs.19.50 per sq ft per month and the additional security deposit which shall be collected from such third parties to the Claimant. Such arrangement was apparent from the conduct of the parties as well as from an e-mail of the Petitioner dated 13th May, 2008 at page/582, Vol-IV (for transfer of security deposit) and also from Petitioner's letter dated 27th February, 2009 at page/1179, Vol-IX (paragraph 2 for transfer of security deposit) and para 2 of e-

mail dated 30th March, 2009 at page 1212, Vol-IX (for sharing additional rent with the Claimant). Mr. Surana submits the Claimant in course of his cross examination as Claimant's witness, particularly in answer to Q. No. 91G at page/1293, Vol-XI has said that in course of discussion it was agreed that three conditions would be required to be observed in this regard i.e. the respondent would follow the terms and conditions which have been accepted by the Claimant while executing various Term Sheets with other sub-licensees in other Blocks. Mr. Surana submits such terms were not incorporated in the Supplementary Agreement at the sole request of the Petitioner on the ground that such agreement is required to be shared with the new sub-licensees and such terms may send a wrong wind and cause a stumbling block for attractive license fee from the prospective sub-sub-licensees. However, the Petitioner agreed to issue such acceptance/confirmation separately. Mr. Surana submits, he accepted such request of the Petitioner in good faith being a large corporate house and a leading force in retail business in the country at that point of time. The Petitioner, however, refused to comply with such confirmation despite repeated requests by the Claimant by several letters and e-mails at pages/583-585, 588, 589, 591-594, Vol-4, 676, 677, 690, 696, Vol-5 and others available on record of the Tribunal except issuing few emails and a letter, stated above, which fully and unequivocally confirms such understanding between the parties leading to the liability of the Petitioner in respect of

additional license fee and security deposit. Mr. Surana submits It is settled law that interpretation of the terms of the contract is within the domain of the Arbitrator. The proposition of law is clear that an Award can only be interfered with if found to be perverse or contrary to the evidence or in conflict with public policy. This evidence of the Claimant has not been contradicted nor there has been any cross examination on this point. Mr. Surana argued this has duly been recorded by the Ld. Arbitrator in paragraph 73 of the Award.

28. Heard the Learned Counsel for the petitioner as well as Mr. Laxmi pat Surana, it appears that Learned Arbitrator has dealt with Point No. 2 i.e. loss of interest of security deposit and loss of income on account of additional license fees in paragraph 73 to paragraph 76 of the impugned award. I perused the said paragraphs. For the better appreciation of the fact paragraph 73 of the award is set out hereinunder.

Loss of Interest on Security Deposit.

Loss of income on account of additional Licence fees.

73. For the sake of convenience, I deal with the above two claims together, as both are based on provisions of the supplementary agreement made between the Claimant and Pantaloons Retail (India) Limited on 14th June, 2008 (RD-I, P 428) which modified Clause 17 of the original agreement dated 30th January, 2007. The said agreement provided that Pantaloons would be entitled to further sub-lease 30,000 sq. ft. area to third parties in consideration of

making over additional security deposit and additional rent to the Claimant. Such arrangement was apparent from conduct of the parties as well as from e-mail of the Respondents dated 13th May, 2008 (CD-II, p 303) and also from a letter dated 27th February, 2009 (RD-11 P 442). Mr. Surana, the Claimant, in course of his cross -examination, particularly in answer to Q. 91G, he said that in course of discussion it was agreed that three conditions would be required to be observed in this regard; (i) Respondents would be obliged to pay additional rent to be received by Pantaloons from their sub-licensees to the extent, exceeds their rate of rent payable to be Claimant i.e. Rs. 19.50p per sq. ft.; (ii) Security deposit to be received by the Pantaloons from such sub-licensees would be transferred to the Claimant and (iii) Such sub-licensee should be in conformity with the terms of agreement between the Claimant and other sub-licensees in other Blocks as recorded in Terms Sheets. This evidence of Mr. Surana has not been contradicted and nor there has been any cross examination on this point. Claimant's further case is that the Respondents neither gave any prior intimation before execution of any agreement with sub-licensees nor did they provide copies of the same at any stage. Hence, the Claimant claims on these two items appearing as Serial No.25 and 26 at Rs.50,00,000/- and Rs.3,95,50,500 and pleaded in paragraphs 42, 43 and 50 was largely a guess

work. I accept Mr. Surana's version of facts credible and his assessment of loss quite reasonable. Innumerable demands were made by the Claimant as would appear from pages 304, 306, 310, 315 of CD-II and pages 392, 393, 401-406, 409-412 of CD-IV. Those demands apparently had not been disputed.

29. It has been argued by the petitioner that claim of loss of interest on security deposit and loss of income on account of additional license fees are out of ambit of the reference. Learned arbitrator has observed that two claims are passed on provisions of supplementary agreement between the parties dated 14th June, 2008 which modified Clause 17 of original agreement dated 30th January, 2007. The Learned Arbitrator has discussed the points in detail and also referred the pleadings, communication through e-mail between the parties and the evidences laid before him. It is the observation of Learned Arbitrator that the claim of the petitioner/Mr. Surana has not been contradicted by the present petitioner or there has no cross-examination on that point. On the basis of which Learned Arbitrator has come to opinion that claimant is entitled to Rs. 50,00,000/- towards loss of interest on security deposit and also Rs. 3,95,50,000/- on account of additional license fees. The reference was made before the Learned Arbitrator in respect of agreement between the parties dated 30th January, 2007. It has been admitted before the Arbitrator by the parties that Clause 17 of the original agreement was modified by the parties by way of

supplementary agreement dated 14th June, 2018. Thus, in my view the point No. 2 is not out of the ambit of the reference. The Hon'ble Apex Court in **Ssanyong Engineering (supra)** in paragraph 66 has referred some observation of High court of Ireland regarding the scope of arbitration.

66. The High Court of Ireland, in Patrick Ryan & Ann Ryan v. Kevin O'Leary (Clonmel) Ltd. & General Motors 60, put it thus:

"24. As regards the second principle which emerges from the case law, namely, that an application to set aside is not an appeal from the decision of the arbitrator and does not confer upon the court the opportunity of second-guessing the arbitrator's decision on the merits, it is sufficient to refer to a small number of the Irish cases and the observations made in those cases. In Snoddy, Laffoy, J. made it very clear that it was not open to the court to second-guess the construction of the relevant contractual issue in that case by the arbitrator by way of a set aside application. Laffoy, J. stated that if the court were to do so, it would be usurping the arbitrator's role (para 34. p. 16). In Delargy 62, Gilligan, J. stated:

It is no function of this Court to attempt in any way to second guess the decision as arrived at by the arbitrator and this Court does not propose to do so. (para 74, p. 37).

Later in his judgment, Gilligan, J. stated that:

"This Court does not consider that it is appropriate to revisit the merits of the arbitrator's award." (para 78, p. 39).

30. After considering the entire circumstances and after considering the argument it appears to me that the Learned Arbitrator has

not travelled beyond the scope of submissions to arbitration. He also not misinterpreted the reference to him as the arbitrator has only considered the impugned reference and subsequent agreement which amounting particular clause of agreement (subject of reference). Thus in my view the Learned Arbitrator has not wondered outsider the contract and only dealt with the matter allotted to him there is no jurisdictional error in passing the impugned award.

31. On the above observation I find no justification regarding the objection raised by the petitioner.

32. Regarding point no. 3 and 4

Learned Arbitrator has awarded Rs 14,68,762/- in favour of the claims towards electricity charges and also awarded Rs. 11,70,000/- towards water charges. Mr. Mookherjee, submits that Learned Arbitrator has gone beyond the terms of the agreement the Learned Tribunal has categorically held such claims were not within the contractual terms of the parties and it is within the quasi contractual claims arising out of Section 70 of Contract Act 1872. Mr. Mookherjee further submits that the water charge is a complete guess work of Learned Arbitrator which cannot be excepted. Mr. Mookherjee further submits that claims of electricity charges and water charges do not find basis on the contractual terms. Therefore, the Learned Arbitrator has committed jurisdictional error by wondering the outside the agreement between the parties which is outsider the mandate of his reference.

33. Mr. Surana, submits that the claim electricity and water charges are completely within the reference there is clear provision in agreement for payment of electricity charges and water charges. He submits though the Learned Arbitrator has awarded such charges u/s 70 of the Contract Act under the concept of quasy contract, but the same observation is baseless in the view of clear stipulations for payment of electricity and water charges in the agreement itself. He submits the Learned Arbitrator though have awarded the same the charges of electricity and water charges but there are some typographical errors, the calculation of electricity charges should be more. It was calculated from “November 2010” it should be corrected as “January 2010” and the payment for electricity charges and water charges should be up to the date of publication of the award.
34. Having heard the Learned Counsel for the parties considering the submissions. I perused the necessary clauses of the agreement dated 30th January, 2007. Wherefrom it appears that water charges and electricity charges are take part of the agreement. Though the Learned Tribunal has awarded said claims in terms of quasi contract u/s 70 of Indian Contract Act but I think it necessary to hold that claims are properly within the scope of reference and Learned Arbitrator has correctly observed the materials therein; the finding of the Learned Arbitrator cannot be said to be perverse and outside the scope of reference. Thus the points of objection raised by the

petitioner in point 3 and 4 is appeared to me not meritorious and the same is hereby set aside.

35. It appears that in the instant application u/s 34 of Arbitration and Conciliation Act, 1996, the petitioner claims for setting aside the entire final award dated 19th May, 2016 (except portion allowing petitioner's counter claim); during the course of argument no other grounds are raised by the petitioner except the above mentioned 04 grounds. Thus I refrain myself to deal with those other points of objection.
36. It further appears that Mr. Surana has also argued at length regarding his claim for enhancement of award amount on the above mentioned 04 claims; as Mr. Surana has already filed another application u/s 34 of the said Act, 1996, the claim and objection of Mr. Surana shall be dealt with properly in deciding his application.
37. Under the above observations, I am of a view that the application of the petitioner u/s 34 of Act, 1996, against final award dated 19th May 2016, is not meritorious and the same is hereby dismissed. Thus AP-COM/135/2024 is hereby disposed of.
38. Parties to act upon the server copy and urgent certified copy of the judgment be received from the concerned Dept. on usual terms and conditions.

(Subhendu Samanta, J.)