

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

Judgment reserved on: 08.11.2011
Judgment delivered on: 22.11.2011

+ FAO(OS) 484/2011

BHARTI TELEVENTURES LIMITED APPELLANT

Vs

**CRYSTAL TECHNOLOGY PRIVATE
LIMITED RESPONDENT**

Advocates who appeared in this case:

For the Appellant : Mr. Maninder Singh, Sr. Advocate with Mr.
Yoginder Handoo and Mr. Nitin Kaushal ,
Advocates
For the Respondent: Mr. Vibhu Bhakru, Sr. Advocate with Mr.
Vineet Jhanji, Advocate

CORAM :-

**HON'BLE MR JUSTICE SANJAY KISHAN KAUL
HON'BLE MR JUSTICE RAJIV SHAKDHER**

1. Whether the Reporters of local papers may
be allowed to see the judgment ? Yes
2. To be referred to Reporters or not ? Yes
3. Whether the judgment should be reported
in the Digest ? Yes

RAJIV SHAKDHER, J

1. In this appeal, the appellant seeks to challenge the judgment of the learned Single Judge dated 02.08.2011 whereby the appellants' objections under section 34 of the Arbitration & Conciliation Act, 1996 (hereinafter in short referred to as Arbitration Act) have been dismissed. The appellant by way of its objection under section 34 of the Arbitration Act had sought to challenge an award dated 28.05.2009 passed by the learned Sole Arbitrator Dr. R.K.P. Shankardass, Sr. Advocate.

Genesis of the dispute

2. The heart of the matter, so to say, is an arrangement, which is given shape, in the form of, two agreements dated 16.05.2001 and 27.05.2001 (collectively referred to as the share purchase agreements) requiring the respondent to facilitate acquisition of shareholding, of certain shareholders, in the company by the name of Skycell Telecommunications Ltd. (in short, Skycell) for the benefit of the appellant. The agreement of 16.05.2001, concerned the acquisition of the shares held by DSS Enterprises Private Limited (in short, DSS) in Skycell, while the agreement of 27.05.2001, which is, a supplementary agreement entered (premised on the agreement of 16.05.2001, that is, the principal agreement) required the respondent to acquire shares of two foreign companies i.e., Bellsouth International (Asia-Pacific) Inc. (in short, Bellsouth) and Millicom International Cellular S.A. (in short, Millicom). The respondent who is the original claimant,

therefore, claimed that having fulfilled its obligations in terms of the agreement dated 16.05.2001, it was entitled to the payment of fee fixed under the agreement by the appellant.

2.1 As we go on with the narrative, it would be a clear; a fact which is not disputed that, in the present proceedings, one is only concerned with, in substance, the fee, if any, payable to the respondent under the agreement dated 16.05.2001. Therefore, before we proceed further, it may be relevant to advert to, very briefly, the broad facts which obtain in the case, as noticed also, by the learned Arbitrator.

Events obtaining prior to May 2001

3. Skycell, is a company which was incorporated on 03.03.1992. On 22.03.1992, a collaboration agreement was entered into between DSS, Crompton Greaves Limited (in short Crompton Greaves), Bellsouth and Millicom. The purpose of the collaboration agreement was to carry on business of cellular services, through the aegis of Skycell, pursuant to a license, which was expected to be obtained by Skycell from Government of India. On Skycell being granted a license by the Department of Telecommunications (in short D.O.T.), for the purposes of cellular services in the territory of Chennai; on 12.08.1992, the aforementioned entities entered into a Joint Venture Agreement (in short, JVA). The JVA, interalia, adverted to the manner and the terms on which shares were to be allotted to each of them in Skycell. Consequent thereto, keeping in mind the Government of India regulations obtaining at that point in time qua

percentage of foreign equity in an Indian telecom company, shares were allotted to the aforementioned entities in the following proportion :-

DSS	10.5%
Millicom	24.5%
Bellsouth	24.5%
Crompton Greaves	40.5%

4. It appears that in 1998, except for Millicom, other shareholders had taken a decision to sell their shares in Skycell, and for this purpose, appointed ABN AMRO Bank to locate a buyer qua their shareholding in Skycell. It is in this background that the appellant got introduced as a possible buyer of the shares, held by the aforementioned shareholders, in Skycell. It also appears that sometime in October, 1999, the appellant entered into a Memorandum of Understanding (in short, MOU), in respect of shares, held by DSS and Crompton Greaves, in Skycell. This MOU, was made subject to the consent of other shareholders i.e., Bellsouth and Millicom, as per the terms of the JVA referred to above.

5. It appears that this MOU, did not fructify, in view of the fact that some of the shareholders of DSS had filed a petition before the Company Law Board (in short, CLB). By virtue of certain order dated 07.04.1999, passed by the CLB, DSS could not sell its share in Skycell without the permission and approval of CLB in this regard. There

were also other impediments in the fruition of this MOU, in the form of, a Non Disposal Undertaking given by DSS to a lender i.e., one Credit Agricole Indo-Suez Bank by way of a collateral security.

6. Other impediments also arose in the acquisition of the shareholding in Skycell, by the appellant, upon the institution of a section 9 petition under the Arbitration Act, by Bellsouth, in the Madras High Court, whereby it sought to injunct the sale of shares by Crompton Greaves and DSS in Skycell, as it had been done without its consent in violation of the JVA. Trigger for the same was to be a share purchase agreement of November, 1999, executed between the appellant and Crompton Greaves. The court, in this petition, ordered maintenance of status quo by parties and in this regard directed parties to meet in Chennai on 03.05.2000, so that, the dispute could be resolved amicably. The petition came to be disposed of amicably by an order dated 06.04.2000. The sum and substance of the order was that if the parties, failed to resolve their disputes, they would proceed to arbitration. According to the appellant, at the meeting held on 03.05.2000, an oral agreement was reached with Crompton Greaves, DSS and Bellsouth for sale of their shareholding in Skycell to it. Since these entities reneged on the oral agreement, the appellant filed two suits bearing nos.1727/2000 and 1957/2000 in this court. These averments which were replicated in the plaint, were obviously rebutted. The appellant as a matter of fact filed another suit being: suit no.2202/2001 against DSS and others in this court wherein, a direction

was issued to the parties to maintain discipline in the management of Skycell.

7. DSS in turn had filed a suit in the District Court at Delhi, seeking to restrain Crompton Greaves from selling shares in violation of the JVA. Initially, an ex parte interim order came to be passed on 31.03.2000, in the said proceedings; which was, set aside by this court on 13.09.2000 in FAO 346/2000.

8. Eventually, on 07.08.2000, the appellant purchased the equity stake of Crompton Greaves, in Skycell, which was pegged at 40.5% of the total equity. It is in the background of these proceedings instituted in the CLB, High Court of Madras and this court, as also certain other proceedings, one of which reached the Supreme Court, that the appellant arrived at the aforementioned two agreements dated 16.05.2001, followed by a supplementary agreement dated 27.05.2001 i.e., share purchase agreements.

9. Before we examine the merits of the contentions raised by counsels for both parties in respect of the scope and extent of the share purchase agreements, it would be pertinent to mention the events which followed the execution of the said share purchase agreements.

Events post May 2001

10. On 02.06.2001, the appellant, it appears, acquired the shareholding of Bellsouth and Millicom, in Skycell. It would be pertinent to note that with this acquisition and the earlier acquisition of

the shares of Crompton Greaves in Skycell, the appellant had acquired at this point in time 89.5% shares in Skycell. Therefore, what appeared to be an attractive proposition, that is, the price crystallized under the agreement of 16.05.2001 for the purchase of shares of DSS equivalent to 10.5% of its shareholding in Skycell - was at this point in time clearly an expensive bargain. The catch, however, was that the agreement of 16.05.2001 accorded time to the respondent herein, to consummate the transactions as envisaged in the agreement of 16.05.2001, till 31.08.2001.

11. The appellant realizing that this eventuality may come to pass, sought to terminate the agreement. A letter dated 30.05.2001 was dispatched by the appellant to the respondent herein. The respondent had claimed before the learned Arbitrator that the said letter was received by them, only on 11.06.2001, and hence, was ante-dated.

11.1 It is important to note that the learned Arbitrator has returned a finding on the aspect of ante-dating after examining the evidence and the material placed before him in that regard. It is also significant to note at this stage, that pursuant to the agreement dated 16.05.2001, the appellant and DSS appointed two lawyers i.e., Mr. Rajive Sawhney, Sr. Advocate and Mr. V.N. Koura, Advocate as escrow agents to effectuate the deal of transfer of the shares held by DSS in Skycell. This escrow agreement, which was undisputedly executed on 27.06.2001, envisaged issuance of instructions to the two escrow agents which were made irrevocable and, were to dissolve, if the

transactions as envisaged by the said document did not conclude to the joint satisfaction of the two escrow agents by 31.08.2001; which was the date envisaged, as noticed above, by us, in the agreement of 16.05.2001.

12. It is not disputed that the agreement of 16.05.2001, contained an arbitration clause in terms of which the matter was referred to the Arbitrator. It is in the background of the aforesaid that the Arbitrator made and published the impugned award.

Submission of counsels.

13. Before us, on behalf of the appellants, arguments have been addressed by Mr. Maninder Singh, Sr. Advocate instructed by Mr. Yoginder Handoo and Mr. Nitin Kaushal, Advocates while, on behalf of the respondent, arguments have been advanced by Mr. Vibhu Bhakru, Sr. Advocate instructed by Mr. Vineet Jhanji, Advocate.

14. Mr. Singh, has assailed the award as well as the judgment of the learned Single Judge, on the ground that the agreement dated 16.05.2001, envisaged the consummation of the transaction in issue only on a conferment of a clean title to the shares of DSS, held in Skycell. It was the contention of Mr. Singh that both, the learned Arbitrator as well as the learned Single Judge, lost sight of the fact that even today, there is an injunction on the sale of shares of DSS in Skycell as the order of the CLB dated 31.08.2001 was stayed by this court vide order dated 05.10.2001 passed in Company Appeal No.13/2011. Mr. Singh further submitted that a clean title to the

shares of DSS could only be conferred on consents being obtained, in the form of no objection certificates (in short, NOC) from Bellsouth, Millicon, ICICI Bank and ABN AMRO Bank. In addition to the above, the consent of Credit Agricole Indo-Suez Bank was also required in respect of sale of the DSS shares in Skycell. Mr. Singh sought to support his submissions by relying upon condition nos.A-5, A-6 and A-7 contained in the escrow agents agreement of 27.05.2001, which finds mention at pages nos. 47 to 49 of the paper book, filed before us. In support of his contention, learned counsel submitted that the learned Arbitrator committed a serious error in coming to the conclusion that the respondent was entitled to a fee under the agreement dated 16.05.2001, even while noticing in paragraph no.36 of his award that the consents referred to above, that is, those from the CLB, Millicom, Bellsouth and the other two banks had not been deposited with the escrow agents.

15. In order to buttress his submission, learned counsel relied upon letter dated 31.10.2011 issued by the attorney of one Mr. Ajit Singh and Ms. Parveen Ajit Singh w/o. Mr. Ajit Singh, who claimed to be 50% shareholders in DSS. By this letter, the said attorney had informed the appellant that the order of CLB dated 31.08.2001, whereby approval was given for the sale of shares in DSS (as noticed by us hereinabove), had been stayed by this court in an appeal preferred by them, by an order dated 05.10.2001.

16. Thus, the burden of the submissions made by Mr. Singh was that, clause A-1 of the agreement dated 16.05.2001, which bears the heading “*objective*” clearly required that the “*deal*” with respect to the sale of shares held by DSS in Skycell, could be deemed as having been completed only on the completion of “transfer of share capital” in the name of the appellant, which as per the “objective” i.e., clause A would take place on : the delivery of share certificates in original, alongwith, duly and validly executed share transfer deeds, being handed over to the appellant, without, any lien, encumbrance or charge; so as to confer “good title” on the appellant. Mr. Singh, submitted that admittedly in the face of various impediments referred to hereinabove, in the form of restraint order of this court and, the non availability of consents from the entities referred to above i.e., Bellsouth, Millicom, and the two banks, it could not be said that the respondent had passed on a good title, in respect of the shares in issue, to the appellant. Mr. Singh thus submitted that, in these circumstances, the findings arrived at by the learned Arbitrator, and which have been sustained by the learned Single Judge; were perverse.

17. On the other hand, Mr. Bhakru essentially relied upon the findings reached by the learned Arbitrator as also various correspondences exchanged between the parties in support of the impugned judgment and the award. Mr. Bhakru drew our attention to the fact that conditions A-5 to A-7, which were adverted to on behalf of the appellant were those which were contained in the escrow agents agreement dated 27.05.2001 which were noting but irrevocable

instructions issued to the two escrow agents jointly by DSS (i.e., the shareholder in Skycell) and the appellant. It was contended that, the respondent, had not taken on the obligations contained therein.

17.1 It was also the contention of learned counsel that the respondent having performed its part of the obligation, which was, essentially to obtain an “*irrevocable offer*” for sale of shares by DSS in favour of the appellant, the appellant could not renege on its obligation to pay the fee envisaged therein. It was thus contended, that the learned Arbitrator after examining the material and the evidence led by the parties had come to a definitive finding that the respondent had discharged its obligations under the agreement dated 16.05.2001.

17.2 The learned counsel also sought to demonstrate the duplicity, that is, the shifting stands of the respondents by adverting to the correspondence which ensued on this subject between the appellant, the respondent and DSS.

17.3 Learned counsel submitted that even though the respondent had filed with the escrow agents, an irrevocable letter of offer from DSS to sell its shares to the appellant for a price equivalent to USD 13.6 Million on 27.05.2001, purportedly, within a period of three (3) days, the appellant sought to terminate the agreement dated 16.05.2001. It was submitted that this was an ante-dated letter, which was received, only on 11.06.2001. The submission was that, this letter had been issued by the appellant to wriggle out of an inconvenient agreement.

In this regard, reference was made to the findings of the learned Arbitrator in that regard.

17.4 The sum and substance of the submissions of the learned counsel was that the learned Arbitrator had correctly found that the respondent had discharged its obligations in the agreement and was thus entitled to 5% of the sale consideration which is pegged at USD 13.6 Million, alongwith pendent lite and future interest.

Reasons

18. We have heard learned counsels for the parties. The background in which the share purchase agreements were entered into has already been noticed by us hereinabove. The only submission that was made before us was with regard to the interpretation of the agreement dated 16.05.2001, which according to the learned counsel for the appellant, required the respondent to obtain certain approvals and consents (already referred to hereinabove) in order to furnish a clean and good title to the shares of DSS in Skycell. For this purpose, one may necessarily have to extract the relevant parts of the said agreement, as one goes alongwith the narrative. Mr. Singh has pivoted his submissions on the basis of clause A-1, which reads as follows :-

“Objective

A-1 The consultant shall advise and assist BTVL in negotiating with DSS, the purchase of the Share Capital by

BTVL from DSS. This advise shall be inclusive of finalizing all the details of the deal including the sale consideration for the Share Capital and shall be deemed to be completed only with the completion of the transfer of the Share Capital in the name of BTVL for the consideration as stated in paragraph B.3 below and of the delivery of the share certificate(s) in original of the Share Capital alongwith duly and validly executed Share Transfer Deed(s) of the said Share Capital in favour of BTVL without any lien, encumbrance or charge and confer good title to BTVL.”

19. Based on the aforesaid clause, Mr. Singh has submitted that the deal i.e., the transfer of shares held by DSS in Skycell could said to have been validly consummated only if the shares in respect of which an “*irrevocable offer*” of acceptance is available with the escrow agents were free of any lien, encumbrance or charge.

20. In order to appreciate this submission, one would have to take note of the fact that the agreement dated 16.05.2001 was executed between the appellant and the respondent whereby, the respondent had taken upon itself, a role of a facilitator to effectuate the transfer of shares held by DSS in Skycell, therefore, while the “*objective*”, which in substance in legal parlance, is a recital to the agreement, encapsulated the ultimate objective of the said agreement, obligations which were undertaken by each party to the agreement of 16.05.2001 were contained in clauses which followed; clause A-1. It is precisely

for this reason that pursuant to the agreement of 16.05.2001, escrow agents were appointed by DSS and the appellant vide escrow agreement dated 27.05.2001, as they were aware of the fact that on account of pending litigation (as amongst the shareholders of DSS) and the undertakings given to the two bankers, a proactive intercession on the part of DSS (i.e., the shareholder) would be required. The obligations in regard to these approvals and consents were, therefore, encapsulated in the form of instructions to the escrow agents in the escrow agent agreement. The said instructions admittedly bore the signatures of the representatives of DSS and the appellant herein. The respondent could naturally; as clearly reflected in the aforementioned escrow agents agreements, only facilitate the transaction upto a stage and, any further movement in that regard, could not be made without the help and assistance of DSS and the appellant. It is not in dispute that the respondent secured an irrevocable offer from the appellant alongwith the original share certificates as well as transfer deeds, which were deposited with the escrow agents within the stipulated time frame. As a matter of fact on 31.08.2001, the CLB had also vacated its earlier interim order, whereby, on 07.04.1999 the shareholders of DSS were directed to obtain the prior approval of CLB in the eventuality of a decision being taken to sell shares of DSS in Skycell. Therefore, the entire argument raised on behalf of the appellant is in our view and that of the arbitrator is wrongly premised on the purpose which a recital, that is, the objective clause falters in an agreement. That a recital does not govern the rights and obligations

between parties to an agreement when clauses in that regard are explicit and unambiguous is captured quite pithily in the words of Lord Halsbury in *Mackenzie vs. Duke of Devonshire*, (1896) A.C.400 :-

*“...It appears to me that this case is susceptible of a very short solution. I simply look at the deed itself and I find that the provisions for the beneficiaries intended by this deed are satisfied by the persons claiming now as heirs female. I really have great difficulty in saying more than that, because if the language of the instrument itself is sufficiently clear as to the beneficiaries pointed to, as I think it is, and if the trust purposes are set forth in the paragraph of the deed which is appropriate to such purposes, it seems to me to be absolutely unarguable that the true meaning of those words, and the purposes of the trust so set forth, can be in any way controlled, qualified, or modified by the **initial statement** of what the motive of the author of the deed was. It would to my mind be disastrous to introduce such a system of construing a deed. One has known the language of a will somewhat perverted to perform the function which it was assumed the testator intended to be performed, but I never in my life heard of the words by a **preliminary statement** of what the maker of the deed intended should be the effect and purpose of the whole deed when made. I should say that, even if there were some*

contradiction between what was done and the supposed purpose. But here it is very obvious to remark that the purpose or the motive which the maker of the deed prescribes to himself is to some extent satisfied by what he does, and I can only say, speaking with the utmost respect of the learned judges who expressed a different view, that I am unable to comprehend how that purpose could alter the natural and ordinary effect of the words used in the instrument.....” (emphasis is ours)

Also, in Muslim Educational Society and Others v. K.A. Paryari and Others, AIR 1987 Ker 80, this position has been reaffirmed in following words:

“The counsel for the respondents made a forceful plea based on the perambulatory portion of the deed which, according to him, indicates the mind of the donor that he resolved or desired to have a hospital building put up on this land. Had there been any ambiguity in the operative portion of the deed, resort to its preamble would have been advisable in order to bring about a construction consistent with the preamble. But such a course is unnecessary in the case of Ext. A1 wherein the recitals are explicit and the terms used in the operative portion are unambiguous. More than a century ago, the Privy Council had emphasized the need to give predominance to the operative

part of a document over the rest of the recitals. In the words of Sir R.P. Collier in Marcar v. Sigg, (1878-80) ILR2 Mad 239 (PC)

“The construction of an ambiguous stipulation in a deed may be governed or qualified by a recital, but on the other hand if the intention of the parties is to be collected from the operative part of the instrument, that intention is not to be defeated or controlled by the other recitals.”

Years later the same principle had been reiterated by the Privy Council in Beli Ram and Bros. V. Mohd. Afzal, 1948 AIR (PC) 168 Sir John Beaumont in that decision said :

“The operative part of a deed cannot be controlled by recitals in the preamble if the operative words are clear””

21. Therefore, in our view, the submission of Mr. Singh that the respondent was not entitled to the fee because the obligations with regard to approvals or consents had not been discharged is, without merit. As a matter of fact, most of the so called impediments in the way of transfer of the shares of DSS in Skycell were really in the nature of self created ghosts by the appellant with the sole objective of reneging on the obligation to pay the respondent's fee. Towards this end, it may also be noticed that before the Arbitrator, an issue was raised as to the legality of the agreement dated 16.05.2001. This issue

was raised even when the appellant himself had in pursuance of the agreement dated 16.05.2001 deposited two cheques in Indian rupees equivalent to USD 13.6 Million with the escrow agents towards the consideration fixed under the said agreement. The appellant drew one cheque in the sum of Rs.42,95,92,400/- in the name of DSS while the other, in the sum of Rs.19,48,42,500/- was drawn in favour of the respondent. The learned Arbitrator rejected this contention. The submission made in this behalf was that, one of the shareholders of DSS (i.e., Mr. Satwant Singh) had through the aegis of the respondent entered into the agreement dated 16.05.2001 only to deprive the shareholders of DSS the benefit of the entire sale consideration of DSS's shares in Skycell. The learned Arbitrator came to the conclusion that the agreement dated 16.05.2001 was for the services which the respondent had agreed to extend to the appellant. The agreement envisages two things: first, the maximum total consideration payable for sale of DSS shares in Skycell which is pegged at USD 13.6 Million ; second, the manner of its payment. Both these aspects which were negotiated between DSS and the appellant were incorporated in the escrow agents agreement in the form of irrevocable instructions. The learned Arbitrator found no illegality attached to the agreement dated 16.05.2001 simply because, the mode of payment as agreed to between the two principal parties i.e., the buyer and the seller (DSS and the appellant) was reflected in the subsequent agreement executed between the said parties i.e., DSS and the appellant.

22. The learned Arbitrator having got the issue of legality out of the way, dealt with the issue as to whether the respondent had discharged its obligations under the agreement dated 16.05.2001. The learned Arbitrator, in our opinion, correctly, appreciated the issue at hand that even if it is assumed that under clause A-1 of the agreement dated 16.05.2001, it was the respondent's obligation to secure further approvals and consents; the respondent was disabled from proceeding further in view of the appellant having terminated the agreement on 13.05.2001. This aspect is crystallized in paragraphs 83 and 84 of the learned Arbitrator's award, which reads as under :-

“83. Even assuming clause A-1 of the Agreement also sets out obligations which the claimant had to perform, the fact is that apart from the irrevocable letter of offer/acceptance, the delivery of the original share certificates and duly executed transfer deeds to the escrow agents was already complete by 27 May, 2001 as were the cheques towards payment for the shares; but once the respondent “terminated” the Agreements of 16 and 27 May 2001, by its letter of 30 May, 2001 there was obviously nothing more the claimant could do by way of rendering further advice and assistance. It would have been for the respondent, after securing executed transfer deeds and original share certificates from the Escrow Agents, to have the transfer completed by applying to Skycell. The claimant was also disabled from rendering services specifically set out in clause 2(ii) of Agreement of 27 May,

2001 in securing affirmative votes for the respondent at Members' and Board meetings of Skycell. There is therefore, no force in the respondent's contention based on clause A-1.

84. The claimant is therefore held to have duly discharged its obligations under the Agreement of 16 May 2001.”

22.1 We are in complete agreement with the view of the learned Arbitrator.

23. Apart from the above, the shifting stand of the appellant if, one were to take a more benign view of its conduct, is evident from the extract of the correspondence exchanged between the appellant, the respondent and DSS, as noticed in paragraph no.49 to 52 of the award. These letters, according to us, reveal the true design and object which the appellant seeks to achieve by virtue of the present litigation. Being relevant, the said extracts are culled out hereinbelow :-

“49. In the course of the exchange of correspondence amongst the parties hereto, DSS and the Escrow Agents, following the termination of the Principal Agreement (in its letter of 19 June, 2001 addressed to the claimant (respondent herein), the respondent (appellant herein) reiterated –

“The objective of the Agreement was for the consultant, i.e., you to advise and assist us in the negotiations with DSS. We do state that we have till the date of

termination of the Agreement i.e. by May 30, 2001
neither received any advice or assistance from you in
this regard nor has there been any communication
received from you in this regard.

50. In a letter of the same date to DSS, the respondent (appellant herein) stated :-

“....we state that M/s. Crystal Technology Private
Limited were never appointed as our agent, to act on
our behalf and represent us nor was the said company
ever authorised to make any “offer” in respect of the
matters as stated by you in your communication under
reference.”

51. In its subsequent letter of 10th August, 2001 addressed to the Escrow Agents, the respondent (appellant herein) did not deny the deposit of the documents with them but stated, inter-alia

“We do not deny the deposit of post dated cheques which were to be delivered only if the proposed sale and purchase of DSS held share of Skycell Shares got, consummated through the efforts of Crystal. Since the agreement with Crystal was duly terminated on May 30th 2001 the said cheques are a nullity, and have become bad and not good for presentation. We

reiterate our request that these cheques be either destroyed or returned back to us.”

52. It appears however that efforts continued to persuade DSS to sell its shares at the lower price. The letter ended stating –

“We are still trying our best and are willing to move forward to come to an agreement whereby we will be ultimately able to acquire the 10.5% equity of Skycell held by DSS and look forward for the help of your good offices to facilitate the meeting of minds between us and DSS which could help us in achieving our goal.”

(emphasis is ours)

24. It is in the background of the aforesaid that the learned Arbitrator has come to the conclusion that the respondent is entitled to a sum of Rs.3,12,21,750/-; being equivalent to 5% of the total sale consideration, amounting to USD 13.6 Million, as crystallized in the agreement dated 16.05.2001, for transfer of shares held by DSS in Skycell. In addition, the learned Arbitrator has also awarded pendent lite interest at the rate of 9% p.a. from 03.10.2001 to the date of the award, alongwith interest, at the rate of 18% p.a. from the date of the award to the date of the payment. We are in agreement both with the findings and the conclusion arrived at by the learned Arbitrator as also the impugned judgment whereby, the award has been sustained.

25. For the foregoing reasons, the appeal is dismissed. At the hearing held on 04.11.2011, we had asked learned counsels for the parties to file their actual bill of costs. The bill of costs filed by the respondent show that they have spent a sum of Rs.2,20,000/- on the fee of counsels appearing in the matter. We find from the record that on 03.10.2011, Mr Vineet Jhanji was not present in court. Accordingly, the appellant is directed to pay a sum of Rs. 1,98,000/- to the respondent towards costs.

26. The appeal be consigned to the record.

RAJIV SHAKDHER, J

SANJAY KISHAN KAUL, J

NOVEMBER 22, 2011
yg