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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.1517 OF 2014

Board Of Control For Cricket in India,
a society registered under the Tamil
Nadu Societies Registration Act, having
its head office at Cricket Centre,
Wankhede Stadium, Mumbai- 400 020
in the name of its Honorary Secretary,
Mr.Sanjay Patel

...Petitioner

..Versus..

Nimbus Communications Limited,
a company incorporated under
the Companies Act, 1956, and
having its registered office at
Nimbus Centre, Oberoi Complex,
Off New Link Road, Andheri (West),
Mumbai – 400 053.

...Respondent

Mr.T.N. Subramanian, Senior Counsel with Mr.Rahul Mascarnehas,
Mr.Aditya Mehta, Mr.Adarsh Saxena, Ms.Prabhjyot Chhabra and
Mr.Rubin Vakil i/b Cyri Amarchand Mangaldas for the Petitioner.

Mr.V.R. Dhond, Senior Counsel with Mr.Shailesh Mendan and
Ms.Shruti Ranade i/b Negandhi Shah & Himaytullah for the
Respondent.

CORAM : R.D. DHANUKA, J.
RESERVED ON : 29TH JUNE, 2015
PRONOUNCED ON : 7TH JULY, 2015.

JUDGMENT :-

1. By this petition filed under section 34 of the Arbitration &
Conciliation Act, 1996 (for short “the Arbitration Act”), the petitioner

seeks to impugn the arbitral award dated 14th August, 2014, passed by the learned arbitrator, allowing the claims made by the respondent and directing the petitioner to pay a sum of Rs.8,70,66,010/- with further interest on the sum of Rs.7,42,32,492/- at the rate of 10% p.a. from 1st May, 2013 till the date of payment and also to pay a sum of Rs.7,50,000/- towards the arbitration costs. Some of the relevant facts for the purpose of deciding this arbitration petition are as under :

2. The petitioner herein was the original respondent, whereas the respondent herein was the original claimant in the arbitral proceedings. On 15th October, 2009, the petitioner and the respondent entered into Media Rights License Agreement (for short the said 'MRLA'), whereby the petitioner licensed to the respondent the right to broadcast international and domestic cricket matches organized by the petitioner in India between 1st April, 2010 and 31st March, 2014 on the terms and conditions set out therein.

3. On 29th October, 2010, the petitioner and the respondent entered into a Production Agreement whereby the respondent was appointed as production partner for producing the audio-visual coverage on behalf of the petitioner in respect of the matches covered under the MRLA on the terms and conditions set out therein.

4. It is the case of the petitioner that the respondent vide its letter dated 12th March, 2011 requested the petitioner to set off the amount due from the respondent to the petitioner under the said MRLA against the payment due from the petitioner to the respondent under production and equipment agreements. It is further the case of the petitioner that on 25th April, 2011, the respondent addressed a similar letter to the petitioner.

5. On 5th May, 2011, the petitioner and the respondent entered into an agreement for supply of equipment and associated services (for short the said Equipment Agreement”) in respect of the cricket matches covered under the MRLA and Production Agreement as well as cricket matches comprising the IPL and CLT 20. It is the case of the respondent that all three agreements entered into between the parties are independent and stand alone agreements and are not inter-connected with each other in any manner whatsoever.

6. On 12th November, 2011, the petitioner terminated the said MRLA on account of the alleged non-payment of the license fees by the respondent. The petitioner filed Arbitration Petition No.167 of 2012 under section 9 of the Arbitration Act in relation to the said MRLA and prayed for interim measures. This Court has passed an interim orders on 19th January, 2012 and 27th February, 2012 in the said proceedings in favour of the petitioner. The said interim orders have been modified by the Division Bench in the appeals preferred by the respondent by an order dated 27th February, 2012.

7. On 31st January, 2012, the respondent addressed a letter to the petitioner alleging material breach of clause 4.2 of the said Equipment Agreement and called upon the petitioner to remedy the said alleged breach under clause 9 of the said agreement by paying an amount of Rs.9,11,53,932/- within 14 days with interest and made it clear that in the event of non-payment, the respondent would terminate the said Equipment Agreement. On 28th February, 2012, the respondent addressed a letter to the petitioner terminating the said Equipment Agreement with immediate effect.

8. On 20th April, 2012, the petitioner through its advocate addressed a letter to the learned advocate of the respondent alleging that an aggregate amount of Rs.3,62,75,31,250/- was due from the respondent to the petitioner under the said MRLA and that the petitioner was entitled to adjust / set off *inter-alia* the amount of Rs.9,11,53,932/- due from the petitioner to the respondent alleged to be due under the said Equipment Agreement.

9. On 28th July, 2012, the respondent addressed a letter to the petitioner stating that there was no basis for the petitioner to adjust any amount due and payable by the petitioner to the respondent under the Equipment Agreement against disputed amounts due by the respondent to the petitioner under the said MRLA and called upon the petitioner to pay an amount of Rs.9,11,53,932/- to the respondent within 3 days from the date of receipt of the said notice and made it clear that in the event of the petitioner failing to pay, the respondent would be constrained to refer the disputes between the parties to arbitration.

10. On 27th August, 2012, the respondent invoked arbitration agreement. A former judge of this Court accordingly came to be appointed as the sole arbitrator.

11. On 29th April, 2013, the respondent filed its statement of claim *inter-alia* praying for an amount of Rs.8,70,66,010/- with interest and costs before the learned arbitrator. The petitioner filed its statement of defence on 12th June, 2013 and pleaded that the petitioner had a right in law and in equity to set off / adjust the amount claimed by the respondent against the amounts due and payable by

the respondent to the petitioner under the said MRLA contending that the two agreement were so innately / intricately closely connected in their nature and circumstances so as to make it inequitable to not allow the petitioner to do so and requested the learned arbitrator to make an award to that effect subject to any award that may be passed. The arbitral proceedings under the said MRLA agreement filed before a separate arbitral tribunal by the petitioner are going on. The respondent filed its rejoinder on 8th July, 2013. Neither party led any oral evidence before the learned arbitrator. The petitioner and the respondent however, filed their respective written submissions on 19th February, 2014 and 28th February, 2014 respectively.

12. On 24th March, 2014, the petitioner filed a Purshis before the learned arbitrator pursuant to an oral directions issued by the learned arbitrator on 8th March, 2014, stating that the petitioner had not yet set off / adjusted in its books of accounts the amount claimed by the respondent under the said Equipment Agreement against the amounts alleged to be due and payable by the respondent to the petitioner under the said MRLA.

13. On 14th August, 2014, the learned arbitrator made an arbitral award holding that the plea of equitable set off was not available to the petitioner in arbitration proceedings before the learned arbitrator and allowed the claim of the respondent in the sum of Rs.8,70,66,010/- with interest and costs. This arbitral award has been impugned by the petitioner on various grounds.

14. Mr.Subramanian, learned senior counsel for the petitioner submits that the learned arbitrator has rendered a finding that the Equipment Agreement could not be treated as part of a single

composite business transaction and/or innately / intricately / closely connected with MRLA and the Production Agreement without considering the terms of the MRLA. He submits that the learned arbitrator has erroneously held that he has no jurisdiction to dissect the terms and conditions of the said MRLA so as to examine the issue of its close connectivity with the Equipment Agreement which is the subject matter of this proceeding. He submits that though the copies of the three agreements were on record before the learned arbitrator, without considering the provisions of all three agreements, the learned arbitrator has erroneously rejected the contention of the petitioner that the Equipment Agreement was closely connected with the said MRLA and the Production Agreement.

15. It is submitted that all the three agreements were intertwined and closely connected with each other and were admittedly executed by and between the same parties. He submits that though the claim filed by the petitioner under the said MRLA against the respondent is pending before another arbitral tribunal, the petitioner was entitled to seek equitable set off of its claim against the respondent under the said MRLA as against the claim made by the respondent against the petitioner under the said Equipment Agreement. In support of this submission, learned senior counsel invited my attention to various provisions of the three agreements entered into between the parties.

16. It is submitted by learned senior counsel that the learned arbitrator in the impugned award has illegally applied the provisions of Order VIII Rule 6 of the Code of Civil Procedure, 1908 in the present case which provision deals only with the legal set off and not equitable set off. He submits that the petitioner had not pleaded for

legal set off under Order VIII Rule 6 of the CPC but had applied for equitable set off which the petitioner was entitled to seek and such right was different than the right of legal set off provided in Order VIII Rule 6 of Code of Civil Procedure.

17. Learned senior counsel for the petitioner submits that the petitioner was not required to set off or to adjust the amount claimed by the petitioner actually prior to raising the said plea. He submits that the impugned award rejecting the plea of the equitable set off on this ground shows patent illegality in the impugned award.

18. It is submitted by the learned senior counsel for the petitioner that the finding of the learned arbitrator that the cross claim must arise out of the same contract or transaction and must flow from closely connected dealings and transactions which would give rise to the subject matter of the claim of the respondent is contrary to the law laid down by various courts permitting the plea of equitable set off.

19. It is submitted by learned senior counsel that though the petitioner had placed reliance on the letters dated 12th March, 2011 and 20th April, 2011 which were addressed by the respondent to the petitioner requesting for set off of its claims against the claim of the petitioner, the learned arbitrator however, has completely ignored the said two crucial letters and has not considered the same in the impugned award. He submits that no evidence was led by the respondent to show that the said two letters were not acted upon by the parties. He submits that on this ground alone, this Court shall set aside the entire award. In the alternate, it is submitted that since the two crucial letters which were relevant for the purpose of deciding the plea of equitable set off not having been considered by the learned

arbitrator though were forming part of the record, this court has ample power under section 34(4) of the Arbitration Act to adjourn this proceeding and to direct the learned arbitrator to resume arbitral proceedings with a direction to consider the said two letters and make a supplementary award and to eliminate the grounds of challenge under section 34 of the Arbitration Act.

20. Learned senior counsel placed reliance on the judgment of the Supreme Court in the case of *Union of India vs. Karam Chand Thapar & Bros. (Coal Sales) Ltd. & Ors.*, (2004) 3 SCC 504 and in particular paragraphs 17 and 18 and would submit that all the provisions of Order VIII Rule 6 of the CPC which deals with the legal set off cannot be extended to the plea of equitable set off. It is submitted that the Supreme Court has held that the mutual debts and credits or cross-demands, to be available for extinction by way of equitable set off, must have arisen out of the same transaction or ought to be so connected in their nature and circumstances as to make it inequitable for the court to allow the claim before it and leave the defendant high and dry for the present unless he files a cross suit of his own. He submits that the learned arbitrator had discretion to entertain such plea of equitable set off which discretion ought to have been exercised judicially by the learned arbitrator.

21. Learned senior counsel for the petitioner placed reliance on the judgment of the Supreme Court in the case of *Chloro Controls India Pvt. Ltd. vs. Severn Trent Water Purification Inc. & Ors.* (2013) 1 SCC 641 and in particular paragraph 74 and would submit that though the parties have executed different agreements in this case but that all with one primary object in mind and that common obligations which are interconnected, the learned arbitrator ought to

have applied such principles and ought to have permitted the plea of equitable set off.

22. Learned senior counsel placed reliance on the judgment of the *Court of Appeal Civil Division, delivered on 11th June, 2010, in the case of Geldof Metaalconstructie NV v. Simon Carves Limited, 2010 WL 2131394* and in particular paragraph 47 in support of the aforesaid submission. It is submitted by learned senior counsel for the petitioner that the respondent does not have adequate assets or moneys to satisfy or secure the claim of the petitioner under the said MRLA and if any amount is required to be paid by the petitioner in this matter to the respondent, it is likely that the respondent will secrete the moneys it would receive from the petitioner with a view to extract or deal with the valid claims made by the petitioner under the said MRLA. He submits that even the interim orders passed by this Court in favour of the petitioner in the proceedings filed by the petitioner against the respondent under the said MRLA are also not complied with by the respondent. In these circumstances, he submits that the learned arbitrator ought to have allowed the plea of equitable set off raised by the petitioner against the respondent.

23. Mr.Dhond, learned senior counsel for the respondent on the other hand invited my attention to various correspondence, pleadings and findings rendered by the learned arbitrator in the impugned award. He submits that the learned arbitrator has rendered various findings of fact and has interpreted the terms of the Equipment Agreement which is the subject matter of this dispute and such interpretation being a possible interpretation, this Court cannot substitute such interpretation of the learned arbitrator with another interpretation.

24. Learned senior counsel for the petitioner submits that the respondent had entered into the said MRLA on 15th October, 2009. Under the said agreement, the petitioner had given media rights to the respondent for commercial exploitation of telecast. There was no condition precedent in the said agreement that the respondent would also be a part of other agreements that would be entered into in future. He submits that on 29th September, 2010, the parties had entered into the said Production Agreement by which the parties jointly agreed for production of ifeed. He submits that the agreement, which is the subject matter of this dispute is an agreement for supply of equipment which was entered into between the parties on 5th May, 2011. There was no provision in this agreement that this agreement would be supplementary to the earlier two agreements and the rights and obligations of the parties under the said Equipment Agreement would be dependent on the rights and obligations of the parties under the earlier two agreements.

25. It is submitted that all the three agreements were stand alone agreements and had no inter-connection of whatsoever nature. He submits that there is no provision in the said Equipment Agreement that the said agreement was entered because the other two contracts were awarded by the petitioner to the respondent or because the other two agreements were alleged to be similar in nature or connected with the said Equipment Agreement. Learned senior counsel placed reliance on the definition of “entire agreement” under clause 14.1 and would submit that under the said provision, it was made it clear that the said agreement represented the entire agreement between the parties in relation to the provision, supply and/or delivery of the equipment and associated services by the

respondent to the petitioner and supersede any provisions of the agreement by written or oral between the parties in relation thereto. He submits that it is thus clear that the said Equipment Agreement was stand alone agreement had no connection with other two agreements of any nature whatsoever entered into between the parties.

26. Learned senior counsel for the respondent submits that the finding rendered by the learned arbitrator on the issue that the Equipment Agreement was not at all connected with other two agreements is not impossible finding and is based on the interpretation of the agreements and the finding not being perverse, this Court cannot interfere with such finding of fact. He submits that the purpose and the rights and obligations of both the parties under the said three agreements were totally different. Learned senior counsel invited my attention to the finding rendered by the learned arbitrator in paragraph 47 of the impugned award on the issue of connectivity and submits that the same being not perverse, no interference is permissible with such finding of fact. He submits that the learned arbitrator has considered the broad features of the agreements and has rightly held that he had no jurisdiction to dissect the provisions of MRLA while adjudicating upon the dispute between the parties under the Equipment Agreement.

27. Insofar as the submission of learned senior counsel for the petitioner that the learned arbitrator had taken a *prima-facie* view in the matter is concerned, it is submitted by learned senior counsel that the said observation is based on the first evaluation of the learned arbitrator and no fault can be found with such evaluation. He submits that it is not in dispute that the proceedings for recovery of

the alleged dues of the petitioner against the respondent under the said MRLA are pending before another arbitral tribunal and such claims are vehemently opposed by the respondent on merits.

28. It is submitted that though the petitioner had not already adjusted equitable set off as falsely alleged in the written statement filed before the learned arbitrator, the petitioner has subsequently admitted by filing a purshis before the learned arbitrator that the petitioner had not already made equitable set off in respect of its alleged claim from the amount due and payable to the respondent. He submits that admittedly the petitioner has not disputed the liability of the petitioner against the respondent insofar as Equipment Agreement which was the subject matter of this proceeding is concerned. He submits that insofar as the alleged financial condition of the respondent is concerned, the same is not relevant for the purpose of deciding the plea of equitable set off, as canvassed by the petitioner.

29. Insofar as the letters dated 12th March, 2011 and 25th April, 2011, addressed by the respondent to the petitioner, which are vehemently relied upon by the petitioner in support of its plea of equitable set off are concerned, it is submitted by learned senior counsel for the respondent that the respondent had made such suggestion for seeking adjustment which suggestion was not accepted by the petitioner. He submits that when the said two letters were addressed by the respondent to the petitioner, Equipment Agreement was not even entered into. The said two letters were in respect of MRLA and not in respect of the two separate agreements. He submits that the petitioner did not give any response to any of these two letters and did not allow the respondent to set off its claim

equitably, as canvassed by the petitioner. No reliance could be placed on these two letters. He submits that no prejudice is thus caused to the petitioner even if such letters are not considered by the learned arbitrator, as the same would have no bearing on the merits of the claim.

30. Learned senior counsel for the respondent submits that the learned arbitrator has rightly placed reliance on the judgment of the Supreme Court in the case of *Union of India vs. Karam Chand Thapar & Bros. (Coal Sales) Ltd. & Ors.* (supra) and also the judgment of the Supreme Court in the case of *Jeetendra Kumar Khan & Ors. vs. The Peerless General Finance & Investment Co. Ltd. & Ors.* (2013) 8 SCC 769. The learned arbitrator has also placed reliance on the judgment of the Supreme Court in the case of *Raja Bhupendra Narain Singh Bahadur vs. Maharaj Bahadur Singh & Ors.*, AIR 1952 SC 201 and the judgment of the Supreme Court in the case of *M/s.Lakshmichand & Balchand vs.State of Andhra Pradesh*, (1987) 1 SCC 19, while holding that when the claim is founded on the doctrine of equitable set off, all cross-demands should arise out of the same transaction or the demands should be so connected in the nature and circumstances that they can be looked upon as a part of one transaction. It is also held that the plea in the nature of equitable set off is not done as of right and discretion lies with the Court to entertain and allow such plea or not to do so.

31. In rejoinder, Mr.Subramanian, learned senior counsel submits that though the Equipment Agreement is executed on 5th May, 2011, the same was made effective from 1st October, 2010. He submits that these letters addressed by the respondent to the petitioner on 12th March, 2011 and 25th April, 2011 were for equitable

set off of the claims made by the respondent against the petitioner under the said Equipment Agreement with the claim under the said MRLA. He submits that the petitioner has already terminated the said MRLA.

REASONS AND CONCLUSIONS :

32. A perusal of the record indicates that the parties had entered into three separate agreements i.e. the said MRLA on 15th October, 2009, Production Agreement on 29th September, 2010 and Equipment Agreement on 5th May, 2011. It is not in dispute that in none of the agreements there was any provision stating that each of the agreement was supplementary to each other or it was a composite transaction. There was also no provision that the Equipment Agreement was executed and the said contract was awarded to the respondent by the petitioner in continuity with and in view of of the petitioner already having awarded the said MRLA and Production Agreement also. There is also no provision in any of the agreements that breach of the parties under one agreement would enable the other party to take action for such breach under other agreements. The parties did not agree that the provisions of the said MRLA and the Production Agreement stood incorporated and/or to be read in the provisions of the said Equipment Agreement.

33. It is not in dispute that the present dispute arises under the Equipment Agreement and not under the said MRLA. The petitioner has already filed a separate arbitration claim against the respondent under the said MRLA which is pending for disposal before another arbitral tribunal. The respondent herein has opposed the said claim made by the petitioner by filing the statement of defence.

34. A perusal of the record indicates that in the written statement filed in the present proceedings by the petitioner against the respondent, the petitioner had pleaded that the petitioner had already adjusted the claim of the petitioner against the respondent under the said MRLA from the amount due and payable to the respondent under the Equipment Agreement by way of equitable set off. This plea of the petitioner was denied by the respondent. The learned arbitrator therefore in one of the meeting directed the petitioner to clarify this issue as to whether the petitioner had already set off its claim against the respondent by way of equitable set off from the amount due and payable to the respondent under the Equipment Agreement. In response to the said direction, the petitioner filed the purshis before the learned arbitrator, clarifying that no such amount was already adjusted and/or set off by way of equitable set off from the amount due and payable to the respondent under the Equipment Agreement.

35. It is not in dispute that the petitioner has not disputed its liability to the respondent under the Equipment Agreement and did not dispute on merits. The learned arbitrator has recorded the statement made by the petitioner through its learned senior counsel in the arbitration proceedings. The statement recorded by the learned arbitrator in the impugned award to this effect has not been challenged by the petitioner in the present petition. The petitioner has also not challenged the fact that the petitioner had not already adjusted the amount alleged to be due from the respondent under the said MRLA from the amount due and payable to the respondent under the Equipment Agreement. In my view, since the petitioner's case was on the incorrect premise that the petitioner had actually set off their claim and subsequently admitted not having actually set off,

the learned arbitrator rightly rejected the claim of set off also on the ground that the same was not already adjusted by the petitioner.

36. A perusal of the award clearly indicates that the learned arbitrator has applied the principles laid down by the Supreme Court in various judgments referred to aforesaid and has held that for the purpose of seeking set off of the claim by way of equitable set off, two rival claims should arise from out of the same contract or transaction and must flow from closely connected dealings and transactions which gives rise to the subject matter of the claim of the respondent herein.

37. A perusal of the award indicates that the learned arbitrator has also considered the fact that the present arbitral reference arises from and out of the Equipment Agreement dated 5th May, 2011, whereas the claim of the equitable set off set up by the petitioner herein arises from and out of an agreement known as MRLA dated 15th October, 2009 and all the disputes are being simultaneously tried by two different arbitral tribunals. The learned arbitrator has rendered a finding of fact that the two rival claims i.e. the claim of the respondent herein and the cross claim of the petitioner herein were arisen from and out of the two different agreement executed on two different dates for different purpose and the field of operations were also different. It is held that the terms and conditions of both the agreements are also different.

38. The learned arbitrator has rightly observed that he could not venture to examine, much less to adjudicate upon the merits of the claim of the petitioner herein arising from and out of the said MRLA for want of jurisdiction. It is held that the legality and

justifiability of its claim cannot be investigated by the learned arbitrator since the alleged claim of the petitioner herein arising out of the said MRLA was being tried by another arbitral tribunal started much before the reference under Equipment Agreement was made to the learned arbitrator, who was adjudicating the claims made by the respondent herein. The learned arbitrator rightly held that he had no jurisdiction to dissect the terms and conditions of the said MRLA so as to examine the issue of close connectivity with the Equipment Agreement, since the said MRLA was not the subject matter of the dispute for investigation before him and was before another three member arbitral tribunal. In my view, there is no infirmity in the said finding of the learned arbitrator.

39. The learned arbitrator could not have decided the merits of the claim of the petitioner, which was the subject matter of adjudication already filed much prior to the date of the reference being the claims made by the respondent before the learned arbitrator. A perusal of the award indicates that the learned arbitrator has considered the effect of all three agreements for the limited purpose of recording a finding of fact that the agreements were not connected with each other and the claim of the respondent and the cross claim of the petitioner was arising out of two different agreements executed on two different dates for different purposes of which field of operations were also different. I do not find any infirmity with this part of the award.

40. The Supreme Court has held in the case of *Union of India vs. Karam Chand Thapar & Bros. (Coal Sales) Ltd. & Ors.* (supra) that mutual debts and credits or cross-demands, to be available for extinction by way of equitable set off, must have arisen out of the

same transaction or ought to be so connected in their nature and circumstances as to make it inequitable for the court to allow the claim before it and leave the defendant high and dry for the present unless he files a cross suit of his own. It is also held that the plea in the nature of the equitable set off is not done as of right and discretion lies with the Court to entertain and allow such plea or not. In the case of *Bhupendra Narain Singh Bahadur vs. Maharaj Bahadur Singh & Ors.*(supra), the Supreme Court has held that the plea in the nature of equitable set off is not available when the cross demand do not arise out of the same transaction.

41. In the case of *Jeetendra Kumar Khan & Ors. vs. The Peerless General Finance & Investment Co. Ltd. & Ors.* (supra), the Supreme Court has held that the plea of equitable set off cannot be raised as a matter of right and it is at the discretion of the Court to entertain and allow such a plea or not. The concept of equitable set off is founded on the fundamental principles of equity, justice and good conscience. The discretion vests with the Court to adjudicate upon it and the said discretion has to be exercised in an equitable manner. It is held that the equitable set of is not be allowed where protracted enquiry is needed for the determination of the sum due. Similar is the view taken by the Supreme Court in the case of *M/s.Lakshmichand & Balchand vs. State of Andhra Pradesh*.

42. In my view, the learned arbitrator has rightly rendered the finding of fact that the Equipment Agreement was not closely connected with the said MRLA. Both the claims made by the parties were not arising out of the same transaction and in any event not under the agreements closely connected to each other. In my view , the learned arbitrator has after coming to such conclusion, has rightly

rejected the plea of equitable set off raised by the petitioner. The petitioner has already filed a cross claim for adjudication which is pending.

43. I am not inclined to accept the submission of learned senior counsel for the petitioner that the learned arbitrator has not exercised discretion judicially while rejecting the plea of equitable set off raised by the petitioner. The learned arbitrator has rightly held in my view that insofar as the claims made by the respondent, which was the subject matter of this arbitration is concerned, there was no denial of the liability on the part of the petitioner, whereas insofar the claim of the petitioner is concerned, which is the subject matter of another arbitration, the respondent has opposed such claim and said proceedings are pending.

44. Insofar as the submission of learned senior counsel for the petitioner that the financial condition of the respondent is not sound and even if succeeds in the proceedings filed before the arbitral tribunal under the said MRLA, the petitioner would not be able to recover any amount is concerned, in my view the learned arbitrator has rightly rejected this plea on the ground that he did not have jurisdiction to adjudicate upon the merits of the claim of the petitioner arising out of the said MRLA for want of jurisdiction. It is not in dispute that the proceedings under MRLA filed by the petitioner are pending before another arbitral tribunal and also before this Court. The learned arbitrator therefore, rightly refused to accept such plea for want of jurisdiction. Neither the learned arbitrator nor this Court can decide the validity of the claim made by the petitioner under the said MRLA while deciding the claim of the respondent under Equipment Agreement or while deciding the petition under section 34 of the

Arbitration Act respectively. Question as to whether the respondent has complied with the order passed by this Court in the said MRLA or not, no order can be passed by this Court in this proceeding.

45. Insofar as the judgment in the case of *Chloro Controls India Pvt. Ltd. vs. Severn Trent Water Purification Inc. & Ors.* (supra) relied upon by learned senior counsel for the petitioner is concerned, the Supreme Court has held that where the parties execute different agreements but all with one primary object in mind, the Court would normally hold the parties to the bargain of arbitration and not encourage its avoidance. The said judgment of the Supreme Court, in my view, does not apply to the facts of this case even remotely. Similarly, the judgment of the Court of Appeal (Civil Division) in the case of *Geldof Metaalconstructie NV v. Simon Carves Limited* (supra) also does not apply to the facts of this case. The facts before the Court of Appeal in the said judgment are totally different and the said judgment even remotely does not apply to the facts of this case.

46. Insofar as the submission of the learned senior counsel for the petitioner that the learned arbitrator has not considered the effect of the two letters dated 12th March, 2011 and 25th April, 2011 is concerned, a perusal of the letters clearly indicate that when both the letters were addressed by the respondent, Equipment Agreement was not even executed. It is not the case of the petitioner that the petitioner had permitted the respondent for equitable set off as requested. No such letters thus could be read in isolation. In my view thus the said two letters were of no bearing on the issue of equitable set off raised by the petitioner. The petitioner has thus not made out any case under section 34(4) of the Arbitration & Conciliation Act, 1996.

47. In my view, the petition is totally devoid of merits. I, therefore, pass the following order :-

Arbitration Petition No.1517 of 2014 is dismissed. There shall be no order as to costs.

(R.D. DHANUKA, J.)

At this stage, learned counsel for the petitioner seeks stay of the operation of the order and judgment passed today. The application for stay is rejected.

(R.D. DHANUKA, J.)