

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

Judgment reserved on March 09, 2015

Judgment delivered on April 06, 2015

+ **O.M.P. 60/2015**

NIMBUS COMMUNICATIONS LTD

..... Petitioner

Through: Mr.Jayant Bhushan, Sr. Adv.
with Mr.Amol Chitala,
Mr.N.Dube, Mr.Ankur
S.Kulkarni, Mr.Anand
Srivastava, Mr.Shubham
Jaiswal, Advs.

Versus

PRASAR BHARTI & ANR

..... Respondents

Through: Mr.Rajeev Sharma, Adv.
with Ms.Radha Laksmi R.,
Adv. for R1/Prasar Bharti

CORAM:
HON'BLE MR. JUSTICE V.KAMESWAR RAO

V.KAMESWAR RAO, J.

1. The challenge in this petition under Section 34 of the Arbitration and Conciliation Act, 1996 (Act, in short) is to the interim award dated September 16, 2014 passed by the Arbitral Tribunal (Tribunal, in short), by majority (Hon'ble Mr. Justice S.P.Bharucha, Presiding Arbitrator and Hon'ble Mr. Justice B.P. Jeevan Reddy) whereby the Tribunal has

awarded in favour of the respondent No. 1 an amount of Rs.22,77,67,422/-. By a dissenting order, dated September 18, 2014, Hon'ble Mr. Justice V.N.Khare has held that the application for interim award be taken up for hearing after evidence is led by the parties on a reasoning that the expression used 'adjustment of liabilities cannot be construed as an admission of claim by the petitioner.

The facts:

2. On November 11, 2005, the Govt. of India had notified guidelines known as Downlinking Guidelines, which inter alia, provided in para 5.2 thereof, for compulsory sharing of signals of sporting events of national importance by the rights holders with Prasar Bharti. The said guidelines also provided that insofar as cricketing events are concerned, all cricket matches featuring the Indian Team and the Semi-Finals and Finals of International events would constitute sporting events of national importance. The downlinking guidelines provided, the revenues generated by the sharing of signals by the rights holders with Prasar Bharti would be shared in the ratio of 75:25 between the rights holders and Prasar Bharti. The guidelines also provided as to who, out of the rights holders and Prasar Bharti would undertake the marketing of commercial times associated with telecast. It is noted that the rights holders had to provide the live signals of sporting events of national

importance to Prasar Bharti without advertisements and Prasar Bharti had to retransmit the live signals on its terrestrial and DTH networks (Doordarshan National and DD Direct). During the transmission of the matches on Doordarshan National, opportunities for airing the advertisements would arise. Therefore, it was also necessary to provide as to who would book advertisements. The guidelines provided that the party that offered to maximise, the revenue would be appointed as the Revenue Management Company. The appointment was formalized through a bidding process, whereunder, both parties would give sealed bids in respect of their estimation of the revenues that could be generated by way of advertisements to be carried on Doordarshan during the telecast of the matches. The party which would give the higher estimation would get the right to book the advertisements and the revenues so collected would be shared in the ratio of 75:25 as between the rights holders and Prasar Bharti.

3. On December 5, 2005, the uplinking guidelines were notified. I note from record, the uplinking guidelines also contained a provision similar to the one contained in downlinking guidelines insofar as the sharing of signals of sporting events of national importance were concerned.

4. The first Cricket Series played after the aforesaid guidelines was

India-England series in February 2006 for which, the petitioner was the rights holder. By way of bidding process, the petitioner was appointed as the RMC for the telecast to be made by the respondent No.1, Prasar Bharti. To secure the rights of both the parties, it was agreed that all money would be deposited in an Escrow Account and the RMC would furnish a bank guarantee to the other party-Prasar Bharti for an amount equal to 25% of the net projected revenue. Petitioner as RMC furnished a bank guarantee to the respondent No.1 for an amount equal to 25% of the net projected revenue.

5. In February 2007, the Sports Broadcasting Signals (Mandatory Sharing with Prasar Bharti) Ordinance, 2007 was promulgated which was subsequently replaced by the Sports Broadcasting Signals (Mandatory Sharing with Prasar Bharti) Act, 2007. In terms of Section 1(3), the Act was deemed to have come into force on November 11, 2005, the day on which the downlinking guidelines were notified. The Act provided the mandatory sharing of live signals of events of national importance by the content rights owners or holders/Television or Radio Service Providers with Prasar Bharti to enable it to retransmit such signals on its terrestrial and DTH networks. The Act, inter alia, provided that the revenues earned from such sharing of live signals would be shared in the ratio of 75:25 between the rights holders and Prasar Bharti.

The rules made under the Act of 2007, inter alia, provides for a sealed bid procedure to be adopted and the party bidding higher shall get the marketing rights. The party getting marketing rights shall give a bank guarantee to the other party for an amount equal to the other party's share of guaranteed revenue, which shall be valid for a period of six months from the first day of the month succeeding the month, in which the sporting event comes to an end. The rules also contemplate, the party having marketing rights shall be entitled to obtain all release orders and payments in its name and all payments shall be received by it only by way of account payee cheques which shall be deposited in a designated Escrow Account from which the party shall be at liberty to make withdrawals after discharging the tax liability. The rules also contemplate the party having the marketing rights shall submit to the other party, complete accounts of revenue earnings duly audited by Chartered Accountant along with all the release orders and shall pay the entire guaranteed amount as well as any other amount to which the other party is entitled as per the revenue sharing formula under the Act and Sub-Rule 3 of Rule 4 within 75 days from the first day of the month succeeding the month in which the sporting events comes to an end.

6. It may be stated here that between the years 2007 and 2009, the following seven cricketing events took place:

S.No.	Event	Shared By
1	India Bangladesh Series 2007	Nimbus Sport International Pte Ltd.
2	India Australia Cricket Series, 2007	Nimbus Communications Ltd.
3	India Australia T-20 match played on 20.10.2007	Nimbus Communications Ltd.
4	India Pakistan Cricket Series, 2007	Nimbus Communications Ltd.
5	India, Bangladesh & Pakistan Series, 2008	Nimbus Sport International Pte Ltd.
6	India England Series, 2008	Nimbus Communications Ltd.
7	India Sri Lanka Series, 2009	Nimbus Sport International Pte Ltd.

In the aforesaid cricketing events, the signals were shared by the petitioner and the respondent No. 2 with the Prasar Bharti i.e. the respondent No. 1.

7. It is noted that a formal agreement was entered between the petitioner and Prasar Bharti (respondent No. 1) with respect to India Pakistan Series 2007, Sl. No. 4 above, which provided resolution of disputes by arbitration. As disputes arose between the Prasar Bharti and the petitioner and the respondent No. 2 herein, clause 13 of the agreement in respect of India Pakistan Series 2007, was invoked on June 1, 2009 for adjudication of the disputes. It was mutually agreed between the parties that all disputes arising from the dealings between the parties concerning the aforesaid seven events be adjudicated by the Tribunal constituted pursuant to the invocation letter dated June 1, 2009. Accordingly, as desired by the Tribunal (as submitted by learned counsel

for the respondent No.1), on the first date of hearing, calling upon the parties to enter into an arbitration agreement for referring the disputes to the Tribunal, the parties on August 31, 2011, signed an arbitration agreement, whereby it was consented that all disputes arising out of the cricketing events mentioned at Sl. Nos. 1 to 7 above between the petitioner and respondent No. 1 and Nimbus Sports International Pte Ltd.-respondent No.2 be adjudicated upon in accordance with clause 13 in the agreement dated November 3, 2007 by the Tribunal. Suffice to state, the agreement also record that, “all contentions of the parties are left open”.

The Disputes:

8. The respondent No.1/Prasar Bharti's, the claimant before the Tribunal, claim in brief was that the petitioner and respondent No. 2 have failed to pay their share of revenues for the respective series marketed by them. It was the case of the respondent No. 1/Prasar Bharti that it was at least entitled to the following amounts from the petitioner and the respondent No.2:-

S.No.	Event	Due from Nimbus Sports International Pte. Ltd. Rs.	Due from Nimbus Communications Ltd.	Interest	Total
1	India Bangladesh Cricket Series 2007	14,16,633		12,11,221	26,27,854
2	India Australia Cricket Series, 2007		8,82,50,000	6,48,63,750	15,31,13,750
3	India		77,50,000	56,96,250	1,34,46,250

	Australia Twenty-20 Cricket match 2007				
4	India, Bangladesh, Pakistan 2008	2,52,50,000		1,55,28,750	4,07,78,750
5	India England 2008		5,48,25,000	2,87,83,125	8,36,08,125
6	India Sri Lanka 2008	1,75,50,000		86,99,625	2,62,49,625

9. The prayers made in the claim petition by the respondent No. 1 are reproduced as under:

i. *direct respondent no.1 to render audited accounts in respect of revenue earnings from the following series:*

- a. *India - Australia Cricket Series, played from 29th September to 27th October, 2007;*
- b. *India - Australia Twenty-20 Cricket Match played on 20th October, 2007.*
- c. *India - England cricket series; played from 14th November, 2008 to 2nd December, 2008.*

ii. *direct respondent No.1 to pay Rs. 15,31,13,750/- (Rs. Fifteen Crore Thirty One Lakh Thirteen Thousand Seven Hundred & Fifty) for the India-Australia Cricket Series, 2007 to the claimant which is inclusive of the principal sum of Rs.8,82,50,000/- (Rs. Eight .Crore Eighty Two Lakh Fifty Thousand) and interest thereon ^ 18% per annum for the period 15.1.2008 to 23.1.2012 amounting to Rs. 6,48,63,750/- (Rs. Six Crore Forty Eight Lakh Sixty Three Thousand Seven Hundred & Fifty) alongwith pendente lite and future interest @ 18% per annum till the date of payment or direct respondent No.1 to pay 25% of the actual net revenue for the India Australia series, 2007 if the actual net revenue was in excess of Rs. 36.30 crore alongwith interest thereon @ 18% per annum w.e.f 15.1.2008 upto the date of payment, direct respondent No.1 to pay Rs. 1,34,46,250/- (Rs. One Crore Thirty Four Lakh Forty Six Thousand Two Hundred & Fifty) to the claimant for the India-Australia T-20 match, 2007 which is inclusive*

of the principal sum of Rs.77,50,000/- (Rs. Seventy Seven Lakh Fifty Thousand) and interest thereon @ 18% per annum for the period 15.1.2008 to 23.1.2012 amounting to Rs. 56,96,250/- (Rs. Fifty Six Lakh Ninety Six Thousand Two Hundred & Fifty) alongwith pendente lite and future interest @ 18% per annum till the date of payment

or

direct respondent No.1 to pay 25% of the actual net revenue for the India Australia T-20 match, 2007 if the actual net revenue was in excess of Rs. 3.10 crore alongwith interest thereon @ 18% per annum w.e.f 15.1.2008 upto the date of payment.

iv. direct respondent No.1 to pay Rs. 8,36,08,125/- (Rs. Eight Crore Thirty Six Lakh Eight Thousand One Hundred & Twenty Five) for the India-England Cricket Series, 2008 to the claimant which is inclusive of the principal sum of Rs.5,48,25,000/- (Rs. Five Crore Forty Eight Lakh Twenty Five Thousand) and interest thereon @ 18% per annum for the period 16.3.2009 to 23.1.2012 amounting to Rs. 2,87,83,125/- (Rs Two Crore Eighty Seven Lakh Eighty Three Thousand One Hundred &Twenty. Five) alongwith pendente lite and future interest @ 18% per annum till the date of payment:

or

direct respondent No.1 to pay 25% of the actual net revenue for the India England series, 2008 if the actual net revenue was in excess of Rs. 22.05 crore, alongwith interest thereon @ 18% per annum w.e.f 16.3.2009 upto the date of payment

vi. direct respondent no.2 to render audited accounts in respect of revenue earnings from the following series:

a. India - Bangladesh - Pakistan Triangular Cricket series played in June, 2008

b. India-Sri Lanka Cricket Series, 2009 played in January-February, 2009.

vii. direct respondent No.2 to pay Rs. 26,27,854/- (Rs. Twenty Six Lakli Twenty Seven Thousand Eight Hundred & Fifty Four) to the claimant for the India Bangladesh series, 2007 which is inclusive of the principal amount of Rs

14,16,633/- (Rs. Fourteen Lakh Sixteen Thousand Six Hundred & Thirty Three) and interest thereon @ 18% per annum for the period 14.8.2007 to 23.1.2012 amounting to Rs.12,11,221/- (Rs. Twelve Lakh Eleven Thousand Two Hundred & Twenty One) alongwith pendente lite and future interest @ 18% per annum till the date of payment;

vii. direct respondent No.2 to pay Rs. 4,07,78,750/- (Four Crore Seven Lakh Seventy Eight Thousand Seven Hundred & Fifty) for the India-Bangladesh-Pakistan Cricket Series, 2008 to the claimant which is inclusive of the principal sum of Rs.2,52,50,000/- (Rs. Two Crore Fifty Two Lakh Fifty Thousand) and interest thereon @ 18% per annum for the period 13.9.2008 to 23.1.2012 amounting to Rs. 1,55,28,750/- (Rs. One Crore Fifty Five Lakh Twenty Eight Thousand Seven Hundred & Fifty) alongwith pendente lite and future interest 18% per annum till the date of payment

Or

direct respondent No.2 to pay 25% of the actual net revenue for the India-Bangladesh-Pakistan Cricket Series, 2008 if the actual net revenue was in excess of principal sum of Rs. 10.10 crore alongwith interest thereon @ 18% per annum w.e.f 13.9.2008 upto the date of payment.

viii. direct respondent No.2 to pay Rs.2,62,49,625/- (Two Crore Sixty Two Lakh Forty Nine Thousand Six Hundred & Twenty Five) for the India-Sri Lanka series, 2009 to the claimant which is inclusive of the principal sum of Rs. 1,75,50,000/- (Rs. One Crore Seventy Five Lakh Fifty Thousand) and interest thereon @ 18% per annum for the period 14.5.2009 to 23.1.2012 amounting to Rs.86,99,625/- (Rs. Eighty Six Lakh Ninety Nine Thousand Six Hundred & Twenty Five) alongwith pendente lite and future interest @ 18% per annum till the date of payment

Or

direct respondent No.2 to pay 25% of the actual net revenue

collections for the India-Sri Lanka series, 2009 if the actual net revenue was in excess of the principal sum of Rs. 7,02 crore alongwith interest thereon @ 18% per annum w.e.f 14.5.2009 upto the date of payment.

ix. Costs of the proceedings be awarded to the claimant;

x. such other order be passed as deemed fit in the circumstances of the case”.

10. The petitioner/respondent No.2's case in the reply to the claim petition was that the sums claimed by the respondent No. 1 have already been adjusted against the amounts due to the petitioner. It was the case of the petitioner that the respondent No. 1 had booked advertisements, time totalling to 16,549 extra seconds but it accounted only for 30,000 seconds and had paid to the petitioner only Rs.60,93,75,000 towards 75% of the value of the 30,000 seconds. The value of the additional time consumed by the respondent No. 1 of 16,549 seconds and 75% thereof being 19,86,82,487/- is required to be paid by the respondent No. 1. In fact, the reliefs prayed for in the counter claim by the petitioner were as under:

(a) Be it declared that the adjustments made: by the Respondent No.1 vide its letter, as recorded In its Advocate's letter dated 24.10.2008 and as recorded in its Advocate's letter dated 16-05-2009 addressed to the Claimant–Exhibit-AN to the Statement of Claim

appearing on page 325 is valid and binding upon the claimant and the claimant be directed to record such adjustments in its books of accounts.

(b) For an award that adjustment of a sum of Rs.4,12,62,500/- originally owned by the respondent No. 2 to the claimant is validly adjusted against the amount of Rs.7,66,06,626/- owed by the claimant to respondent No. 1.

(c) For an award that the Claimant is liable to pay to the Respondent No.1 a sum Rs.21,19,81,626/- as per particulars is annexed herewith.

(d) For an award that the adjustment of a sum of Rs.13,53,75,000/- claimed by the claimant from the respondent No. 1 against the sum of Rs.21,19,81,626/- owed by the claimant to the respondent No. 1 is valid and binding upon the claimant.

(e) For an award directing the claimant to pay to the respondent No. 1 a sum of Rs.3,53,44,126/- as per particulars is annexed herewith;

(f) For costs;

(g) For such other and further reliefs as the nature and circumstances of the case may require.

11. The basis for the aforesaid counterclaim of the petitioner as stated

by the petitioner in its notice dated May 16, 2009, got issued through its lawyers, was that an amount of Rs.1,32,99,139/- was due to the petitioner by the respondent No. 1 in respect of India-England 2006 Cricket Series. In relation to India-Pakistan November-December 2007 Series, the petitioner had demanded a sum of Rs.19,86,82,847/- which amount as on the date of notice was said to be Rs.21,19,81,626/-. In respect of India-Australia October 2007 Series and India-England November-December 2008 Series, a sum of Rs.13,53,75,000/- was claimed by the respondent No. 1/Prasar Bharti and on adjustment of the claim of the respondent No. 1/Prasar Bharti against the petitioner's claim of Rs.21,19,81,626, an amount of Rs.7,66,06,626/- was due on that date. That apart, it was the case of the petitioner that it was nominated by the Nimbus Sports International Singapore to be a Revenue Management Company in respect of India-Bangladesh May 2007 Series, India-Pakistan-Bangladesh June 2008 Cricket Series, and India-Sri Lanka January-February 2009 Series. After adjusting a sum of Rs.15,37,500/-; the net amount claimed by the respondent No.1/Prasar Bharti was Rs. 4,12,62,500/- from Nimbus Sports International Singapore and the petitioner has procured from Nimbus Sports International Singapore-respondent No.2 their mandate to adjust the amount of Rs. 4,12,62,500/- owed by it to the respondent No. 1/Prasar Bharti, against the amount of

Rs.7,66,06,626/- owed by Prasar Bharti to the petitioner and after adjustment, the net amount payable by Prasar Bharti/respondent No. 1 to the petitioner was Rs.3,53,44,126/-.

Proceedings before the Tribunal:

12. It is noted that the Tribunal vide its order dated October 5, 2012 had directed disclosure of Revenue Generation Statements. The petitioner furnished Revenue Generation Statements on July 11, 2013. Based on these statements, the respondent No. 1 filed an application under Section 17 of the Act before the Tribunal on July 15, 2013, inter alia, contending that as per the petitioner's own showing, the petitioner and the respondent No. 2's actual revenues were much less than estimated revenue for all but one series. Even though, the respondent No. 1/Prasar Bharti disputed the correctness but still it was its case that one were to go by the same, the petitioner and the respondent No. 2 are liable to pay the following admitted amount:-

Series (A)	Bid of the Respondents (B)	Entitlement of the claimant As per Bid (25%) of (B) (C)	Net Revenue Earned as Per the Respondents (D)	25% of the Net Revenue Earned (E)	Amount due to the claimant as per the figures provided by the Respondents (F)
India Australia 2007	38,40,00,000	9,60,00,000	30,17,22,477	7,54,30,619.00	9,60,00,000
India Bangla Pak 2008	10,10,00,000	2,52,50,000	9,12,51,122	2,28,12,780.50	2,52,50,000
India England 2008	2,20,50,000,	5,48,25,000	13,21,76,437	3,30,44,109.25	5,48,25,000
India Sri Lanka 2009	7,02,00,000	1,75,50,000	20,67,69,688	5,16,92,422.00	5,16,92,422
Total	57,72,50,000	19,36,25,000	73,19,19,724	18,29,79,930.80	22,77,67,422

It accordingly made the following prayers:-

(a) direct the respondents to deposit an amount of Rs. 22,77,67,422/- alongwith appropriate interest and/or furnish a Bank Guarantee for the said, amount so as to secure the amount in dispute;

(b) secure the amount of Rs. 22,77,67,422/- alongwith appropriate interest in such other manner as this Hon'ble Tribunal may deem fit; and

(c) pass such other order as deemed fit in the circumstances of the case.

13. Suffice to state, the petitioner and the respondent No. 2 had opposed the application and sought the dismissal of the same.

14. It may be noted here that the respondent No. 1/Prasar Bharti had also filed an application on September 13, 2013 for making an interim award in the sum of Rs.22,77,67,422/-. In reply, the petitioner had denied that it had made any admission as alleged by the respondent No. 1/Prasar Bharti. Both the applications were initially heard on November 11, 2013 when Mr.Rajeev Sharma, learned counsel for the respondent No. 1 had concluded his submissions. On the request of the learned Senior Counsel for the petitioner and the respondent No. 2, the matter was adjourned to February 3, 2014. On that date, the petitioner filed two applications; one for adjourning the matter and the other for allowing

inspection and discovery of a number of documents. The Tribunal adjourned the matter to March 8, 2014 by directing the respondent No. 1 to give inspection of the documents required by the petitioner. On that day, it was reported by the learned counsel for the petitioner and the respondent No. 2 herein that the inspection was incomplete in certain particulars. The matter was accordingly adjourned to May 2, 2014 on which date, the counsel for the petitioner and the respondent No. 2 came forward with fresh objections stating that inspection was not fully granted, that the copies of the documents required, were not given. The Tribunal thought it fit not to postpone the hearing of the respondent No. 1's application awaiting the result of the inspection and discoveries sought by the petitioner and respondent No. 2. The reasoning given by the Tribunal was admittedly inspection and discovery of the several documents asked for by the petitioner and respondent No. 2 were either to substantiate their claim/counterclaim or with a view to enable them to increase the amount claimed by them by way of counterclaim and because those claims were yet to be established at the trial. It may be pointed out here that the Tribunal had heard the arguments of the learned Senior Counsel for the petitioner and the respondent No. 2 on the respondent No.1's application. The application under Section 17 dated July 15, 2003 was decided on May 06, 2014 by the Tribunal (as per

majority) whereby it directed the petitioner and the respondent No. 2 to furnish a bank guarantee in a sum of Rs.20 Crores in favour of the respondent No. 1 within three weeks' from that date. The bank guarantee was to be obtained from a nationalized bank in India and was to be unconditional, payable on demand by the respondent No. 1 without demur or objection. The said bank guarantee was to be kept alive by the petitioner and the respondent No. 2 pending arbitral proceedings. At the same time, the respondent No. 1 was to invoke the bank guarantee, subject only to the orders of the Tribunal. It may be noted here that the other application for interim award filed on September 13, 2013 was kept pending awaiting the compliance of the order dated May 6, 2014.

15. Hon'ble Mr. Justice V.N.Khare had given a dissenting order whereby he was of the view that the respondent No. 1 herein, the claimant before the Tribunal owed certain amounts to the petitioner and the respondent No. 2 for which they have filed a counter claim. According to him, the counter claim by the petitioner and the respondent No. 2 was in the nature of set off, the amount due to them, being an accounting adjustment which only could be done after looking into the evidence led by the parties.

16. Justice V.N. Khare was of the view that the petitioner and the respondent No. 2 in order to substantiate their case has prayed for

production and inspection of the documents by the respondent No. 1, which has been allowed by the Tribunal and since the production and inspection of the documents was not complete, the consideration of the applications on merit be deferred and be taken after the evidence is led by the parties. The order dated May 6, 2014 was challenged by the petitioner herein in Arb. Appeal No. 15/2014 before this Court. The initial hearing in Arb. Appeal No. 15/2014 was held on July 4, 2014 when notice was issued for July 7, 2014. On July 7, 2014, time was sought by the learned counsel for the respondent No. 1/Prasar Bharti which request was acceded to and the matter was posted for August 26, 2014. On August 26, 2014, further time was sought by the learned counsel for the respondent No.1. On the said date, it was clarified by the Court that there is no stay in the case and the Tribunal may continue with the proceedings. Accordingly, the Tribunal heard the application dated September 13, 2013 on September 12, 2014 and vide the order dated September 16, 2014 (as per majority) was of the view that it was a fit case where an interim award should be made. However, with a view to provide a final chance to the petitioner and the respondent No. 2 to show their bona fides, it was directed that they may deposit with the respondent No. 1 an amount of Rs.22 Crores on or before November 1, 2014 through a bank demand draft from a nationalized bank in India.

The learned Tribunal also observed that in case the petitioner and the respondent No. 2 failed to make such deposit, an interim award would follow awarding a sum of Rs. 22,77,67,422/- in favour of the respondent No.1. Justice V.N. Khare in his dissenting order was of the view that the petitioner and the respondent No.2 in their reply have used the expression “adjustment of liabilities”. The said expression cannot be construed as admission of claim by them. In law, the admission must be an unequivocal and without reservation. The expression ‘adjustment’ does not amount to admission and in his view the consideration of the application need to be deferred. I may state here that the learned Senior Counsel for the petitioner and the respondent No. 2 had argued before the Tribunal on September 12, 2014, only one aspect that when there is a counter claim, no decree should follow in favour of the respondent No.1 even if the respondent No.1’s claim is admitted by the petitioner and the respondent No.2. In that regard, he had cited three judgments.

17. The order dated September 16, 2014 was also challenged by the petitioner before this Court vide Arb. Appeal No. 30/2014. The learned Single Judge directed the Arb. Appeal No. 30/2014 be listed along with Arb. Appeal No. 15/2014

18. That on December 11, 2014, Tribunal, has by referring to its earlier order dated September 16, 2014 and noting the failure of the

petitioner and the respondent No. 2 to deposit the sum of Rs.22 Crores gave a declaration that the interim award has come into effect and issues to be determined are the interest on the amount awarded by the interim award and the counter claim of the petitioner and respondent No.2. It is pursuant thereto, the present petition has been filed challenging the interim award dated September 16, 2014.

The submissions:

19. Mr.Jayant Bhushan, learned Senior Counsel appearing for the petitioner would submit that the petitioner had never acknowledged its liability towards the respondent No. 1 nor admitted the claim of the respondent No. 1 and the conclusion of the Tribunal is not tenable. He would refer to the legal notice dated May 16, 2009 to contend that the claim of the respondent No.1 against six matches need to be adjusted against the money owed by the respondent No. 1 to the petitioner against India-Pakistan Series 2007 for which the respondent No. 1 was the RMC and also the money owed by the respondent No. 2 to the respondent No. 1/Prasar Bharti and on such adjustments, the respondent No. 1 rather owes the petitioner an amount of Rs.3,53,44,126/-. The notice only stated that liability was discharged by way of an adjustment. He would also state that a reading of averments in paragraphs 36, 37, 61, 69, 78 of the claim petition and paragraphs 27, 28, 47, 48, 54 and 61 of the

defence statement would show that the petitioner had specifically denied the claims. He would also state that the claim of the respondent No. 1 in its application for interim award was also denied by the petitioner in its reply. He would rely upon the following judgments in support of his contention that there was no unequivocal and/or absolute and/or unconditional admission by the petitioner to the claims made by the respondent No. 1:

(i) Valliamma Champaka Pillai Vs. Sivathanu Pillai and Ors., (1979) 4 SCC 429

(ii) Himani Alloys Ltd. Vs. Tata Steel Ltd., (2011) 15 SCC 273

(iii) Western Coalfields Ltd. Vs. Swati Industries, AIR 2003 Bom 369

20. Learned Senior Counsel also contends that the impugned order could not have been passed without considering the counter claim of the petitioner. According to him, it was the case of the petitioner that the respondent No. 1 was the RMC for India-Pakistan Series 2007 and had booked advertisements for 16,549 extra seconds over and above the contractual time of 30000 seconds and the petitioner is entitled to the revenue for those extra seconds. According to him, on the face of the counter claim, the interim award overlooking the counter claim in a piecemeal by accepting the version of the respondent No. 1, is not

tenable. He would rely upon the judgment of the Supreme Court in the case of *K.V. George Vs. Secretary to the Govt., Water and Power Department, Trivandrum and Anr. (1989) 4 SC 595*.

21. It was also his contention that the interim award is bad as the same was passed without considering the issue of limitation specifically raised by the petitioner. According to him, the issue of limitation was a substantive issue having a bearing on the maintainability of the claims and could not have been overlooked. He would also state that the interim award passed on the ground of non-compliance of the interim order is also bad in law. In that regard, he would reiterate that interim award is in the nature of a final award, to the extent of the claims made by the respondent No. 1 and such award ought to have been passed after adjudicating the claims of the parties in accordance with the law on the basis of the material available on record. He would also state that the interim award passed on a speculation that the petitioner does not have sufficient assets, is bad in law. He states that on May 2, 2014 while hearing the application for interim order, the Tribunal, for the first time, had asked the counsel for the petitioner about the assets of the petitioner company. The counsel for the petitioner company sought time to seek instructions. However, without providing an opportunity to furnish details of assets of petitioner, the Tribunal passed the interim order.

Subsequently, on the same ground, interim award came to be passed. In the last, it was his submission that the award is against the principles of natural justice inasmuch as the petitioner had filed an application for inspection of discovery of documents, to be furnished by the respondent No.1. However, the inspection of the documents was not complete which was noted by the Tribunal in its order dated March 8, 2014. By the said order, the Tribunal directed the parties to file applications for the discovery of documents and posted the matter for hearing the said applications on May 02, 2014. Surprisingly, on May 2, 2014, the Tribunal observed that it was not necessary to adjudicate the applications for discovery of documents at that stage, and proceeded with the hearing and passed the interim order and ultimately, for non-compliance of the interim order, interim award came to be passed in favour of the respondent No. 1.

22. It was his submission that the interim award need to be set aside to enable the Tribunal to decide the respective claims and counter claim of the parties together.

23. On the other hand, Mr.Rajeev Sharma, learned counsel for the respondent No. 1 would justify the interim award dated September 16, 2014 (as per the majority), which according to him, was passed because of unequivocal admissions in the pleadings. In this regard, he has drawn

my attention to averments made in paragraphs 24, 28, 36, 49, 60, 61, 63, 71 of the claim petition and paragraphs 23, 27, 38, 48, 50 and 56 of the reply to the claim petition to highlight the admissions of the petitioner and the respondent No. 2, which relates to the amounts payable for the India-Australia ODI Series 2007, India-Australia T-20 Matches 2007, India-England Series 2008, India- Bangladesh-Pakistan Triangular Series June 2008 and India-Sri Lanka Cricket Series 2009. He would also refer to the letter dated April 2, 2008 and its Annexure-I with regard to the India-Australia Series 2007 to show that as per the petitioner itself, respondent No. 1/Prasar Bharti's share of 25% of Net Projected Revenue was Rs.9,00,84,643/- which along with notice dated May 16, 2009 is an acknowledgement of the subsisting liability. He would state that the mandate to adjust the amounts due from the petitioner to the respondent No. 1/Prasar Bharti was unequivocal admission of its liability. He would deny the counter claim of the petitioner with regard to the extra seconds having not paid by the respondent No. 1/Prasar Bharti as fictional. According to him, 75% of the revenue realized from the sale of commercial time had already been paid to the petitioner and the amount of Rs.60,93,75000/- is not limited to 75% of the 30,000 seconds. He would state, till such time, the counter claim of the petitioner is adjudicated, it is still a claim. In any case, it is his case that the counter

claim of the petitioner has not been admitted unlike the claims of the respondent No. 1 by the petitioner and the respondent No.2.

24. On limitation, it is his submission that no such objection was raised at the time of hearing. According to him, the same is clear from the fact, even the dissenting order of Justice V.N.Khare dated September 18, 2014 does not refer to the point of limitation. According to him, the only point urged before the Tribunal was, even if the claims have been admitted by the petitioner, no decree should follow, since there is a counter claim. He would state that even in the petition before this Court, it is not averred that the issue of limitation was pressed at the time of hearing and the same was ignored. The only reference to the limitation in the petition is in the ground, in paragraph 3.20, which also does not state, the issue was pressed at the time of hearing.

25. Even on merits, it is his submission that the dealings between the parties took place between the years 2007-09, the arbitration was invoked by the respondent No. 1 in June, 2009; statement of claim filed in January 2012, which is within limitation period. According to him, even if the limitation is accounted from the date of adjustment was conveyed i.e. May 16, 2009, the claim is within limitation. He would state that explanation to Section 18 of the Limitation Act provides that an acknowledgement can be coupled with a refusal to pay or claim for

set off.

26. It is his case that the pendency of the counter claim was no bar to the passing of an interim award to the extent the claim was admitted. According to him, a counter claim is nothing but a cross suit. A Court, in its discretion, can order it to be tried separately. So, can the Tribunal. According to him, the claim was admitted and counter claim was disputed. He would state, any view contrary, would reduce the provisions of Order 12 Rule 6 CPC a dead letter inasmuch all one has to do to avoid a decree on admission, is only prefer a counter claim. He would state that the judgment of the Supreme Court in ***K.V.George (supra)*** is not an authority for proposition that an interim award cannot be made on the basis of an admission on account of a pendency of a counter claim. It is his submission that the petitioner, all throughout, had avoided to discharge its liability towards the respondent No. 1 on one pretext or the other. The initial order to give a bank guarantee was not complied with by the petitioner. Even the impugned order dated September 16, 2014, directs the petitioner to deposit the amount of Rs.22 Crores on or before November 1, 2014 which was also not complied with. He would also state that between the period 2007-2009, the petitioner neither opened an Escrow Account; nor gave bank guarantee for 25% nor paid any amount for the Series/events where the petitioner

and the respondent No. 2 were the RMC, despite the Act and the Rules stipulated so. He has relied upon the following judgments in support of his case and would seek the dismissal of the petition:-

(i) State of Maharashtra Vs. Ramdas Shrinivas Nayak, (1982) 2 SCC 463

(ii) Union of India Vs. Karam Chand Thappar and Bros. (Coal Sales) Ltd., (2004) 3 SCC 504

(iii) Numero Uno International Ltd. Vs. Prasara Bharti, FAO (OS) 507/2007

(iv) Nagindas Ramdas Vs. Dalpatram Ichharam (1974) 1 SCC 242

(v) McDermott International Vs. Burn Standard Co. Ltd., (2006) 11 SCC 181

(vi) Shikharchand Vs. M/s. Bari Bai and Ors., AIR 1974 MP 75

(vii) Iron & Hardware (India) Co. Vs. Firm Shamlal & Bros, AIR 1954 Bombay 423

(viii) Javed Sheikh Vs. Taher Malik, 45 CWN 519

(ix) Gammon India Ltd. Vs. Sankaranarayanan Construction, OMP No. 628/2008 (Madras High Court)

27. Mr. Jayant Bhushan, learned Senior Counsel for the petitioner, in his rejoinder to the submissions made by Mr. Rajeev Sharma would state that the interim award can only be passed when there is no counter claim

by the other party. In other words, according to him, if there are claims by one party and no counter claim by the other to the extent the claims are admitted by the other party, the interim award can be passed. According to him, the judgment of the Supreme Court in ***K.V.George (supra)*** is exactly on this proposition where the claim was adjudicated overlooking the counter claims and the Supreme Court has held that the High Court could not have done it. He would state that even if there were admissions, interim award could not be passed in view of the counter claim. He would lay stress on the fact that the claims made by the respondent No. 1 were beyond the period of three years. He would refer to Section 18 of the Limitation Act to contend, there was no acknowledgement of debt/liability. He states, that, even assuming there was an acknowledgment of liability, still, the claims need to be within limitation w.e.f. April 2, 2008. He reiterated his submission on extra air time to contend that the petitioner was entitled to revenue for 16549 extra seconds which amounts to Rs. 19,86,82,487/-.

28. On the other hand, Mr.Rajeev Sharma would reiterate that even the letter to set off dated May 16, 2009 is an acknowledgement and the time would get extended in terms of Explanation to Section 18 of the Limitation Act. He would refer to the order dated September 16, 2014 to highlight, the limited submission made by the learned Senior Counsel for

the petitioner.

29. Both the parties have filed their respective written submissions.

30. Having heard the learned counsel for the parties and considered the written submissions made by them, the first and foremost point need to be decided is whether, there was an unequivocal admission on the part of the petitioner and the respondent No. 2 of their liability towards respondent No. 1. In this regard, it is relevant to refer to the averments made in the claim petition and the corresponding reply of the petitioner and the respondent No. 2 before the Arbitral Tribunal. I reproduce the relevant paragraphs to appreciate the respective stand of the parties:

Series	Averments in the claim	Reply to claim
India Australia Cricket Series, 2007 (Refer to letter dated 02.04.2008)	24. That in September-October, 2007 an India-Australia series, was scheduled to be played in India. The said series comprised of seven ODI's and one T-20 match. Nimbus Communications Ltd. was the rights holder in respect of the said series. Meetings took place on September 17, 18, 19 & 20, 2007 between the officials of the claimant and respondent no. 1 for finalising arrangements for the sharing of the signals of the matches by respondent No. 1 with the claimant and marketing of commercial time associated with such telecasts. XXX 28. Thereafter by way of a bidding process held on 20.9.2007, Respondent No. 1 was appointed as the Revenue Management Company for the ODI matches since it had offered a net projected revenue of Rs. 35.30 crore as against the offer of Rs. 35 crore made by the claimant for the ODI's. The bids submitted by the parties for the ODI's are annexed as ANNEXURE-G. A separate meeting for appointing the RMC for the T.20 match was held on 19.10.2007. Respondent No.1 was appointed as the RMC since it had offered Rs. 3.10 crore for the T-20 match as against the offer of Rs. 2.8 crore by the claimant. The bids submitted by the parties for the T-20 match are annexed as ANNEXURE-H. XXXX 36. In response to the letter dated 31.3.2008, respondent No.1 sent a letter dated 2.4.2008 along with which it forwarded an unaudited revenue generation statement on the specious plea that "our auditors have refused to conduct	<u>Reply to para 24 (Not replied).</u> <u>Reply to para 27:</u> 22. With reference to paragraph 27, this respondent repeats and reiterates the reply to paragraph 26 and the contents of the record of discussions are evident from the documents except that it was not binding upon the respondent No. 2. <u>Reply to para 28:</u> 23. The contents of paragraphs 28 and 29 do not call for any comments from this Respondent. <u>Reply to para 36:</u> 27. With reference to paragraph 36, it is denied that the 1st Respondent's plea that its auditors had refused to conduct the audit till the signed agreement was shown to them was a specious plea. As a matter of fact and, practice and

	an audit, till we share with them the signed agreement between PB/Nimbus for this event". As per the said statement also an amount of Rs.8,23,24,643/- was payable to the claimant for the ODI series and an amount of Rs.77,50,000/- was payable for the T-20 match. Thus the total amount payable as per respondent No.1 itself was Rs.9,00,74,643/-. A copy of the letter dated 2.4.2008 sent by respondent No.1 is annexed as ANNEXURE-R. 37. Thereafter by a letter dated 26.6.2008 the claimant called upon respondent No.1 to at least pay the amount, which as per its own unaudited statement was due to the claimant. A copy of the letter dated 26.6.2008 is annexed as ANNEXURE-S. Thereafter a reminder dated 18.7.2008 was sent to respondent No.1, whereby it was called upon to pay Rs.9,00,74,643/- and to provide an audited statement of account. A copy of the letter dated 18.7.2008 is annexed as ANNEXURE-T. Subsequently by a letter dated 16.10.2008 respondent No.1 was again called upon to pay Rs.9,00,74,643/-, i.e. the amount, which admittedly was due from it to the claimant as per its own unaudited revenue generation statement. A copy of the letter dated 16.10.2008 is annexed as ANNEXURE-U. However, no response was given by respondent No.1 to the claimant's said letter.	requirement, the auditors always require a agreement before they can conduct an audit. In the instant case Prasar Bharati failed and neglected the agreement and as such the auditors did not proceed with their task of conducting the audit. There are no payments due from the Respondents towards the Claimant and all payments have already been, made by the Respondents. No claim can now subsist from the Claimants against the Respondent. <u>Reply to paragraph 37:</u> 28. With reference to paragraph 37, it is denied that a sum of Rs.9,00,74,643/- was due or payable from the Respondent No.1 to the Claimant, The letters of demand notwithstanding it is submitted that the Claimant's share would have become due after the audit process was completed and this could not be carried out since there was no signed agreement: In the circumstances there is no question of making any payment of the amount demanded.
India Bangladesh Pakistan, 2008 Cricket Series	49. That an India-Bangladesh-Pakistan cricket series was scheduled to be played in Bangladesh, in June, 2008. The said series comprised of four GDI's, of which three ODI's (two ODI's featuring India and the final) were sporting events of national importance. Respondent No. 2, Nimbus Sports International Pte Ltd. was the rights holder in respect of the said series. By a bidding process held on 21.5.2008, it was decided that respondent No. 1 would market the air time associated with the event, since it had offered net projected revenue of Rs. 10.10 crore as against the offer of Rs. 4.0 crore made by the claimant. Accordingly Respondent No. 2 was appointed as the Revenue Management Company. The bid documents for the India- Bangladesh-Pakistan cricket series are annexed as ANNEXURE-X. associated with the event, since it, had offered net projected revenue of Rs. 81.25 crore as against the offer of Rs. 75.60 crore net made by respondent No. 1. A formal agreement dated 3.11.2007 was executed between the parties. XXX 60. That in the absence of the furnishing of a revenue generation statement by the respondent No. 2, it is not possible for the claimant to give an exact estimate of the amount due to it. The claimant was entitled to 25% of the actual revenue or 25% of the net projected revenue, whichever was higher.	<u>Reply to paragraphs 49 to 52 and 51-52</u> 38. The contents of paragraphs 49 to 52 are substantially correct and contents of paragraph 51 and 52 are matters of record and do not call for any comments from this respondent. <u>Reply to paragraph 60</u> With reference to paragraph 60, the claimant would Have become entitled to its share of revenue only upon signing of the agreement acceptable to both the parties. In the circumstances the claim is vague and lacks material particulars. The claimant has also made an attempt to specify its claim dispute, having knowledge of the advertisers' telecast on its own channel. It is

	61. However, what can be stated with certainty is that if the revenue earned was less than the net-projected revenue of Rs. 10.10 crore of which Rs.2,52,50,000/- constituted the guaranteed revenue share of the claimant, the claimant was at least entitled to that amount or 25% of the actual revenue, if actual revenue exceeded Rs. 10.10 crore, The requisite amount was payable to the claimant on or before 13.9.2008 but has not been paid till date. The claimant is also entitled to interest @ 18% per annum on the amount due to it w.e.f. 13th September, 2008.	estopped from making any claim on this basis. <u>Reply to para 61</u> 48. With reference to paragraph 61, the contents thereof are denied as speculative
India England Series, 2008	63. That an India-England cricket series was scheduled to be played in November-December, 2008. Respondent No. 1, Nimbus Communications Ltd. was the rights holder in respect of the said series. The said series comprised of seven ODI's. By the bidding process held on 27.10.2008, it was decided that respondent No. 1 would market the air time associated with the event, since it had offered net projected revenue of Rs. 22.05 crore as against the offer of Rs.6.80 crore made by Prasar Bharati. Accordingly Respondent No. 1 was appointed as the Revenue Management Company. The bid documents are annexed as ANNEXURE-AD.	<u>Reply to paras 63 to 65</u> 50. With reference to paragraphs 63 to 65, the same are matters of record and do not call for any specific response except that the respondent No. 1 is not bound to sign any agreement as proposed since the terms proposed were not acceptable to it.
India Sri Lanka Series, 2009	71. That an India-Sri Lanka cricket series was scheduled to be played in Sri Lanka in January-February, 2009. Respondent No. 2, Nimbus Sports International Pte Ltd., was the rights holder in respect of the said series. The said series comprised of five ODI's & one T-20, out of which an arrangement under the Act was made for the four ODI's & the T-20 match (one ODI not being telecast on account of the demise of Mr. R. Venkataraman, former President of India). By the bidding process held on 27.1.2009, it was decided that respondent No. 2 would market the air time associated with the event, since it had offered net projected revenue of Rs. 7.02 crore as against the offer of Rs. 4.0 crore made by the claimant. Accordingly Respondent No.2 was appointed as the Revenue Management Company. The bid documents are annexed as ANNEXURE-AH.	<u>Reply to paras 71 and 72</u> 56. With reference to paragraph 71 and 72, the contents are matters of record and are not in dispute.

31. It may be noted here, vide letter dated April 2, 2008 the petitioner in its communication to the respondent No. 1 has shown the sharable revenue computation for the India Australia Series 2007 in terms of Annexure I. The Annexure I depicts an amount of Rs.8,23,24,643/-, the share of the respondent No. 1/Prasar Bharti i.e. 25% of the Net Projected Revenue for the seven ODIs played in that series and Rs.77,50,000/- for

the T-20 matches. In fact, respondent No.1/Prasar Bharti, vide its letter dated June 26, 2008 had called upon the petitioner to deposit the said amount.

32. Also for India Pakistan Bangladesh Triangular Series, 2008, the petitioner had bid for appointment as a Revenue Management Company on the projected net revenue of Rs.10.10 Crores against which, the respondent No.1/Prasar Bharti's share is of at least 25% i.e. Rs.2,52,50,000/-.

33. That apart, I note, in the legal notice dated May 16, 2009, the petitioner had acknowledged the respondent No.1's claim of Rs.13,53,75,000/- and also the amount of Rs.4,12,62,500/- owed by Nimbus Sports International Singapore to the respondent No. 1/Prasar Bharti. Even though, in the said letter, the petitioner mentioned about adjustment of the amount payable against the amount payable to the petitioner on account of India Pakistan Cricket Series, 2007, the respondent No. 1 has denied such a claim. In this regard, I may point out the response of the respondent No. 1/Prasar Bharti in its letter dated June 24, 2009 addressed to the lawyers of the petitioner, wherein, it has taken the following stand:

“Your letter also wrongly mentions that a sum of Rs.13,53,75,000/- is due from your client to Prasar

Bharti for the India Australia, 2007 Series comprising 7 ODIs, India Australia, 2007 T-20 match and the India England, 2008 Series. The correct amount is Rs.15,08,25,000/-. The said amount has not been paid despite numerous reminders.

In addition, Nimbus Sports International, Singapore owes to my client a sum of Rs.4,42,16,633 for the India in Bangladesh Series, 2007 India Bangladesh Pakistan Series, 2008 and the India in Sri Lanka Series, 2009. The said sums are covered by separate agreements between Prasar Bharati and Nimbus Sports International, Singapore and have not been paid despite numerous reminders.

With a view to avoid paying the legitimate dues of Prasar Bharati, which are held in trust by it, your client has raised false disputes regarding the India Pakistan and India England Series and come up with false and untenable claims. Whatever be the claims, your client has no right to withhold amounts collected for and on behalf of Prasar Bharti and due to it, nor has it the right to adjust the amounts collected for an on behalf of Prasar Bharati by Nimbus Sports International, Singapore and payable by Nimbus Sports International Singapore to Prasar Bharati. The alleged mandate by Nimbus Sports International, Singapore in favour of your client is illegal, of no avail and indicative of the criminal conspiracy between your client and Nimbus

Sports International Singapore to misappropriate amounts held in trust for and on behalf of Prasar Bharati.

In the circumstances, we hereby call upon your client to pay to Prasar Bharti the aforesaid sum of Rs.15,08,25,000/- alongwith interest thereon @ 18% per annum in terms of my client's letters dated May 26, 2009 (bearing Nos. 2/41/2007-PX, 2/41/2007-PX & 2/20/2008-PX) within fifteen days of the receipt of this notice, failing which we shall be constrained to initiate appropriate criminal and civil proceedings against your client and all persons in charge of and in control of its affairs”.

34. That apart, from the pleadings of the parties before the Tribunal , it is noted, the petitioner has not denied the offer of net projected revenues, for the India England Series 2008, and India Sri Lanka Series, 2009, which would entail Prasar Bharti/respondent No. 1 a revenue of at least 25% of the projected revenues.

35. In the application filed under Section 17 of the Act, the respondent No. 1/Prasar Bharti, has stated that the amounts due to it is as per the figures provided for by the petitioner and the respondent No. 2. In reply to para 11 of the application, on a stand of the respondent No. 1 for a claim of Rs.22,77,67,422/-, the petitioner has stated as under:

“11. The respondent No. 1 is, therefore, entitled to receive

the said sum of Rs. 19,86,82,487/- with interest thereon at such rate as this Tribunal may grant from the date on which the claimant paid to the respondent No. 1 the sum of Rs. 60,93,75,000/-. It is further submitted that the claimant has filed audited revenue statement on or about 22.07.2013 in this proceeding in an attempt to show that the shareable revenue generated on the telecast of the India Pakistan 2007 Cricket Series was Rs.83,10,74,358/-. The said certification is far from accurate and it has suppressed additional time sold by the claimant such special properties and standard commercial elements such as Aston Bands, Action Reply Bugs, Third Umpire Lights, On Air Graphics, Two Super (All pull through) per Over, End of Match packages etc. contemplated in Clause 10 of the agreement for revenue management dated 3.11.2007 between the claimant and respondent No. 1. It is denied that the respondents were liable to pay a sum of Rs.19,36,25,000/- or any part thereof or that it raised false claim of Rs.21 Crores as alleged or at all. It is vehemently denied that the respondent is making any fraudulent claim in relation to the Indi Pakistan Series as alleged or at all”.

36. There is no whisper in reply to para 11 that the amount of Rs.22,77,67,422/- was not payable to the respondent No. 1/Prasar Bharti against the four series/events. I note, the petitioner had raised the issue of India Pakistan Series 2007 in reply to this para, the same shall be

subject to the determination by the Tribunal.

37. Suffice to state, from a reading of the letters/legal notice, the pleadings referred to above, the petitioner claims to have adjusted the amounts payable by it against the revenue it has to get for the India Pakistan Series 2007. The petitioner and respondent No. 2 admit their liability to that extent by giving credit to the respondent No. 1. In other words, the admission is implicit in the very stand of the petitioner. On admissions, an interim award can be passed as admissions are best proof of facts admitted. It has been held in *Nagindas Ramdas's case (supra)* as under:

Admissions if true and clear, are by far the best proof of the facts admitted. Admissions in pleadings or judicial admissions, admissible under Section 58 of the Evidence Act, made by the parties or their agents at or before the hearing of the case, stand on a higher footing than evidentiary admissions. The former class of admissions are fully binding on the party that makes them and constitute a waiver of proof. They by themselves can be made the foundation of the rights of the parties. On the other hand, evidentiary admissions which are receivable at the trial as evidence, are by themselves, not conclusive. They can be shown to be wrong”.

38. The question which is required to be answered is whether the

amount of Rs.22,77,67,422/- can be a subject matter of an interim award when a counter claim has been filed by the petitioner. The issue is no more res-integra having been decided by a Division Bench of this Court in the case of *Numero Uno International Ltd. (supra)* wherein the Division Bench on an identical issue on more or less identical facts was of the following view:-

“6.What then remains to be examined is whether the pendency of a counter claim made by the appellant before the arbitrator was sufficient to dis-entitle the respondent Prasar Bharti from claiming even the admitted amount due from the appellant by way of an interim award in its favour. According to Mr.Jaitley, since the claim made by the respondent and the counter claim of the appellant were eventually to result in a net amount which one or the other party would be required to pay, the payment of any amount which the appellant may have admitted to be due and payable out of the claim made by the respondent would not meet the ends of justice nor was any such payment otherwise necessary. We do not however think so. The legal position as regards the nature of a set off and counter claim was examined in Canara Bank’s case (supra) and summarised thus:

“34. The following things are in common in set off and counter claim:

- (1)None should exceed the pecuniary limits of the jurisdiction of the Court;*
- (2)Both are pleaded in the written statement, if the law governing the Court permits such plea being raised by the defendant in the written statement;*
- (3)The plaintiff is expected to file a written statement in answer to a claim for set off or to a counter claim;*
- (4)Even if permitted to be raised, the Court may in appropriate cases direct for set off or counter claim being tried separately;*
- (5)A defendant cannot be compelled to plead a set off nor a counter claim; he may as well maintain an independent action for enforcing the claim forming subject matter of set off or counter claim;*
- (6)Both are liable to payment of court fee under Sch. 1 Art. 1 of Court-fees Act, 1870;*
- (7)Dismissal of suit or its withdrawal would not debar a set off or counter claim being tried, may be followed by a decree against the plaintiff.”*

7. In the light of the above, there is no gainsaying that the making of a counter claim is tantamounting to institution of an independent suit for the adjudication of

the claim of the defendant. Not only court fee is payable on the counter claim but the counter claim remains unaffected by the claim is a suit in itself. So also the court has always the power to direct a set off or counter claim being tried separately from the original suit. Such being the legal nature and character of a counter claim, its pendency does not denude the arbitrator of the power to make an interim award in the original suit/claim if such an interim award is otherwise justified. What is significant is that the legality of an interim award may be tested by reference to the material on which it is based rather than the areas of dispute that may still call for adjudication between the parties. If an interim award on the basis of material available on record is not justified, the Court may set aside the same under Section 34 of the Act. No interference with an interim award would, however, be permissible only because the defendant has made a counter claim or because some areas of dispute independent of the area covered by the interim award remains to be resolved.”

39. It may be noted here that the judgment of Division Bench of this Court in ***Numero Uno International Ltd. (supra)***, has been followed by a Single Judge of the High Court of Madras in ***Gammon India Ltd. (supra)***.

40. Insofar as the judgment of the Supreme Court in ***K.V. George (supra)***, on which reliance has been placed by Mr. Jayant Bhushan, is

concerned, I note the said judgment is distinguishable on facts. In *K.V. George (supra)*, the Supreme Court was considering a case where the appellant before the Supreme Court, a contractor entered into an contract with respondent on April 22, 1978 in connection with a construction of an embankment across Musaliyar Podom between chainage 2573.5 M to 2827 M of E.B. Main canal of Kallada Irrigation Project. Under the contract-agreement, the work was to be completed by March 30, 1980 i.e. two years from the date of selection notice which was dated March 30, 1978. The appellant having failed to complete the work as per the terms of the contract, the respondent by a notice dated April 26, 1980 cancelled the contract at his risk and cost. Consequent there-to the appellant filed a claim being Arbitration Case No.132/1980 before the named Arbitrator claiming enhancement of rates in respect of the earth work involved in the contract. He also claimed interest on delayed payment and costs. The second respondent i.e. respondent, No. 2-Superintendent Engineer (KIP Circle), filed a defence statement denying its liability for enhancement of rates. It was their case that the extra and excess items were covered by the supplemental agreement. The department has also alleged, the delay was attributable to the contractor. A counter claim was made by the Superintending Engineer (K.I.P.Circle), for Rs.28,84,000/-. The Arbitrator by his order dated

January 22, 1981 made an award in regard to claim No. 1 directing the respondents to pay 35% increase in the agreed rate for the item of Earth work excavation and filling for forming the compacted embankment with earth from barrow area. Claim No. 1 was thus allowed. Claim Nos. 2 and 3 regarding interest were disallowed. As regards counter-claim Nos. 1 and 2, it was ordered that those issues will be considered separately and no award was made. The appellant thereafter filed O.P. (Arb.) No. 81 of 1981 in the court of Sub-Judge, Trivandrum under section 14 of the Arbitration Act for making the award a rule of the court. On objections being raised by the respondents, the Court of the Sub-Judge after hearing the parties by order dated August 18, 1981 remitted the reference to the Arbitrator for fresh consideration on the ground that the Arbitrator did not consider the counter claims made by the respondents. The appellant thereafter filed an application in the court of Sub-Judge praying that the order dated August 18, 1981 may be reviewed. In the, meantime, the appellant filed another Arbitration Case No.276/1980 before the same Arbitrator in respect of the wrongful termination of the contract and also raised 13 items of claims therein. The Arbitrator after going through the objections of the respondents made an award on October 29, 1981 whereby he ordered that the re-arrangement of the work should not be at the risk and cost of the

appellant. As regards claim No. 2, he ordered 30% increase in rates (as per original and supplemental agreement) for all items of work carried out by the appellant except on items covered by Award No. 132 of 1980 dated January 22, 1981. Claim Nos. 3 and 5 were rejected. As regards claim No. 4 an increase of 20% in the agreed rates for these items was allowed. Claim No. 11 regarding interest was disallowed. It was also stated in the award, inter alia, that the claimant shall be entitled to the refund of the security amount as well as refund of the retention amounts, the claimant shall be entitled to his final bill in terms of the Award, the counter claim for recovery of costs of rearrangement of work and also the counter claims filed by the respondent dated April 8, 1981 were declined. The appellant filed O.P. (Arb) No. 296 of 1981 for making the second award a rule of the court. A statement of defence was filed by the respondents. The respondents raised a plea of res judicata. The Sub-Judge, vide order dated March 18, 1982 made the award the Rule of the Court, dismissing the plea of res-judicata raised by the respondents. The respondents filed two appeals before the High Court at Ernakulam, which held that the Arbitrator could not review its order on the facts of the present case, so allowed one appeal. Insofar as the other appeal is concerned, the same was allowed holding that the principles of constructive res judicata would apply to the arbitration case. The

question which fell for consideration before the Supreme Court was whether the Sub Judge could have remanded the case back to the Arbitrator insofar as the first case is concerned. The Supreme Court was of the view that the Arbitrator, without considering the counter claims and keeping the same for subsequent consideration made an award. It held that the award made by the Arbitrator is not sustainable in law. It upheld the order of the High Court whereby the High Court held that the Arbitrator misconducted himself and had set aside the proceedings by directing the Arbitrator to dispose of the reference in accordance with the law, considering the claim of the contractor and the counter claim of the respondents.

41. It is clear from the above, in *K.V. George (supra)*, the claim of the petitioner allowed by the Arbitrator was for enhancement of rates which claim was denied by the department. Some counterclaims were made by the department. The claim allowed, was not on an admission by the department. Unlike in *K.V. George (supra)*, where there was no admission of liability, in the case in hand there were admissions of liability by the petitioner herein and on admissions, the interim award is justified.

42. It is a settled position of law that a judgment is only an authority for what it actually decides in particular facts.

43. Insofar as the reliance placed by Mr.Bhushan on the case of ***Himani Alloys Ltd. (supra)*** is concerned, the Supreme Court was dealing with a case wherein a suit was filed by the respondent TISCO against the appellant for recovery of sum of Rs.2,02,72,505/40 in regard to supply of steel. The respondent filed an application praying for a decree upon admission for Rs.74,57,074/50 alleging that the appellant has admitted the liability for such sum. The said application was resisted by the appellant contending that there was no such admission and was only a tentative agreement to have the accounts verified and not a final settlement or admission of liability. The Supreme Court in para No.9 was of the view that a judgment can be given on an admission but the admission should be categorical. The Supreme Court was also of the view that Order 12 Rule 6 being an enabling provision the power of the Court is discretionary. The Supreme Court further observed that on examination of facts and circumstances the Court has to exercise its judicial discretion keeping in mind that a judgment on admission is a judgment without trial which permanently denies any remedy to the defendant by way of an appeal on merits. The Supreme Court in the facts has held that the Minutes of Meeting on which reliance was placed by the TISCO could not be termed as an admission for the purpose of Order 12 Rule 6 CPC. The facts in the said case are different from the

facts in the case in hand. Hence, the said judgment is distinguishable. In this case the pleadings and the communications/correspondence are clear and have been dealt with above and on the basis of which this Court has held that the petitioner and the respondent No.2 have accepted their liability towards the respondent No.1.

44. Insofar as the judgment of Bombay High Court in the case of *Western Coalfields Ltd. (supra)* is concerned, the said case has been decided keeping in view the fact situation. The Court on a reading of the pleadings has come to a finding that the admissions made by the defendant are not absolute but were conditional and it has been specifically stated that in terms of another contract the said amount is already appropriated. Unlike in *Western Coal Fields Ltd's case (supra)*, in the case in hand the liability towards the respondent No.1 is not disputed even though plea of set off was taken, which was disputed by the respondent No.1, as such a plea need to be decided and till such time it is decided it would, remain a claim and not a debt, for the respondent No. 1 to be pecuniarily liable. Even though Mr. Rajeev Sharma has made submissions on the merit of the counter claim of the petitioner, I refrain from saying anything as the same needs to be decided by the Tribunal. That would not stop the entitlement of the respondent No.1 to get money on the basis of admissions with regard to 4 series/events. As

held by the Division Bench of this Court in *Numero Uno International Ltd.'s case (supra)*, if a liability is admitted the amount can be awarded by the Arbitrator, which has been done in the present case.

45. Insofar as the submission of Mr.Jayant Bhushan, learned Senior Counsel for the petitioner, on limitation is concerned, on a reading of the impugned award it is seen and noted that no such plea was urged before the Tribunal. The only submission advanced by the learned Senior Counsel for the petitioner before the Tribunal was that the interim award/decreed cannot be granted in view of the counterclaim. In the absence of any submission on limitation, there was no occasion for the Tribunal to consider and decide the issue of limitation. There is no jurisdictional error.

46. The submission of Mr.Jayant Bhushan that the legal notice dated May 16, 2009 cannot be construed as an acknowledgement of existing liability as the liability was discharged by way of an adjustment by relying on the judgment of the Supreme Court in *Valliamma Champaka Pillai's case (supra)* is concerned, the same also need to be rejected in view of my conclusion above that till such time, the claim of the petitioner with regard to India Pakistan Series 2007 is decided, it would remain a claim and would not fructify as a “liability” to be adjusted.

47. In *Valliamma Champaka Pillai's case (supra)*, the Supreme Court

was dealing with a case where the release deed executed by the original mortgagee referred to a past liability. The deed also recorded that the payment has been made. It was in that context, the Supreme Court held that it does not amount to a subsisting liability.

48. Insofar as the submission of Mr.Jayant Bhushan that the limitation had started running on April 02, 2008 and the reference having been made to the Arbitral Tribunal on August 31, 2011 the claims were barred by time, is concerned, this submission of Mr.Jayant Bhushan also need to be rejected for the reason that vide letter dated April 02, 2008 the petitioner had acknowledged the liability of the petitioner and the respondent No.2 towards the respondent No.1/Prasar Bharti with regard to India Australia Series 2007 only. Vide notice dated May 16, 2009 the acknowledgment of liability was with regard to most of the matches played between the years 2007-2009 and included the India Australia Series, 2007 as well. I agree with the submission of Mr.Rajeev Sharma, learned counsel for the respondent No. 1 who had placed reliance on Explanation to Section 18 of the Limitation Act which stipulates that for the purpose of the said Section, acknowledgment may be sufficient if it is coupled with a claim to set off. The letter dated May 16, 2009 is an acknowledgement of liability with a stand of adjustment and the invocation of arbitration clause was vide letter dated June 1, 2009, the

agreement executed between the parties to refer to the disputes to the Arbitral Tribunal was on August 31, 2011 and the claims having been filed in January 2012, the claims would be within time.

49. Insofar as the submission of Mr. Jayant Bhushan that the interim award was passed only because the petitioner had not complied with the interim order is concerned, I do not see anything illegal. The Tribunal has granted the interim award after noting the non compliance of first interim order dated May 6, 2014 to furnish a bank guarantee; failure to deposit an amount of Rs.22 Crores on or before November 1, 2014, and also failure to state clearly whether they possess any assets within India. In fact I note, despite order dated October 31, 2014 in Arb. Appeal No.30/2014, the petitioner neither in that appeal nor even in this petition has filed details of its unencumbered assets located in this country. In the given circumstances, as it is a settled law, a decree on admission under Order 12 Rule 6 C.P.C. is a discretionary relief and the Tribunal having exercised the discretion by way of an interim award, the same cannot be interfered with.

50. Insofar as, the submissions of Mr. Jayant Bhushan that the Tribunal without allowing the petitioner to complete the inspection of the documents and adjudicating the application for discovery of documents had proceeded with the hearing and passed an interim

order/interim award in favour of the respondent No.1 is concerned, the inspection of the documents sought for by the petitioner and respondent No.2 were with regard to India Pakistan Series 2007 and the said documents have no concern with the application for interim award filed by the respondent No.1 with regard to other four series/events. The Tribunal was justified to hold that the inspection and discovery of the documents asked for by the petitioner and the respondent No.2 was either to substantiate their claim/counter claim or with a view to enable them to increase the amount claimed by them by way of counter claim and the said documents are yet to be established at trial. Meaningfully read, the application for inspection and discovery of documents had no effect/bearing on the application for interim award. No prejudice was caused to the petitioner. There was no violation of principle of natural justice as alleged by Mr. Bhushan. This objection also need to be rejected. No submission has been made on the competency of the Tribunal to pass an interim award.

51. In view of above discussion and keeping in view the position of law that passing of an interim award based on admissions is matter of discretion and this Court while exercising power under Section 34 of the Act, would not like to interfere with the impugned interim award dated September 16, 2014. The petition is accordingly dismissed with no order

as to costs.

(V.KAMESWAR RAO)
JUDGE

APRIL 06, 2015
akb