$~
* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
7.
\+ **O.M.P. 278/2015**

RAJAT JAIN & ANR. ..... Petitioners
Through: Mr. Sudhir Kumar Sharma, Advocate.

versus

RELIANCE INFOCOM LTD. ..... Respondent
Through: Mr. Rohit Jain, Advocate.

CORAM: JUSTICE S. MURALIDHAR

<u>O R D E R</u>
% **24.11.2016**

<u>IA No. 8716/2015 (for condonation of delay in filing the petition)</u>

1. For the reasons stated in the application, the delay in filing the petition is condoned.

2. The application is disposed of.

<u>O.M.P. 278/2015</u>

3. Mr. Rajat Jain and Ms. Monika Jain have filed this petition under Section 34 of the Arbitration and Conciliation Act, 1996 ('Act') challenging the Award dated 17th December, 2014 passed by the Arbitral Tribunal ('AT') in the disputes between the Petitioners and the Respondent, Reliance Infocom Ltd. ('RIL'), arising out of a lease agreement dated 1st October, 2005 whereby RIL took on lease the terrace of the premises of the Petitioners at Gandhi Nagar Market, Delhi for erecting and installing a telecom antenna

tower.

4. The monthly rent was Rs.20,000 inclusive of all taxes. The lease was for a period of 20 years with an escalation of 15% in lease rental after every five years. The terms of the lease included the obligation of the lessee not to damage the terrace in any manner (except the usual wear and tear) and to maintain the premises in a proper habitable condition carrying out major structural repairs and maintenance whenever necessary. RIL also agreed to pay the sum of Rs.60,000 as security deposit which was to be refunded at the time of vacating the premises.

5. After RIL installed the antenna tower and related machines and equipments, some of the residents of the building filed Civil Suit No. 1201/2006 against the owners of the building as well as RIL in the Court of the Senior Civil Judge for declaration and injunction. The two Petitioners herein were also impleaded as parties.

6. According to the Petitioners, RIL stopped paying rent for the premises with effect from October 2006. It is stated that on 18th June, 2007, RIL approached the Petitioner for permission to dismantle the tower which was granted. On 10th March, 2007, a legal notice was served on RIL for payment of rent for the months of October – December 2006 and January – March 2007 together with interest. A notice dated 4th February, 2008 and another notice dated 4th August, 2008 was sent demanding rent payable and claiming damages for contravening Clause 3 (f) of the Lease Agreement. In the notice dated 4th August 2008, the Petitioner invoked clause 7 (g) of the Lease Agreement seeking the appointment of the AT.

7. On 11th July, 2008, a compromise was recorded in Suit No. 1201 of 2006 and the suit was disposed of in terms of the compromise. Thereafter, the Petitioners filed Arbitration Petition No. 295 of 2009 for the appointment of an Arbitrator.

8. Before the AT, the Petitioners filed 9 claims. Claim No. 1 was for Rs. 11,90,000 towards arrears of rent for the period between October 2006 and September 2010 together with interest. Claim No. 2 was for Rs. 37,20,000 towards major damages to the property together with interest. Claim No. 3 was for a sum of Rs. 46,80,000 for the lock-in-period from 2010 to 2025. Claim No. 4 was for Rs. 6,94,000 towards payment of the security agency. Claim No. 5 was for Rs. 9,00,000 for removal of debris from the roof top. Claim No. 6 was for Rs. 1,05,400 towards litigation expenses. Claim No. 7 was for a sum of Rs. 50,00,000 towards loss of social prestige and mental tension and turmoil. Petitioners further claimed *pendente lite* and future interest @ 24% p.a. in Claim No. 8 and costs of arbitration in Claim No. 9. Therefore, the total sum claimed was Rs.1,47,73,800.

9. RIL filed a reply to the claims and also a counter-claim in the sum of Rs.1,29,80,000 together with interest @ 24% per annum.

10. The AT framed the following issues on 16th February, 2011 and 26th February, 2011:

> "(1) Whether the lease agreement dated 1st October, 2005 cannot be looked into being an un-registered document?
>
> (2) Whether the claimant is entitled to the claims as claimed in the Statement of Claim?

(3) From what date and at which rate claimant is entitled to rent from the Respondent?

(4) Whether the Claimant is entitled to interest? If so, at what rate and from which date?

(5) Whether due to the conduct of the claimant and his power agent the alleged agreement got frustrated?

(6) Whether the Respondent suffered loss as mentioned in the counter claim 1 to 9?

(7) Whether the Respondent is entitled to interest? If so, at what rate and from which date?"

11. The Petitioners examined five witnesses whereas RIL examined one. By a majority of 2:1, the AT passed the impugned Award on 17th December, 2014. The majority partly allowed Claim Nos. 1, 2 and 5 and awarded a sum of Rs. 5,35,000 in favour of the Petitioners. As regards Claim No. 1, a sum of Rs. 4,60,000 was awarded being the rent from October 2006 till 31st August, 2008. Rs. 50,000 was awarded against Claim No. 2 and Rs. 25,000 against Claim No. 5. The other claims were rejected.

12. A dissenting Award was given by the third Member. He allowed Claim Nos. 1, 4 and 6 and partly allowed Claim No. 2. The total sum awarded by the third Member was Rs. 67,64,322. The AT rejected the counter-claims. The findings of the majority can be summarised as under:

(i) While the Petitioners were entitled to receive rent from October 2006 till 31st August 2008 at Rs. 20,000 per month, they were not entitled to rent for the period October 2008 to September 2009 since it was evident that RIL was not permitted to operate its tower from the premises after a compromise order dated 11th July, 2008 in the suit on the basis of the statement of the owner of the premises. The only tower that was permitted to be operated was the DTH tower of Hutch.

(ii) The evidence of K.K. Nagpal, Architect (CW-2), who examined the premises revealed that the demolition of the entire premises was necessitated because of the leakage. The estimate of Rs. 25,00,000 was made for the construction of entire building and that entire cost could not be fastened on to RIL. Inasmuch as the seepage in the walls was because of installation of the tower, RIL was asked to pay Rs. 50,000 for repairs of the walls. For removal of debris as well, the Petitioners were awarded Rs. 25,000. Thus against Claim Nos. 2 and 5, a total sum of Rs. 75,000 was awarded. The other claims were held to be not established by the Petitioners.

13. Learned counsel for the Petitioners took the Court through the dissenting Award and sought to submit that RIL had deliberately not opposed the prayer for disposal of the suit on the basis of the compromise. The Court is unable to agree with the above submission. If, indeed, there was an apprehension that RIL was in connivance with the Plaintiffs in the suit, then the Petitioners could have, as parties to the suit, opposed the recording of the compromise and even challenged it on that ground by way of an appeal. Neither of these courses was adopted by the Petitioners.

14. The Court in the present petition under Section 34 of the Act is not sitting in appeal. In other words, it is not expected to re-appreciate the evidence and interfere with the Award only because a different conclusion is

possible on anlaysing such evidence. In order to persuade the Court to interfere with the impugned Award, the Petitioner has to meet a high threshold as has been set out under Section 34 of the Act.

15. Having heard learned counsel for the parties and having examined the arbitral record, the Court is unable to be persuaded to hold that any part of the majority Award suffers from any legal infirmity attracting any of the grounds in Section 34 of the Act. Each of the claims has been carefully analysed in light of the evidence produced. Since the findings are factual and on the basis of the evidence, no ground is made out for interference with the impugned Award.

16. The petition is, accordingly, dismissed but in the circumstances with no order as to costs.

S. MURALIDHAR, J

NOVEMBER 24, 2016
dn