

IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 12.07.2017

+ **O.M.P. (COMM) 169/2017 & IA No.11146/2016**

MOVIE TIMES CINEPLEX PVT. LTD.

..... Petitioner

Versus

MRG DEVELOPERS PVT LTD & ORS.

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr Harish Malhotra, Senior Advocate with
Mr Rishab Garg, Advocates.

For the Respondents: Mr A. S. Rastogi and Ms Neha Rajpal, Advocates
for R-1 and R-3.
Mr S. Khan and Mr Gurpratap Singh, Advocates
for R-2.

CORAM

HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. Movie Times Cineplex Pvt. Ltd. (hereafter 'Movie Times') has filed the present petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereafter 'the Act') assailing the arbitral award dated 01.06.2016 (hereafter 'the impugned award') passed by the sole arbitrator in the context of the disputes that had arisen between the parties in respect of a Lease Deed dated 24.07.2006.

2. The disputes between the parties essentially relate to the extent of the area leased to Movie Times under the Lease Deed dated 24.07.2006 (hereafter 'the Lease Deed'). It is the case of Movie Times that it was

given possession of an area of 13235 sq. ft. instead of 16000 sq. ft. (as recorded in the Lease Deed) and therefore, it was entitled to a proportional reduction in the lease rentals and also qualified to recover the excess amount paid in respect of Common Area Maintenance (CAM) charges. On the other hand, the respondents raised counterclaims, *inter alia*, seeking the rental withheld as well as unpaid CAM charges along with interest.

3. Briefly stated, the relevant facts necessary to address the controversy involved in the present petition are as under:-

3.1 Movie Times entered into an agreement of lease dated 23.06.2004 with respondent no.1, MRG Developers Pvt. Ltd. (hereafter 'MRG'), to run a Cineplex in the property called 'Pacific North', Pitampura, Delhi. Movie Times was handed over possession of the demised premises for fit-outs. Movie Times and MRG also entered into a Lease Deed dated 24.07.2006. In terms of the Lease Deed, Movie Times was leased an area of 16000 sq. ft. comprising of three Cineplexes, canteen, lobby, projector room and a booking office at the ground floor. The lease rentals commenced with the launch of the Multiplex on 11.08.2006.

3.2 Thereafter, the leased portion of the property was sold by MRG to respondent no.2, Sh. Shankar Lal Gupta (hereafter 'SLG'). On the purchase of the leased premises, a tripartite agreement captioned as 'Deed of Adherence' dated 01.04.2007 (hereafter 'the Adherence Deed') was executed by Movie Times, MRG and SLG, in terms of which, the parties therein agreed to be bound by the terms of the Lease Deed.

3.3 No separate agreement existed between Movie Times and respondent no.3, A & N Maintenance Pvt. Ltd. (hereafter 'ANM'), who was

appointed as the maintenance agency by MRG. The maintenance charges were payable at the rate of ₹21 per sq. ft. for the area of 16000 sq. ft., as agreed between Movie Times and MRG. Movie Times claims that the rate was subject to actual maintenance charges; in case, the actual charges were less than ₹21 per sq. ft., Movie Times had to pay lesser amount.

3.4 Disputes arose between the parties in respect of the extent of area leased to Movie Times. A series of correspondence was exchanged between the parties in this regard. Movie Times claimed that only an area of 13235 sq. ft. had been handed over to Movie Times, instead of an area of 16000 sq. ft. (as specified in the Lease Deed) and it had been paying monthly rent of ₹6,10,000/- (for 16000 sq ft.) as against ₹5,04,000/- for 13235 sq. ft.

4. This led Movie Times to file a suit (being CS(OS) 451/2008) against the respondents seeking an injunction and for recovery of rent against MRG and SLG in respect of the leased premises. By an *ex parte ad interim* order dated 14.03.2008, this Court restrained the respondents from causing any interference or interruption in the supply of electricity, water, and other amenities. This Court disposed of the suit (CS(OS) 451/2008) by an order dated 07.10.2009, directing Movie Times to take recourse to arbitration.

5. Thereafter, Movie Times preferred a petition (being OMP 675/2009 captioned as ***M/s Movie Times Cineplex Pvt. Ltd. v. M/s MRG Developers Pvt. Ltd. & Others***) under Section 9 of the Act to restrain the respondents from causing any interference or interruption in the supply of electricity, water and other amenities. By an order dated 17.11.2009, Movie Times was directed to pay ₹5,04,584/- p.m. to the respondents from November 2009 for use and occupation of the leased premises and the disputed

monthly rent of ₹1,06,000/- was directed to be deposited in this Court every month. This Court, by an order dated 25.11.2010, disposed of OMP 675/2009 by allowing the respondents to withdraw the deposited amount against adequate security. By the same order, Mr S M Chopra, ADJ (Retd.) was appointed as the sole arbitrator to adjudicate the disputes between the parties.

6. Before the arbitrator, Movie Times raised the following claims:-

“(1) An award that the respondent is not entitled to claim rent for 16000 sft, whereas the respondents are entitled to rent for 13235 sft;

(2) The respondents have no right to claim common area maintenance charges for any area beyond the actual area in occupation of the claimant i.e. 13235 sft;

(3) The respondents have no right to disconnect electricity supply or cause any disruption in the air-conditioning facility provided to the claimant so long as the claimant is paying rent for the actual area provided to the claimant and is paying electricity charges as per consumption;

(4) Refund of (i) Rs. 4,68,323/- from the respondent No.1 towards refund of rent for the period 11.08.2006 to 31.3.2007; (ii) Rs.6,10,000/- from the respondent No.2 towards refund of rent for the period 1.4.2007 to 31.3.2008; (iii) Rs.6,66,817/- from the respondent No.3 and respondent No.1 jointly and severally towards refund of extra amount of maintenance charges for the period of 11.8.2006 to 31.1.2008;

(5) Rs.5,00,000/- towards cost of litigation and arbitration.”

7. Respondents also filed their counterclaims which are as follows:-

“(1) An award declaring and holding that the claimant is liable to pay the monthly occupation charges @ Rs.6,10,000/- and the common area maintenance charges

@ Rs.3,70,708/- per month and as increased from time to time and the electricity charges and other charges, as agreed to between the parties;

(2) Recovery of (i) Rs.45,98,648.00 towards occupation charges; (ii) Rs.11,64,469.00 towards interest @ 18% p.a.; (iii) Rs.15,86,901.00 towards Service Tax till February, 2011; (iv) Rs.78,88,589.00 towards common area maintenance charges till February, 2011 alongwith interest @ 18% thereon; (v) pendente lite and future interest @ 18% p.a. till payment;

(3) a Declaration holding that the claimant has been handed over the entire area under the lease comprising of 3 screens and provision of 800 seats and for the purpose of calculation of common area maintenance charges and other charges, the area was mentioned a 16,000 sq. ft. as 'super area' and even otherwise the claimant is in possession of 16,000 sq. ft.;

(4) Recovery of possession of the Demised Premises;

(5) Mesne profits/damages @ Rs.6,10,000/- p.m. or at any other rate under Order 20 Rule 12 CPC w.e.f. 31.12.2009 till vacation of the demised premises;

(6) Rs.10 lakh as Litigation cost.”

8. During the arbitral proceedings, an application was filed by Movie Times for amending its statement of claims by way of incorporating three more claims. The said application was allowed and by an order dated 05.10.2015, the arbitrator held that the issue in regard to justification of the disconnection of electricity and the issue of stoppage of maintenance by the respondents, as alleged by Movie Times, would be adjudicated along with the other claims and counterclaims.

9. After considering the material on record, the contention of Movie Times that the area of the leased premises could not have been measured despite having access to it under the lease deed dated 23.06.2004, was rejected by the arbitrator. The plea of Movie Times regarding a part of the leased premises not being handed over did not find favour with the arbitrator as the possession of the leased premises had been given to Movie times much prior to the execution of the Lease Deed.

10. The arbitrator held that in case, Movie Times had any doubts regarding the area of the leased premises, it would not have executed the Lease Deed dated 24.07.2006 followed by the activation of the rental liability from 11.08.2006 and the execution of the Adherence Deed.

11. The arbitrator recorded that the completion plans, on the basis of which Movie Times had set up its claim - of occupying 13235 sq. ft. instead of 16000 sq. ft. as contemplated under the Lease Deed - were not placed on record.

12. The arbitrator also rejected the plea that the Cineplex had no office area in view of the photographs on record suggesting to the contrary.

13. In this background, the plea of Movie Times of occupying an area less than 16000 sq. ft., was rejected. The arbitrator proceeded to hold that during the subsistence of the lease, Movie Times is liable to pay rent, service tax, interest on delay in payment of rent, maintenance and other recurring charges for electricity & water, as stipulated in the Lease Deed and the Adherence Deed.

14. Further, the counterclaim for recovery of possession of the leased premises was rejected in view of the order dated 25.11.2010 passed in

OMP 675/2009, allowing Movie Times to continue to pay rent. The arbitrator held that the direction for payment/deposit of rent amounts to subsistence of lease, making the occupation of the premises by the tenant lawful and authorized.

15. In regard to payment of maintenance charges, the arbitrator was of the view that Movie Times would be entitled to maintenance services in future only on payment of maintenance charges and recurring expenses of electricity for the preceding month. The arbitrator also observed that Movie Times had appropriated to itself the genset provided by ANM in discharge of its obligations. In the circumstances, ANM was not held liable for the disconnection of electricity or the non-provision of maintenance services to Movie Times.

16. In line with the findings on the issue of rent payable, the arbitrator also held that maintenance charges were payable by Movie Times at the rate as stipulated in the Lease Deed. ANM was held entitled to receive CAM charges so long as Movie Times remains in possession of the leased premises. On payment of the arrears of CAM charges, ANM was directed to restore the common area services. Thus, all the claims filed by Movie Times stood dismissed.

Submissions

17. Mr Harish Malhotra, learned senior counsel appearing for Movie Times, contended that this Court had specifically directed the arbitrator to determine the area let out to Movie Times, however, he had failed to do so. He contended that Movie Times had produced a report of an architect which indicated that the area of the demised premises was 13235 sq. ft. and

not 16000 sq. ft., as indicated in the Lease Deed. The said report was rejected on the ground that it had only considered the carpet area. However, even if an adjustment is made on account of thickness of the walls, it would only make a minor difference and the demised area handed over to Movie Times could under no circumstances be considered as 16000 sq. ft. He next stated that the actual area could have been established by producing the building plans. However, no direction for production of such plans was issued by the arbitrator and this was a fatal flaw in the impugned award and, therefore, it was liable to be set aside.

18. He next contended that Movie Times had deposited the rent regularly till November 2012 but despite the same, electricity had been wrongly disconnected and therefore Movie Times had stopped paying rent as it was not possible for Movie Times to enjoy the leased premises without electricity. He further stated that Movie Times was constrained to use a generator available for power backup after getting the same repaired at considerable cost. He stated that the arbitrator had grossly erred in directing payment of CAM charges from August 2011 till the date of the award as there was no dispute that maintenance services were not rendered after June 2011 and therefore, Movie Times had no obligation to pay such charges. He also referred to clause 5.2 of the Lease Deed which provided that maintenance services were stipulated to be charged for providing elevators, lighting facility for common area, air conditioning in the common area, parking and other common facilities. He submitted that since there was no electricity in the complex after October 2012, therefore, there could be no question of providing maintenance services and thus the decision of the arbitrator to award such charges was perverse and wholly unsustainable.

19. He referred to the decision of the Supreme Court in ***K.P. Poullose v. State of Kerala and Anr.: AIR 1975 SC 1259*** and submitted that the arbitrator erred in not calling for production of the building plans. He also referred to the decision of the Supreme Court in ***Union of India v. V. Pundarikakshudu and Sons and Anr.: 2003 8 SCC 168*** in support of his contention that non-consideration of relevant facts would render the arbitral award liable to be set aside.

20. He also relied on the decision of a Coordinate Bench of this Court in ***Engineering Development Corporation v. Municipal Corporation of Delhi: 2007 SCC OnLine Del 1330*** in support of his contention that an arbitral award contrary to the material on record is unsustainable.

21. Mr Rastogi, learned counsel appearing for MRG and ANM countered the aforesaid submissions. He stated that the arbitrator had considered all materials on record and the impugned award could not be interfered with. He relied on the decision of this Court in ***MC-Rotem-Melco Consortium & Ors. v. M/s Delhi Metro Rail Corporation Limited: (2015) 217 DLT 11***. He also relied on the decisions of this Court in ***Vinay Kumar Aggarwal v. Pace Stock Broking Services Pvt. Ltd.: 2012 (4) ArbLR 421 (Delhi)***, ***PEC Limited v. ADM Asia Pacific Trading Pte Ltd.: (2016) 235 DLT 207*** and ***Connaught Plaza Restaurants Pvt. Ltd. v. Mrs. Niamat Kaur: 2013 (3) ArbLR 19 (Delhi)***. On the strength of the aforesaid decisions, Mr Rastogi contended that the scope of interference under Section 34 of the Act is highly restricted and the court could not reappraise the evidence as if it were an appellate court. He also drew the attention of this Court to various findings returned by the arbitrator as well as certain evidence placed before the arbitrator. He further contended that the

contention that ANM had not provided maintenance services was incorrect. He stated that the elevators, escalators, fittings and fixtures as well as genset equipment, PHU, chiller plants had been provided and were in working conditions. In addition, ANM had also paid the salaries to staff and employees for maintenance of machineries, which were regularly incurred. He also submitted that equipment such as the genset was also being used by Movie Times for its business purposes. The electricity was disconnected due to non-payment of charges by Movie Times and therefore that could not be the reason for Movie Times to deprive ANM of its legitimate dues despite providing the necessary equipment and services.

Reasoning and Conclusion

22. The first and foremost question to be addressed is whether the decision of the arbitrator to reject Movie Times' claim that the area handed over was less than 16000 sq. ft., is perverse and patently illegal. It is evident that the arbitrator has not conducted the exercise of ascertaining the exact area under the occupation of Movie Times. The arbitrator has rejected Movie Times' submission that the area in question was less than 16000 sq. ft., only on the basis that Movie Times had failed to establish the same. Mr Malhotra's contention that this Court has specifically directed the arbitrator to determine the area under the occupation of Movie Times is erroneous. The arbitrator was appointed by an order dated 25.11.2010 passed in OMP No.675/2009, with the consent of the parties, to adjudicate the claims and counterclaims of the parties arising out of the aforesaid agreement (Lease Deed dated 24.07.2006). Thus, the arbitrator was only required to consider the claims and counterclaims and, therefore, there was

no specific direction issued to the arbitrator, charging him with the responsibility of determining the exact area handed over to Movie Times.

23. In the impugned award, the arbitrator had observed that it was required to record a finding of fact on the question “*whether the area leased out is not 16000 sq. ft. as disclosed in the lease deed, but the same is less, as contended by the petitioner (claimant herein)*”. This Court by an order dated 17.11.2009 in OMP 675/2009 had directed Movie Times to pay the undisputed amount of ₹5,04,584/- p.m. to the respondents for occupation of the premises and further deposit a sum of ₹1,06,000/- p.m. in this Court. The said sum was directed to be refunded if Movie Times was not found liable to pay the aforesaid amount. Thus, plainly, the arbitrator had to determine whether Movie Times’ claim that it was not liable to pay the lease rental of ₹6,10,000/- p.m., was merited.

24. The arbitrator after considering the material on record rejected Movie Times’ claim mainly because the arbitrator was of the view that Movie Times had failed to establish that the area in its occupation was less than 16000 sq. ft. The aforesaid conclusion was based on the fact that Movie Times and MRG had entered into an agreement on 23.06.2004 whereby the area to be leased to Movie Times was specifically demarcated. At the relevant time (when possession of the demised premises was handed over to Movie Times), there was no claim or assertion that any further area remained to be handed over to Movie Times. Movie Times had, thereafter, carried out the fit-outs and was in occupation of the premises for more than two years.

25. It is also admitted that Movie Times sent a letter dated 06.02.2006 to MRG, for the first time indicating that the area in its possession was 14620

sq. ft. This was refuted by MRG by its letter dated 11.02.2006. Thus, the controversy as to the area in possession of Movie Times had arisen prior to execution of the Lease Deed and it was open for Movie Times to insist on resolution of the same prior to the execution of the Lease Deed. However, Movie Times did not pursue the matter and entered into the Lease Deed on 24.07.2006 without any protest and/or refuting its liability to pay the lease rentals as stipulated in the Lease Deed. Thereafter, Movie Times, MRG and SLG entered into the Adherence Deed on 01.04.2007 and even at that stage, no protest was made by Movie Times regarding the extent of area occupied by it.

26. SLG was a *bonafide* purchaser and had acquired the demised premises on the basis that it measured 16000 sq. ft., which was in possession of Movie Times.

27. It was pleaded by Movie Times that the area under its occupation could not be measured prior to 2006 since it was under fit-outs. The arbitrator found no merit in this contention and concluded that till the commencement of the rental liability from 11.08.2006, Movie Times had possession of the premises, making it easy to measure the area. This Court finds no infirmity with the aforesaid conclusion. The arbitrator also reasoned that Movie Times would have sorted out any doubt as to the area, if any, prior to the execution of the Lease Deed or the Adherence Deed. This Court is also unable to find any flaw in this reasoning.

28. Movie Times, after having taken possession of the area in question had occupied it for over two years before executing the Lease Deed and the Adherence Deed. In the circumstances, it would obviously require to present exceptional evidence to show that (i) it was unaware of the area in

question being short and (ii) that the area in question is infact less than what was stated in the Lease Deed. The onus to establish the same was squarely on Movie Times.

29. In the response filed by Movie Times to the counterclaims preferred by the respondents, Movie Times asserted that it had initially believed that the area of leased premises was 16000 sq. ft., but later it was found to be much less. It was further asserted that this “*fact came to the notice of the claimant*” (Movie Times) “*when the approved completion drawings of the premises came to the hand of the claimant*” (Movie Times) “*and it was revealed that the demised premises consisted only on 13235 sq. ft*”. This was in variance with Movie Times’ pleadings in its statement of claims wherein it had asserted that the area in its possession was 14400 sq. ft.

30. In view of the above pleadings, it was incumbent upon Movie Times to establish from the approved completion drawings, which was stated to be in its possession, that the demised area only measured 13235 sq. ft. However, these drawings, which form the basis of Movie Times’ claim, were not produced. Mr Malhotra contended that the arbitrator ought to have directed production of the approved drawings. However, this contention is wholly bereft of any merit as it was Movie Times’ stated case that it was in possession of the approved completion drawings. Thus, it was incumbent upon Movie Times to produce those drawings in support of its case.

31. Movie Times produced a report from one M/s Garg A. Associates, indicating that the area in its occupation was 13517.826 sq. ft. and the further area of 1449.083 sq. ft. was not useable. Mr Ashok Garg, the

author of the report was subjected to cross-examination. The arbitrator considered the evidence and found that the witness (Ashok Garg, CW2) had attempted to mislead the arbitrator; although in his report he had stated that he had measured the covered area, he admitted that he had taken the measurements “*internally*”. He also admitted to excluding 1449.083 sq. ft. of the covered area on the pretext that it was not useable (although that was not the aspect for his consideration). The arbitrator also found that the aforesaid witness had submitted that there was no office area in the leased premises, despite being confronted with photographs showing the existence of an ongoing office therein. Thus, the testimony of the witness was not found to be credible and, therefore, the arbitrator rejected the same.

32. MRG had also produced an architect’s report, indicating that the area in question was 17516.359 sq. ft. The arbitrator did not consider the same as it was not necessary for him to determine the exact area in occupation of Movie Times. Since Movie Times had failed to establish, by any credible evidence, that the area in its occupation was less than 16000 sq. ft., the arbitrator rejected its claim in that regard. This Court finds no infirmity with the aforesaid view.

33. It is trite law that while exercising the power of judicial review under Section 34 of the Act, this Court is not called upon to reappraise the evidence and supplant its opinion in place of that of the arbitrator. Unless any of the grounds as set out in Section 34(2) of the Act are established, no interference with the arbitral award would be called for. In the present case, Movie Times has sought to place its case under Section 34(2)(b)(ii) of the Act, that is, the impugned award is contrary to the public policy of India. This Court is unable to accept the contention that the decision of the

arbitrator in rejecting the claims made by Movie Times with regard to the area in its occupation, is either perverse, patently illegal or is in contravention of the fundamental policy of India. The decision in the case of **K. P. Poulose** (*supra*) is of no assistance to Movie Times as in that case, the Court had come to a finding that the arbitrator misconducted himself by arriving at a conclusion that was inconsistent to his own finding and further, failed to consider relevant documents which would have had an important bearing on the outcome of the proceedings. The said decision is not an authority for the proposition that the arbitrator is required to direct the claimant to produce the documents that the claimant seeks to rely on; it is for the claimant to produce all relevant material (which is in his possession) in support of his claim.

34. The next question to be examined is whether the decision of the arbitrator to award CAM charges till the date of the award is perverse and patently illegal. In this regard, it is relevant to state that Movie Times had filed the statement of claims on 31.12.2010. The statement of defence was filed subsequently on 23.02.2011. The respondents had preferred their counterclaims on 08.04.2011 and the written statement to the said counterclaims was filed by Movie Times in July 2011. At the material time, the principal dispute between the parties was only concerning the extent of area handed over to Movie Times. Apparently, during the course of the arbitral proceedings, Movie Times stopped paying the CAM charges. According to Movie Times, it had paid CAM charges till November 2011 and had stopped paying the same since MRG/ANM had stopped maintenance facilities in June 2011. This is disputed by MRG/ANM and according to them, the maintenance facilities continued. However, it is not disputed that after October 2012, electricity was

discontinued by the utility provider. Movie Times claims that in this view, there could be no dispute that maintenance services had not been provided and, therefore, Movie Times was absolved of its liability to pay the CAM charges. In this regard, Movie Times filed an application under Order VI Rule 17 of the Code of Civil Procedure, 1908 dated 21.08.2015, seeking to raise claims on account of lack of maintenance services and the consequential expenses incurred by Movie Times. Movie Times sought to raise a claim for a sum of ₹1,41,31,239/- towards diesel and repair of genset (claim no.6); claim of ₹2,49,300/- for recovering house tax paid by Movie Times to North Delhi Municipal Corporation on behalf of SLG (claim no.7); and claim for declaration that ANM had totally stopped providing any maintenance facilities and thus it is not entitled to any maintenance charges (claim no.8). The said application was considered by the arbitrator on 05.10.2015 and the arbitrator noted that Movie Times was using the genset, a property of ANM, for generation of electricity. Movie Times was permitted to raise claim nos.6 and 8 and the pleadings of the application were directed to be treated as supplementary pleadings.

35. After considering the material on record, the arbitrator concluded that electricity was disconnected in October 2012, as in the proceedings held on 18.12.2012, Mr Anil Kapoor, Director of Movie Times has stated that he was willing to pay rent/CAM charges till that date. In his cross-examination, he had stated that Movie Times had paid maintenance charges till November 2011. However, the arbitrator found that there was no other evidence to establish that Movie Times had paid any maintenance charges after August 2011. The arbitrator further held that payments of maintenance charges and recurring expenses of electricity in the preceding month would entitle Movie Times for future services and not otherwise.

The arbitrator also found that in the given circumstances, “*disconnection of the electricity connection was invited by the claimant*” (Movie Times). This Court does not find the said finding to be in any manner perverse or unsustainable. Admittedly, Movie Times had stopped paying the requisite charges in 2011 and thus, MRG/ANM could not be expected to continue incurring expenditure on electricity consumed by Movie Times. A perusal of the award clearly indicates that the arbitrator had come to the finding to the effect that Movie Times was in default of its obligations.

36. In the aforesaid circumstances, the only question to be addressed is whether the award of the arbitrator directing payment of CAM charges till the date of the award is perverse or patently illegal. Plainly, there was disruption in the maintenance services as the electricity connection had been disconnected by the utility provider. The elevators and other amenities that require electricity would be available only if electricity was available. However, the arbitrator did not accept that maintenance services had “*totally stopped*”, as was the case set up by Movie Times. Indisputably, MRG/ANM had installed elevators, escalators, common light fixtures, equipment, AHU, chiller plants that were necessary to provide the services. Movie Times had appropriated the genset for the purposes of backup power. Maintenance charges would also include certain charges towards equipment and infrastructure provided as well as salaries of staff and employees. In the circumstances, the arbitrator did not accept the plea that maintenance services were totally stopped. This Court is unable to find fault with the said finding. The CAM charges were for a bundle of services including elevators, common air conditioning, power backup, etc. As stated earlier, the necessary equipment for such services has been installed and such services had also been availed of by Movie Times to the full extent in

the past. Movie Times was itself responsible for disconnection of electricity (disruption in the services) and thus was itself liable for non-availability of services, the arrangement for which was made by MRG/ANM. It is difficult to accept that the approach of the arbitrator in not bifurcating the CAM charges to account for non-availability of electricity is perverse. In such circumstances, the arbitrator has awarded CAM charges in favour of MRG/ANM, without any award of interest. Clearly, in view of the findings, the claims made by Movie Times for expenditure on diesel and for a declaration that maintenance services have been totally stopped could not be granted. Given the findings, this Court is unable to accept that the award of CAM charges is perverse or opposed to the fundamental policy of Indian law.

37. In view of the above, the petition is, accordingly, dismissed. Pending application is also disposed of.

JULY 12, 2017
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VIBHU BAKHRU, J