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

Date of judgment: 25th September, 2018

- + **FAO(OS) (COMM) 175/2018 and CM No. 32193/2018**
MAHANAGAR TELEPHONE NIGAM LIMITED..... Appellant
Through: Mr. Saket Sikri, Mr.Ajaylal Singh,
Mr.VikalpMudgal, Ms. K. Gayatri and
Mr. Pranav Sharma, Advocates
- versus
- M/S GAURAV ENTERPRISERespondent**
Through: Dr.Anurag Kumar Agarwal and
Mr. Umesh Mishra, Advocates
- + **FAO(OS) (COMM) 180/2018 and CM No. 32639/2018**
MAHANAGAR TELEPHONE NIGAM LIMITED..... Appellant
Through: Mr. Saket Sikri, Mr.Ajaylal Singh,
Mr.VikalpMudgal, Ms. K. Gayatri and
Mr. Pranav Sharma, Advocates
- versus
- M/S H S CONSTRUCTION CORespondent**
Through: Mr. Bharat Bhushan Bhatia and
Mr. Vivek Singh, Advocates
- + **FAO(OS) (COMM) 181/2018 and CM No. 32645/2018**
MAHANAGAR TELEPHONE NIGAM LIMITED..... Appellant
Through: Mr. Saket Sikri, Mr.Ajaylal Singh,
Mr.VikalpMudgal, Ms. K. Gayatri and
Mr. Pranav Sharma, Advocates
- versus
- M/S H S CONSTRUCTION CORespondent**
Through: Mr. Bharat Bhushan Bhatia and
Mr. Vivek Singh, Advocates

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S. SISTANI, J.

1. Present appeal has been filed under Section 37 of the Arbitration and

Conciliation Act, 1996 (hereinafter referred to as ‘the Act’) read with Section 13(2) of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 (hereinafter referred to as the ‘Commercial Courts Act’) is directed against the order dated 09.04.2018 passed by the learned Single Judge of this Court in O.M.P (COMM) No. 286/2016, O.M.P (COMM) No. 182/2017 and O.M.P (COMM) No. 181/2017 whereby the objections to the Arbitral Award dated 30.12.2015 passed by the Sole arbitrator were dismissed.

2. Before dealing with the rival submissions of the learned counsels appearing for the parties, we deem it appropriate to set out basic facts which has led to the dispute between the parties as noted by the Learned Single Judge. Relevant portion reads as under :-

“7.1 MTNL issued a Notice Inviting Tender (NIT) on 25.11.2002 for “rehabilitation of outdoor plant at Saraswati Vihar, Rohini, Badli and Narela, Delhi which included the work of laying of cables through Trenchless Technology”. The NIT specifically provided that MTNL reserved its right to award the work to three contracts in the specified ratio of 50:30:20.

The respondent submitted its bid pursuant to the aforesaid NIT. The said bid was not the lowest bid. The lowest bid was submitted by M/s Carrycon India Ltd. (hereafter “Carrycon”). However, as per the MTNL’s policy, the respondent was also provided the option to carry out portion of the works albeit at the rate fixed in the case of the L-1 bidder (Carrycon).

On 25.02.2003, the respondent agreed to undertake the work awarded to him at the rate of ₹412/- per meter, which was the rate agreed between MTNL and the L-1 Bidder (Carrycon). The parties entered into an agreement dated 25.02.2003 („the Agreement”). The respondent also furnished a Performance Security of ₹1,00,000/-. The Agreement was valid for a

period of one year from the date of signing the same. Material Management Cell (MM Cell), a division of MTNL issued another Notice Inviting Tender (NIT) on 30.12.2002 for new network creation through Trenchless Technology for the same work of laying of cables through Trenchless Technology. The rates for the said work were discovered to be lower than the rates for the work awarded pursuant to the NIT dated 25.11.2002.

On 13.05.2003, a meeting was held between MTNL and Carrycon – the L1 bidder – regarding reduction of rates in the new tender for similar work of laying of cables through Trenchless Technology.

MTNL, by a letter dated 03.07.2003, informed Carrycon that the base rate of ₹230/- per meter was approved by the Competent Authority for the work of laying of cables through Trenchless Technology and the said rate would also be applicable for the agreement with Carrycon. A copy of the said letter was also sent to all the contractors. However, the respondent disputes the receipt of the said letter.

The respondent submitted its first bill dated 09.09.2003 for execution of the part of the work contracted at the agreed rate of ₹412/- per meter. However, MTNL cleared the said bill by unilaterally reducing the rate to ₹230/- per meter.

The respondent sent various letters dated 23.08.2003, 29.09.2003, 24.07.2004, 13.08.2004 and 01.09.2004 protesting against the conduct of MTNL in not adhering to the terms of the Agreement and effective payments for the work done at the reduced rate of ₹230/- per meter. None of the aforesaid letters were responded to by MTNL. Although, MTNL had disputed the receipt of the aforesaid letters, the Arbitral Tribunal – on the basis of the information disclosed pursuant to the respondent in response to an application filed under the Right to Information Act, 2005 – accepted that the said letters were received by MTNL.

The respondent, by its letter dated 30.03.2004, requested MTNL to extend the validity period of the contract by a further period of six months. Respondent consented to carry out trenchless digging

work at the MM prevailing rate during the extended period. MTNL extended the validity of the contract upto 26.07.2004.

On 26.07.2004, the work awarded to the respondent was completed.

On 01.09.2004, the respondent issued a letter to MTNL contending that it had been forced to receive payments at the rate of ₹230/- per meter for laying of cables. The respondent issued a notice dated 10.11.2006 for payment of balance amount at the rate of ₹412/- per meter but MTNL did not respond to the aforesaid notice.”

3. Upon conclusion of the arbitration proceedings, the Arbitral Award dated 30.12.2015 was passed by the Sole Arbitrator whereby an Award for a sum of Rs. 92,58,465/- was directed to be paid to the claimants by the respondent on account of the balance differential bills, which were not paid along with the security amount, and, a sum of Rs. 82,38,765.57/- was awarded in favour of claimant on account of *pendente lite* interest calculated @ 10% per annum from the date of filing claim petition with future interest @12% per annum from date of award till the final payments were made. Objections to the award dated 30.12.2015 filed by MTNL were considered by learned Single Judge in O.M.P (COMM) No. 286/2016, O.M.P (COMM) No. 182/2017 and O.M.P (COMM) No. 181/2017, and by way of impugned order, learned Single Judge held that the letter dated 03.07.2003, constituted a counter offer, as it did not unconditionally accept the terms stated by Carrycon in its letter dated 17.05.2003 and upheld the award on this aspect. However, learned Single Judge modified the rate of lying of cables @ of Rs. 230/- per meter instead of Rs 412/- per meter during the extended period from 30.3.2004 to 26.07.2004 on the basis of letter dated 30.03.2004 issued by the claimant to MTNL. Being aggrieved by the aforesaid order,

MTNL has filed the present appeal.

4. Mr Saket Sikri, learned counsel for the appellants contends that the order passed by the learned Single Judge is liable to be set aside as the same is not sustainable in law as also on facts. According to the terms of clause 17 of Notice Inviting Tender (NIT), M/s Carrycon was to carry out all negotiations on behalf of all the respondents; that M/s Carrycon tendered their confirmation in respect of the revised rates vide letter dated 17.05.2003; that on 03.07.2003 a letter was sent informing the respondents that the Material Management Cell has approved the revised rate and the same would be applicable from the date of signing of the agreement; that the agreement dated 25.02.2003, originally entered between the parties stood novated as M/s Carrycon had willingly agreed to the reduced rates from Rs 412/- to Rs 230/- per meter, which was binding upon all the respondents; that once the negotiations were crystalized into final terms, all the other respondents were to follow the terms of the new agreement; that post confirmation, the respondents continued the work at the revised rates and raised all their invoices at the reduced rate of Rs. 230/- per meter, which clearly indicates their unequivocal acceptance to the downward revision of rates; that hence, in view of the above, the impugned order dated 09.04.2018 is prayed to be set aside. In support of his contentions learned counsel relied on *Mc Dermott International Inc. v. Burn Standard Co. Ltd. and Ors*, reported at (2006) 11 SCC 181 (para 51), *Bhagwati Prasad Pawan Kumar v. Union of India* reported at AIR 2006 SC 2331 and *Chitra Kumari v. Union of India* reported at 2001 (3) SCC 208.
5. On the converse, Dr. Anurag Kumar Agarwal, learned counsel appearing for the respondent contended that there is no infirmity in the impugned order as well as award which would require interference by

this court. It is further contended that the scope of judicial inference in an appeal under Section 37 of the Arbitration and Conciliation Act, 1996 is even narrower than deciding the objections to the Award under Section 34 of the Arbitration and Conciliation Act, 1996. It is further contended that the sole arbitrator had examined the agreement, letters and evidence recorded by them and has correctly applied law to the facts of the present case. The counsel also submitted that there was no novation of the agreement as the parties never came to a consensus; that reliance placed by the appellant on the letter dated 17.5.2003 issued by M/s Carrycon to prove the alleged novation of the Agreement holds no merit as vide the said letter, Carrycon had only accepted revised rate @ Rs. 230/- per meter applicable from the date of acceptance; that the respondents had presented the bills initially at the rate of Rs. 412/- per meter but later they were made to submit all the bills @ 230/- per meter in order to protect themselves from various government tax liabilities; that five protest letters dated 23.08.2003, 29.09.2003, 24.07.2004, 13.08.2004 and 01.09.2004 were served upon the appellant, protesting against the unilateral reduction of the rates; that in support of his contention learned counsel for the respondent placed reliance on the case of *Sasan Power Limited vs. North American Coal Corporation India Private Limited* reported at *AIR 2016 SC 3974*, *P.C.L Suncon (JV) v N.H.A.I.*, reported at *2015 SCC Online Del 13192*, *McDermott International Inc. v. Burn Standard Co.Ltd. and Ors*, reported at *(2006) 11 SCC 181*, *State Trading Corporation of India Ltd. v. Toepfer International Asia Pte. Ltd*, reported at *2014 (144) DRJ 220 (DB)*, *Associate Builders vs. Delhi Development Authority*, reported at *(2015) 3 SCC 49*.

6. Mr. Bharat Bhushan Bhatia, counsel appearing for other two respondents adopted the arguments raised by counsel for the

respondent in FAO(OS) (COMM) 175/2018 and sought dismissal of the present appeals.

7. We have heard the learned counsels for the parties and considered their rival submissions.
8. The basic facts, which are not in dispute are that parties entered into a contract for Rehabilitation of Outdoor Plant of GM (N-II). It is also not in dispute that on 13.05.2003 a meeting was held between MTNL and Carrycon for reduction of rates; that pursuant thereto respondent company vide communication dated 17.05.2003 informed MTNL that they are agreeing to the new rates i.e. Rs. 230/- per meter from the date of acceptance of new rates by Material Management Cell.
9. To appreciate the rival submissions made by the counsels for their parties we deem it appropriate to extract the relevant portion of the letter written by Carrycon dated 17.05.2003 which reads as under: -

“During the discussion we agree on the following proposal:-

1. The base rate for laying of cable through trench less would be the approved rates of MM Cell plus the enhancement for respective areas as per the agreement entered with you.

2. The effective date of accepting the new base rate will be from the date of acceptance of the new rate by your MM Cell.

As such we are continuing our work as agree upon.”

10. It would also be necessary to reproduce the letter dated 03.07.2003 issued by MTNL: -

“with reference to your letter No.CCON/NDL/03-04, dated 17/5/03 regarding the rates for laying of cable through trench less method, it is intimated that after the discussions, it is approved by the Competent Authority that the base rate for laying of cable through trench less method will be the approved rate of MM Cell circulated by the AGM (MM-1) vide his letter No.AGM (MM-11)/MM-15/No Dig.LOI/03-04/52 dated 6/8/03. The approved base rate of MM Cell for Bore size upto 145 mm (All types of soil

except rock) is Rs.230/- per meter which is applicable in the present agreement made with you for the Rehabilitation work instead of Rs.412/- (Para 5.3, sub para (b) at Page No.37 of NIT book let). The above rate is applicable from the date of signing of the agreement i.e. 27.01.2003.”

11. It would also be necessary to reproduce the letter dated 30.03.2004 issued by the respondent company. The relevant portions of the same is reproduced as under: -

“this is with reference to the above mentioned contract for Rehabilitation works in North II Area. We request you to kindly extend the contract again for a further period of 6 months.

We hereby give our consent to carry out the works at the same rates, terms and conditions of the existing agreement and also carry out trenchless digging works at prevailing MM rates without any enhancement for all the work orders issued during the extended period...”

12. It is also important to note the findings of learned Single Judge with regard to the five protest letters issued by the respondents to the appellant. Relevant portion of the same reads as under:-

“12. The Arbitral Tribunal also rejected the contention that the respondent had accepted the new reduced rates by its conduct, as the Arbitral Tribunal observed that the respondent had sent letters dated 23.08.2003, 29.09.2003, 24.07.2004, 13.08.2004 and 01.09.2004 protesting against MTNL’s unilateral reduction in the rates with effect from the date of the Agreement. MTNL had disputed the receipt of the letters of protest. However, this was rejected by the Arbitral Tribunal as the respondent had produced copies of certain letters obtained from MTNL pursuant to an application made under Right to Information Act, 2005, which established that MTNL had received the protest letters sent by the respondent.”

13. The question, which arises for consideration is to whether the

communication dated 03.07.2003 made by MTNL can be construed as an offer or novation of contract.

14. From perusal of the aforesaid letter it is seen that pursuant to the meeting dated 17.05.2003 between the appellant and Carrycon, a communication was issued to MTNL on 17.05.2003, agreeing to the new rates i.e. Rs. 230/- per meter from the date of acceptance of new rates by Material Management Cell. This offer was not accepted by MTNL and a counter offer was made vide communication dated 03.07.2003, whereby they informed Carrycon and the other respondents that the base rate of Rs. 230/- per meter was approved by the competent authority for laying of cables, which would be applicable from the date of agreement i.e. 25.02.2003. The respondents vide letters dated 23.08.2003, 29.09.2003, 24.07.2004, 13.08.2004 and 1.09.2004 in clear terms protested against the counter offer made by MTNL. It is vide communication dated 30.03.2004 respondents sought extension of time @ Rs 230/- per meter, which would be applicable from the date of extension. The perusal of the extension letter reveals that relaxation sought by the appellant company was for a period from 30.03.2004 till the completion of the contract and it cannot be construed that the appellant company agreed for performance of work contract @ Rs 230/- per meter before the said period.
15. The arbitrator also rightly analyzed this issue, relevant portion of the Award read as under: -

“14.1 I further HOLD that the respondent’s contention that post tender negotiations could be held only with L-1 bidder is also misplaced and untenable. In the tender process negotiations with any other bidder except L-1 Bidder are barred but once after discussions and negotiations with the L-1 Bidder, contracts are signed with the various bidders then any further change in the contracts has to be discussed and negotiated with each of the parties. Change in one contract will not

automatically change the terms of the other contracts. Therefore, if the respondent wanted to change the terms of the contract signed with the claimant, it should have discussed and negotiated the lower rate with the claimant and sign an amendment to the agreement dated 25.02.2003.”

“Issue No. (iii) Whether the payments made by the Respondent at the re-negotiated rate of Rs.230/- per meter were accepted by the claimant and therefore binding on it.

There is no evidence on record to show that the claimant has accepted the lower rates of Rs. 230/- per meter. There was no negotiation with the claimant regarding the lower rates as admittedly negotiations were held only with the L-1 Bidder. The claimant had sent number of letters of protest including letter dated 01.09.2004 protesting against settlement of bills at the lower rate of Rs. 230/-. In view of this the lower rate of Rs. 230/- was never accepted by the claimant though the claimant was forced to raise the bills at the lower rate. Thus the issue is decided in favour of the claimant and against the respondent.”

16. The case of the Appellant was that by raising all bills at the rate of Rs.230/- per meter and by accepting all payments at the same rate, the contract stood novated. Perusal of the records reveals that there was only a unilateral acceptance, but no consensus was arrived between the parties. The Apex court in the case of ***Sasan Power Limited vs. North American Coal Corporation India Private Limited*** reported at ***AIR 2016 SC 3974*** while dealing with the concept of novation has held that novation is the substitution of a contract by a new one, only through the consent of both the parties. Paragraphs 66 and 67 of the judgment reads as under:

“66. That apart, in my view, reading of Agreement-I and Agreement-II also does not indicate that any novation of contract has emerged inter se parties. It is for the reason that in order to constitute a "Novation of contract", it is necessary to prove, in the first place,

that the contract is in existence and second, such contract is substituted by a new contract either by the same parties or different parties with a mutual consideration of discharge of the old contract.

67. In other words, the novation of contract comprises of two elements. First is the discharge of one debt or debtor and the second is the substitution of a new debt or debtor. The novation is not complete unless it results in substitution, recession or extinguishment of the previous contract by the new contract. Mere variation of some terms of a contract does not constitute a novation. (See Pollock & Mulla Indian Contract and Specific Relief Acts, 13th Edition, pages 1225-1226).”

17. Moreover, MTNL never negotiated any terms with the respondents. The appellant only relies upon clause 17 of NIT. The said clause exhausts itself when the parties entered into an agreement on 25.02.2003, after which the NIT does not contemplate any negotiations so held between the parties. So, in our considered opinion the Arbitral Tribunal and learned Single Judge has correctly applied the law to the present case.
18. Also, the scope of this court is limited with regard to Section 34 and 37 of The Arbitration and Conciliation Act, 1996. The position of law stands crystallized today, that findings, of fact as well as of law, of the arbitrator/Arbitral Tribunal are ordinarily not amenable to interference either under Sections 34 or Section 37 of the Act. The scope of interference is only where the finding of the tribunal is either contrary to the terms of the contract between the parties, or, ex facie, perverse, that interference, by this Court, is absolutely necessary. The Arbitrator/ Tribunal is the final arbiter on facts as well as in law, and even errors, factual or legal, which stop short of perversity, do not merit interference under Sections 34 or 37 of the Act. This Hon’ble Court in the case of ***P.C.L Suncon (JV) v N.H.A.I.*** reported at **2015**

SCC Online Del 13192, in para 24 stated that :

“24. As a postscript, this Court believes that it is imperative to sound a word of caution. Notwithstanding the considerable jurisprudence advising the Courts to remain circumspect in denying the enforcement of arbitral awards, interference with the awards challenged in the petitions before them has become a matter of routine, imperceptibly but surely erasing the distinction between arbitral tribunals and courts. Section 34 jurisdiction calls for judicial restraint and an awareness that the process is removed from appellate review. Arbitration as a form of alternate dispute resolution, running parallel to the judicial system, attempts to avoid the prolix and lengthy process of the courts and presupposes parties consciously agreeing to submit a potential dispute to arbitration with the object of actively avoiding a confrontation in the precincts of the judicial system. If a court is allowed to review the decision of the arbitral tribunal on the law or on the merits, the speed and, above all, the efficacy of the arbitral process is lost.”

19. The scope of judicial scrutiny and interference by an appellate court under Section 37 of the Act is even more restricted, while deciding a petition under Section 34 of the Act. The Hon’ble Supreme Court in the case of **McDermott International Inc. v. Burn Standard Co.Ltd. and Ors**, reported at (2006) 11 SCC 181 held as under:

"52.The 1996 Act makes provision for the supervisory role of courts, for the review of the arbitral award only to ensure fairness. Intervention of the court is envisaged in

few circumstances only, like, in case of fraud or bias by the arbitrators, violation of natural justice, etc. The court cannot correct errors of the arbitrators. It can only quash the award leaving the parties free to begin the arbitration again if it is desired. So, scheme of the provision aims at keeping the supervisory role of the court at minimum level and this can be justified as parties to the agreement make a conscious decision to exclude the court's jurisdiction by opting for arbitration as they prefer the expediency and finality

offered by it."

20. It has been repeatedly held that while entertaining appeals under Section 37 of the Act, the Court is not actually sitting as a Court of appeal over the award of the Arbitral Tribunal and therefore, the Court would not re-appreciate or re-assess the evidence. In the case of ***State Trading Corporation of India Ltd. v. Toepfer International Asia Pte. Ltd.***, reported at **2014 (144) DRJ 220 (DB)**, in para 16 it has been held as under:

"16. The senior counsel for the respondent has in this regard rightly argued that the scope of appeal under Section 37 is even more restricted. It has been so held by the Division Benches of this Court in Thyssen Krupp Werkstoffe Vs. Steel Authority of India and Shree Vinayaka Cement Clearing Agency Vs. Cement Corporation of India 147 (2007) DLT 385. It is also the contention of the senior counsel for the respondent that the argument made by the appellant before the learned Single Judge and being made before this Court, that the particular clause in the contract is a contract of indemnification, was not even raised before the Arbitral Tribunal and did not form the ground in the OMP filed under Section 34 of the Act and was raised for the first time in the arguments."

21. In ***Associate Builders vs. Delhi Development Authority***, reported at **(2015) 3 SCC 49**, the Supreme Court while further explaining the scope of judicial intervention under the appeal in the Act held as under:-

"It must clearly be understood that when a court is applying the "public policy" test to an arbitration award, it does not act as a court of appeal and consequently errors of fact cannot be corrected. A possible view by the arbitrator on facts has necessarily to pass muster as the arbitrator is the ultimate master of the quantity and quality of evidence to be relied

*upon when he delivers his arbitral award. Thus an award based on little evidence or on evidence which does not measure up in quality to a trained legal mind would not be held to be invalid on this score¹. Once it is found that the arbitrators approach is not arbitrary or capricious, then he is the last word on facts. In *P.R. Shah, Shares and Stock Brokers (P) Ltd. V. B.H.H Securities (P) Ltd.*: (2012) 1 SCC 594, this Court held: 21. A court does not sit in appeal over the award of an Arbitral Tribunal by reassessing or re-appreciating the evidence. An award can be challenged only under the grounds mentioned in Section 34(2) of the Act. The Arbitral Tribunal has examined the facts and held that both the second Respondent and the Appellant are liable. The case as put forward by the first Respondent has been accepted. Even the minority view was that the second Respondent was liable as claimed by the first Respondent, but the Appellant was not liable only on the ground that the arbitrators appointed by the Stock Exchange under Bye-law 248, in a claim against a non-member, had no jurisdiction to decide a claim against another member. The finding of the majority is that the Appellant did the transaction in the name of the second Respondent and is therefore, liable along with the second Respondent. Therefore, in the absence of any ground Under Section 34(2) of the Act, it is not possible to re-examine the facts to find out whether a different decision can be arrived at.”*

22. This Court, time and again has emphasized on the narrow scope of section 37. In the case of *MTNL Vs. Fujitsu India Private Limited*, reported at **2015 (2) ARBLR 332 (Delhi)**, the division bench held as under: -

“The law is settled that where the Arbitrator has assessed the material and evidence placed before him in detail, the court while considering the objections under Section 34 of the said Act does not sit as a court of appeal and is not expected to re- appreciate the entire evidence and reassess the case of the parties. The jurisdiction under section 34 is not appellate in nature and an award passed by an Arbitrator cannot

be set aside on the ground that it was erroneous. It is not open to the court to interfere with the award merely because in the opinion of the court, another view is possible. The duty of the court in these circumstances is to see whether the view taken by the Arbitrator is a plausible view on the facts, pleadings and evidence before the Arbitrator. Even if on the assessment of material, the court while considering the objections under section 34 is of the view that there are two views possible and the Arbitral Tribunal has taken one of the possible views which could have been taken on the material before it, the court would be reluctant to interfere. The court is not to substitute its view with the view of the Arbitrator if the view taken by the Arbitrator is reasonable and plausible Jhang Cooperative Group Housing Society v. P.T Munshi Ram & Associates Private limited: 202(2013) DLT 218.

The extent of judicial scrutiny under section 34 of the Act is limited and scope of interference is narrow. Under section 37, the extent of judicial scrutiny and scope of interference is further narrower. An appeal under section 37 is like a second appeal, the first appeal being to the court by way of objections under section 34. Where there are concurrent findings of facts and law, first by the Arbitral Tribunal which are then confirmed by the court while dealing with objections under section 34, in an appeal under section 37, the Appellate Court would be very cautious and reluctant to interfere in the findings returned in the award by the Arbitral Tribunal and confirmed by the court under section 34. Court, or vitiated by an apparently untenable interpretation of the terms of the contract, requires to be eviscerated. In view thereof, the decision of the Id. Single Judge that reasoning of the arbitral award in this regard was based on no material and was contrary to the contract, cannot be said to be deserving of any interference at our hands under Section 37 of the Act. In a pronouncement reported at, MTNL v. Fujitshu India Pvt. Ltd. (FAO(OS) No. 63/2015), the Division Bench of this court has held that "an appeal under Section 37 is like a second appeal, the first appeal

being to the court by way of objections under Section 34". Being in the nature of a second appeal, this court would be hesitant to interfere, with the decision of the learned Single Judge, unless it is shown to be palpably erroneous on facts or in law, or manifestly perverse."

23. Having regard to the law laid down by this Court, learned Single Judge and Arbitral Tribunal as well as the Apex Court in number of decisions rendered and applying the law laid down to the facts of the present case, we do not find any merit in the appeals. Hence, no grounds are made out to interfere in the impugned order passed by Learned Single Judge. Resultantly, the appeals are dismissed along with pending applications.

G.S.SISTANI, J.

SANGITA DHINGRA SEHGAL, J.

SEPTEMBER 25, 2018

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