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

Reserved on: 31.10.2018

Pronounced on: 22.01.2019

+ **FAO (OS) (COMM) 10/2017 & CM APPL. 997/2017**

M/S CROMPTON GREAVES LTD Appellant

Through: Mr. Parag Tripathi, Sr.
Advocate with Mr. Prashanto
Sen, Sr. Advocate with
Mr. Udayan Verma,
Mr. Srinivasan R., Mr. Kaustubh
Singh & Mr. Shivanshu Singh,
Advocates.

versus

**M/S CENTRE FOR DEVELOPMENT
OF TELEMATICS (C-DOT)** Respondent

Through: Mr. J.C. Seth, Advocate.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE PRATEEK JALAN

MR. JUSTICE PRATEEK JALAN

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1. The present appeal is directed against a judgment dated 16.12.2016 whereby the appellant's petition under Section 34 of the Arbitration and Conciliation, 1996 (hereinafter, "the Act") was dismissed. The learned Single Judge declined to set aside an interim award dated 16.11.2016 passed by a Sole Arbitrator, under which the appellant Crompton Greaves Ltd. (hereinafter, "CGL" was directed to

pay ₹1.85 crores alongwith interest to the respondent, Centre for Development of Telematics (hereinafter, “C-DOT”).

Facts

2. The dispute between the parties arises out of agreements dated 01.11.1991, 10.10.1997 and 14.04.1999 under which C-DOT transferred technology to CGL for the consideration provided therein, including certain upfront payments and payment of royalty. C-DOT addressed a letter dated 13.11.2006 to CGL claiming dues of ₹2,05,02,722/- towards royalty for the period 01.04.2001 to 31.03.2007. By a subsequent letter dated 08.10.2007, C-DOT revised its claim for the period 2004-07. CGL disputed the claims, which were ultimately referred to arbitration on 05.03.2008.

3. Before the learned arbitrator, C-DOT claimed ₹6,05,05,444/- towards unpaid royalty for the period 2001-07, and ₹73,50,653/- toward interest until 31.03.2007. During the pendency of proceedings, C-DOT amended its royalty claim to ₹7,86,48,180/-. CGL disputed the claim and provided certificates of a Chartered Accountant certifying the royalty payable to C-DOT during the period 2004-09 as well as its balance sheet for these years. It counter claimed for ₹6,08,29,788. CGL also subsequently filed the certificates of its statutory auditors, which revealed an outstanding liability of ₹20,09,403/- towards royalty.

4. The respondent's first attempt to secure an interim award was rejected by an order of the learned arbitrator dated 05.09.2012 holding that an interim award was unwarranted when claims and counter claims were both pending for adjudication. CGL also made an

application for an interim award, closing or restricting some of the claims of C-DOT, on the strength of the Chartered Accountants' certificate submitted by it. This application was also rejected by the learned arbitrator by order dated 19.01.2013 on account of the fact that the auditor's certificates had been disputed by C-DOT, therefore, required adjudication on evidence. CGL submitted a further affidavit dated 14.05.2013 wherein royalty for the period 2003-04 to 2006-07 was again confirmed relying upon the auditor's certificates.

5. C-DOT filed another application on 25.02.2014 seeking an interim award to the tune of ₹2,60,79,640/- alongwith interest, claiming that the same was an admitted liability. By an order dated 03.05.2014, the learned arbitrator appointed one Mr. J.S. Kochar, an independent Chartered Accountant, to examine the books of accounts and audited financial statements of CGL for the years 2001-02 to 2006-07 and submit a report. The report was submitted by Mr. Kochar on 19.01.2015. The learned arbitrator passed an interim award dated 27.05.2015 in favour of C-DOT for sum ₹2,18,59,011/- with interest at the rate of 8% pa from 31.03.2007. After recording the contentions of the parties and the course of proceedings, the learned arbitrator compared the figures disclosed in CGL's affidavit and Chartered Accountant's certificates for each year, with the corresponding figures in Mr. Kochar's report. It appears that the learned arbitrator, for the purposes of this interim award, awarded the lower of these two figures for each of the years in question. This is evident from the following discussion in the said interim award:-

“41. According to the report of the learned Auditor appointed by the Tribunal, the amount of royalty payable by the Respondent to the Claimant in regard to sale of products manufactured by the Respondent by employing the three technologies of the Claimant is as follows:-

<i>Fin. Year (1)</i>	<i>Royalty Payable (2)</i>	<i>Royalty Paid (3)</i>	<i>Balance</i>	<i>Adjustment Allowed by CGL (5)</i>	<i>Balance due after adjustment</i>
2001-02	3,89,99,763	1,80,00,000	2,09,99,763	15,00,000	51,51,278
2002-03	1,70,00,944	-	1,70,00,944	-	1,94,99,763
2003-04	28,31,230	-	28,31,230	-	28,31,230
2004-05	7,57,503	-	7,57,503	-	7,57,503
2005-06	1,50,960	-	1,50,960	-	1,50,960
2006-07	2,11,596	-	2,11,596	-	2,11,596
<i>Total</i>	<i>5,99,51,996</i>	<i>1,80,00,000</i>	<i>4,19,51,996</i>	<i>15,00,000</i>	<i>4,04,51,996</i>

42. On the basis of the CA certificates for the years 2001-02, 2002-03, 2004-05, 2005-06 & 2006-07 and the affidavit of Mr. Rodrigues dated November 27, 2013 acknowledging the royalty due from the Respondent to the Claimant for the year 2003-04, the amount payable to the Claimant is as per the following table:-

<i>Fin. Year (1)</i>	<i>Royalty Payable (2)</i>	<i>Royalty Paid (3)</i>	<i>Balance</i>	<i>Adjustment Allowed by CGL (5)</i>	<i>Balance due after adjustment</i>
2001-	2,46,51,278	1,80,00,000	66,51,278	15,00,000	51,51,278

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2002-03	1,27,56,444	-	1,27,56,444	-	1,27,56,444
2003-04	46,62,515	-	46,62,515	-	46,62,515
2004-05	15,38,046	-	15,38,046	-	15,38,046
2005-06	2,00,845	-	2,00,845	-	2,00,845
2006-07	2,70,475	-	2,70,475	-	2,70,475
Total	4,40,79,603	1,80,00,000	2,60,79,603	15,00,000	2,45,79,603

43. A comparison of the figures in the two tables show that for the financial years 2001-02 and 2002-03 the royalty payable as per the Auditor appointed by the Tribunal is more than the 'Royalty Payment Liability' as certified by Mr. M. Rajashekar, CA of the Respondent. Pending the final determination of the royalty that may be due from the Respondent, the royalty admitted to be due by the Respondent as per the certificates of Mr. M. Rajashekar, CA, will be taken into consideration for passing the interim award.

44. A comparison of the aforesaid two tables also reflects that the figures of royalty arrived at by the auditor for the years 2003-04, 2004-05, 2005-06 and 2006-07 are less than the royalty figures for the same years admitted by the Respondent. I consider it appropriate to give benefit to the Respondent of the figures of royalty admitted by it through the certificates of its Chartered Accounts and Mr. Rodrigues.

45. On the basis of the aforesaid discussion and having regard to the figures of royalty for the years 2001-02 and 2002-03 arrived at by the learned Auditor appointed by the Tribunals and the royalty acknowledged to be due by the Respondent, I am of the considered view that the Respondent is liable to pay the royalty for the purposes of the instant application, as per the following details:

<i>Fin. Year (1)</i>	<i>Royalty Payable (2)</i>	<i>Royalty Paid (3)</i>	<i>Balance</i>	<i>Adjustment Allowed by CGL (5)</i>	<i>Balance due after adjustment</i>
2001-02	2,46,51,278	1,80,00,000	66,51,278	15,00,000	51,51,278
2002-03	1,27,56,444	-	1,27,56,444	-	1,27,56,444
2003-04	28,31,230	-	28,31,230	-	28,31,230
2004-05	7,57,503	-	7,57,503	-	7,57,503
2005-06	1,50,960	-	1,50,960	-	1,50,960
2006-07	2,11,596	-	2,11,596	-	2,11,596
<i>Total</i>	<i>4,13,59,011</i>	<i>1,80,00,000</i>	<i>2,33,59,011</i>	<i>15,00,000</i>	<i>2,18,59,011</i>

46. Therefore, the Respondent is liable to pay a sum of Rs. 2,18,59,011/- with simple interest @ 8% per annum to the Claimant from March 31, 2007 till the passing of the interim award, which works out to Rs. 1,42,66,646/-. Accordingly, interim award for a sum of Rs. 3,61,25,657/- (Rs. 2,18,59,011/- (+) 1,42,66,646/-) is hereby passed against the Respondent in favour of the Claimant with interest @ 18% per annum from the date of passing of the award till the realisation of the amount.”

6. The interim award dated 27.05.2015 was not challenged by either party, but CGL filed objection to Mr. Kochar's report before the learned arbitrator. At this stage, C-DOT filed another application dated 31.07.2015 for an interim award, claiming a sum of

₹1,85,92,985/- and interest thereupon for the period 2001-03. C-DOT relied for this purpose on Mr. Kochar's report which, for the years in question had, assessed CGL's dues at a higher figure than those disclosed in the certificates of CGL's accountants. CGL resisted this application, contending that it was in the nature of a review of the first interim award and that the disputed liability required adjudication *inter alia* with regard to the correctness of Mr. Kochar's report. By the second interim award dated 16.11.2016 (which is challenged in these proceedings), the learned arbitrator awarded the said claim of C-DOT, alongwith interest at 8% per annum from 31.03.2007 until the passing of the award [16.11.2016] and 18% p.a. thereafter until realization.

7. The learned Single Judge upheld the impugned interim award holding that the contentions advanced by CGL do not merit setting aside of an award under section 34 of the Act. Pursuant to an order dated 20.01.2017 passed in this appeal, CGL has furnished a bank guarantee for ₹2.5 crores as a condition for stay of the impugned award.

Submissions

8. Mr. Parag Tripathi, learned Senior Counsel for CGL submitted that the learned arbitrator ought to have waited for a trial on evidence to be completed instead of passing the impugned interim award. He contended that the procedure adopted by the learned arbitrator was irregular, in as much as CGL was not given the opportunity to make good its objections against Mr.Kochar's report. In this connection, Mr.Tripathi relied upon the orders of the learned arbitrator dated 05.09.2012 and 19.01.2013 whereby the applications of both sides for

interim award were rejected. He also drew our attention to an order dated 23.05.2018 passed by the learned arbitrator (on an application by CGL, after the passing of the impugned interim award), whereby he terminated the proceedings. Mr. Tripathi submitted that this demonstrates that the impugned interim award was in fact in the nature of a final decision on all issues. Lastly, Mr. Tripathi has assailed the direction of the learned arbitrator regarding award of differential rates of interest for different periods as contrary to the judgment of the Supreme Court in *Vedanta Ltd. vs Shenzhen Shandong Nuclear Power Construction Co. Ltd.* (2018) SCC OnLine SC 1922.

9. Mr. J.C. Seth, learned counsel for C-DOT submitted that CGL's challenge to the impugned interim award does not fall within scope of interference under Section 34 of the Act. According to him, CGL had not only stopped making payments due to C-DOT under the technology transfer agreements, but had also failed to cooperate with Mr. Kochar and did not produce any material to assist in the assessment of its dues. Consequently, he urged the Court to uphold the impugned interim award, and the order of the learned Single Judge.

Discussion & Analysis

10. The principal argument of CGL is that the learned arbitrator has not taken into account CGL's objections to Mr. Kochar's report, which raised substantial disputes about the methodology adopted by him and the conclusions arrived at. The learned arbitrator referred the matter for an assessment by an independent auditor on 03.05.2014 by agreement of the parties. His mandate was to examine the books of accounts of CGL, including but not limited to the schedules mentioned

in Annexure-U to the written statements filed by CGL. The terms of reference of the auditor inter alia included the following :-

“2. The Auditor shall collect copies of details of all the relevant Schedules such as Schedule 1, 11, 14, 15 & 17 etc. mentioned in Annexure – ‘U’ (summation of which is incorporated in audited account of Public Switch Division) to ascertain and scrutinize the Sale Figures and tally the same with the Ledger/Sub-Ledger or any other type of account book maintained by M/s Crompton wherein it had been showing the Sale figures of products and spare parts of C-DOT Technologies for the years 2001-2002 to 2006-2007. The Auditor shall compare and tally the total sale figures in the Audited Accounts (Annexure U) and also the aggregate sale figure of products and spares parts involving C-DOT Technologies, namely (i) 512 SBM RAX, (ii) MAX-XL and (iii) TDMA-PMP and sale of other items, if any, so as to correlate with the total sales figures shown in the audited accounts viz. ‘Annexure-U’ attached to Written Statement.

3. For the aforesaid accounting years 2001-2002 to 2006-2007, the Auditor shall collect and scrutinize the details of consolidated figures shown in the Audited Profit & Loss and Balance Sheets of Respondent Public Switch Division filed by the Respondent (as Annexure-U attached with its Written Statement), under the following heads:

- i) Sale figures of product and spares parts relating to C-DOT Technologies, as mentioned in Para 1 above.*
- ii) Amount of Royalty payable to C-DOT under three Agreements of Technologies, in question.*
- iii) Amount of Royalty paid to C-DOT during the aforesaid period.”*

The learned arbitrator had further directed as follows:-

“6. The Auditor shall collect and scrutinize the relevant Schedule 17 etc. relating to “Manufacturing, Selling and Administration” to arrive at the figure of “Royalty” shown as an ‘expense’ in the Profit & Loss Accounts of Crompton. The amount shown as Royalty payable to C-DOT may be segregated and the Technology-wise break up of liability for Royalty be given so that the total amount of Royalty provided in books of account tallies with the figure provided in the ‘Manufacturing, Selling and Administration’ expense in the ‘Profit & Loss’ account year-wise.

7. The Auditor shall go into the sales of the Respondent Company relating to Public Switch Division for the aforesaid period in order to ascertain as to whether or not the sales of the Public Switch Division of the Respondent company relate entirely to the sales of the equipment which was based upon the technology of the Claimant or whether it partly relates to sale of equipment based upon the technology of the claimant and partly to the sale of equipment not based upon technology of the Claimant. On the basis of the record and its analysis, the Auditor shall cull out the details of the sale figures relating to sale of the equipment based upon the technology of the Claimant.”

11. Mr.Kochar's report was submitted on 19.01.2015, and CGL's objections thereto were filed before the learned arbitrator on 01.10.2015, i.e. between the making of the first interim award and the impugned award. The first objection of CGL was that the auditor had exceeded the terms of reference by examining CGL's excise records which are, according to CGL, not sales records at all. CGL contended that excise returns and stock registers were not conclusive documents which formed the basis of the statement of accounts for the purpose of

revealing the sales of the product in question. According to CGL, the procedure adopted by Mr. Kochar for the period 2003 to 2007 was correctly based on sales invoices, sales books etc., in contrast to reliance on excise records which would not reveal whether C-DOT's technology at all being employed for the goods in question. CGL urged that Mr.Kochar had thus erred in equating the values of goods removed for the purposes of excise duty with the quantum of sale. CGL rebutted the allegation that it had not cooperated with Mr.Kochar by referring to the accounts which were in fact produced by it and to the contention that sales records for the period in question were not available with it as they were not required to be retained under any statute. CGL's contention was that Mr.Kochar ought to have approached the learned arbitrator in the event of any difficulty in performing his mandate, rather than examining records which were not within the contemplation of the parties. The second objection urged by CGL before the learned arbitrator was that Mr.Kochar's report does not account for any sales using technology other than that of C-DOT or for sales of spare parts.

12. The report submitted by Mr. Kochar records that he had made an interim report which inter alia requested certain clarifications from the learned arbitrator. This report was considered by the learned arbitrator in his order dated 14.07.2014 wherein Mr. Kochar was empowered to decide which documents he required in order to accomplish the terms of reference. Mr. Kochar has, in his final report, elaborated upon CGL's failure to furnish the required documents, particularly for the years 2001-02 and 2002-03, with which we are

concerned. Although CGL of course denies any deliberate obstructionism, what is not disputed is that the sales records original sought by Mr. Kochar for the period in question was not available. It is the excise stock register and returns which were ultimately produced.

13. Mr. Kochar's report also elaborately deals with the methodology adopted by him for identification of those sales which were relatable to the respondent's technology. On this basis he arrived at year wise figures and recorded the following conclusions:-

“10.1 While, the overall objectives of the audit are achieved, certain details as required to be furnished by us cannot be provided for the reason that the manner of account keeping and records maintenance by both CGL and C DOT are not designed to produce the results as they are sought by the terms of reference. In the following paragraphs, we set out as to the extent the terms of reference stand answered and to what extent they are not answered.

10.2 We have collected the full sets of audited balance sheets of CGL for the years 2001-02 to 2006-07 containing all the Schedules and groupings of the figures contained in the Profit & Loss Accounts and Balance Sheets. These include Schedules 1, 11, 14, 15 & 17 etc. mentioned in Annexure 'U'. The summations of Groupings tally with the figures in the Schedules and the summations of Schedules tally with the figures in the Profit & Loss Accounts and the Balance Sheets. Complete sets of Balance Sheets for the years 2001-02 to 2006-07 are submitted alongwith this report in separate binders for each year.

10.3 The aggregate sale figures of products and spare parts involving C DOT technologies, namely (i) 512 SBM

RAX, (ii) MAX-XL and (iii) TDMA – PMP have been taken from the Excise Stock Register (RG-1) and monthly Excise returns (RT-12/ER-1). However, there is no corresponding account in the General Ledger exclusively containing sale of such products and hence no reconciliation with the same was possible. This might have been possible if access to the servers hosting the financial accounts was allowed to us but it was not.

10.4 The amount of Royalty payable to C DOT under three agreements in question, for the years 2001-02 to 2006-07 has been determined.

10.5 The amount of Royalty paid to C DOT for the aforesaid years and during the aforesaid years has been determined.

10.6 The exact amount of liability of Royalty payable to C DOT as shown under “Liabilities & Provisions” has been determined.

10.7 The figure of Royalty shown as expense in Schedule 17 etc. “under Manufacturing, Selling and Administration” has been determined. The amount shown as Royalty has been segregated technology wise for 2001-02 and 2002-03, has been determined. For 2003-04 and 2004-05, the details were not available. For 2005-06 and 2006-07, no amount of Royalty under the three agreements was booked.

10.8 The sales of CGL do not relate entirely to the sales of the equipment based upon the technology of C DOT. The sales of CGL comprise, inter-alia, of the products manufactured by CGL based on its own technologies and also technology provided by others e.g. I.I.T. Madras, of products manufactured by others (trading goods) and also sale of services. We have culled out the details of sale figures relating to sale of equipments based upon the technology of C DOT.”

14. The consequence of the interim award is that the figures arrived at by Mr. Kochar for the years 2001-02 and 2002-03 have ultimately been accepted and awarded. The learned arbitrator has accepted the reliance placed upon the excise records in view of the fact that the relevant ledger account of CGL was not available. The learned arbitrator has further satisfied himself that the quantum of royalty assessed by Mr. Kochar is only in respect of products which used C-DOT's technology. The learned arbitrator has specifically approved of the methodology adopted by Mr. Kochar. The objections to the report filed by CGL were, therefore, duly considered by the learned arbitrator. Although Mr. Tripathi argued that CGL had also objected to the figures contained in Mr. Kochar's report, we do not find any substantial contention to this effect other than a few vague and unsubstantiated statements.

15. It is not for the Court in a petition under Section 34 of the Act to reappraise the evidence or examine its probative value afresh. So long as there was material before the learned arbitrator to arrive at the conclusion reached, the Court's interference is impermissible. In the present case, it cannot be said that the impugned interim award is based on no evidence at all or on such a perverse appreciation as would invite the Court's limited jurisdiction under Section 34. Reference may be made in this connection to the judgment of the Supreme Court in *Associate Builders vs. Delhi Development Authority* (2015) 3 SCC 49 :-

“33. 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 score.”

16. CGL's reliance on orders dated 05.09.2012 and 19.01.2013 passed by the learned arbitrator rejecting the parties applications for interim awards is also misplaced. By those orders, the learned arbitrator had declined to make interim awards on disputed issues and held, in that context, that the adjudication would depend on the evidence led by the parties. However, in view of the nature of the controversy, the learned arbitrator subsequently appointed an independent Chartered Accountant to examine the books and prepare a report. This course of action was agreed between the parties as recorded by the arbitrator in the order dated 03.05.2014. After the independent accountant submitted his report, the learned arbitrator made the first interim award which was not challenged by either party. Only thereafter did CGL submit its objections to the auditor's report on 23.11.2015. If the learned arbitrator found that the controversy had narrowed to a few issues which could be determined without evidence, no objection can be taken to such a course. The Act is intended to achieve speedy resolution of disputes and, subject to parties being treated with equality and being given a full opportunity to present their case, and gives arbitrators great flexibility in matters of procedure and

evidence. We do not regard the earlier orders of the Tribunal or even the first interim award 27.05.2015 as having foreclosed any of the options available to the learned arbitrator in adjudicating the disputes between the parties.

17. Coming to the question of interest awarded by the learned arbitrator, CGL's objection was to the adoption of different rates of interest for the periods from 01.04.2007 until the making of the award and for the period thereafter until realization. Mr. Tripathi relied for this purpose on the judgment of the Supreme Court in *Vedanta* (supra). The Court in that case was concerned with differential rates of interest for the period from the date of award until 120 days thereafter (9% p.a.) and for the period after 120 days from the date of the award (15% p.a.). It is in this context that the Court observed as follows:-

“15. In the present case, the arbitral tribunal has adopted a dual rate of Interest in the Award. The Award directs payment of Interest @ 9% for 120 days post award; if the amount awarded is not paid within 120 days, the rate of Interest is scaled up to 15% on the sum awarded.

16. The dual rate of Interest awarded seems to be unjustified. The award of a much higher rate of Interest after 120 days' is arbitrary, since the Award-debtor is entitled to challenge the award within a maximum period of 120 days' as provided by Section 34(3) of the 1996 Act. If the award-debtor is made liable to pay a higher rate of Interest after 120 days, it would foreclose or seriously affect his statutory right to challenge the Award by filing objections under Section 34 of the said Act.

17. The imposition of high rate of interest @ 15% post-120 days is exorbitant, from an economic standpoint, and

has no co-relation with the prevailing contemporary international rates of Interest. The Award-debtor cannot be subjected to a penal rate of interest, either during the period when he is entitled to exercise the statutory right to challenge the Award, before a Court of law, or later. Furthermore, the arbitral tribunal has not given any reason for imposing a 15% rate of Interest post 120-days.

18. The Petitioner in his Written Submissions submitted a chart which shows that the Interest component of the Award amounts to almost 50% of the sum awarded. The grant of 15% Interest is excessive and contrary to the principle of proportionality and reasonableness.”

18. So far as the present case is concerned, the learned arbitrator differentiated between the pre-reference and *pendente lite* period, on the one hand, and the post-award period, on the other. Such a differentiation is in fact incorporated in the statute itself in the two clauses of Section 31(7) which provides as follows:-

“(7) (a) Unless otherwise agreed by the parties, where and in so far as an arbitral award is for the payment of money, the arbitral tribunal may include in the sum for which the award is made interest, at such rate as it deems reasonable, on the whole or any part of the money, for the whole or any part of the period between the date on which the cause of action arose and the date on which the award is made.

(b) A sum directed to be paid by an arbitral award shall, unless the award otherwise directs, carry interest at the rate of eighteen per centum per annum from the date of the award to the date of payment.”

This has also been noticed by the Supreme Court in paragraphs 10 and 11 of *Vedanta* (supra). Therefore, we are not inclined to set aside the award on this ground either.

Conclusion

19. No other argument having been urged before us, we find that the present appeal is without merit. It is accordingly dismissed alongwith pending applications. The Registrar General is directed to invoke the bank guarantee furnished by CGL pursuant to the order dated 20.01.2017 in this appeal, and make over its proceeds to C-DOT, to be adjusted against the amount awarded in the impugned interim award dated 16.11.2016.

PRATEEK JALAN, J

S. RAVINDRA BHAT, J

JANUARY 22, 2019

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