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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on:14.11.2018

Pronounced on:16.07.2019

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OMP(COMM) No. 248/2017

M/S SHIEL TRADE VENTURE PRIVATE LIMITED..... Petitioner

Through: Mr. Ankit Virmani with Ms. Manasi
Kumar, Advs.

versus

M/S SAMSUNG INDIA ELECTRONICS PRIVATE LIMITED

..... Respondent

Through: Mr. Prashanto Chandra Sen, Sr. Adv.
with Mr. Niraj Singh, Mr. Deepak
Jaiswal and Mr. Atipra, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J.

1. This is a petition preferred under Section 34 of the Arbitration and Conciliation Act, 1996 (in short '1996 Act') to assail the award dated 9 March 2017. The learned arbitrator via the impugned award has held that the respondent is entitled to payment of a sum of Rs.94,38,327.13 along with interest at the rate of 7% per annum with effect from 31 December 2010 till the date of the award. Furthermore, the learned arbitrator has also awarded a sum of Rs.7,50,000/- towards costs in favour of the respondent. In the

impugned award, the learned arbitrator fixed a time limit of three months for payment of the aforementioned awarded amount to the respondent with a caveat that if the amount is not paid within the time limit set out therein, the petitioner will be required to pay future interest at the rate of 9% per annum, commencing from the date of the award till the date of realization.

2. Before I proceed further, I may indicate that the petitioner, which is a private limited company going by the name of Shiel Trade Ventures Private Limited would hereafter be referred to as 'Shiel', while the respondent, that is, M/s Samsung India Electronics Private Limited will be referred to as 'Samsung'. Furthermore, collectively the disputants would be referred to as parties unless the context requires me to refer to them separately in the manner indicated above.

3. The record shows that the disputes between the parties have arisen in the background of the following circumstances.

3.1. Samsung which is in the business of manufacture and sale of electronic gadgets and home appliances including mobile phones appointed Shiel as its distributor for distribution of GSM mobile handsets in Eastern, U.P.

3.2. While there is a disagreement between the parties as to the exact date of appointment, there is a consensus that Shiel was appointed as a distributor in January 2009.

3.3. Shiel claims that a formal written distributorship agreement stamped on behalf of the Samsung, which is dated 7 August 2009, was dispatched to

it for signatures. Shiel also claims that it executed the distributorship agreement dated 7 August 2009 and had it sent to Samsung. Samsung, on the other hand, claims that the distributorship agreement dated 7 August 2009 never came into existence as it was not signed and hence executed.

3.4. The fact remains that the business relationship between Shiel and Samsung continued for approximately a year.

3.5. In and about January 2010, disputes arose between the parties with regard to statement of accounts. According to Samsung, as on 23 June 2010, a sum of Rs. 2,96,17,398.57/- was payable by Shiel.

3.6. It appears that to reconcile accounts a meeting was held between authorized representatives of the parties on 2 July 2010. This aspect is recorded in Shiel's communication dated 17 November 2010. A perusal of the e-mail dated 17 November 2010 would show that Shiel wanted a response from Samsung concerning the following:

- (i) Collection details of Rs.1.22 crores from Redistribution Stockists (hereafter referred to as 'RDS'). These amounts were evidently to be collected by Samsung. Shiel was keen on knowing as to whether or not the amounts had been credited to its account.
- (ii) Proof of claim made by RDS amounting to Rs.17.12 lakhs. According to Shiel, at the meeting on 2 July 2010, it was agreed that RDS will send their proof of claims made within one week and since that period had elapsed, they could not be entertained.

- (iii) The handing over of demo handsets by Shiel to Samsung. According to Shiel, the delay in taking custody of demo handsets by Samsung was resulting in their devaluation.

3.7. The record placed before me also refers to an e-mail dated 3 July 2010 purportedly sent by Samsung to Shiel. Via this e-mail, Samsung sought authorization from Shiel on two counts. First, Samsung should be authorized to collect monies from RDS's on Shiel's behalf. Second, Samsung should be authorized to pay RDS on Shiel's behalf.

3.8. The aforementioned document is appended to the calculation sheet which etches out two possible scenarios. In the first scenario, Samsung was purportedly required to pay a sum of Rs.50 lakhs to Shiel while in the second scenario; Samsung was required to pay a sum of Rs.68 lakhs to Shiel. Besides, there is also a reference to certain disputed claims obtaining between the parties. These pertain to slow-moving inventory support quantified at Rs. 39 lakhs and trade discount/spikes (verbal) pegged at Rs.20 lakhs. Besides this, thereto, there is also a reference to the relationship scheme. No amounts were quantified under the said head. I may also indicate that this e-mail was filed by Shiel with the learned arbitrator at the stage when final arguments were being addressed. It is also, however, the case of Samsung that on 15 November 2010, a joint meeting was held whereupon after giving credit to all amounts due and payable to Shiel, it was agreed that Shiel would pay a sum of Rs.94,38,327.13/- to Samsung. According to Samsung, despite such an agreement being reached, Shiel did a

u-turn and instead issued an e-mail dated 17 November 2010, which I have referred to hereinabove.

3.9. It is this circumstance which propelled Samsung to have a notice served on Shiel via its advocates. Via this notice, Samsung demanded payment of a sum of Rs. 94,38,327.13/- along with interest at the rate of 18% per annum. Pertinently, in this notice, reference was made to the arbitration agreement supposedly existing between the parties, which was printed on the invoices served by Samsung on Shiel. Shiel was, thus, put to notice by Samsung that if it did not pay the amount as indicated in the notice, it would have its Vice-President, in terms of the arbitration agreement obtaining between them, appoint an arbitrator by having the disputes referred to him in terms of the arbitration agreement.

4. Shiel responded to this notice by having its advocates issue a reply dated 21 December 2010. Via this reply, Shiel, *inter alia*, took the following position:

- (i) That the credits were due to it under various heads; the reference to which was made in paragraph 5 of the reply.
- (ii) After adjusting the amounts due to it, Shiel was entitled to a credit amounting to Rs. 68 lakhs from Samsung.
- (iii) The realization of outstanding amounts from RDS was Samsung's concern, and therefore, Shiel could not be held responsible *qua* the same given Samsung's undertaking in that behalf.

- (iv) The disputes raised by Samsung did not arise out of or in relation to any invoice or invoices and for that matter were not incidental to the invoices. In other words, the disputes fell outside the realm of the arbitration agreement, which was mentioned on the rear of the invoices.

4.1 It appears that Samsung thereupon appointed an arbitrator on 1 April 2011. Consequently, *vide* letter dated 12 May 2011, the arbitrator indicated to the parties that he had entered upon reference in the matter. Via this letter, parties were directed to appear before him through counsel/authorized representative on 1 June 2011.

4.2 Shiel on its part, *vide* letter dated 1 June 2011, wrote to the arbitrator. In this communication, Shiel adverted to the fact that in a telephonic conversation with the arbitrator, it had expressed its inability to appear before him on 1 June 2011 as its legal advisor was not available till 30 June 2011 due to ensuing vacation. Further, more importantly, Shiel flagged its concern about the reference of disputes being made to the arbitrator. Shiel, specifically, highlighted the fact that it had “justifiable doubts” as to the circumstances in which the arbitrator was appointed. Furthermore, Shiel also objected to the arbitrator not having requisite qualifications as envisaged in the arbitration agreement obtaining between the parties.

4.3 A perusal of this reply would show that Shiel was adverting to the arbitration clause obtaining in the distributorship agreement dated 7 August 2009 and not to the arbitration agreement which is mentioned in the invoices based on which Samsung had triggered the appointment of the arbitrator.

4.4 The record shows that the learned arbitrator on 20 July 2011 directed parties to complete pleadings in the matter.

4.5 Consequent thereto, on 14 January 2012 Samsung filed its Statement of Claim (in short 'SOC'). In response thereto, Shiel filed its Statement of Defence (in short 'SOD') on 16 July 2012. This was followed by Samsung filing its rejoinder to the SOD. Importantly, on 5 February 2013, Shiel filed a supplementary statement to which a rebuttal was filed by Samsung on 5 September 2013. Notably, parties relied upon documentary evidence. The learned arbitrator, on 3 August 2016, permitted parties to file their written submissions in the matter within a period of four weeks. It is on this date i.e. 3 August 2016 that Shiel attempted to file certain additional documents *qua* which objection was raised by the representatives of Samsung.

4.6 A perusal of the impugned award shows that the learned arbitrator appears to have sustained the objection of Samsung that additional documents could not be taken on record at the stage of final arguments.

4.7 The learned arbitrator after considering the material placed before him dealt with the objection taken by the Shiel to his appointment. In this behalf, the learned arbitrator concluded that constitution of the arbitral tribunal could not have taken place under the distributorship agreement dated 7 August 2009 as it did not bear the signatures of the authorized representative of Samsung. According to the learned arbitrator, the distributorship agreement dated 7 August 2009 was not a concluded contract and hence could not have any binding legal effect. Insofar as the objection taken by Shiel with concerning to his appointment based on the arbitration clause

referred to on the rear of the invoice was concerned, the learned arbitrator observed that since goods were accepted by Shiel based on invoices generated by Samsung which contained an arbitration agreement, the same was binding. In this behalf, the learned arbitrator referred to a judgment of a Single Judge of this Court in the matter of ***Orchid Electronics versus Vinitec Electronics Private Limited***, 2007 Supp Arb. L.R. 266 (Delhi). Based on this reasoning, the learned arbitrator rejected the objection of Shiel to his appointment as the arbitrator.

4.8 As to the merits of the claims lodged by Samsung, the learned arbitrator returned a finding of fact that the statement of account which was presented before him by Samsung was maintained in the ordinary course of business since 27 January 2009 and that Shiel had never raised any objection with regard to any entry in the statement of account. The learned arbitrator also recorded in this regard that Shiel had not led any evidence to rebut the statement of account produced by Samsung.

4.9 The learned arbitrator further observed that Samsung as a measure of goodwill had agreed to help Shiel in resolving its problems with RDS and towards this end, out of a sum of Rs.1,21,42,910/-, it had collected a sum of Rs.70,15,418/- *qua* which due credit had been given to Shiel. The learned arbitrator notes, in the impugned award, that Samsung had never committed that it would collect the entire amount equivalent to Rs.1,21,42,910/- from RDS.

4.10 Besides this, the learned arbitrator also records that Samsung had agreed to give Shiel credit for the demo handsets, price drop, SCP

incentive/salary, the difference in stock valuation, etcetera. In this behalf, the learned arbitrator observed that Shiel had submitted that credit for demo handset in the sum of Rs.5,91,611/- was given as far as back on 9 November 2010.

5. Likewise, the learned arbitrator also notes that according to Samsung, SCP incentive was credited to its account on 8 November 2010. The fact that Shiel had returned, *albeit* partially, stock worth Rs.1,28,23,287.44/-, was also noted by the learned arbitrator.

5.1. This aspect, the learned arbitrator returned a finding of fact that Shiel had failed to furnish any evidence concerning slow-moving handsets, which was quantified at Rs. 39,74,292.95/- and trade discount amounting to Rs.19,30,840/-.

5.2. The fact that Shiel had adverted to the fact that it had counterclaims in the offing worth Rs. 54.05 lakhs and that it was not followed through by making a specific claim in that behalf was also observed by the learned arbitrator.

5.3. It is in this background that the learned arbitrator came to the conclusion, as alluded to hereinabove, that Samsung was entitled to the amounts indicated in its statement of account in full, *albeit*, at a considerably scaled-down rate of interest of 7% per annum that too till the date of award with the caveat though that if the amount was not paid within three months, it would stand hiked to 9% per annum from the date of the award till the date of actual payment. As noted above, the cost of Rs. 7,50,000/- has been awarded in favour of Samsung.

Submissions of the counsel:

6. Given this backdrop, the arguments in the matter on behalf of Shiel were advanced by Mr. Ankit Virmani, learned counsel and those on behalf of Samsung were advanced by Mr. Prashanto Chandra Sen, learned senior counsel. The submissions advanced on behalf of Shiel can be broadly paraphrased as follows:

6.1. The arbitration clause printed on the rear of the invoice was not a valid arbitration agreement as per the provisions of Section 7 of the 1996 Act. The contention was that the arbitration clause which was printed on the rear of two invoices was acknowledged by personnel of Shiel. The signatures of the personnel were found appended under the heading “received the material stated herein”. In other words, the personnel only acknowledged the receipt of goods. The argument being, there was no consent given by Shiel to authorize adjudication of disputes via arbitration. The personnel, according to Shiel, was in any event not authorized to give any such consent. In support of this submission, reliance was placed on the following judgments:

- i. ***Alupro Building Systems Private Ltd. vs. Ozone Overseas Private Ltd., 2017 SCC Online Del 7228.***
- ii. ***NSK-India Sales Company Private Ltd. v. Proactive Universal Trading Company Pvt. Ltd., 2015-4-L.W.417***
- iii. ***Taipack Ltd. & Ors. Vs. Ram Kishore Nagar Mal, (2007) 143 DLT 123.***

6.2. In support of the aforesaid contention, reliance was also placed on behalf of Shiel on the supplementary statement dated 15 February 2013 filed before the learned arbitrator. In this context, the following contentions were advanced.

(i) The disputes raised before the learned arbitrator did not pertain to the two invoices produced before him. The submission was that the disputes referred to the learned arbitrator were not covered by the arbitration clause based on which the constitution of the arbitral tribunal had taken place.

(ii) The arbitration agreement which was operable between the parties was Clause 11.6 of the distributorship agreement dated 7 August 2009. This agreement had a binding legal effect as Shiel had fulfilled its part by executing the same and handing over the document to Samsung.

(ii)(a) To demonstrate that the distributorship agreement dated 7 August 2009 was binding on Samsung, the emphasis was laid on the fact that it bore the stamp i.e. seal of Samsung.

(ii)(b) In other words, according to Shiel, since the distributorship agreement dated 7 August 2009 created a binding legal relationship between the parties, the arbitration clause contained therein was the only clause which could be enforced for the appointment of an arbitrator.

(ii)(c) It was argued that since Clause 11.6 was binding on the parties, the arbitrator could only have been appointed by the Managing Director of Samsung who had to be at least a retired High Court Judge.

(ii)(d) In this behalf, it was contended that the invoices signed by personnel of Shiel, who was not authorized to enter into a binding arbitration agreement, could not have dislodged the arbitration clause which was contained in Clause 11.6 of the distributorship agreement dated 7 August 2009.

(iii) The appointment of the arbitrator was *non est* in law as Samsung had given no prior notice of appointment as required under Section 21 of the 1996 Act. This was a mandatory requirement and since it was not fulfilled, the impugned award could be set aside on this ground alone under Section 34(2)(iii) of the 1996 Act.

(iv) The learned arbitrator had committed a grievous error in accepting the stand of Samsung as regards the purported amounts due and payable by Shiel by relying solely on the statement of account produced by Samsung without any proof with respect to the fact that books from which statement of account was generated were kept in the normal and usual course of business and corroborative evidence with regard to the entries contained therein.

(v) Samsung in its mail dated 3 July 2010 addressed to Shiel had categorically admitted that monies were payable by it to Shiel.

(v)(a) In a nutshell, on this aspect, the argument advanced on behalf of Shiel was that the statement of account was wholly inadmissible and unreliable. Reference in this regard was made to Section 34 of the Indian Evidence Act, 1872 (in short 'Evidence Act'). Furthermore, reliance was placed on the following judgments:

- i. ***Central Bureau of Investigation versus V.C. Shukla & Ors., (1998) 3 SCC 410.***
- ii. ***Sudesh Galaut versus Om Prakash & Ors. 2015 SCC Online Del 13038.***

(vi) The finding as to the amounts purportedly payable by Shiel to Samsung was perverse as it ignores the contents of the e-mail dated 3 July 2010 which was appended as Annexure-1 to the supplementary statement dated 15 February 2013. As per the contents of this mail, Samsung itself had envisaged two scenarios. In the first scenario, Samsung was required to pay a sum of Rs. 50 lakhs while in the second scenario it was required to pay a sum of Rs. 68 lakhs.

(vi)(a) Besides this, it was emphasized that the arbitrator had failed to give credit *qua* other adjustments which found mention in the mail dated 3 July 2010. The fact that there was a reference to these adjustments in the SOD was also highlighted in the course of the arguments. It was stressed that though the impugned award deals with some adjustments, it does not discuss details concerning other heads/adjustments adverted to in the mail dated 3 July 2010. In this context, the argument is that the learned arbitrator had completely ignored the pleas and evidence placed on record by Shiel.

7. On the other hand, on behalf of Samsung, the following arguments were advanced:

(i) The distributorship agreement dated 7 August 2009 was a draft agreement as it did not bear the signatures of authorized representatives of

Samsung. It was argued that since Shiel had asserted that a binding agreement had come into existence, it ought to have led evidence in that behalf and since it had failed to do so, it could not have taken benefit of the arbitration clause obtaining in the draft agreement.

(ii) Insofar as the arbitration clause which was mentioned on the rear of the invoices was concerned, the submission was that since Shiel had accepted delivery of goods against those invoices, which also had signatures of his representative appended on them, the arbitration clause was binding on Shiel. In support of this submission, reliance was placed on the judgment rendered in Orchid (*supra*).

(ii)(a) The judgments rendered in Tiapack Ltd. (*supra*), and NSK (*supra*) were sought to be distinguished by adverting to the fact that in all these cases purchase orders were generated which did not contain an arbitration clause and, therefore, the fact that an arbitration clause was mentioned in the invoice, did not account for very much as it was contrary to the terms of the purchase order.

(iii) It was sought to be highlighted that the business transaction between the parties was a subject matter of several invoices and at no stage did Shiel ever take objection to the conditions mentioned in the invoices which included the arbitration clause. In this context, the argument advanced was the fact that the invoices were signed was good enough for a valid arbitration clause to come into existence notwithstanding the defence that the terms and conditions contained in the invoice were not understood by the person who signed the invoice on behalf of Shiel as long no fraud was employed. In

support of this submission, reliance was placed on the judgment of King's Bench Division rendered in *L'estrage versus F. Graucob Limited*, (1934) 2 K.B. 394 and *Ghatge and Patil (Transport) Limited versus M/s Madhusudan Ramkumar*, AIR 1977 Bombay 299.

7.1. Insofar as the merits of the matter were concerned, the arguments advanced were that the statement of accounts submitted by Samsung was sufficient to prove the amount which was due and payable to it by Shiel. In this context, it was contended that it was well established that the accounts regularly maintained in the course of business are taken to be correct by Courts unless there are strong and sufficient reasons to indicate that they are unreliable. In this connection, it was sought to be highlighted that Shiel had not raised any objection about any specific entry in the statement of accounts or put out an alternate statement of accounts to contest the one on which Samsung had relied upon before the learned arbitrator. It was stressed, the fact that the goods had been received by Shiel against invoices generated by Samsung was found to be correct by the learned arbitrator against the claims lodged by Samsung. In support of the aforesaid submissions, reliance was placed on *CIT versus Woodward Governor India Private Limited*, (2009) 13 SCC 1 and *Gian Chand and Brothers and Another versus Rattan Lal Alias Rattan Singh*, (2013) 2 SCC 606.

7.2. Furthermore, it was argued that reliance placed by Shiel on the contents of the e-mail dated 3 July 2010 was misplaced as the same was placed on record for the first time after the conclusion of arguments when

the learned arbitrator had reserved the matter for pronouncement of the award.

7.3. Insofar as the adjustments were concerned, on behalf of Samsung, reference was made to the joint meeting held on 2 July 2010 between the representatives of the parties. It was contended that only as a gesture of goodwill, Samsung had agreed to collect monies from RDS and, therefore, having collected a sum of Rs.70,50,481/-, credit was given *qua* the same to Shiel. It was further contended that credit was also given for stock of mobile handsets handed over by Shiel to Samsung which was pegged at Rs.1,28,23,287.44/-. In other words, after the aforementioned adjustments were made, according to Shiel, at the meeting held between the representatives of parties on 15 November 2010, it was agreed that Shiel would pay a sum of Rs.94,38,327.13/- to Samsung. Further, it was contended that the turnabout made by Shiel via its e-mail dated 17 November 2010 was only to wriggle out its commitment to pay the aforementioned amounts.

Analysis and reasons:

8. Having heard learned counsel for the parties and perused the record, to my mind, the following aspects emerge *qua* which there can be no dispute:

(i) Shiel was appointed as a distributor by Samsung in and about January 2009.

(ii) Though the distributorship agreement dated 7 August 2009 was signed by Shiel, the same does not bear the signatures of Samsung. Even according to Shiel, what it could produce before the arbitrator was a distributorship agreement dated 7 August 2009 which bore the stamp of Samsung. Thus, there was, in a sense, a last-mile gap between intent and conclusion of a legally binding relationship based on the distributorship agreement dated 7 August 2009 on which reliance was placed by Shiel.

(iii) Goods have been supplied by Samsung to Shiel. There is no dispute that the supply of goods was under invoices generated by Samsung. The fact that only two invoices have been put on record, to my mind, does not lead to a different conclusion as there is no averment in the SOD filed on behalf of Shiel that other supplies made to Shiel were not accompanied by invoices.

(iv) Even according to Shiel, the invoices served upon it along with the subject goods adverted to an arbitration clause along with other terms and conditions, *albeit*, on its rear side.

(iv)(a) This aspect emerges upon perusal of the reply dated 21 December 2010 served on behalf of Shiel on Samsung in response to its notice dated 10 December 2010. In the reply, Shiel does not take the position that there is no arbitration agreement obtaining between the parties but goes on to state that the disputes raised by Samsung did not arise out of or in relation to any invoice or any matter incidental thereto. For the sake of greater clarity, I may only quote that part of the reply sent by Shiel's advocate, which adverts to this aspect of the matter: -

“8. That the disputes raised by your client in the notice under reference did not arise out of or in relation to any invoice/invoices or any matter incidental thereto so as to invoke the arbitration. ...”

(iv)(a.1) It is pertinent to note that this position was taken by Shiel’s advocates knowing fully well that in paragraph 7 of the notice dated 10 December 2010, Samsung had made the following assertion:-

“7. There is an agreement between you and our client printed on the invoices for reference of all disputes or differences arising out of invoices or for any matter incidental thereto to the arbitrator be appointed by the Vice-President of our client. ...”

(v) Notably, Shiel did not refer to Clause 11.6 of the distributorship agreement dated 7 August 2009. The defense, in the first instance, which was taken, was that the disputes sought to be referred by Samsung to arbitration were not arbitrable as they neither arose out of nor were they related to the matter incidental to the invoices.

8.1. I must indicate herein that the assertion concerning to Clause 11.6 of the distributorship agreement dated 7 August 2009 was raised for the first time on behalf of Shiel in the SOD.

8.2. Likewise, insofar as the adjustments were concerned, the documents which are vital to this aspect of the matter are the minutes of meeting dated 3 July 2010, e-mail dated 17 November 2010, minutes of meeting dated 18 November 2010 and contents of the reply dated 21 December 2010.

9. Given this backdrop, the issues which arise for consideration before me would be the following:

Issues:

- (i) As to whether the arbitration agreement appearing at the rear side of the invoices would bind Shiel?
- (ii) Whether the learned arbitrator was right in quantifying the amounts payable by Shiel to Samsung based solely on the statement of account furnished by Samsung?

Issue no. (i):

10. Insofar as the first issue is concerned, in my view, the facts obtaining, in this case, are *sui generis* when compared to judgments cited both on behalf of Shiel and Samsung. As noted above, in this case, there is no serious dispute raised by Shiel that goods supplied to it were accompanied by invoices. There is also no dispute that the receipt of goods was evidenced by signature of an employee of Shiel is appended against the following endorsement on the invoice: -

“Received the material stated herein. Customer signature and stamp”

11. The invoice has explicitly set out on its face that the conditions under which goods are supplied are adverted to overleaf. Pertinently, the conditions are set forth, in a font size, which is legible. Further, one of the terms and conditions mentioned in the invoice, which is, Condition No. 12 encapsulates the arbitration agreement. For the sake of convenience, Condition No. 12 is set forth hereafter: -

“...12. ARBITRATION

Any dispute or difference of any nature whatsoever arising out of or in relation to this Invoice or any manner incidental thereto or any claim, cross-claim, counter-claim, or set off regarding any right, liability, act or omission of any of the parties hereto shall be referred to the sole arbitration of the Arbitrator to be nominated by the Vice President of M/s. Samsung India Electronics Private Ltd. The award of the Arbitrator shall be final, conclusive and binding on both the parties, hereto. Such arbitration shall be held at New Delhi and the Courts at Delhi alone shall have the jurisdiction to deal with the arbitration proceedings and the award in accordance with law. ...”

12. A bare perusal of the aforementioned condition would show that it is set out in the widest terms as it not only adverts to disputes or differences which arise out of or in relation to the invoice but also to disputes which are incidental thereto, in addition to, any claim, cross-claim, counterclaim, set off regarding any right, liability or omission of any of the parties. The power of appointment under Condition No. 12, as is obvious, upon a plain reading was vested in the Vice-President of Samsung.

13. Section 7 of the 1996 Act¹ encapsulates as to what constitutes an arbitration agreement.

¹ 7. Arbitration Agreement-

(1) In this Part, “arbitration agreement” means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.

(2) An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.

(3) An arbitration agreement shall be in writing.

(4) An arbitration agreement is in writing if it is contained in—

(a) a document signed by the parties;

13.1. A perusal of the provisions of Section 7 would show, (insofar as it is relevant to the present case), that to constitute a valid arbitration agreement, it should be in writing. The provision goes on to state that an arbitration agreement is in writing if it falls in any of the three categories referred in sub-clause (a) to (c) of Subsection (4) of Section 7. For the moment, I am not referring to Subsection (5) of Section (7) as the situation contemplated therein does not arise in the present case.

13.2. Therefore, an arbitration agreement is construed to be in writing if it is contained in a document signed by parties or is elicited from exchange of letters, telex, telegrams, or other means of telecommunication, including electronic which advert to the agreement or even where existence of an arbitration agreement emerges on perusal of pleadings filed before the arbitrator.

13.3. The instant case, in my opinion, will fall, if at all, under clause (a) of Subsection 4 of Section 7. Thus, though the arbitration agreement itself need not be signed, it is, however, construed to be in writing (as is the mandate of law) if it is found incorporated in a document signed by parties. The expression used in Subclause (a) to Subsection (4) of Section 7 is

(b) an exchange of letters, telex, telegrams or other means of telecommunication which provide a record of the agreement; or

(c) an exchange of statements of claim and defence in which the existence of the agreement is alleged by one party and not denied by the other.

(5) The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement if the contract is in writing and the reference is such as to make that arbitration clause part of the contract.

‘document’ which is wider than the expression contract. Therefore, an invoice, to my mind, would be a document which falls within the ambit of Section 7(4)(a).

13.4. The judgments cited on behalf of Shiel are distinguishable on facts as the invoices which contained the arbitration clause were preceded by documents such as purchase orders, GR notes which did not contain an arbitration clause. In other words, in each of those cases, the Court concluded that parties did not intend to have their disputes adjudicated *via* an arbitration mechanism. The true ratio of those judgments, to my mind, is not that arbitration clause in an invoice signed by parties *per se* would not bind parties but instead is pivoted on the intendment of parties. The contradiction in the form of absence of signatures on purchase orders and GR notes made the court conclude that parties did not intend to enter into a binding arbitration agreement.

13.5. Therefore, what is important in this case is does the material on record show that the business transaction which obtained between them was regulated by the terms and conditions of sale given in the invoice which included an arbitration clause.

13.6. As noted above, in response to Samsung’s notice dated 10 December 2010, wherein there was a reference to the arbitration clause, in the reply, Shiel’s advocates did not deny knowledge of the same or the fact that the signature on the invoice of the employee of Shiel indicated only acceptance of material and not the terms and conditions of sale, which included the arbitration agreement. Instead, the objection raised was that the disputes

raised in the notice dated 10 December 2010 were not arbitrable as they did not pertain to invoices but the statement of account. The argument on behalf of Shiel that acceptance of material did not result in acceptance of terms and conditions is in teeth of Condition No. 5 of the terms and conditions given in the invoice which reads as follows: -

“5. ACCEPTANCE BY BUYER

The receipt of this invoice by the Buyer shall be construed as the acknowledgement of the receipt of goods and acceptance of all the terms and conditions of this invoice. This invoice shall bind the parties and shall be construed a valid contract under the Indian Contract Act, 1872, or any other law that may govern such kind of transaction.

(emphasis is mine)

13.7. In other words, the argument on behalf of the Shiel boils down to this: that the receipt of the invoice along with goods does not necessarily imply that it was bound down by the terms and conditions of sale. This argument, as noted above, is in the face of Condition No. 5 of the terms and conditions of sale, included in the invoice.

13.8. A plain reading of the aforementioned condition would show that the receipt of invoice by Shiel was to be construed not only as acknowledgement of receipt of goods but also acceptance of all terms and conditions of the invoice. If that be the case, Shiel can derive no mileage from the fact that its employee while appending his signatures on the invoice only accepted the goods and that acceptance did not imply in law, the acceptance of terms and conditions of the invoice.

13.9. Furthermore, there was no evidence brought on record by Shiel that it had, at any stage, objected to any of the terms and conditions of sale incorporated in the invoice. Thus, for the foregoing reasons, I am of the view that Condition No. 12 of the terms and conditions of sale appended to invoice, which contains the arbitration agreement, binds the parties.

Issue no. (ii):

14. Before I embark upon the discussion in respect of issue no. (ii), I must set down as to what is the jurisdictional periphery available to the Court while examining the issue. It will have to be borne in mind that not only am I examining a domestic award but also a challenge to a domestic award after the enactment of Arbitration and Conciliation (Amendment) Act, 2015 (in short '2015 Amendment Act'). Therefore, one would have to bear in mind the provisions of Section 34 (2A) of the 1996 Act. This provision was inserted *via* the 2015 Amendment Act. In a nutshell, Section 34 (2A) provides that an arbitral award i.e. a domestic award, other than a domestic award arising out of international commercial arbitration, may be set aside if it is vitiated by a 'patent illegality' appearing on the face of the award. The proviso to Section makes it clear that the award cannot be set aside merely on the ground that the law has been erroneously applied by the learned arbitrator or on a re-appreciation of evidence, the Court, while exercising powers under Section 34, reaches to a conclusion different from that of the arbitrator.

15. Undoubtedly, the Legislature has narrowed down the challenge to a domestic award made on the ground of patent illegality. However, *qua* this

aspect, I do not intend to reinvent the wheel, so to speak, as the scope of the expression ‘patent illegality’ has been considered by the Supreme Court in a recent judgment rendered in *Ssangyong Engineering & Construction Co. Ltd. Vs. National Highway Authority of India (NHAI)* (in short ‘Ssangyong’), 2019 SCC OnLine SC 677. The observations made by the Court, while considering its earlier judgments on the issue, being apposite, are extracted hereafter: -

“...37. Thus, it is clear that public policy of India is now constricted to mean firstly, that a domestic award is contrary to the fundamental policy of Indian law, as understood in paragraphs 18 and 27 of Associate Builders (supra), or secondly, that such award is against basic notions of justice or morality as understood in paragraphs 36 to 39 of Associate Builders (supra). Explanation 2 to Section 34(2)(b)(ii) and Explanation 2 to Section 48(2)(b)(ii) was added by the Amendment Act only so that Western Geco (supra), as understood in Associate Builders (supra), and paragraphs 28 and 29 in particular, is now done away with.

38. Insofar as domestic awards made in India are concerned, an additional ground is now available under sub-section (2A), added by the Amendment Act, 2015, to Section 34. Here, there must be patent illegality appearing on the face of the award, which refers to such illegality as goes to the root of the matter but which does not amount to mere erroneous application of the law. In short, what is not subsumed within “the fundamental policy of Indian law”, namely, the contravention of a statute not linked to public policy or public interest, cannot be brought in by the backdoor when it comes to setting aside an award on the ground of patent illegality.

39. Secondly, it is also made clear that re-appreciation of evidence, which is what an appellate court is permitted to do, cannot be permitted under the ground of patent illegality appearing on the face of the award.

40. *To elucidate, paragraph 42.1 of Associate Builders (supra), namely, a mere contravention of the substantive law of India, by itself, is no longer a ground available to set aside an arbitral award. Paragraph 42.2 of Associate Builders (supra), however, would remain, for if an arbitrator gives no reasons for an award and contravenes Section 31(3) of the 1996 Act, that would certainly amount to a patent illegality on the face of the award.*

41. *The change made in Section 28(3) by the Amendment Act really follows what is stated in paragraphs 42.3 to 45 in Associate Builders (supra), namely, that the construction of the terms of a contract is primarily for an arbitrator to decide, unless the arbitrator construes the contract in a manner that no fair-minded or reasonable person would; in short, that the arbitrator's view is not even a possible view to take. Also, if the arbitrator wanders outside the contract and deals with matters not allotted to him, he commits an error of jurisdiction. This ground of challenge will now fall within the new ground added under Section 34(2A).*

42. *What is important to note is that a decision which is perverse, as understood in paragraphs 31 and 32 of Associate Builders (supra), while no longer being a ground for challenge under “public policy of India”, would certainly amount to a patent illegality appearing on the face of the award. Thus, a finding based on no evidence at all or an award which ignores vital evidence in arriving at its decision would be perverse and liable to be set aside on the ground of patent illegality. Additionally, a finding based on documents taken behind the back of the parties by the arbitrator would also qualify as a decision based on no evidence inasmuch as such decision is not based on evidence led by the parties, and therefore, would also have to be characterized as perverse.*

43. *Given the fact that the amended Act will now apply, and that the “patent illegality” ground for setting aside arbitral awards in international commercial arbitrations will not apply, it is necessary to advert to the grounds contained in Section 34(2)(a)(iii) and (iv) as applicable to the facts of the present case... ”.*

16. A perusal of the aforementioned extract from the Ssangyong judgement would show that perversity which relates to a case of no evidence or rendering of an award by ignoring vital evidence would continue to fall within the ambit of the expression 'patent illegality' ever after the enactment of the 2015 Amendment Act.

17. Therefore, as indicated above, while dealing with this issue, unless I conclude that the learned arbitrator ignored vital and relevant material, even though placed before him, his conclusion as to the amounts payable under the award by Shiel to Samsung cannot be interfered with by me.

18. Thus, the limited exercise that I am required to carry out is: as to whether the learned arbitrator could have concluded (given the entirety of the material placed before him) that a sum of Rs. 94,38,327.13/- shown as payable by Shiel to Samsung in the statement of account drawn up by the latter i.e. Samsung was the correct amount.

18.1. Towards this end, let me at the outset advert to the law enunciated as to the weight which is to be given to entries set out in the statement of account of one of the contesting parties, in this case, Samsung.

18.2. The principle of law concerning the weight to be given to entries in the statement of accounts is encapsulated by the Supreme Court in the matter of *Chandradhar Goswami & Ors vs The Gauhati Bank Ltd., 1967 AIR 816*. This decision was rendered by the Supreme Court in context of the provisions of Section 34 of the Evidence Act². Section 34 of the Evidence

² 34. Entries in books of account when relevant. — 1 [Entries in books of account, including those maintained in an electronic form], regularly kept in the course of business, are relevant whenever they refer

Act provides that entries in the books of account regularly kept in the course of business are relevant. However, the provision goes on to state that such statements alone are not sufficient evidence to charge a person with liability.

18.3. Therefore, the Section by itself while giving weight to the statement of accounts (incorporated in the books of account kept in the ordinary course of business) does hold out a salutary warning that the entries contained therein alone would not be sufficient evidence to mulct a person with liability. In the context of this provision, the Supreme Court made the following apposite observations:

“...It is clear from a bare perusal of the Section that no person can be charged with liability merely on the basis of entries in books of account, even where such books of account are kept in the regular course of business. There has to be further evidence to prove payment of the money which may appear in the books of account in order that a person may be charged with liability thereunder, except where the person to be charged accepts the correctness of the books of account and does not challenge them. ...”

(emphasis is mine)

18.4. The aforesaid observations of the Supreme Court would show that where a challenge is laid to the entries made in the books of accounts, the Court enquiring as to the amounts payable by the defendant will not base its conclusion merely on the entries in the statement of accounts.

to a matter into which the Court has to inquire, but such statements shall not alone be sufficient evidence to charge any person with liability

18.5. Therefore, the answer to this issue would lie in the facts obtaining in this case. In other words, did the material on record show that Shiel had challenged the entries made in the statement of account?

18.6. Before I go further, I may only indicate that *sensu stricto* the learned arbitrator was not bound by the provisions of the Evidence Act. This aspect emerges upon a plain reading of the provisions of Section 19(1) of the 1996 Act.

18.7. However, having said so, the broad principles contained in Section 34 of the Evidence Act would have to be applied by the arbitrator to avoid a perverse conclusion. In this particular case, therefore, the arbitrator was required to look at the material placed before him.

19. Given the fact that in this case, parties had agreed to rely upon documentary evidence, the learned arbitrator, in the very least, was required to examine the entirety of the material placed before him from the perspective of its relevance, materiality, and weight. Importantly, the stage at which, the material was produced was, perhaps, not that relevant. What was important was that each party was allowed to deal with material put forth by the opposing party. I am referring to this aspect of the matter as one of the documents, which is an e-mail dated 03.07.2010, purportedly issued by Samsung to Shiel, though, made available, it appears, was not dealt with by the learned arbitrator. I have elaborated on this aspect of the matter in the latter part of my judgment.

19.1. Thus, the material placed before the learned arbitrator, as alluded to hereinabove, *inter alia*, included the minutes of meeting dated 3 July 2010

(concerning the joint meeting held on 2 July 2010) and 18 November 2010, the contents of the e-mail dated 3 July 2010 and the reply dated 21 December 2010 as also the attachments appended thereto.

19.2. The learned arbitrator has, while deciding the matter on merits, stated the following in one paragraph of the award, which reads: -

“28. SIEL as a goodwill gesture agreed to-help the STVPL in resolving the issues with the Regional Distributors (RDS). Out of Rs.1,21,42,910/- a sum of Rs.70,15,418 was collected from the RDS and said amount was credited to the STVPL. There is nothing on record to indicate that SIEL had ever committed to the STVPL to collect Rs.1,21,42,910/- from RDS and SIEL agreed to issue credit for DOA handset, price drop, SCP incentive/salary, difference in stock valuation and demo handsets. It is specifically submitted by SIEL that the claim for Rs.5.91 ,611/- regarding DOA handset was credited as back as on 09.11.2010 and SCP incentive was credited on 08.11.2010. It is further submitted by SIEL that in terms of meeting dated 02.07.2010, the STVPL returned the partial stock of Rs.12,82,3,287.44 lying with them whi.ch was credit in STVPL's account. The claim of STVPL towards slow moving handsets for Rs.39,74,292.95, trade discount for Rs.19,30,840/- denied by SIEL and STVPL failed to lead any evidence. It is important to note that despite specific averments in the statement of defence, to file counter claim of Rs. 54.05 lacs, STVPL failed to file the same. Though, SIEL in its rejoinder denied the claim of the STVPL. The alleged counter claims are rejected.”

19.3. A perusal of the contents of paragraph 28 would show that the learned arbitrator has simply accepted the stand of Samsung with regard to three credit entries i.e. claim for Dead on Arrival handset (in short ‘DOA’) in the sum of Rs.5,91,611/-, SCP incentive without advertng to what the amount is, and credit for partial return of stock in the sum of Rs.12,823,287.44/-.

19.4. On merits, the material documents which were available to the learned arbitrator are as follows:

- i. The minutes of the meeting dated 03.07.2010. These pertain to the joint meeting held on 02.07.2010.
- ii. The email dated 03.07.2010.
- iii. The email dated 17.10.2010 sent by Shiel.
- iv. The minutes of the meeting dated 18.11.2010.
- v. Lastly, the reply of Shiel dated 21.12.2010 to the legal notice of Samsung dated 10.12.2010.

19.5. A perusal of these documents would show that the following picture emerges in so far as the reconciliation of accounts is concerned.

19.6. Evidently, at a joint meeting held on 02.07.2010, the following broad points were discussed and an agreement appears to have been reached between parties thereafter:

- i. Samsung will collect current amounts payable from RDS on behalf of Shiel and upon collection will credit Shiel *qua* the same.
- ii. Upon collection of current amounts payable from RDS, Samsung will make payments to RDS against their claims as per details provided by Shiel. These payments were to be made from Shiel's account.
- iii. Samsung will collect from RDS, within 7 days, proofs of claims. No claims from RDS were to be entertained beyond a period of 7 days.
- iv. Samsung had agreed to credit amounts on account of the following heads:
 - a) DOA-56H/Sets: Rs. 5,91,611.00/-

- b) Rate Diff/PD Dec/Stock in Transit: Rs.10,13,763.65/-
- c) SCP Incentive for Nov & Dec 2009: Rs. 3,19,848.00/-
- d) The difference in stock valuation as pointed out in the working provided by SIEL: Rs.16,33,002.51/-
- e) Demo Handsets lying unsold: Rs. 5,96,488.00/-

Total: Rs.41,54,713.16

19.7. Upon Samsung crediting the amounts collecting from RDS and the sum of Rs. 41,54,713.16/-, the details of which have been given above, Shiel was to handover stocks lying with it to Samsung.

20. After the aforesaid aspects were taken care of, one of the employees of Samsung i.e. one Mr. Kapoor was to arrange a meeting with the upper echelon of Samsung to discuss Shiel's claims and point of view concerning the following:

- a) Claim towards slow-moving handsets quantified at: Rs.39,74,292.35/-
- b) Trade discounts quantified at: Rs. 19,30,840.00/-

20.1. A review was to be undertaken of relationship scheme operable between August and October 2009.

20.2. Samsung was also required to collect from Shiel unsold demo handsets upon an authority letter being issued by one Mr. KH Khan of Samsung on Samsung's letterhead.

20.3. It appears based on the aforesaid that on a day after the joint meeting of 02.07.2010 i.e. on 03.07.2010, an email was issued by one Mr. Nirupam

Bhattacharya on behalf of Samsung to Mr. Sanjeev Rattan of Shiel. I must indicate herein that there are two versions as to when this document was submitted. According to Shiel, this document was a part of the supplementary statement filed with the learned arbitrator on 15.02.2013 whereas Samsung claims that Shiel tried to submit this document once the learned arbitrator had reserved the matter after oral submissions were advanced i.e. on 03.08.2016.

20.4. Be that as it may, as adverted to above, this email is accompanied by a detailed worksheet. Amounts payable by RDS to Shiel and *vice versa* have been quantified. Adjustments under various heads sought by Shiel which were discussed and agreed upon at the joint meeting dated 02.07.2010 are factored in.

20.5. Based on these aspects, two scenarios emerged. In the first scenario, the net amount payable by Samsung to Shiel was quantified at Rs. 50,00,000/- whereas, in the second scenario, the net amount payable once again by Samsung to Shiel was quantified at Rs. 68,00,000/-. Besides this, there is also a reference to claims for slow-moving inventories and trade discounts which were capped at Rs.39,74,292.35/- and Rs. 19,30,840.00/- respectively. There is also a reference to relationship scheme working; a head under which no amount was quantified.

20.6. These aspects were undisputedly ignored while determining amounts payable by Samsung to Shiel for no discernible reason.

20.7. It is, however, important to note that while at the joint meeting held on 2.7.2010, it was agreed between the parties that Samsung will not only

get authorization of collecting money from RDS but also pay the amount to RDS, Shiel *via* communication dated 3.7.2010 (see Annexure 1/4) had only given authorization for collection and not for payment. The reason, perhaps, was that Samsung was to collect proof of claims made by RDS within 7 days which Shiel claimed it had not received. It appears that after 2.7.2010, a meeting was held between the representatives of the parties on 15.11.2010 as well. On record, the minutes of meeting dated 15.11.2010 are not available; there is, however, a reference to this meeting as well as the earlier meeting dated i.e. 2.7.2010 in Sheil's e-mail dated 17.11.2010 addressed to Samsung. In this e-mail, Shiel adverts to the fact that the collection details of the sum of Rs. 1.22 Crores had neither been furnished to it nor were the amounts credited to its account. Shiel emphasized in this e-mail that the amount noted was reconciled in the presence of one Mr. K.H. Khan, an employee of Samsung, in the presence of his team, in the first week of June 2010.

20.8. Furthermore, Shiel also asserted in this e-mail that proof of claims lodged by RDS in the sum of Rs. 17.12 lakhs was not handed over as agreed in the meeting dated 2.7.2010. In line with the agreement reached on 2.7.2010, Shiel took the stand that since proof of claims was not received within the stipulated period of seven days, the same could not be adjusted. Furthermore, an assertion was made that demo handsets were lying with Shiel and that since they were not collected, with each passing day, they were losing their value.

20.9. Evidently, on 18.11.2010, another meeting was held between representatives of the parties. At this meeting, a representative of Samsung

indicated that Shiel would not be providing the latest copies of accounts and other credit notes as issued, previously discussed and settled till the permission of Samsung's legal department was obtained. Besides this, the representatives of Samsung also informed the representative of Shiel that they had credited amounts in the account of Shiel under the following heads:

- (i) DOA Handsets;
- (ii) SCP Incentive for November and December 2009-10 and;
- (iii) A Credit note for 1772 handsets out of 1799 handsets returned on 17.7.2010.

21. Insofar as the balance 27 handsets were concerned, it was indicated that a credit note will be prepared and the amounts will be credited after verification of IMEI numbers from the warehouse. Pertinently, the representative of Samsung gave fresh working in respect of two heads.

(i) Firstly, insofar as amounts claimed for rate difference/PD stock in transit were concerned, it claimed reduced sum which was an amount equivalent to Rs. 5,94,573/- as against Rs. 10,13,763.65/-, which was recorded in the meeting held on 2.7.2010.

(ii) Secondly, insofar as amounts claimed *qua* difference in stock valuation and price stock was concerned, Shiel now claimed an enhanced amount of Rs. 18,82,005/- as against the sum of Rs. 16,33,002.51; a figure which was also provided by it at the meeting held on 2.7.2010.

21.1. Therefore, in a nutshell, against a sum of Rs. 41,54,713.16/-, Shiel was seeking the credit of Rs. 39,84,525/-.

22. Clearly, Shiel felt that the parties needed to work at reconciliation of the accounts and thus, *inter alia*, made a suggestion to that effect in its reply dated 21 December 2012.

23. The learned arbitrator, on the other hand, as noted by him in paragraph 28 of the award, has accepted the version of Samsung that credit has been given *qua* the following:

- (i) Rs.70,15,418/-; collected from RDS.
- (ii) Rs. 5,91,611/-; in respect of DOA handset.
- (iii) *Qua* SCP incentive, though the amount is not crystallized.
- (iv) Rs. 1,28,23,287.44/-; towards the return of part of the stock.

23.1. A perusal of Samsung's statement of account would show that there is, firstly, no consolidated entry in the sum of Rs. 70,15,418/- found therein in respect of amounts purportedly collected from RDS. As noted hereinabove, at the joint meeting held on 02.07.2010, Samsung and Shiel had come to an agreement that the former (i.e. Samsung) will collect the entire amount and give credit *qua* the same to Shiel. The material on record shows that the amount to be collected from RDS was a sum of Rs. 1,21,42,910/-, even according to the learned arbitrator, as noted by him in paragraph 28 of the award. The arbitrator, contrary to the minutes of the meeting dated 03.07.2010, based on his *ipse dixit* concludes that there is no material on record to show that Samsung had undertaken the responsibility to collect the entire amount from RDS and thereupon give the credit *qua* the same to Shiel. Furthermore, it needs to be emphasized that while a

consolidated entry in the sum of Rs.70,15,418/- is not found in the statement of account, there is no discussion in the award as to whether or not, this amount is spread over various entries.

23.2. As noted above, insofar as the SCP incentive is concerned, the learned arbitrator, while noting that Samsung had given credit to Shiel *qua* the same, has not adverted to any specific sum in that behalf. However, on a perusal of the statement of account, it is found that on 08.11.2010, Samsung has given credit for SCP incentive to Shiel of an amount equivalent to Rs. 2,91,969/-. It may be noted that Shiel had asked for a credit of an amount equivalent to Rs. 3,19,848/-. There is no discussion as to why the balance amount was not credited in the statement of account. There is also no discussion in paragraph 28 as to why no credit is given *qua* 'Rate Diff/PD Dec/Stock in Transit'.

23.3. Likewise, there is no discussion in the award as to why no credit is given *qua* difference in stock valuation, slow-moving handset and trade discount, even though these aspects were the subject matter of joint meeting held on 02.07.2010. I may also indicate that though the learned arbitrator has noted that Samsung has given credit to Shiel of an amount equivalent to Rs. 1,28,23,287.44/- towards the partial return of the stock, no consolidated entry of a like amount is found in the statement of account. Concerns raised about the review of the relationship scheme for the period from August to October 2009, which were articulated in the meeting dated 02.07.2010, are also not dealt with by the learned arbitrator. It appears that the learned arbitrator has taken the balance struck (i.e. the amount said to be owed by

Shiel to Samsung in Samsung's statement of account) as the gospel truth. The learned arbitrator has randomly referred to some entries in paragraph 28 and thus affirmed the figure of Rs. 94,38,327.13/- as the amount payable by Shiel to Samsung.

23.4. The learned arbitrator has, thus, to my mind, committed patent illegality in ignoring the relevant and vital material placed before him. Therefore, the conclusion reached by the learned arbitrator as to the amount payable by Shiel to Samsung can only be alluded to as perverse.

24. This is not a case which falls within the realm of appreciation of evidence by the learned arbitrator and therefore, outside the jurisdiction of this Court under Section 34 of the 1996 Act. This is a case where the learned arbitrator has completely ignored vital parts of the material placed on record. The facets which have come to fore do not relate to quantity or quality of evidence and therefore outside the jurisdictional ken of this Court but impinge upon a fundamental issue- which is turning a blind eye to inconvenient material.

25. Given the aforesaid circumstance, in my opinion, this issue would have to be decided in favour of Shiel and against Samsung. Thus, for the foregoing reasons, while I conclude that the learned arbitrator had the jurisdiction to adjudicate upon the disputes between the parties, I am constrained to hold that the conclusion reached in the impugned award as to the amount payable by Shiel to Samsung is erroneous. The learned arbitrator in reaching this conclusion, has clearly ignored relevant material, as discussed hereinabove.

26. Therefore, the captioned petition is partially allowed. The operative directions contained in paragraph 29 of the award concerning the amounts payable and the interest are set aside. The logical sequitur of this would be that parties hereafter, will be free to trigger a fresh arbitration proceeding as per law.

JULY 16, 2019
VKR

(RAJIV SHAKDHER)
JUDGE