

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION

COMMERCIAL ARBITRATION PETITION NO. 449 OF 2024

WITH

INTERIM APPLICATION (L) NO. 6505 OF 2025

WITH

INTERIM APPLICATION (L) NO. 10816 OF 2024

IN

COMMERCIAL ARBITRATION PETITION NO. 449 OF 2024

ATC Telecom Infrastructure Pvt. Ltd.

...Petitioner

Versus

Mahanagar Telephone Nigam Limited

...Respondent

Mr. Tishampati Sen *a/w Sumanth Anchan for the Petitioner.*

Mr. L.B. Rai (Through VC) *i/b R V & Co. for Respondent.*

CORAM : SOMASEKHAR SUNDARESAN, J.

RESERVED ON: MAY 5, 2025

PRONOUNCED ON: SEPTEMBER 16, 2025

JUDGMENT :

Context and Factual Background:

1. This is a Petition filed under Section 37 of the Arbitration and Conciliation Act, 1996 (“*the Act*”) impugning an order of a Learned Arbitral Tribunal dated January 10, 2024 passed under Section 17 of the

Act (“***Impugned Order***”), refusing to grant interlocutory reliefs sought by the Petitioner.

2. The Petitioner, ATC Telecom Infrastructure Private Limited (“***ATC***”) is a passive telecom infrastructure service provider while the Respondent, Mahanagar Telephone Nigam Limited (“***MTNL***”) is a state-owned telecommunications service provider.

3. MTNL had executed a Master Services Agreement dated October 5, 2009 with Essar Telecom Infrastructure Private Ltd. (“***Essar Agreement***”). Likewise MTNL had executed a Master Infrastructure Provisioning Services Agreement dated October 20, 2010 with ATC (then called Wireless TT Info Services Limited). ATC inherited the Essar Agreement too and therefore the parties are counterparties to both these agreements.

4. It is ATC’s case that the two separate agreements constitute one economic transaction and they are inter-related. MTNL is said to have owed Rs. ~12.13 crores as of February 1, 2023, but has only made *ad hoc* payments. This led to arbitration proceedings by a Learned Arbitral Tribunal appointed by a Learned Single Judge of this Court by an order dated January 7, 2023. A claim for Rs. ~24.88 crores was made as of March 2023. An application under Section 17 was filed

asking for a deposit of the amount claimed and a direction to pay future invoices (with effect from March 2023) to avoid further accumulation of debt.

5. ATC's grievance is that it is already involved in three different arbitration proceedings with MTNL, which continues to utilise its services. ATC was desirous of not letting further dues get accumulated and desired to club the economic impact of both agreements and to get payments directed in these arbitration proceedings on all future bills.

6. The Learned Arbitral Tribunal did not grant the reliefs sought in the Section 17 Application. The primary grievance raised in these proceedings is that despite ATC continuing to provide services and despite MTNL's track record of defaults, the Learned Arbitral Tribunal has refused to direct that future bills be paid on time.

Analysis and Findings:

7. I have heard Mr. Tishampati Sen, Learned Advocate on behalf of ATC and Mr. L.B. Rai, Learned Advocate on behalf of MTNL and with their assistance reviewed the material on record.

8. MTNL had raised an objection that individual site agreements governing the use of individual units of telecom

infrastructure have not been executed. MTNL contended that there are disputes over the amounts payable. MTNL has also raised the issue of limitation on certain component of the dues claimed.

9. Having heard the Learned Counsel for the parties and despite the persuasive skills of Mr. Sen for ATC, I am of the view that the Impugned Order does not call for interference.

10. The Learned Advocate Tribunal has noted that the issue of limitation in relation to certain invoices has been raised, presenting mixed questions of fact and law. The objection raised by MTNL about the parties not having signed individual site agreements also has to be dealt with. Whether there is a need for signing such site agreements; whether customs and trade usage in the telecom sector do not require them to be executed; whether their usage flows from the two master agreements referred to above, rendering their execution unnecessary and a ruse not to pay, are these facets that the Learned Arbitral Tribunal would examine and deal with in the course of the arbitral proceedings.

11. ATC could well be totally right about there being no practice or requirement to execute individual site agreements over and above the

two master agreements, but this would have to be adjudicated by the Learned Arbitral Tribunal in the arbitral proceedings.

12. ATC has also alluded to MTNL's financial condition being weak, among others pointing to correspondence from MTNL stating that it would pay as and when monies are available to it. The history of payment defaults even while continuing to use ATC's infrastructure has been brought to bear. However, what measures would be appropriate pending the conduct of the arbitral proceedings to protect and preserve the subject matter of the arbitration agreement is a matter for Learned Arbitral Tribunal to determine. The Learned Arbitral Tribunal has indeed found that payments have been made by MTNL, which are termed as *ad hoc* payments by ATC. The Learned Arbitral Tribunal has taken the view that a declaration that any invoice that may be raised in future should be paid, would be in the nature of a final relief and that too in relation to invoices that are yet to come into existence.

13. The Learned Arbitral Tribunal has taken a view that after evidence is complete, the issue of protective reliefs may be revisited by the Learned Arbitral Tribunal. The Learned Arbitral Tribunal has also found that directing an anticipatory relief of paying invoices to be raised in future would be inappropriate. The Learned Arbitral Tribunal has

also taken a view that there is no reasonable apprehension that MTNL would dispose of its assets or take any steps to frustrate the arbitral proceedings and that merely based on apprehensions about its financial weakness, an intervention in the nature of a direction to pay future invoices cannot be made.

14. The Learned Arbitral Tribunal found that ATC was continuing to provide services to MTNL and raising monthly bills to the tune of Rs. 90 lakhs. Considering that the claim amount too is substantial, the Learned Arbitral Tribunal has observed that the main matter ought to be expeditiously heard and concluded. The Learned Arbitral Tribunal has also granted leave to make a fresh application for protective relief at a future stage should the proceedings take longer than anticipated.

15. It is well settled law that an appeal is to be regarded as a continuation of the original proceedings. Equally, an Appellate Court exercising the power under Section 37 of the Act to review the exercise of discretion by an Arbitral Tribunal must be well guided by the principles set out by the Supreme Court in ***Wander vs. Antox***¹ i.e. it may interfere only if there is something perverse or implausible in the

¹ *Wander Ltd. Vs. Antox India (P) Ltd. – 1990 Supp SCC 727*

exercise of discretion by the Learned Arbitral Tribunal. In a plethora of judgements, the principle articulated in *Wander vs. Antox* has been followed and reiterated. The following extract would suffice to throw light on the principles:

14. The appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such appeals, the appellate court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage, it would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion.

[Emphasis Supplied]

16. Having examined the record, I find no reason to find the Impugned Order as being unreasonable or having been taken in a

manner that is not judicious. It is not open to me to substitute one plausible view taken by the Learned Arbitral Tribunal with another view found plausible by the Section 37 Court. The reasoning of the Learned Arbitral Tribunal is clear and not perverse. Indeed, a direction to pay every future invoice would be inappropriate – genuine reasons for non-payment of an invoice in future may arise and that would have to be considered on merits of the disputes over that invoice. It cannot be anticipated that there would be a default. Indeed, ATC may take a commercial view on continuing to do business with a counterparty that is perceived to be a default risk, but that would not translate into the Learned Arbitral Tribunal having to necessarily direct that every future invoice should be paid, regardless of merits of any dispute that may arise in relation to such future invoice. The relief sought would be speculative.

17. In any case, the Learned Arbitral Tribunal has taken a view that once evidence is led, the Learned Arbitral Tribunal would be in a better position to examine the matter. In my opinion, after evidence is led, there may be a firmer footing to deal with some of the objections that MTNL has taken and that may enable revisiting the need for protective relief. Indeed, the Learned Arbitral Tribunal has permitted that too.

18. In these circumstances, applying the *Wander vs. Antox* principles, I see no reason to interfere with the Impugned Order. The captioned appeal is *disposed of* without any interference.

19. All actions required to be taken pursuant to this order shall be taken upon receipt of a downloaded copy as available on this Court's website.

[SOMASEKHAR SUNDARESAN, J.]