IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
COMMERCIAL ARBITRATION PETITION(L) NO. 6451 OF 2020

World Sport Group (India) Private Ltd ..Petitioner

Vs.

Board of Control for Cricket in India ..Respondent

WITH
INTERIM APPLICATION (L)NO.6456 OF 2020
IN
COMMERCIAL ARBITRATION PETITION(L) NO. 6451 OF 2020

World Sport Group (India) Private Ltd ..Applicant
(Orig. Petitioner)

IN THE MATTER BETWEEN

World Sport Group (India) Private Ltd ..Petitioner

Vs.

Board of Control for Cricket in India ..Respondent

Mr. Aspi Chinoy, Senior Advocate a/w Mr. Rajat Taimni, Mr. Saurajay Nanda, Mr. Anubhav Dutta i/b Tuli & Co, for the Petitioner/Applicant.

Mr. Rafiq Dada, Senior Advocate a/w Mr. Indranil Deshmukh, Ms. Gathi Prakash, Mr. Rishabh Malaviya i/b Cyril A. Mangaldas, for the Respondent.

CORAM :- B. P. COLABAWALLA, J.

Reserved on : 18th March, 2021.
Pronounced on : 16th March, 2022.

J U D G E M E N T :-

1. At the outset, I must mention that arguments in the above matter were concluded on 18th March 2021 and parties had also tendered detailed written submissions. However, due to the third wave of the COVID-19 pandemic and also other exigencies of work, there was a delay in pronouncing judgment in the above matter. I had, therefore, placed the matter on Board today (i.e. 16th March 2022) at 2:30 pm in chambers under the caption *"FOR DIRECTION/PRONOUNCEMENT OF JUDGEMENT"*. I did this because almost a year has elapsed since the judgment was reserved, and I wanted to inquire from the parties if they wanted to make any further submissions. In these circumstances, I asked Mr. Chinoy, the learned senior counsel appearing on behalf of the Petitioner, as well as Mr. Dada, the learned senior counsel appearing on behalf of the Respondent, if they wanted to make any further submissions or whether I should proceed to pronounce judgment in the above matter. Both counsels stated before me that notwithstanding the delay, they do not want to make any further submissions and I should proceed for pronouncing the judgment. Accordingly, I have pronounced the judgment today.

2. The above Petition is filed under Section 34 of the Arbitration and Conciliation Act, 1996 (for short "**the Arbitration Act**") seeking to set aside the Majority Award of the Arbitral Tribunal dated 13th July 2020. The Majority Award is passed by Mrs. Justice Sujata Manohar (Retd.), a former Judge of the Supreme Court of India and Dr. Justice Mukundakam Sharma (Retd.), also a former Judge of the Supreme Court. The dissenting Award dated 20th July 2020 is given by a former Judge of the Supreme Court of India, Mr. Justice S. S. Nijjar (Retd).

3. By the Majority Award, the Petitioner's challenge to the Respondent's rescission of the Petitioner's 2nd Media Rights License Agreement dated 25th March 2009 (for short, the **"2nd BCCI-WSGI MRLA"**) was rejected. Under the 2nd BCCI-WSGI MRLA, the Petitioner was granted Media Rights in relation to the **Indian Premier League** (for short the "**IPL"**) for the *"Rest of the World"* (**"RoW"**) territories (i.e. all territories other than the Indian Sub-Continent), for the period 2009-2017. In the Majority Award, the Arbitrators upheld that the said rescission of the 2nd BCCI-WSGI MRLA by accepting the Respondent's contention that the said MRLA was part of a fraudulent composite transaction. Since the said MRLA was part of a composite fraud, the Respondent's rescission of the said MRLA was upheld by the Majority Award.

4. Before I advert to the facts of the case, it would be necessary to set out the description of the parties. The Petitioner, *World Sports Group (India) Private Limited* (for short **"WSGI**") is a company incorporated under the provisions of the Companies Act, 1956. It was part of the World Sports Group of companies which was subsequently acquired by the Lagardere Group which is engaged in the business of sports marketing, event management and media rights, specifically in relation to cricket, golf, and football. The Respondent, *the Board of Control for Cricket in India* (for short **"BCCI"**) is a society registered under the provisions of the Tamil Nadu Registration of Societies Act, 1975 and is the governing body for the sport of cricket in India. In fact, BCCI organizes cricket matches in India and abroad. For the sake of convenience, I shall refer to the Petitioner as **"WSGI"** and the Respondent as **"BCCI"**.

5. The facts to be noted to decide the present controversy are this. In September 2007, BCCI conceptualized and decided to launch the Indian Premier League (for short the "**IPL"**) which was the first of its kind, franchise-based, 20-over cricket tournament. The format of the IPL differed from the then existing structure of either the 5-day TEST MATCHES or the ONE-DAY INTERNATIONAL MATCHES. The IPL was

to be administered by a sub-committee of BCCI known as the IPL Governing Council. Mr. Lalit Kumar Modi was appointed as the Chairman of the IPL Governing Council. To facilitate all this, a Memorandum of Understanding dated 13th September 2007 was executed between BCCI and the *International Management Group (UK) Ltd.* (**"IMG"**) to provide specialist Media Rights services to BCCI *inter alia* in relation to negotiation, review, and execution of contracts for the IPL.

6. On 30th November 2007, BCCI floated an invitation to tender inviting bids from broadcasters and/or media marketing agencies to acquire a license for the IPL Media Rights for a period of 10 years starting from 2008 to 2017. The tender contemplated IPL Media Rights (i) for the Indian Sub-Continent (consisting of India, Pakistan, Sri Lanka, Bangladesh, Nepal, Bhutan, and the Maldives) and (ii) for the *"Rest of the World"* (for short **"RoW"**) territories.

7. Pursuant to the aforesaid tender, WSGI bid for and was awarded the contract for the Global Media Rights Package of the IPL for a period of 10 years (2008-2017) for the approximate value of USD One Billion. Since WSGI (the Petitioner/Claimant) was not a broadcaster but only a trader in Media Rights, it entered into pre-bid negotiations with

MSM Satellite (Singapore) Pte. Ltd. (for short **"MSM"**) which had a broadcasting network in India. Though the Claimant/WSGI was the only successful bidder for the IPL Global Media Rights Package for the entire period (2008-2017), MSM, for its own commercial reasons, instead of entering into a sub-licensing Agreement with WSGI, desired to enter into a direct Media Rights License Agreement (MRLA) with BCCI for the Indian Sub-Continent (hereinafter referred to as the **"India Rights"**) for the period 2008-2012. To facilitate this process, MSM, with the consent of WSGI, entered into a Media Rights License Agreement dated 21st January 2008 with BCCI (for short the **"1st BCCI-MSM MRLA"**) for the period 2008-2012 for USD275.40 Million. This 1st BCCI-MSM MRLA was only for the India Rights for the period 2008-2012.

8. On the same day i.e., 21st January 2008, a composite Media Rights License Agreement was also executed between BCCI and WSGI (for short the **"1st BCCI-WSGI MRLA"**) for (i) the India Rights for the period 2013-2017 for a sum of USD 550 Million (Approximately Rs.2,200 crores); and (ii) the RoW Media Rights (i.e. excluding India Rights) for the period 2008-2017 for USD 92 Million. Accordingly, the aggregate amount receivable by BCCI for the India Rights for the period 2008-2017 was USD 824.50 Million (USD 274.50 Million from MSM + USD 550 Million from WSGI) which was equivalent to Rs.3301.60 crores. In

addition to this, an amount of USD 92 Million was also payable by WSGI to BCCI for the RoW rights.

9. Since MSM had only acquired India Rights for the period 2008-2012, an Option Agreement dated 21st January 2008 was also entered into between WSGI and MSM whereunder MSM was given the option to acquire the India Rights for the period 2013-2017 from WSGI by making a payment of a sum of up to USD 60 Million to WSGI. This was in addition to the License Fee of USD 550 Million which was payable to BCCI by WSGI under the 1st BCCI-WSGI MRLA. For the sake of convenience, all the aforesaid agreements are hereinafter collectively referred to as "**the MRLAs of 2008"**. The MRLAs of 2008 are unquestioned and neither party has challenged the validity of these Agreements.

10. The first season of the IPL was conducted between April and May of 2008 and was a resounding success. After the first season of the IPL, disputes arose between BCCI and MSM which lead to BCCI terminating the 1st BCCI-MSM MRLA (which was for the India Rights for the period 2008-2012) on 14th March 2009. Being aggrieved by this termination, MSM filed a petition in this Court under Section 9 of the Arbitration Act and sought interim relief against BCCI from acting on the

aforesaid termination. The aforesaid Section 9 Petition was slated to be heard on 15th March 2009.

11. Since BCCI had terminated the 1st BCCI-MSM MRLA on 14th March 2009, BCCI became entitled to re-auction the India Rights for the period 2009-2012. However, given the resounding success of the IPL, BCCI wanted to substantially increase the License Fee receivable for the India Rights not only for the period 2009-2012 but also for the period 2013-2017 (which belonged to WSGI under the 1st BCCI-WSGI MRLA dated 21st January 2008). In other words, BCCI was desirous of re-auctioning and concluding a new Media Rights Agreement for the India Rights for the entire period of 2009-2017 as a single package.

12. To take this further, BCCI requested WSGI to agree to a mutual termination of WSGI's Composite Media Rights License Agreement dated 21st January 2008 (the 1st BCCI-WSGI MRLA) so that BCCI could unbundle the India Rights for the period 2013-2017 and aggregate the same with the India Rights for the period 2009-2012 and then re-auction them as a single package for a substantially higher amount. To achieve this objective, BBCI would enter into a fresh MRLA with WSGI or its affiliate World Sport Group (Mauritius) Limited (for short **"WSGM"**), granting it the India Rights for the period 2009-2017.

Additionally, BCCI would also enter into a fresh MRLA with WSGI for the RoW rights for the period 2009-2017. It is not in dispute that at that relevant time (i.e. in March 2009), there were no disputes whatsoever between BCCI and WSGI regarding the MRLAs of 2008.

13. According to WSGI, it agreed to a mutual termination of the 1st BCCI-WSGI MRLA dated 21st January 2008 only in order to enable BCCI to receive an enhanced License Fee for the India Rights for the period 2009-2017 on the condition (i) that the India Rights for the period 2009-2017 would be licensed to WSGI, or its nominee – WSGM, thereby enabling WSGI to realize a premium for relinquishment of its India Rights for the period 2013-2017; and (ii) that BCCI would reinstate WSGI's RoW Rights for the period 2009-2017 by entering into a fresh MRLA with WSGI on the same terms and conditions as was recorded in the 1st BCCI-WSGI MRLA dated 21st January 2008.

14. To facilitate this entire process, BCCI, WSGI and WSGM entered into a *Deed of Mutually Agreed Termination* dated 15th March 2009 (for short the **"DMAT")**. On the same date, i.e. 15th March 2009, BCCI also entered into an Media Rights Licensing Agreement (MRLA) with WSGM for licensing/ sub-licensing the India Rights for the period 2009-2017 for a substantially increased sum of Rs.4791.89 crores (for

short the **"BCCI-WSGM MRLA"**). Both the aforesaid Agreements were entered into at 3 AM on 15th March 2009. It is to be noted that the India Rights for the period 2009-2017 under the MRLAs of 2008, were licensed for a consideration of Rs.3,000 crores. In other words, BCCI licensed the India Rights for the period 2009-2017 for an additional sum of Rs.1791 crores. One of the terms of this MRLA was that WSGM was required to enter into a sub-license Agreement with a broadcaster within 72 hours. Since BCCI and WSGM had entered into the BCCI-WSGM MRLA on 15th March 2009, an affidavit was filed by Mr. Lalit Modi on behalf of BCCI in the Section 9 Petition (filed by MSM before this Court) stating that an MRLA was already executed between WSGM and BCCI on 15th March 2009. In this light, arguments were heard by this Court in MSM's Section 9 Petition and was reserved for orders.

15. According to WSGI, in view of the pending Court litigation, the 72-hour period as prescribed by the BCCI-WSGM MRLA was extended first till 21st March 2009 and then till 24th March 2009. The Bombay High Court passed an order in MSM's Section 9 Petition on 23rd March 2009. By the said order, this Court refused interim reliefs to MSM *inter alia* on the basis that the India Rights of the IPL for the period 2009-2017 had already been granted to WSGM under the BCCI-WSGM MRLA dated 15th March 2009.

16. Since WSGM was not a broadcaster but only a trader in Media Rights, according to WSGI, between 15th March 2009 and 19th March 2009, WSGM was approached by MSM and several other broadcasters who were desirous of securing the India Rights for the period 2009-2017. For securing the India Rights for the period 2009-2017, MSM (i) was willing to match the amount payable by WSGM to BCCI under the BCCI-WSGM MRLA (i.e. pay Rs.4791 crores to BCCI for the period 2009-2017); and (ii) since MSM was insistent on a direct agreement with BCCI and not as a sub-licensee of WSGM, it was also willing to pay an additional amount of Rs.425 crores to WSGM for giving up its India Rights.

17. According to WSGI, to facilitate the aforesaid arrangement, it was agreed between WSGM, MSM and BCCI that WSGM would allow its rights under the BCCI-WSGM MRLA dated 15th March 2009 to lapse and BCCI would thereafter enter into a direct MRLA with MSM for the India Rights for the entire period of 2009-2017 on the same terms i.e. by paying BCCI Rs.4791 crores. In addition thereto, MSM would pay WSGM an additional fee/premium of Rs.425 crores under a separate Agreement. Accordingly, and to facilitate this entire arrangement, the BCCI-WSGM MRLA dated 15th March 2009 was allowed to lapse and a letter dated 25th

March 2009 was executed by WSGM and BCCI confirming that the BCCI-WSGM MRLA had lapsed on 25th March 2009. This gave way for MSM to enter into a MRLA directly with BCCI for the India Rights for the period 2009-2017. Accordingly, on 25th March 2009, MSM entered into a direct agreement with BCCI for the India Rights for the period 2009-2017 for an amount of Rs.4791.89 crores (for short the **"2nd BCCI-MSM MRLA"**). On the same day (i.e. 25th March 2009), WSGM and MSM also executed a *"Deed for Provision of Facilitation Services"* (for short the **"Facilitation Deed"**) which *inter alia* recorded that WSGM had assisted MSM in finalising the 2nd BCCI-MSM MRLA and that MSM had agreed to pay a Facilitation Fee of Rs.425 crores to WSGM in return for such Facilitation Services. It is the case of WSGI that though the BCCI-WSGM MRLA is dated 15th March 2009, inadvertently the same was referred to as being dated 23rd March 2009 in the Facilitation Deed. Be that as it may, under this entire arrangement, BCCI received an additional amount of Rs.1791 crores for the India Rights for the period 2009-2017 i.e. Rs.4791 crores minus Rs.3000 crores [for the same period under the MRLAs of 2008].

18. In order to restore/reinstate WSGI's RoW rights and which were given to it under the 1st BCCI-WSGI MRLA, BCCI also executed a fresh/2nd Media Rights License Agreement with WSGI on 25th March

2009 for the RoW rights for the period 2009-2017 w. e. f. 15th March 2009 (for short the **"2nd BCCI-WSGI MRLA"**). This MRLA had the same terms and conditions as stipulated in the 1st BCCI-WSGI MRLA dated 21st January 2008 save and except that the 2nd BCCI-WSGI MRLA contained Clause 27.5 which inter alia stipulated that upon BCCI receiving a notice regarding the non-payment of the Facilitation Fee Amount from MSM, BCCI would either terminate the 2nd BCCI-MSM MRLA or pay the amount owed by MSM to WSGM.

19. It is the case of the WSGI that the arrangement set out above and all the Agreements entered into in 2009 (to give effect to the above arrangement), were all prepared by Paul Manning of IMG. To put it in a nutshell, it is the case of WSGI that the aforesaid arrangement, which culminated into all the Agreements executed in 2009:

> (i) enabled BCCI to re-auction the India Rights for the period 2009-2017 for an increased License Fee of Rs.4791 crores in comparison to the original License Fee of Rs.3000 crores (i.e. an increase of Rs.1791 crores). BCCI was able to get this increased amount by re-auctioning the India Rights for the entire period of 2009-2017 only because WSGI agreed to the termination of its 1st BCCI-WSGI MRLA and thereby giving up its India Rights for the period 2013-2017 to BCCI as recorded in the DMAT;

(ii) WSGI, who was entitled to the India Rights for the period 2013-2017, relinquished the same to BCCI under the DMAT only to enable BCCI to re-auction the same by clubbing it with the India Rights for the period 2009-2012 which accrued to BCCI pursuant to the termination notice issued by BCCI to MSM on 14th March 2009. This relinquishment was subject to BBCI entering into a fresh MRLA with WSGI or its affiliate – WSGM, granting it the India Rights for the period 2009-2017; and

(iii) WSGI's RoW Media Rights for the period 2009-2017 were restored and reinstated w.e.f. 15th March 2009 on the same terms and conditions as the 1st BCCI-WSGI MRLA, with the exception of insertion of Clause 27.5, which inter alia stipulated that upon BCCI receiving a notice regarding non-payment of the Facilitation Fee amount by MSM, BCCI will either terminate the 2nd BCCI-MSM MRLA or pay the amount owed by MSM.

20. According to WSGI, during the 2nd and 3rd seasons of the IPL (i.e. the IPL held in 2009 & 2010), all parties acted on the Agreements entered into in 2009. In other words, MSM dealt with the India Rights and agreed to pay the enhanced License Fee of Rs.4791 crores to BCCI while WSGI dealt with the RoW rights. According to WSGI, during the course of the 3rd season of the IPL, there were reports of disputes between Mr. Lalit Modi and other office bearers of the BCCI. As there were media

reports alleging irregularities over the acquisition of Media Rights from BCCI, MSM, on 23rd April 2010, issued a press statement about the circumstances in which it had entered into the contract for payment of the Facilitation Fee to WSGM. The aforesaid press release *inter alia* stated:

> (i) MSM's intent to secure the India Rights from WSGM, who had acquired said Rights under the BCCI-WSGM MRLA dated 15th March 2009;
>
> (ii) that MSM had been insistent on getting a direct contract with BCCI rather than a sub-license from WSGM who had these rights under the BCCI-WSGM MRLA dated 15th March 2009; and
>
> (iii) the Facilitation Fee of Rs.425 crores was payable to WSGM for giving up its India Rights under the BCCI-WSGM MRLA dated 15th March 2009.

21. Be that as it may, according to WSGI, on 25th June 2010, MSM, acting contrary to the aforesaid press statement and at the instance of BCCI, issued an Advocate's Notice to WSGM purporting to rescind the Facilitation Deed on the ground that WSGM had falsely represented that WSGM had executed an Agreement dated 23rd March 2009 with BCCI whereunder WSGM had been granted unfettered Global Media Rights, including the India Rights and that the said rights were subsisting with

WSGM at the time of execution of the Facilitation Deed on 25th March 2009. According to WSGI, MSM at the instance of BCCI, sought to take wrongful advantage of the fact that the Facilitation Deed had inadvertently / erroneously referred to the BCCI-WSGM MRLA as being dated 23rd March 2009 instead of 15th March 2009. According to WSGI, MSM's said allegations were ex-facie contrary to and belied by its own press statement dated 23rd April 2010 which referred only to the BCCI-WSGM MRLA dated 15th March 2009 and made absolutely no reference to any alleged MRLA dated 23rd March 2009.

22. Be that as it may, on 25th June 2010, a further Agreement was entered into between BCCI and MSM amending the 2nd BCCI-MSM MRLA dated 25th March 2009. This Agreement *inter alia* deleted Clause 10.4 of the said 2nd BCCI-MSM MRLA which stipulated that upon BCCI receiving a notice from WSGM for non-payment of the Facilitation Fee, BCCI would terminate the 2nd BCCI-MSM MRLA.

23. Thereafter, on 28th June 2010, BCCI issued a notice to WSGI alleging that the 2nd BCCI-WSGI MRLA dated 25th March 2009 (and which related only to the RoW rights for 2009-2017) was on the face of it vitiated by fraud since the Facilitation Fee of Rs.425 crores payable to WSGM were amounts actually due to BCCI. In these circumstances, BCCI

purported to rescind the 2nd BCCI-WSGI MRLA *"due to the all-pervasive fraud that you have perpetrated on the BCCI"*.

24. The allegations made by BCCI, through its termination notice dated 28th June 2010, were responded to by WSGI vide its letter dated 30th June 2010. Thereafter, WSGI filed a Section 9 Petition seeking interim relief against BCCI's termination of the 2nd BCCI-WSGI MRLA. A learned Single Judge of this Court rejected the said Section 9 Petition on 20th December 2010. Being aggrieved by the aforesaid rejection, an Appeal was filed before a Division Bench of this Court. The Division Bench in Appeal, by order dated 23rd February 2011, allowed the Appeal and restrained BCCI from creating any third-party rights in relation to the Media Rights for the RoW ("Rest of the World").

25. Being aggrieved by the order of the Division Bench, BCCI preferred an SLP before the Hon'ble Supreme Court. The Hon'ble Supreme Court, by its order dated 21st April 2011, disposed of the SLP filed by BCCI by giving the following directions:

> "(a) BCCI shall be entitled to award any of the unawarded sub-licence media rights (to which respondent was entitled under the agreement dated 25.3.2009), by following the standard tender procedures. BCCI will be entitled to take all decisions, and do all acts, that could have been taken or done by the respondent under the agreement dated 25.3.2009, if it had been operational.

(b) All amounts/deposits/licence fees received by BCCI as consideration in respect of sub-licence or by the agreements entered by the respondent, or by the BCCI after the termination, shall be remitted to an Escrow Account with a Nationalized Bank.

(c) Out of the amounts so remitted to the Escrow Account, BCCI shall be entitled to draw every year, an amount equivalent to the license fee it would have received from the respondent under the agreement dated 25.3.2009 (if the said agreement had not been terminated), without prejudice to its rights and contentions.

(d) The net annual income (that is the difference between the total of amounts remitted to the Escrow Account every year less the amount equivalent to the licence fee that is drawn by BCCI in terms of agreement dated 25.3.2009) shall be kept in a fixed deposit for a term of one year. Such fixed deposits shall be renewed yearly till the final adjudication of the disputes between the respondent and the appellant by a competent court or arbitral tribunal (if the remedy of arbitration is available or agreed) as the case may be.

(e) BCCI shall file yearly accounts (after furnishing a copy thereof to the respondent) in regard to the amounts received, the amount remitted to the Escrow Account, amounts drawn by BCCI (equivalent to the licence fee under the agreement dated 25.3.2009) and the net amount invested in fixed deposits.

(f) In regard to the amounts to be received and accounted for by BCCI as aforesaid, the BCCI shall be deemed to be a Receiver appointed by this Court. Such deemed Receivership will end automatically, on final decision by the Court/Tribunal before which the disputes are raised, or on 31.1.2017, whichever is earlier."

26. Thereafter, arbitration commenced between the parties and WSGI filed its Statement of Claim before the Arbitral Tribunal on 7th June 2016. On 13th July 2016 BCCI filed its Statement of Defence. Thereafter,

and on 22nd February 2017, BCCI filed its amended Statement of Defence incorporating the ground that the arbitration was not maintainable in the absence of proper and necessary parties being WSGM and Mr Lalit Kumar Modi. WSGI filed its additional Rejoinder on 16 March 2017. Thereafter, the matter went to trial and the impugned Majority Award dated 13th July 2020 was passed and which is challenged in the present Petition.

WSGI's SUBMISSIONS:

27. In this factual backdrop, Mr. Chinoy, the learned senior counsel appearing on behalf of WSGI, submitted that the Majority Award is ex-facie perverse and vitiated by patent illegality in as much as it totally fails to advert to or consider the crucial undisputed fact / evidence that BCCI was able to receive from MSM an increased License Fee of Rs.4791 crores for the India Rights for the period from 2009-2017 by virtue of the Agreements entered into between BCCI, WSGI, WSGM and MSM in the year 2009. Mr. Chinoy submitted that pursuant to all the Agreements entered into between the period 15th March 2009 to 25th March 2009 (including the DMAT), WSGI, relinquished its India Rights for the period from 2013-2017 to BCCI so as to enable BCCI to aggregate these rights with the India Rights for 2009-2012 (which reverted to BCCI pursuant to the termination of the 1st BCCI-MSM MRLA dated 21st January 2008),

and then re-sell/re-auction the India Rights for the entire period of 2009-2017 (as a single package) for a substantially higher License Fee. Mr. Chinoy submitted that failure of the Tribunal to note this enormous benefit/gain which had inured to BCCI as a consequence of the aforesaid Agreements entered into between 15th March 2009 and 25th March 2009 (the composite transaction) was material because:

(i) as a result of having received and retained this enormous monetary benefit, BCCI had necessarily approbated and affirmed the said composite transaction (i.e. the Agreements entered into between 15th March 2009 and 25th March 2009) and was therefore, in law, precluded from rescinding or reprobating any part thereof, including the 2nd BCCI-WSGI MRLA dated 25th March 2009, and which was in relation to the Media Rights for the RoW; and

(ii) this has led the Tribunal to come to a perverse conclusion that the object of the composite transaction was only to enable the alleged diversion of Rs.425 crores to WSGM. It completely overlooked the fact that by the composite transaction, BCCI was able to receive and retain a much higher License Fee of Rs.4791 crores

for the period 2009-2017.

28. Mr. Chinoy took me through the Majority Award and pointed out that in the entire Award, there is not a single reference to the fact that by the aforesaid composite transaction, BCCI had in-fact benefited to the extent of Rs. 1791 crores. He submitted that this composite transaction, resulting in BCCI receiving the benefit of Rs.1791 crores and which BCCI had retained, had been specifically averred/stated in the Statement of Claim and not been disputed/denied by BCCI in the reply/Written Statement of BCCI, and more particularly, paragraph 55 (qq) thereof. Mr. Chinoy submitted that BCCI had gained and retained the benefit of an increase in the License Fee of Rs. 1791 crores because of the composite transaction entered into between BCCI, MSM, WSGM and WSGI respectively. This being the case, BCCI was precluded from impugning / rescinding any part of the composite transaction (i.e. all the Agreements entered into in the year 2009). Despite having urged this argument specifically before the Tribunal and which is reflected in the post hearing submissions, the Arbitral Tribunal in its Majority Award, has failed to consider the aforesaid argument which would go to the root of the matter. In this regard, Mr. Chinoy brought to my attention pages 460, 463, 465, 467, 485, 486 and 536 of the paper book which relate to post hearing submissions of WSGI. Mr. Chinoy submitted that the fact

that BCCI received and retained this benefit of Rs. 1791 crores and consequently having approbated/affirmed the composite transaction is also noted in the Minority Award. Mr. Chinoy submitted that the only reason he refers to the Minority Award is to show to the Court that the aforesaid argument was specifically put in issue before the Tribunal and the Majority Award completely overlooks this argument and has not even been considered. It is this conduct of the Majority Tribunal that Mr. Chinoy terms as ex-facie perverse and vitiated by patent illegality.

29. Mr. Chinoy then submitted that WSGI's argument on perversity is further reinforced when one reads the Arbitrators' findings on the purpose/object of the DMAT. He submitted that the said findings are ex-facie contrary to the express terms of the DMAT. In this regard, Mr. Chinoy submitted that while the increased License Fee of Rs. 4791 crores was undoubtedly due to the increased popularity of the IPL after the 1st season of the IPL in 2008, BCCI would not have been able to secure such increased License Fees for the India Rights for the period 2013-2017 without WSGI agreeing to surrender their India Rights for the aforesaid period to BCCI under the DMAT. It is the DMAT that enabled BCCI to re-sell/re-auction the India Rights for the period 2009-2017 as a complete package. Mr. Chinoy, therefore, submitted that the Majority Award is liable to be set aside on the ground of patent illegality and perversity for

totally failing to advert to and consider the facts and evidence that under the composite transaction (and more particularly the DMAT), BCCI was able to re-sell the India Rights for the period 2009-2017 to MSM for an enhanced License Fee of Rs.4791 crores and which sum BCCI had retained and enjoyed the benefit thereof. Mr. Chinoy submitted that if this fact had been considered, it would necessarily lead to the conclusion / consequence that receipt and enjoyment of the said enhanced sum of Rs.4791 crores clearly constituted approbation on the part of BCCI which, in turn, precluded BCCI from reprobating / rescinding the composite transaction (i.e. the Agreements entered into in 2009) or any part thereof, including the 2nd BCCI-WSGI MRLA dated 25th March 2009.

30. The next argument canvassed by Mr. Chinoy was that the Award is perverse as it contravenes the principles of Sections 64 and 65 of the Contract Act, 1872, and is therefore, contrary to the fundamental policy of Indian Law. Mr. Chinoy submitted that the Majority Award upholds the rescission of the 2nd BCCI-WSGI MRLA dated 25th March 2009, without requiring BCCI to terminate the other Agreements, and in particular, the DMAT. Consequently, the Majority Award does not require BCCI to restore the benefit it had received under all the Agreements executed in 2009 including the DMAT. In this regard, Mr. Chinoy submitted that BCCI has only purported to rescind the 2nd BCCI-

WSGI MRLA dated 25th March 2009 and had not terminated/rescinded the other Agreements executed in 2009, including the DMAT. This is despite the fact that it is BCCI's own case that all the Agreements from 15th March 2009 to 25th March 2009, (including the DMAT) formed part of a fraudulent composite transaction. Mr. Chinoy submitted that in law, BCCI could not have rescinded only the 2nd BCCI-WSGI MRLA dated 25th March 2009 without rescinding / cancelling all the other Agreements which formed part of the so called fraudulent composite transaction, including the DMAT. Mr. Chinoy submitted that the reason why the other Agreements were not terminated is not far to see. He submitted that BCCI did not terminate the other Agreements, including the DMAT, as that would have resulted in requiring BCCI to restore the benefits it had received thereunder i.e. it would have had to restore to WSGI (i) the India Rights for the period 2013-2017; and (ii) the RoW rights for the period 2009-2017. This would necessarily require BCCI to give up the increase in the License Fee of Rs.1160 crores which it had received from MSM for the India Rights for the period 2013-2017. Mr. Chinoy submitted that the rescission of only the 2nd BCCI-WSGI MRLA dated 25th March 2009 and not of the DMAT and other Agreements executed in 2009 (which formed part of the composite transaction), is ex-facie impermissible and invalid in law. By purporting to rescind only the 2nd BCCI-WSGI MRLA and not the DMAT, BCCI has sought to defeat/nullify the statutory obligation to

return the benefit/advantage it had received under the DMAT i.e. the India Rights for the period 2013-2017 and the RoW Rights for the period 2009-2017.

31. Mr. Chinoy submitted that the Majority Award, by upholding the termination of only the 2nd BCCI-WSGI MRLA dated 25th March 2009 (despite BCCI's own case that it formed part of the fraudulent composite transaction, including the DMAT), in effect enabled BCCI to negate/bypass its statutory obligation to restore the benefit/advantage it had received under the DMAT. Mr. Chinoy submitted that such a purported partial rescission of the composite transaction has resulted in unjust enrichment and is contrary to the principle of Section 64 of the Contract Act, 1872 which embodies the fundamental policy of Indian Law. The Award which upholds such an illegal partial rescission, results in unjust enrichment contrary to the principles embodied in Sections 64 and 65 of the Contract Act, 1872 and is accordingly illegal, perverse, and contrary to the fundamental policy of Indian Law. Mr. Chinoy clarified that WSGI was not seeking restoration / restitution of the benefit / advantage received by the BCCI under Sections 64 and 65 of the Contract Act, 1872. He submitted that it is WSGI's submission that the purported rescission was bad in law as BCCI had not terminated the other Agreements, including the DMAT, and had

thereby sought to bypass/negate the statutory obligation which would have arisen on termination of the DMAT which was to return the advantage/ benefit it had received under such Agreements, including the DMAT.

32. Mr. Chinoy brought to my attention that it was the submission of BCCI before the Tribunal that the termination of the 2nd BCCI-WSGI MRLA dated 25th March 2009 had the effect of rescinding/repudiating all the Agreements that formed part of the composite transaction, including the Deed of Mutually Agreed termination (DMAT), and therefore, no separate rescission of the DMAT was required or warranted. The Award, however, holds that there was no need to rescind the other Agreements (forming part of the alleged fraudulent composite transaction) because by the time BCCI discovered the fraud, all these Agreements were determined by the efflux of time. Mr. Chinoy submitted that the finding in the Majority Award that there was no need to rescind the other Agreements (forming part of the alleged fraudulent transaction) as ***"…all these Agreements were determined by efflux of time by the time the Respondent discovered the fraud and, therefore, there was no requirement for the BCCI to rescind the other Agreements",*** is ex-facie perverse. Mr. Chinoy submitted that BCCI was

able to re-sell/re-auction the India Rights for the period 2009-2017 to MSM at a higher price of Rs.4791 crores only because WSGI had, under the DMAT, agreed to surrender/revert its India Rights for the period 2013-2017 to BCCI. BCCI acted on the basis of that surrender and re-licensed the India Rights for the period 2009-2017 to MSM. This being the factual position, Mr. Chinoy submitted that there was no question of the DMAT having "determined by efflux of time". If the composite transaction was fraudulent, the DMAT (which formed a part thereof) would also be required to be rescinded and on such rescission, BCCI would have statutorily been required to return to WSGI the benefit it had received thereunder i.e. the India Rights for the period 2013-2017 as well as the RoW Rights for the period 2009-2017. He, therefore, submitted that the Award is also perverse and suffers from a patent illegality on this ground as well.

33. Mr. Chinoy thereafter submitted that the Majority Award also deserves to be set aside because the Arbitrator's interpretation of the DMAT and its stated purpose and object is clearly contrary to the express terms/plain language thereof, and is therefore, ex-facie perverse and is not even the possible view. In this regard, Mr. Chinoy submitted that the Majority Award holds that WSGI's contention that the DMAT was executed to unbundle the India Rights for the period 2013-2017 so as to

make its subsequent aggregation with the India Rights for the period 2009-2012 possible (which would get BCCI more money), does not appear to be convincing. Mr. Chinoy submitted that the Majority Award also holds that there is no reference to the unbundling of the India Rights by WSGI in the order to enhance its value when sold as an entire package for the period 2009-2017. He submitted that the Award further goes on to hold that by the DMAT, the WSGI agreed to give up its India Rights for the period 2013-2017 in favour of WSGM for no consideration. Mr. Chinoy submitted that the aforesaid observations and findings in the Award regarding the DMAT, are contrary to the express terms thereof.

34. To substantiate this argument, Mr. Chinoy took me through recitals (D) and (E) of the DMAT as well as the definition of the term *"New WSG Media Rights Agreements"* as well as Clauses 2.1 and 2.2 thereof. Relying upon the aforesaid clauses, Mr. Chinoy submitted that the DMAT makes it clear: (a) that BCCI, which now held the India Rights for the period 2009-2012 (pursuant to termination of MSMs 1st BCCI-MSM MRLA dated 21st January 2008), had requested WSGI to agree to a Mutual Termination of its composite MRLA (the 1st BCCI-WSGI MRLA dated 21st January 2008) which encapsulated the RoW rights for the period 2008-2017 and the India Rights for the period 2013-2017; (b) on this Mutual Termination, WSGI's India Rights for the period 2013-2017

would revert to BCCI; (c) this arrangement would enable BCCI to re-sell/re-auction the India Rights for the period 2009-2017 as a single package and receive a higher License Fee; (d) BCCI would license the India Rights for the period 2009-2017 to WSGM (an affiliate of WSGI) who could sub-license these rights to a broadcaster for a premium; and (e) BCCI would restore to WSGI the RoW rights for the period 2009-2017 on the same terms as the 1st BCCI-WSGI MRLA dated 21st January 2008 (in so far as it related to the RoW Rights).

35. Mr. Chinoy submitted that the execution of the BCCI-WSGM MRLA dated 15th March 2009 between BCCI and WSGM for the India Rights for the period 2009-2017 at the increased fee of Rs.4791 crores was in pursuance of the DMAT and was clearly only a means for BCCI to recover the increased License Fee amount and to enable WSGM to recover a premium from a broadcaster, through sub-licensing of the India Rights. When one reads the terms of the DMAT, Mr. Chinoy submitted that the Majority Award's decision that the object of the DMAT was for WSGI to assign its India Rights to its affiliate WSGM, is ex-facie perverse and would mean that WSGI gave up its valuable India Rights for the period 2013-2017 to BCCI, only in order to receive the same rights back through its affiliate WSGM with payment of an additional License Fee of Rs. 1160 crores. He submitted that this interpretation is wholly perverse

also from the point of view that there is absolutely no explanation in the Majority Award as to why WSGI would give up its valuable rights for the period 2013-2017 only to get it back through its affiliate by paying an additional amount of Rs.1160 crores. He, therefore, submitted that on this ground also the impugned Award cannot stand and must be set aside.

36. Mr. Chinoy then submitted that the Majority Award is also ex-facie arbitrary, capricious, perverse and contrary to the basic notions of justice and morality, in as much as it resulted in BCCI receiving and enjoying the benefit of an increase in the License Fee of Rs.1791 crores for the India Rights for the period 2009-2017 and at the same time upholding BCCI's claim that Rs.425 crores payable to WSGM for relinquishing and/or giving up its India Rights for the period 2009-2017 was fraudulent and belonged to BCCI. Mr. Chinoy submitted that as a consequence, the Award upholds BCCI's rescission of the 2nd BCCI-WSGI MRLA dated 25th March 2009 under which WSGI got the RoW rights for the period 2009-2017. Mr. Chinoy submitted that this effectively means that BCCI whilst receiving the aforesaid benefit of Rs. 1791 crores has deprived WSGI of all the rights it had under the 1st BCCI-WSGI MRLA, and all the benefits that come to it under the DMAT.

37. In this regard, Mr. Chinoy submitted that initially WSGI had

the India Rights for the period 2013-2017 as well as the RoW Rights for the period 2008-2017 under the 1st BCCI-WSGI MRLA. Admittedly, there were no disputes/issues between BCCI and WSGI *qua* these rights/MRLA's in 2009. It was on BCCI's request that WSGI agreed to a Mutual Termination of the 1st BCCI-WSGI MRLA so as to enable BCCI to re-sell/re-auction the India Rights for the period 2009-2017 as a package for a higher License Fee only on the basis that it would be given back/restored its RoW rights for the period 2009-2017 and would be compensated for giving up its India Rights for the period 2013-2017 by permitting its affiliate WSGM to sub-license the same and receive a premium thereunder. By virtue of these arrangements, BCCI was able to license the India Rights for the period 2009-2017 to MSM for Rs.4791 crores i.e. an increase of Rs. 1791 crores. However, whilst receiving and retaining such an enormous benefit of Rs.1791 crores, BCCI has thereafter purported to deprive WSGM of Rs.425 crores it had to receive as compensation (termed as the Facilitation Fee) for the India Rights for the period 2013-2017 and has also deprived WSGI of its RoW rights for the period 2009-2017. An Award which upholds this action of BCCI as legal, is ex-facie contrary to the basic notions of justice and morality, and therefore, ought to be set aside.

38. Lastly, Mr. Chinoy submitted that the finding in the Majority

Award that the fraud as alleged by BCCI is established beyond reasonable doubt, and therefore can be a valid ground for rescinding the 2nd BCCI-WSGI MRLA dated 25th March 2009, is vitiated by perversity and patent illegality in as much as it is based on the Tribunal's perverse/ impossible view of the DMAT and by the Tribunal's total failure to consider material evidence/facts i.e. the MSM Press Note/statement dated 23rd April 2010. Mr. Chinoy submitted that the Press Note issued by MSM and who according to BCCI was not part of the alleged fraud, clearly states that the entire India Rights transaction was done after negotiations and with WSGM relinquishing its rights. Mr. Chinoy submitted that this would be a very important aspect that ought to have been considered by the Tribunal before giving any finding on fraud being established beyond a reasonable doubt. Mr. Chinoy submitted that this Press Release/Note again relates to the India Rights whereas the subject matter of the present arbitration was the RoW rights. He brought to my attention the fact that BCCI objected to WSGI's reliance on the aforesaid Press Note as not being proved during the cross examination of RW-4 but the same was not accepted by the Tribunal. Mr. Chinoy submitted that the finding of fraud rendered by the Tribunal because of the alleged diversion of Rs.425 crores is based on the Arbitrator's perverse interpretation and misreading of the DMAT and their total failure to consider MSM's Press Note. Mr. Chinoy submitted that the Award totally fails to consider the Press Note

issued by MSM and which in fact establishes that WSGM's rights under the BCCI-WSGM MRLA has not merely lapsed or come to an end simplicitor on 25th March 2009 as contended by BCCI and accepted by the Arbitrators in the Majority Award. It was only to facilitate MSM's insistence/condition for a direct contract/license for the India Rights with BCCI (instead of a sub-license from WSGM), that WSGM relinquished its India Rights / agreed to give up its India Rights in favour of MSM by letting the BCCI-WSGM MRLA dated 15th March 2009 lapse. This enabled MSM to enter into a direct contract / license with BCCI. In consideration of this, MSM agreed to pay WSGM a Facilitation Fee which was quantified at Rs. 425 crores. This Facilitation Fee was the premium that MSM would have to otherwise pay to WSGM if it had taken a sub-license from WSGM for the India Rights. Mr. Chinoy submitted that the Award however only refers to the fact that WSGM's rights came to an end on 24th March 2009 and on that basis holds that there was a fraud/diversion of Rs.425 crores. This finding is rendered without considering the aforesaid circumstances set out by MSM in its Press Note which establishes that WSGM relinquished its India Rights/let them lapse so that on 25th March 2009 MSM could enter into a direct contract/license with BCCI, and as a part of this arrangement, MSM agreed to pay WSGM a premium as a Facilitation Fee.

39. Mr. Chinoy submitted that the total perversity of the finding of diversion/fraud as reflected in the Majority Award is that it results in the absurd consequence that:

(i) WSGM simplicitor gave up/abandoned the valuable India Rights for the period 2009-2017 (for which as recorded in MSM's Press Note there were *"intense commercial negotiations with other broadcasters also expressing interest, making the situation extremely competitive"*) without seeking to recover any premium/consideration for the same; and

(ii) WSGI gave up its valuable India Rights for the period 2013-2017 for which it would have otherwise received a premium of upto USD 60 million from MSM under the 2008 Option Deed.

40. Mr. Chinoy submitted that the finding of fraud in the Majority Award regarding the diversion of Rs.425 crores, completely ignores the commercial purpose, object and terms of the DMAT, and is therefore, vitiated by perversity and patent illegality in as much as it is based on the Tribunal's perverse/impossible view of the DMAT and by the Tribunal's total failure to consider material evidence/facts i.e. MSM's

Press Note. For all the aforesaid reasons, Mr. Chinoy submitted that the Majority Award is unsustainable and must be set aside.

BCCI's SUBMISSIONS:

41. On the other hand, Mr. Dada, the learned senior counsel appearing on behalf of BCCI, submitted that from the averments in the Petition as well as the arguments canvassed by Mr. Chinoy, it was clear that WSGI's challenge to the Majority Award is nothing else but to seek (i) a review of the merits of the dispute; (ii) re-appreciation of the evidence; and (iii) substitution of an alternate view in place of the view taken by the Tribunal in the Majority Award.

42. Mr. Dada submitted that WSGI has extensively relied upon the "minority/dissenting opinion" issued by a member of the Arbitral Tribunal, presumably in a misguided attempt to present an alternate view of the dispute. Similarly, WSGI has recanvassed arguments that were advanced before the Arbitral Tribunal which were considered and rejected in the Majority Award. Mr. Dada submitted that none of the grounds canvassed by WSGI fall within the purview of Section 34 of the Arbitration Act (as amended in 2015). Mr. Dada submitted that it is now well settled that in any challenge to an Award, re-appreciation of evidence is impermissible in Section 34 proceedings. Similarly, a mere

contravention of the substantive law of India, by itself, is no longer a ground available to set aside an Arbitral Award. Mr. Dada submitted that even the construction of the terms of a contract is primarily for the Arbitral Tribunal to decide, and the same cannot be interfered with by this Court under Section 34, unless the Arbitral Tribunal construes the contract in a manner that no fair-minded or reasonable person would. In other words, Mr. Dada submitted that it is only when the Arbitrator's view is such that no other prudent person would have taken such a view, would this Court interfere under Section 34 of the Arbitration Act. Mr. Dada submitted that this Court under Section 34 cannot undertake an independent assessment of the merits of the dispute. The Tribunal is the ultimate master of the quantity and quality of evidence to be relied upon whilst delivering the Arbitral Award. Even if the Award is 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. To put it in a nutshell, Mr. Dada submitted that it is now well settled that the scope of judicial scrutiny under Section 34 of the Arbitration Act (as amended in 2015) is very limited. Re-appreciation of evidence or reinterpretation of the contract is impermissible. No interference with the Award is warranted if the view taken by the Tribunal is a plausible view.

43. Without prejudice to the aforesaid arguments, Mr. Dada

submitted that WSGI has alleged that its actions in relinquishing its India Rights for the period 2013-2017 (by executing the DMAT) and bundling it with the India Rights for the period 2009-2012, enabled BCCI to an increase in the License Fee to the tune of Rs.1791 crores. Mr. Dada submitted that WSGI contends that this was a material fact, and the Award is perverse as it does not consider this fact. Mr. Dada submitted that this submission is factually incorrect. He submitted that the Tribunal has considered and rejected the self-serving arguments of WSGI and detailed observations and findings in this regard are contained in the Majority Award, and more particularly, paragraphs 35 to 37 thereof. In these circumstances, Mr. Dada submitted by no stretch of the imagination, the Award can be termed as perverse.

44. Mr. Dada submitted that even otherwise, the allegations of WSGI are false as it is apparent from a perusal of the DMAT that WSGI agreed to give up its India Rights for the period 2013-2017 (acquired under the 1st BCCI-WSGI MRLA dated 21st January 2008) so as to facilitate the acquisition of the India Rights for the period 2009-2017 by WSGM. Mr. Dada further submitted that the Arbitral Tribunal in its Majority Award has also rightly held that from a perusal of the recitals of the DMAT, it is clear that the Petitioner agreed to the termination of the 1st BCCI-WSGI MRLA to unbundle the India Rights for the period 2013-

2017 in order to facilitate the acquisition of the India Rights for the period from 2009-2017 by WSGM. Mr. Dada submitted that upon the execution of the BCCI-WSGM MRLA, whereunder the India Rights for the period 2009-2017 were granted to WSGM, WSGI admittedly received its consideration under the DMAT. At this stage, the DMAT was sublimated into the BCCI-WSGM MRLA. However, since the BCCI-WSGM MRLA lapsed on WSGM's failure to comply with its obligations thereunder [being its obligation (a) to make an upfront payment of INR 112.5 crores on the signing of the MRLA; (b) to provide a bank guarantee of INR 335 crores within 7 days of the MRLA; and (c) to find a sub-licensing partner within 72 hours of the signing of the MRLA], all rights under the BCCI-WSGM MRLA reverted to BCCI. Mr. Dada pointed out that no consequences are spelt out in the DMAT for what would happen if the BCCI-WSGM MRLA executed pursuant to the DMAT were to subsequently lapse. Mr. Dada submitted that any enhancement in the License Fee payable to BCCI under the 2nd BCCI-MSM MRLA was not on account of WSGI releasing any rights. Mr. Dada submitted that the enhancement was *inter alia* on account of termination of the 1st BCCI-MSM MRLA on 14th March 2009 and the increased popularity of the IPL in the year 2009. Mr. Dada submitted that the value of such enhancement would go to the rights holder i.e. BCCI, since after the said termination it was open for BCCI to auction the said rights in the market. Mr. Dada

submitted that WSGM had agreed to pay an additional sum of Rs. 1791 crores to BCCI, but never paid the same. Ultimately, MSM agreed to pay this additional amount of Rs.1791 crores to BCCI. Therefore, the increase in value was not relatable to any acts of WSGI. In this regard, it is also pertinent to note that under the 2nd BCCI-MSM MRLA, MSM was granted 600 seconds of additional commercial advertising time per match which was not available under the 1st BCCI WSGI MRLA and the 1st BCCI-MSM MRLA. Mr. Dada submitted that the 2nd BCCI-MSM MRLA was terminated by the parties and replaced by a new media rights agreement executed between BCCI and MSM dated 28th June 2010 (for short the "**3rd BCCI-MSM MRLA**"). This was an entirely new agreement, arrived at after fresh negotiations. It was under the 3rd BCCI-MSM MRLA that BCCI received the amount of Rs.4791 crores, post discovery of the fraud. In fact, MSM also agreed to pay BCCI an additional amount of Rs.300 crores towards the India Rights for the period 2010-2017 under the 3rd BCCI-MSM MRLA. Over and above this, MSM also agreed to pay an amount of Rs.125 crores, if the same was recovered from the WSGM. Mr. Dada submitted that the License Fee for the India Rights was the specific subject matter of negotiations between BCCI and MSM. Pursuant to these negotiations, MSM agreed to fresh payment terms, subject to BCCI fulfilling certain additional requests put forth by MSM. Mr. Dada submitted that, therefore, there was a proposal by BCCI, a counter-

proposal by MSM and acceptance thereafter by BCCI. In support of this argument, Mr. Dada relied upon the correspondence exchanged between MSM and BCCI, namely, two letters both dated 2nd June 2010, one addressed by MSM to BCCI and the other by BCCI to MSM respectively, and a letter dated 24th June 2010 addressed by MSM to BCCI.

45. Mr. Dada submitted that the submission of WSGI that the 3rd BCCI-MSM MRLA was only an amendment to the 2nd BCCI-MSM MRLA is totally misconceived and baseless. Mr. Dada submitted that BCCI and MSM renegotiated the License Fee for the India Rights. Thus, the enhanced fees were a direct result of the fresh negotiations and new terms agreed upon with respect to the License Fee for the period 2010-2017. Mr. Dada submitted that the 3rd BCCI-MSM MRLA also contains an "Entire Agreement" clause and a "No Reliance Clause". Mr. Dada submitted that when one reads the 3rd BCCI-MSM MRLA, it is quite clear that it superseded and replaced the earlier MRLA and the earlier understanding. When one looks at it from this angle, post discovery of the fraud, the enhanced India Rights Fees were thus received under the 3rd BCCI-MSM MRLA, and not under the 2nd BCCI-MSM MRLA. Mr. Dada submitted that it is not BCCI's case that the 3rd BCCI-MSM MRLA formed a part of the fraudulent composite transaction. The 3rd BCCI-MSM MRLA was successfully performed and has now determined by the efflux of time.

The monies received by BCCI thereunder, thus, cannot be termed as a benefit from the fraud. Mr. Dada, therefore, submitted that the view taken by the Tribunal in the Majority Award is correct or is, at the very least, a plausible view, and therefore, there is no merit in this ground of challenge canvassed by WSGI.

46. Whether the alleged benefit/advantage received by BCCI is a material piece of evidence, the non-consideration of which would render the Majority Award perverse, Mr. Dada submitted that the Tribunal has in fact considered WSGI's argument regarding the alleged benefit/ advantage received by BCCI at paragraph 35 of the Majority Award. Mr. Dada submitted that in any event, as stated earlier, there was no benefit or advantage that BCCI had received. As explained earlier, the enhanced fee that BCCI received was not relatable to any acts of the WSGI. Further, WSGM not only breached the BCCI-WSGM MRLA but also committed a fraud on MSM and BCCI by executing the Facilitation Deed. He, therefore, submitted that it was totally incorrect on the part of WSGI to contend that the alleged benefit/advantage received by BCCI was a material piece of evidence, non-consideration of which rendered the Majority Award perverse. Mr. Dada, therefore, submitted that there was no merit in the argument of WSGI that the Arbitral Tribunal failed to advert to or consider that BCCI was able to receive from MSM an

increased License Fee of Rs.4791 crores for the India Rights for the period 2009-2017 because WSGI had relinquished its India Rights for the period 2013-2017 to BCCI.

47. Mr. Dada then submitted that even the argument of Mr. Chinoy that the Majority Award is perverse and contravenes the principles of Sections 64 and 65 of the Indian Contract Act, 1872, and is therefore, contrary to the fundamental policy of Indian Law, is without any merit. Mr. Dada submitted that there is no prayer and/or pleading in the Statement of Claim filed before the Tribunal for "restoration" of any alleged benefit under Sections 64 and 65 of the Indian Contract Act, 1872. Mr. Dada submitted that at no point in time, did WSGI quantify its purported entitlement under Section 65 and/or demand a refund of a specified amount towards the benefit (purportedly received by the BCCI from WSGI) under the 2nd BCCI-WSGI MRLA. In the absence of the same, the Tribunal could not have granted any relief under Sections 64 & 65 of the Contract Act to WSGI. Mr. Dada submitted that under Sections 64 and 65: (a) the alleged benefit is required to have been received by BCCI under the 2nd BCCI-WSGI MRLA itself & which admittedly is not the case; and (b) what is sought to be restored must be an advance payment or benefit already conferred under the 2nd BCCI-WSGI MRLA.

48. Mr. Dada then submitted that in any event, Sections 64 and 65 of the Contract Act will not aid WSGI since admittedly it had been found to have committed the fraud. Mr. Dada submitted that WSGI was found to have been complicit in the fraudulent transaction. As such, there was no question of WSGI being returned any rights it had lost under the DMAT. The whole reason for the rescission was that WSGI was involved in playing a fraud on BCCI. If any rights of WSGI are restored, it would defeat the entire purpose and effect of the rescission, was the submission. Mr. Dada submitted that this argument has been dealt with by the Tribunal in paragraph 66 of the Majority Award wherein the Tribunal holds that no relief is claimed for restoration of any advantage received by BCCI as mentioned in Section 65 of the Contract Act, and there is no pleading or evidence led to that effect. The Tribunal has further recorded that there was no oral argument on this issue, as well. The Tribunal, therefore, holds that this contention cannot be raised at this stage. Mr. Dada pointed out that the Tribunal further goes on to hold that nothing is stated throughout the proceeding as to the nature of the advantage received by BCCI. Mr. Dada, therefore, submitted that there is no merit in the arguments canvassed by WSGI that the Majority Award is perverse and contravenes the principles of Sections 64 and 65 of the Contract Act and which is contrary to the fundamental policy of the Indian Law.

49. Mr. Dada thereafter submitted that WSGI is completely incorrect when it contends that the Arbitrator's interpretation of the DMAT and its stated purpose and object is contrary to the express terms/plain language thereof. In this regard, Mr. Dada submitted that under the 1st BCCI-WSGI MRLA dated 21st January 2008, WSGI had the RoW rights for the period 2008-2017 along with the India Rights for the period 2013-2017. Even after the execution of the DMAT and the 2nd BCCI-WSGI MRLA, WSGI continued to have the RoW Rights for the period 2009-2017. What WSGI gave up was the India Rights for the period 2013-2017. Clearly, therefore, looking at the transaction as a whole, the RoW Rights were not WSGI's consideration for anything at all because WSGI always had those rights. The consideration was clearly the diversion of the India Rights of WSGI to WSGM. Clearly, therefore, retention of the RoW Rights was not the WSGI's consideration for the DMAT. The consideration for the DMAT was the diversion of WSGI's India Rights to WSGM. Mr. Dada submitted that this is exactly what the Tribunal has held at Paragraphs 35 to 37 of the Award. Mr. Dada submitted that this consideration (diversion of the India Rights to WSGM) was received by WSGI when the BCCI-WSGM MRLA was executed on 15th March 2009. BCCI's alleged obligations under the DMAT were thus fulfilled on the execution of the BCCI-WSGM MRLA. To put it in a nutshell, Mr. Dada submitted that:-

(a) The WSGI's consideration for the DMAT was the diversion of the India Rights for the period 2009-2017 to its affiliate WSGM;

(b) WSGI did not surrender the India Rights for the period 2013-2017 to BCCI absolutely. The DMAT itself contemplated reversion of the India Rights for the period 2013-2017 to the BCCI for the limited purpose of enabling the BCCI to sign the BCCI-WSGM-MRLA, and it is for this reason that WSGM was party to the DMAT;

(c) This consideration was received by the WSGI when the BCCI-WSGM MRLA was executed on 15th March 2009 and MSM succeeded in its arbitration against WSGM, and the amounts paid under the Facilitation Deed have been directed to be returned to MSM and which has absolutely nothing to do with BCCI.

50. Mr. Dada, therefore, submitted that BCCI cannot be held liable for anything when the WSGI already received its consideration under the DMAT. Mr. Dada submitted that the DMAT having been performed, had come to an end. Nothing remained for BCCI to perform or rescind. Mr. Dada submitted that it was in this light that the Tribunal held that the DMAT along with all the other Agreements had come to an end by the efflux of time, and hence, there was no need for any termination or rescission of the DMAT. He, therefore, submitted that the

only agreement left to be rescinded and which formed part of the composite fraud was the 2nd BCCI-WSGI MRLA and that is what was exactly done by BCCI vide its termination notice dated 28th June 2010. He therefore submitted that the findings given by the Arbitral Tribunal with relation to the DMAT were fully justified. In any event, Mr. Dada submitted that the view taken by the Tribunal in the Majority Award on the interpretation of the DMAT is certainly a plausible view, and hence, this Court ought not interfere with those findings under Section 34 of the Arbitration Act.

51. Mr. Dada then submitted that WSGI contends that BCCI has not been able to establish fraud beyond reasonable doubt because the Tribunal allegedly failed to consider the material findings/facts i.e. MSM's Press Note. In this regard, Mr. Dada submitted that the contents of the Press Note were never proved in the proceedings before the Arbitral Tribunal. As such, WSGI cannot rely on the Press Note at all. The said Press Note was denied by BCCI vide its statement of admissions and denials dated 5th May 2017 filed in the arbitration proceedings. Thus, WSGI is not entitled to rely upon the Press Note since the contents and the truth thereof were never proved by WSGI in the arbitral proceedings. Mr. Dada submitted that despite WSGI relying heavily on MSM's Press Note dated 23rd April 2010, it has not led evidence of any witnesses to

prove the correctness of the contents thereof. Further, WSGI has also repeatedly refused to produce the Award passed by the ICC Singapore Tribunal under which the said Tribunal held that MSM was justified in rescinding the Facilitation Deed executed between the MSM and WSGM. Mr. Dada submitted that therefore, the learned Arbitral Tribunal has rightly not attached any evidentiary value to MSM's Press Note and has not referred to or relied upon the same in its Majority Award. For all the aforesaid reasons, Mr. Dada submitted that there was no merit in the above Petition and the same ought to be dismissed with costs.

Reasoning and Findings of the Court:

52. I have heard the learned counsel for the parties and perused the papers and proceedings in the above Petition. I have also gone through in detail the Majority Award dated 13th July 2020. Before I deal with the arguments canvassed by the respective parties, it would be apposite to recapitulate the facts in brief once again. In the year 2007, BCCI conceptualized the Indian Premier League [**IPL**]. To license the Media Rights for the IPL, BCCI floated a tender. WSGI was the successful tenderer and was accordingly awarded the Global Media Rights for the IPL for the period 2008-2017. Since WSGI was only a trader in Media Rights, it entered into pre-bid negotiations with MSM which had a broadcasting network in India. During these negotiations, MSM, for its

own commercial reasons, instead of entering into a sub-licensing Agreement with WSGI, desired to enter into a direct Media Rights License Agreement [**MRLA**] with BCCI. Further, MSM only wanted the India Rights for the period 2008-2012. To facilitate this entire process, in the year 2008, the following Agreements were entered into between BCCI, MSM and WSGI respectively:

(a) ***The 1st BCCI-MSM MRLA dated 21st January 2008***. This MRLA was in relation to the India Rights for the period of 2008-2012 and for which MSM had to directly pay BCCI an amount totalling to USD 275.40 Million;

(b) ***The 1st BCCI-WSGI MRLA dated 21st January 2008***. This MRLA was executed between BCCI and WSGI for (i) The India Rights for the period 2013-2017 for a sum of USD 550 Million and (ii) The RoW Rights (i.e. excluding the India Rights) for the period 2008-2017 for USD 92 Million; and

(c) ***The Option Deed dated 21st January 2008***. This Agreement/Deed was executed between MSM and WSGI because MSM had only acquired the India Rights for the period 2008-2012. In the event MSM wanted to acquire the India Rights for the period 2013-2017 from WSGI, they had the option to do so by making a payment of a sum of upto USD 60 Million to WSGI. This payment of USD 60 Million (payable to

WSGI) was in addition to the License Fee of USD 550 Million payable to BCCI by WSGI under the 1st BCCI-WSGI MRLA (in so far as it related to the India rights).

53. All these Agreements (and which are referred to as **the MRLAs of 2008**) are unquestioned. In other words, neither BCCI nor WSGI has ever called into question the validity of these Agreements. From these Agreements it is clear that for the India Rights for the period 2008-2017, BCCI would receive an aggregate amount USD 824.50 Million [i.e. USD 274.50 Million from MSM for the period 2008-2012 + USD 550 Million from WSGI for the period 2013-2017]. This was equivalent to approximately Rs.3300 crores. Further, if MSM wanted the India Rights from WSGI for period 2013-2017, MSM could opt to acquire these rights on payment of USD 60 Million to WSGI as set out in the Option Deed. This was in addition to USD 550 Million that MSM would have to pay to BCCI for the India Rights for the period 2013-2017.

54. Thereafter come the Agreements executed in the year 2009. The reason why fresh Agreements had to be executed in the year 2009 was because BCCI, on 14th March 2009, terminated its Media Rights Agreement with MSM (being the 1st BCCI-MSM MRLA dated 21st January

2008) for the period 2008-2012. Hence, the India Rights of the IPL for the period 2009-2012 reverted to BCCI. Since the first season of the IPL in 2008 was a resounding success (especially in the Indian Sub-Continent), BCCI wanted to re-auction/re-sell the India Rights for the IPL for the entire period of 2009-2017 for a higher License Fee. To facilitate this process, the following Agreements were entered into in the year 2009:

(a) ***The Deed of Mutually Agreed Termination (DMAT) dated 15th March 2009***. By this Agreement/Deed, the Composite Media Rights License Agreement entered into by BCCI with WSGI for (i) the India Rights for the period 2013-2017 and (ii) the RoW Rights for the period 2008-2017 [the **1st BCCI-WSGI MRLA** dated 21st January 2008] was terminated so that the India Rights for the period 2013-2017 reverted back to BCCI. The DMAT *inter alia* provided that (i) a new Media Rights Agreement for the period 2009-2017 in relation to India Rights would be entered into by BCCI with WSGM; and (ii) for the same period, a new and separate Media Rights Agreement would be entered into with WSGI for the RoW Rights. In other words, the India rights for the period 2009-2017 would be licensed to WSGM (an affiliate of WSGI) and the RoW Rights for the same period (i.e. 2009-2017) would be licensed to WSGI

(and which it already had under the 1st BCCI-WSGI MRLA dated 21st January 2008);

(b) ***The BCCI-WSGM MRLA dated 15th March 2009***. This MRLA was executed in furtherance of what was agreed to under the DMAT. This MRLA licensed the Media Rights of the IPL for the period 2009-2017 to WSGM for an increased License Fee of Rs. 4791 crores. In other words, by entering into this MRLA with WSGM, BCCI got an additional sum of Rs.1791 crores for the India Rights for the period 2009-2017. This is because under the MRLAs of 2008, for the same period, BCCI would have got only Rs.3,000 crores. Since WSGM was not a broadcaster but only a trader in Media Rights, one of the terms of this MRLA required WSGM to enter into a sub-license Agreement with a broadcaster within 72 hours of entering into this MRLA. This requirement was thereafter extended upto and including 24th March 2009 in view of the pending litigation in this Court and more particularly set out earlier in this judgement;

(c) ***The 2nd BCCI-MSM MRLA dated 25th March 2009***. By this MRLA, MSM procured the India Rights for the period 2009-2017 directly from BCCI for a consideration of Rs.4791 crores. According to WSGI, MSM was able to procure these India Rights directly from BCCI only because (i) under the DMAT, WSGI gave up its India Rights for the period 2013-2017; and

(ii) WSGM let its MRLA with BCCI [referred to in (b) above] lapse on 25th March 2009. According to WSGI, WSGM agreed to let its MRLA [the BCCI-WSGM MRLA] lapse so that MSM, as per their request/requirement, could enter into a direct MRLA with BCCI for the period 2009-2017 (for the India Rights). To facilitate this, MSM agreed to pay WSGM a sum of Rs. 425 crores;

(d) ***The Deed for Provision of Facilitation Services (Facilitation Deed) dated 25th March 2009***. By this Deed, MSM agreed to pay a Facilitation Fee of Rs.425 crores to WSGM in the manner more particularly set out therein. This Fee was for assisting MSM in finalizing the 2nd BCCI-MSM MRLA dated 25th March 2009 [referred to in (c) above]; and

(e) ***The 2nd BCCI-WSGI MRLA dated 25th March 2009***. This MRLA was executed because as contemplated under the DMAT, the RoW rights of WSGI under the 1st BCCI-WSGI MRLA [and which stood terminated pursuant to the DMAT] were to be restored back to WSGI.

55. BCCI alleges that all the aforesaid Agreements entered into in the year 2009 (the MRLAs of 2009), including the DMAT, form part of a fraudulent composite transaction which gave them the right to

terminate the 2nd BCCI-WSGI MRLA dated 25th March 2009. To put it in a nutshell, the fraud alleged by BCCI is that the Facilitation Fee payable by MSM to WSGM under the Facilitation Deed were monies that were actually due to BCCI. According to BCCI, all the aforesaid Agreements were entered into for the purposes of diverting to WSGM the sum of Rs.425 crores which actually belonged to BCCI. Since WSGI and WSGM are sister concerns and the fact that WSGI and WSGM were both parties to the DMAT, WSGI was complicit in the aforesaid fraud which gave BCCI the right to rescind the 2nd BCCI-WSGI MRLA dated 25th March 2009 even though the same pertained only to the RoW Rights (as defined in the DMAT) and not the India Rights. It was this rescission that was challenged before the Arbitral Tribunal, and which has been upheld in the Majority Award.

56. The first grievance made by Mr. Chinoy is that the Majority Award totally fails to advert to or consider that by virtue of the Agreements entered into in 2009, and which BCCI now alleges are a part of an *"all pervasive fraud"*, BCCI was able to receive an increased License Fee of Rs. 4791 crores for the India Rights for the period 2009-2017 in contrast to the amount of Rs.3,000 crores that BCCI would have received under the MRLAs of 2008 for the same period. In other words, by virtue of the Agreements entered into in 2009, BCCI benefited to the tune of

approximately Rs.1791 crores. The Tribunal has failed to consider this enormous benefit that inured to BCCI, and the fact that BCCI retained the same. This according to Mr. Chinoy is a fundamental error on the part of the Tribunal as it completely ignores and fails to take into consideration this vital fact which goes to the root of the matter.

57. I have carefully gone through the Majority Award. It can't be disputed that by virtue of the Agreements entered into 2009, BCCI was able to re-sell/re-auction the India Rights for the period 2009-2017 for a sum totalling to Rs.4791 crores. It is also not in dispute that under the unquestioned 2008 MRLAs, for the same period, BCCI would have received a sum of Rs.3000 crores for the India Rights. This means that by virtue of the Agreements entered into in 2009 (including the DMAT), BCCI got a benefit of Rs.1791 crores. Despite this, I find that the Majority Award nowhere mentions or considers this enormous benefit that was received by BCCI under the Agreements entered into in the year 2009. I must mention that this was specifically put in issue before the Tribunal in the post hearing submissions submitted by WSGI. The relevant portion of these submissions read thus:-

> "99. Admittedly, the Respondent has taken the benefit of the Termination Deed without which it could not have consolidated and sold the Indian Sub-Continent Rights for

> an increased rights fee of Rs. 1,791 crores, initially to WSGM and ultimately to MSM under the direct licence under the 2nd BCCI MSM MRLA. Similarly, the Respondent fought tooth and nail to resist the proceedings initiated by MSM against the Respondent following the termination of the 1st BCCI MSM MRLA by relying upon the BCCI WSGM MRLA. Mr Lalit Modi filed an affidavit on behalf of the Respondent (the LKM Affidavit), before the Bombay High Court stating that the BCCI WSGM MRLA had been entered into between the parties at 3 am on 15 March 2009 **[Page 1-4; CCD (Vol VII)] [Page 979 (Typed Copy); CTC].** Based on the various submissions by the Respondent's counsel at the time before the Hon'ble Bombay High Court on, inter alia, the validity of the BCCI WSGM MRLA, the Hon'ble Bombay High Court disallowed interim relief to MSM through the Bombay High Court Order **[Page 273-316; CCD (Vol 1)]"**
>
> (emphasis supplied)

58. In fact, it was specifically argued before the Tribunal that if the fraud was an *"all pervasive fraud"* and which attached itself even to the DMAT, then, all Agreements, including the DMAT had to be rescinded. BCCI could not have merely rescinded the 2nd BCCI-WSGI MRLA and that too for an alleged fraud which did not in any way attach itself to the RoW rights but only to the India Rights. To counter the argument of Mr. Chinoy on this aspect, Mr. Dada submitted that the aforesaid benefit which allegedly accrued to BCCI has in fact been considered in the Majority Award and more particularly paragraphs 35 to 37 thereof. Paragraphs 35 to 37 read thus:-

"35. The next question which arises is: If the final result was to grant RoW rights for the years 2009-2017 to WSGI why was the first BCCI-WSGI-MRLA which did precisely this, terminated? The Claimant's submission is that this was done in order to unbundle the India Rights for 2013 to 2017 so as to make its subsequent aggregation with India Rights for 2009-2012 possible, which would get for the Respondent more money. This does not appear to be convincing. In the first place, apart from this submission, there is no oral evidence before us to support such a reason. If we look at the documentary evidence, Clause 2 of the Deed of Mutually Agreed Termination of 1st WSGI Media Rights Agreement provides as follows:

2.1 The parties acknowledge and agree that the BCCI has terminated BCCI- Sony agreement and that given the proximity of the start of the 2009 IPL season, and its obligations to its stakeholders and to protect the interests of such stakeholders, the BCCI wishes to execute new media rights agreements for the period 2009-2017 on an expedited basis.

2.2 In order to facilitate this process, and for good and valuable consideration, the parties have mutually agreed to terminate the WSG media rights agreement and to enter into the new WSG media rights agreements.

2.3 The parties shall have no liability to each other as a result of the mutually agreed termination of the WSG media rights agreement.

36. There is no reference to unbundling of India rights by WSGI in order to enhance the value of India rights by achieving a package for the India rights for 2009-2017 which would be attractive to the market. On the contrary the Deed of Mutually Agreed Termination records that the parties agreed to terminate the first BCCI-WSGI-MRLA for good and valuable consideration. It is not clear what this good

> and valuable consideration was. Looking at the Agreements entered into thereafter, was this good and valuable consideration the agreement of the Respondent with WSGM?
>
> 37. This is supported by Clause 29 of the first BCCI-WSGI-MRLA which requires that if Sony agreement (MSM) is terminated for whatever reason prior to the end of the rights period, the Respondent will be required to meet WSGI as soon as practicable with a view to agree in good faith by which of the parties and on what basis the rights pursuant to such termination can be exploited within the Indian subcontinent. Thus the 3 parties namely Mr. Modi, WSGI and WSGM have acted in consultation and collusion with each other in formulating the agreements subsequent to the termination of the first BCCI-MSM-MRLA."

59. From the aforesaid paragraphs of the Majority Award, I do not find anything therein that would lead me to believe that the Tribunal in the Majority Award has considered the benefit of Rs.1791 crores that inured to BCCI and the effect it would have on BCCI's rescission of the 2nd BCCI-WSGI MRLA dated 25th March 2009. In fact, there is absolutely no mention of the figures of *"Rs.4791 crores"* or *"Rs.1791 crores"* in the Majority Award. It is completely silent as far as these figures are concerned. There is absolutely no mention in the aforesaid paragraphs regarding the fact that by the Agreements entered into in the year 2009, and under which WSGI gave up its India Rights for the period 2013-2017 to BCCI in order to enable it to aggregate the same with the India Rights for the period 2009-2012, an enormous benefit of Rs.1791 crores inured

to BCCI. In fact, all that the Majority Tribunal has done is that it sets out the argument of WSGI in part and thereafter gives the finding that the same *"does not appear to be convincing"*. From what is stated in the said paragraphs, it would effectively mean that WSGI gave up its valuable India Rights for the period 2013-2017 to get absolutely nothing in return, when in contrast, under unquestioned 2008 MRLAs (Option Deed) if WSGI were to give up its India Rights for the period 2013-2017 to MSM, they would be paid up to USD 60 Million. This interpretation of the Tribunal in the Majority Award is unsustainable. From the DMAT (dated 15th March 2009), it is ex-facie clear that WSGI agreed to the termination of the 1st BCCI-WSGI MRLA so that BCCI would be able to re-license the India Rights for the period 2009-2017 for a much higher price and which would be licensed to WSGM (an affiliate of WSGI). Further, the RoW Rights would be granted back to WSGI for the period 2009-2017. It was to facilitate BCCI receiving a higher License Fee that WSGI agreed to the termination of the 1st BCCI-WSGI MRLA so that BCCI could re-license the India Rights for the entire period (2009-2017) as a single package. Any other interpretation just does not make any sense. The findings in Majority Award would effectively mean that WSGI gave up its valuable India Rights to BCCI for the period 2013-2017 just to get it back through its affiliate – WSGM and that too by agreeing to pay an additional amount of Rs.1791 crores. When one reads these Agreements together with the

findings and reasons given in the Majority Award, I find that the issue regarding BCCI receiving a benefit of Rs.1791 crores by virtue of the aforesaid transaction and the effect it would have on BCCI's right to terminate/rescind the 2nd BCCI-WSGI MRLA dated 25th March 2009, is completely missed in the Majority Award. In my view, before the Tribunal (in the Majority Award) upheld BCCI's rescission on the ground of an *"all pervasive fraud"*, it ought to have considered whether the said rescission could be held to be valid when BCCI had received a benefit of Rs. 1791 crores under the very Agreements which it now alleges form the subject matter of a fraudulent composite transaction, and which in turn, gave BCCI the right to terminate the 2nd BCCI-WSGI MRLA. I say this because it is trite law that a party cannot be permitted to approbate and reprobate at the same time. A party cannot be permitted to blow hot and cold, fast and loose or approbate and reprobate. When one party knowingly accepts the benefits of a contract, it is estopped by denying the validity and binding effect of that contract on him. Once a party takes advantage of any instrument, he must accept all that is mentioned in the said document. This has been so held by the Hon'ble Supreme Court in the case of **Bhagat Sharan v/s Purushottam and Ors [(2020) 6 SCC 387],** the relevant portion of which reads thus:-

> **"26.** It is also not disputed that the plaintiff and Defendants 1 to 3 herein filed suit for eviction of an occupant in which he claimed that the property had been bequeathed to him by Hari Ram. According to the

defendants, the plaintiff having accepted the will of Hariram and having taken benefit of the same, cannot turn around and urge that the will is not valid and that the entire property is a joint family property. The plaintiff and Defendants 1 to 3 by accepting the bequest under the will elected to accept the will. It is trite law that a party cannot be permitted to approbate and reprobate at the same time. This principle is based on the principle of doctrine of election. In respect of wills, this doctrine has been held to mean that a person who takes benefit of a portion of the will cannot challenge the remaining portion of the will. In *Rajasthan State Industrial Development & Investment Corpn.* v. *Diamond & Gem Development Corpn. Ltd.* [*Rajasthan State Industrial Development & Investment Corpn.* v. *Diamond & Gem Development Corpn. Ltd.*, (2013) 5 SCC 470 : (2013) 3 SCC (Civ) 153 : AIR 2013 SC 1241] , this Court made an observation that a party cannot be permitted to "blow hot and cold", "fast and loose" or "approbate and reprobate". Where one party knowingly accepts the benefits of a contract or conveyance or an order, it is estopped to deny the validity or binding effect on him of such contract or conveyance or order.

27. The doctrine of election is a facet of law of estoppel. A party cannot blow hot and blow cold at the same time. Any party which takes advantage of any instrument must accept all that is mentioned in the said document. It would be apposite to refer to the treatise *Equity—A Course of Lectures* by F.W. Maitland, Cambridge University, 1947, wherein the learned author succinctly described principle of election in the following terms:

> "The doctrine of election may be thus stated : that he who accepts a benefit under a deed or will or other instrument must adopt the whole contents of that instrument, must conform to all its provisions and renounce all rights that are inconsistent with it…."

This view has been accepted to be the correct view in *Karam Kapahi* v. *Lal Chand Public Charitable Trust* [*Karam Kapahi* v. *Lal Chand Public Charitable Trust*, (2010) 4 SCC 753 : (2010) 2 SCC (Civ) 262] . The plaintiff having elected to accept the will of Hari Ram, by filing a suit for eviction of the tenant by claiming that the property had been bequeathed to him by Hari Ram, cannot now turn around and say that the averments made by Hari Ram that the property was his personal property, is incorrect.**"**

(emphasis supplied)

60. I am mindful of the fact that a challenge to an Arbitral Award under Section 34 of the Arbitration Act is not equivalent to an Appeal. The grounds on which an Arbitral Award can be challenged are circumscribed by section 34 and the judicial precedents interpreting the said provision. One of the grounds to challenge a domestic Arbitral Award, even after the amendment of the Act in 2015, is that it suffers from a patent illegality. The Supreme Court has clearly held that a decision of the Tribunal which is perverse, while no longer being a ground of challenge under the *"public policy of India"*, would certainly amount to a patent illegality appearing on the face of the Award. The Supreme Court has *inter alia* held that a finding in the Award based on no evidence 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. This has so been held by the Supreme Court in the case of ***Ssangyong Engg. & Construction Co. Ltd. v. NHAI*, [(2019) 15 SCC 131]**. The relevant portion of this decision reads thus:

> "**36.** 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 paras 18 and 27 of *Associate Builders* [*Associate Builders* v. *DDA*, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , or secondly, that such award is against basic notions of justice or morality as understood in paras 36 to 39 of *Associate Builders* [*Associate*

Builders v. *DDA*, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] . 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* [*ONGC* v. *Western Geco International Ltd.*, (2014) 9 SCC 263 : (2014) 5 SCC (Civ) 12] , as understood in *Associate Builders* [*Associate Builders* v. *DDA*, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , and paras 28 and 29 in particular, is now done away with.

37. Insofar as domestic awards made in India are concerned, an additional ground is now available under sub-section (2-A), 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.

38. Secondly, it is also made clear that reappreciation 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.

39. To elucidate, para 42.1 of *Associate Builders* [*Associate Builders* v. *DDA*, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , namely, a mere contravention of the substantive law of India, by itself, is no longer a ground available to set aside an arbitral award. Para 42.2 of *Associate Builders* [*Associate Builders* v. *DDA*, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , 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.

40. The change made in Section 28(3) by the Amendment Act really follows what is stated in paras 42.3 to 45 in *Associate Builders* [*Associate Builders* v. *DDA*, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , 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(2-A).

41. What is important to note is that a decision which is perverse, as understood in paras 31 and 32 of *Associate Builders* [*Associate Builders* v. *DDA*, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , 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 characterised as perverse.

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76. However, when it comes to the public policy of India, argument based upon "most basic notions of justice", it is clear that this ground can be attracted only in very exceptional circumstances when the conscience of the Court is shocked by infraction of fundamental notions or principles of justice. It can be seen that the formula that was applied by the agreement continued to be applied till February 2013 — in short, it is not correct to say that the formula under the agreement could not be applied in view of the Ministry's change in the base indices from 1993-1994 to 2004-2005. Further, in order to apply a linking factor, a Circular, unilaterally issued by one party, cannot possibly bind the other party to the agreement without that other party's consent. Indeed, the Circular itself expressly stipulates that it cannot apply unless the contractors furnish an undertaking/affidavit that the price adjustment under the Circular is acceptable to them. We have seen how the appellant gave such undertaking only conditionally and without prejudice to its argument that the Circular does not and cannot apply. This being the case, it is clear that the majority award has created a new contract for the parties by applying the said unilateral Circular and by substituting a workable formula under the agreement by another formula dehors the agreement. This being the case, a fundamental principle of justice has been breached, namely, that a unilateral addition or alteration of a contract can never be foisted upon an unwilling party, nor can a party to the agreement be liable to perform a bargain not entered into with the other party. Clearly, such a course of conduct would be contrary to fundamental principles of justice as followed in this country, and shocks the conscience of this Court. However, we repeat that this ground is available only in very exceptional circumstances, such as the fact situation in the present case. Under no circumstance can any court interfere with an arbitral award on the

> ground that justice has not been done in the opinion of the Court. That would be an entry into the merits of the dispute which, as we have seen, is contrary to the ethos of Section 34 of the 1996 Act, as has been noted earlier in this judgment."
>
> (emphasis supplied)

61. The fact that the Tribunal in the Majority Award has completely failed to consider the issue regarding BCCI receiving a benefit of Rs.1791 crores by virtue of the Agreements entered into in 2009 (including the DMAT), and the effect it would have on BCCI's right to terminate/rescind the 2nd BCCI-WSGI MRLA dated 25th March 2009, would render the Majority Award susceptible to challenge on the ground of patent illegality. I say this because this is an issue that goes to the root of the matter on whether BCCI, having retained the benefit of Rs.1791 crores under the Agreements of 2009, could rescind the 2nd BCCI-WSGI MRLA (dated 25th March 2009) on the ground that all the Agreements entered into in 2009 (including the DMAT), and under which BCCI received the aforesaid benefit, were a part of a fraudulent composite transaction. Failing to consider this fundamental issue which goes to the root of the matter, renders the Majority Award susceptible to challenge as it clearly suffers from a patent illegality and is therefore liable to be set aside on this ground alone.

62. I must also mention that the Majority Award completely fails to consider MSM's Press Note dated 23rd April 2010. Mr. Dada submitted that MSM's Press Note has not been referred to in the Majority Award because the same was objected to by BCCI and was not proved by WSGI during the arbitration proceedings. I find this submission to be factually incorrect. In the Minority Award, at paragraph 62 thereof, the Dissenting Arbitrator specifically refers to the Press Note. In the Minority Award, the Dissenting Arbitrator specifically records that BCCI objected to the Press Note issued by MSM as not being proved during the cross examination of RW-4. However, this was not accepted by the Tribunal. The relevant portion of the Minority Award reads thus:

> "62. MSM on 21 April 2010 issued a press statement on the IPL Broadcast rights in which it narrated the circumstances in which the 1st BCCI MSM MRLA was terminated and the 2nd BCCI MSM MRLA was executed including the payment of facilitation fees of Rs.4,250,000,000/- to WSGM. In the Press Statement, MSM referred to the BCCI WSGM Agreement dated 15 March 2009 under which WSGM was awarded the India Sub-continent Rights, which formed the basis for MSM entering into extensive discussions with the Respondent. In the Press Statement, MSM does not refer to any agreement between the Respondent and WSGM on 23 March 2009 or that it had been in any manner been defrauded. Also, in the Press Statement, MSM defended the entire transaction and explained the events, including the basis for calculating the amount of Rs.425 Crores agreed to be paid to WSGM (Paragraph 7):

> *"5. Intense commercial negotiations ensued with other broadcasters also expressing interest making the situation extremely competitive. After protracted negotiations between MSM, WSG Mauritius and BCCI, MSM entered into a renegotiated agreement on the IPL broadcasting rights with the BCCI at the same consideration offered by WSG Mauritius and for the same duration (9 years), in lieu of WSG Mauritius relinquishing its rights, thereby achieving both its goals"*
>
> This press release by MSM, one of the main beneficiaries in the entire transaction and who according to the Respondent was not part of the alleged fraud, states that the entire India sub-continent media rights transaction was done after negotiations and with the WSGM relinquishing its rights. This would be an important aspect to be considered. Moreover, this press release again relates to the India sub-continent media rights, whereas the subject matter of the present arbitration is the RoW media rights. Respondent objected to the press release by MSM as not being proved during the cross examination of RW-4 but this was not accepted by the Tribunal at Pg.358 CCE, q.3-RW-4."

(emphasis supplied)

63. The only reason why I am reproducing the relevant portion of the Minority Award is to show that this argument of BCCI, and which was canvassed by Mr. Dada before me, was negated by the Tribunal. Non-consideration of this Press Note would also go to the root of the matter considering that the aforesaid Press Note sets out in detail as to under what circumstances the amount of Rs.425 crores was payable by MSM to WSGM. In fact, the consideration of

the Press Note would have been vital before giving any finding of fraud being established. This Press Note, and which relates to the India Rights for the period 2009-2017, at least, prima facie, indicates that WSGMs rights under the BCCI-WSGM MRLA had not merely lapsed or come to an end simplicitor on 25th March 2009 as contended by BCCI, but WSGM allowed its MRLA to lapse in order to facilitate MSM entering into a direct contract with BCCI for the India Rights for the period 2009-2017. In consideration for this, MSM agreed to pay a Facilitation Fee which was quantified at Rs.425 crores. The relevant portion of the said Press Note reads thus:-

> "We wish to state that all transactions relating to MSM's acquisition of the broadcast media rights in 2008 as well as 2009, have been undertaken with full knowledge of all the parties; in an open and transparent manner and in keeping with applicable laws.
>
> MSM strongly refutes all unsubstantiated allegations of any impropriety in this matter, as incorrect and inaccurate.
>
> To clarify the situation and our position, we wish to highlight the following:
>
> **A quick summary**
>
> 1. On March 14, 2009, the BCCI unilaterally terminated the then existing broadcasting rights agreement dated 21 January 2008 with MSM.
>
> 2. MSM immediately initiated legal action against the BCCI in

Bombay High Court to stay the termination. However, BCCI had vested the Indian subcontinent broadcasting rights with WSG Mauritius, for a nine year period (2009-2017) under ***an agreement dated 15 March 2009***.

3. Given that the contract had already been awarded to WSG Mauritius, the court did not grant MSM a stay leaving MSM the only recourse to sue BCCI for damages or try to secure the rights back through a commercial negotiation. MSM opted to enter into a commercial negotiation to try and re-secure the rights.

4. MSM's goals in the commercial negotiation were two-fold: i) to secure the rights that had been unilaterally terminated and for the entire 9 year period keeping BCCI unaffected by paying the same amount to BCCI as contracted by WSG Mauritius, and ii) It was MSM's clear position that to secure its business interests, the broadcasting rights agreement should be a direct contract with the BCCI, rather than as a sub-license under an agreement with WSG Mauritius, which had these rights, ***as per the agreement with BCCI, dated March 15, 2009***. To facilitate MSM's condition for a direct contract with BCCI, WSG Mauritius agreed to give up its broadcast rights for the Indian subcontinent in favour of MSM, thus paving the way for BCCI & MSM to enter into a contract directly. ***In consideration for this, MSM agreed to pay WSG Mauritius a facilitation fee***.

5. MSM wishes to re-emphasize here that the 'Facilitation Fee' of Rs 425 crores to WSG Mauritius is for:

   a. the original option fee of $25 million (Rs. 115 crores approximately) to extend the rights to years 6 till 10,

   b. an additional fee over the 9 years of the contract of Rs. 310 crores. These fees were to compensate WSG Mauritius for returning its rights for IPL season 2 - 10 to BCCI in favour of MSM and were necessary if MSM was to secure the rights to IPL season 2- 10.

However, the potential rating incentive at the end of year 5 of $ 35 million (Rs. 160 crores) under the agreement dated 21 January 2008 was eliminated, and

c. as a consequence of these commercial negotiations the net incremental amount attributable to WSG Mauritius giving up its IPL Indian subcontinent rights is Rs. 150 crores.

6. MSM also wishes to state that the payments made to BCCI and WSG Mauritius have been in accordance with applicable laws and as per established international cross border banking norms and procedures.

i. MSM received tax advice from external tax experts that the transaction with WSG Mauritius did not attract India taxes and MSM has accordingly not withheld any Indian tax. MSM has accounted for the payments in its financial statements which have been audited and filed before statutory authorities.

MSM has acted at all times with impeccable integrity and highest ethical standards and corporate Governance. MSM has complied with applicable laws. Allegations in certain sections of the media attributing wrongful conduct to MSM are incorrect and completely unfounded.**"**

(emphasis supplied)

64. It is important to note that BCCI alleges in its termination notice that MSM was misled to believe that there was an MRLA with WSGM dated 23rd March 2009. However, in the Press Note, MSM makes no reference to any MRLA of 23rd March 2009 but in fact correctly mentions that the BCCI-WSGM MRLA was dated 15th

March 2009. I fail to understand as to how MSM was misled when even in its own Press Note it has stated that the BCCI-WSGM MRLA was dated 15th March 2009. In fact, this Press Note also goes on to explain with great clarity as to why Rs.425 crores was payable to WSGM. Non-consideration of this Press Note, and the effect it would have on the finding of fraud, is also completely missed by the Arbitral Tribunal in the Majority Award which would render it vulnerable to challenge.

65. This apart, even as far as the finding of fraud is concerned, I find that the reasoning of the Tribunal in the Majority Award is much to be desired. It was the case of BCCI, and which was accepted by the Tribunal in the Majority Award, that a fraud was committed on BCCI and MSM because a sum of Rs. 425 crores was diverted to WSGM when the aforesaid amount ought to have been paid and belonged to BCCI. The Tribunal holds that looking at the terms of the Agreements as entered into in the year 2009, the reasons alleged by the Claimant (WSGI) for subsequent changes as against the reasons pointed out by the Respondent (BCCI), the manner in which WSGM was introduced as a party to one of the

transactions, the subsequent termination of that transaction and the absence of knowledge of the Respondent (BCCI) regarding the exact nature of the various transactions, especially the liability imposed upon the Respondent (BCCI), the fraud as alleged was established beyond reasonable doubt. I fail to understand how the Majority Award has come to this finding. Firstly, how BCCI is entitled to Rs.425 crores is something that is not explained in the Majority Award. From the documents on record, namely the Agreements entered into in the year 2009 as well as the Press Note issued by MSM dated 23rd April 2010, *prima facie*, it would appear that Rs.425 crores was to be paid to WSGM for giving up its India Rights for the period 2009-2017, and which had come to it by virtue of the DMAT read with the BCCI-WSGM MRLA dated 15th March 2009. I fail to understand how a fraud in such transaction is alleged, at least *qua* BCCI. What is important to note is that in the MRLAs of 2008, and which are undisputedly unquestioned documents, a similar provision finds place in the *"Option Deed"* executed between MSM and WSGI which *inter alia* contemplated that if MSM wanted the India Rights for the period 2013-2017, they would have to pay WSGI a sum of USD 60 Million. It has never been BCCI's case that the

aforesaid Option Deed was in any way fraudulent or that the amount of USD 60 Million which WSGI would have got under the Option Deed was actually money which was due and payable to BCCI. I, therefore, find that on the material on record, and especially the non-consideration of the MSM Press Note, the Tribunal (in the Majority Award) could not have come to the conclusion that fraud on BCCI was proved, either on the preponderance of probabilities or beyond reasonable doubt. This being the case, even on this count, the Award is unsustainable.

66. There is yet another reason why I find that the Majority Award is required to be interfered with. In paragraph 61 of the Majority Award, the arbitrators hold as under:

> "61. IPL GC meeting did take place and was held on 11th August, 2009 and there is nothing on record to suggest the second BCCI WSGI MRLA and second BCCI MSM MRLA were discussed and brought to the attention of the Governing Council members of the IPL for approval in the said meeting. There is also nothing on record to show that the contracts were available at the meeting either and, therefore, there could not have been any ratification and even if there be any ratification, the same was obtained fraudulently by suppressing the most relevant clauses and by suppressing the Facilitation Deed whereby legitimate fund of the BCCI was sought to be diverted and misappropriated and therefore rightly the BCCI took steps for rescission of such

transaction."

(emphasis supplied)

67. As can be seen from the aforesaid reproduction, the Majority Award holds that there is nothing on record to show that the 2nd BCCI-WSGI MRLA dated 25th March 2009 or the 2nd BCCI-MSM MRLA also dated 25th March 2009, were available at the meeting held on 11th August 2009 and therefore there could have been no ratification. I am unable to understand how the Tribunal in the Majority Award has come to this finding when there is a detailed discussion on this aspect in the Minority Award from Paragraphs 159 to 178 thereof, which read thus:

> "159) IPL GC members, by way of the agenda for the 11 August 2009 IPL GC meeting, which had been circulated to them as far back as 2 August 2009, had been given access to the MRLAs, apart from the detailed write-ups on them in the financial statements forming part of the agenda papers.
>
> 160) Item 6.c shown at Page 675, Vol.II of CCD gives the provisional income and expenditure for IPL 2009 along with the statement of all expenses by vendor. The Claimant's argument seems to be correct inasmuch as the media rights fee payable by MSM and the Claimant to the Respondent is provided and the sum payable from MSM to Respondent increases substantially. That is reflected in the document.
>
> 161) Item 6.f shown at Page 713,Vol.II of CCD under the heading approval of all vendor contracts for 2009 season is a statement that *"All vendor contracts are placed here in the*

office along with the multiple quotes that are received from various parties." The Respondent's contention that Item 6.f was left blank therefore cannot be accepted.

162) I have examined the Respondent's allegation that Mr. Modi added the 2009 MRLA's to Annexure C to the minutes post circulation and approval of the minutes of the IPL GC Meeting of 11 August 2009 and find it meritless. Firstly, not a single witness led by the Respondent has supported such a finding that the Annexure C which contains the list of the MRLA's was circulated much later to the meeting. It is noteworthy that there is no specific testimony of this fact or for instance when did the Respondent notice that the Minutes were incorrect or had been supplemented with the Annexure C which purportedly was not shared at the time of the meeting.

163) The Vendor contract argument raised by the Respondent is false. Along with the MRLAs there were a number of other agreements which had been placed in the Vendor category including the 'BCCI-IPL' CSA Agreement. In his cross-examination, RW-3 categorically states that though he may have referred to the MRLAs as 'Vendor Agreements', there is no such definition of Vendor Agreements in the Respondent's approval process [Q.54 (page 366); CCE]. Thus, there is no material to indicate that the 'Vendor Agreements' would have only included a particular class of agreements. The Respondent's arguments fall on this point as well.

164) No rule or practice has been put forth in evidence that media rights agreements were prohibited from being placed in the category of vendor contracts. There are only few minutes of the IPL GC meetings which have been placed on the record of this arbitration and they again do not disclose that media rights contracts were placed in a separate category or that there was a great amount of discussion between the members on such contracts.

165) Even if it were put under the head of vendor contracts, it

would be the duty of the members sitting in a meeting to have gone through all the matters noted in the Agenda note while approving them. Once the Agenda is approved, the conclusion that would follow is that it has been duly considered and approved. In absence of anything more, the evidence of the interested party witnesses saying that they did not peruse the entirety of the document before approving, would not be sufficient to hold that the members approving did not have full knowledge or their knowledge was defective. Also, none of the members of the IPL GC have deposed to that effect, rather the evidence is of the non-voting members. In any event, the very fact that all matters were put in the Agenda Note it would rule out any case of fraud or collusion.

166) The Respondent has argued extensively that the ratification of the 2nd BCCI WSGI MRLA and 2nd BCCI MSM MRLA can only occur with the full knowledge of all facts including any irregularity. In support, it has been argued that the contracts were not available at the meeting, there was also no specific mention of the contracts in the minutes which would show that they were not orally mentioned or discussed at the meeting. On this basis, the Respondent contends that the alleged ratification that is obtained fraudulently by suppressing the most relevant clauses cannot be said to be valid or binding on BCCI. The Respondent in response to the Claimant's argument that office bearers had no voting rights in the IPL GC meeting stated that President and Secretary supervise the overall affairs of the BCCI and their knowledge is relevant for determining the BCCI's knowledge.

167) The Claimant's arguments were that the persons who were entitled to vote and ratify the contracts were the members of the IPL GC. RW-3 and RW-4 were office bearers who were ex-officio members without any voting rights. The Respondent has led no evidence to show that the usual procedure for ratification was for considering the detailed terms and conditions of the terms/contracts. Also, there was clear and detailed reference to the media rights

agreement in the Agenda note and the agreements were available for inspection, thus, the ratification was done with knowledge.

168) I have considered the material and evidence on record on this point of ratification. There is no quarrel with the legal proposition in the judgments cited by the Respondent on this point such as *T. R. Pratt (Bombay) Ltd v E.D. Sassoon and Co Ltd* [1935] LX ILR Bom. 326 as also *Premila Devi v The peoples Bank of Northern India* [1938] ILR Lah 1 PC concerning ratification.

169) It has emerged in the Respondent's evidence that the only persons in the IPL Governing Council who were entitled to vote and take decisions were the members appointed by the General Body of the Respondent. These were the persons concerned who would approve/ratify the actions. The office bearers who were part of the IPL GC were ex-officio members but did not have any voting power. This has been elicited in the cross examination of RW-1 where he has stated in answer to a question (Line 10 at Page 217 of CCE) that: *Q. Are they allowed to vote in the meeting? A. The members vote for that. The office bearers definitely don't participate in the voting part of it because the decision makers are the members of that. Q. Do they vote or not in the meeting to your knowledge? A. The Committee is responsible to take decisions and the committee is the members who are appointed by the general body who take decisions.*

170) The Respondent has contended that the reliance on RW-1's evidence is misplaced. No reason has been given for this. Even so, it is not just RW-1's who has deposed on this point. RW-3 who was President of the Respondent at the relevant time also testified in his cross-examination that the only persons who were entitled to vote were the members appointed by the general body and the ex-officio members could not vote. This can be found at Line 16 at Page 323 of CCE- *Q. In terms of ability to participate in meetings, there is no difference between an ex-officio member and a*

member, right? A. No, the right to vote was only with the members. We never had a right to vote. If there was voting in the meeting, we never had a right to vote. Q. Whenever a vote was called, you weren't entitled to vote? A. I can only- with regard to the deliberations, we could participate.

171) The conclusion therefore has to be that the persons entitled to vote and the decision makers at the 11 August IPL GC were those who were members of the council. Any defect in knowledge or the absence of the proper ratification because the relevant clauses in the 2nd BCCI WSGI MRLA were concealed or that there was no discussion concerning these contracts had to be established by reference to the state of mind of the person entitled to vote and who were the decision makers as they would have approved and ratified the 2nd BCCI WSGI MRLA. However no such evidence was led by the Respondent and in this state of affairs I am unable to accept the Respondent's argument that the ratification was defective and that the 2nd BCCI WSGI MRLA cannot be said to be valid or bind the Respondent.

172) On this point, the Respondent further argued that President and Secretary of the BCCI supervise the overall affairs of the Respondent and their knowledge therefore is relevant for determining the state of knowledge of the Respondent. That may well be correct, but in my view, it does not advance the Respondent's case any further as their state of knowledge is irrelevant for the purposes of determining whether the ratification of the 2nd BCCI WSGI MRLA was defective or not.

173) There is again no evidence of the steps taken by the Respondent when it discovered the belated addition of Annexure C to the Minutes. These factual matters which are stated to be part of and actively conceal the Fraudulent Composite Transaction cannot be decided on the basis of arguments without evidence. Secondly, the Minutes of 11 August 2009 IPL GC Meeting clearly state that Approval of all contracts for 2009 season-All contract were entered the

approved List (Which was attached as Annexure C).

174) If agreements were approved without the Annexure C, i.e. the List which contains the agreements, then the persons present there including RW-3 and RW-4 would have led evidence that the members approved and ratified the contracts in the absence of Annexure C. There is no such evidence. Even the draft agenda which was circulated by Mr. Modi on 25 August 2009 by his email at Page 1253, Vol.III of CCD carried the same line namely Approval of all contracts for 2009 season-All contract entered were approved (List attached as Annexure C). The Minutes of 11 August 2009 IPL GC Meeting were annexed but did not contain the Annexure C.

175) Even so there does not seem to be any correspondence from any members after the 2 September 2009 that the Annexure C was not shown to them. There is the email from RW-3 on 25 August 2009 responding to the draft agenda sent by Mr. Modi regarding the incorrect recording of the minutes in relation to IMG. Even that email does not raise any question on the Annexure C and no other correspondence has been produced by the Respondent on this point. As such it is not possible to accept the Respondent's argument that the Annexure C was included subsequent to the approval of the Minutes of the 11 August 2009 IPL GC meeting.

176) After allegedly coming to know of the transactions in April, 2010, the Respondent let the third season of the IPL and collected license fee from the Claimant under the subject Agreement. In my view, this in itself would be an act of ratification by conduct.

177) The Agreement had been acted upon and the Respondent has also received consideration in the form of media rights fees for the IPL 2009 and 2010 season from the Claimant. The IPL matches were in fact broadcast to various Rest of the World territories as envisaged under the 2nd BCCI WSGI MRLA and the Respondent was fully aware about who was

> responsible for it in addition to the fact that these agreements were ratified at the August 2009 GC meeting. After taking the advantage and benefit of the Agreement for 2 years, in my view, the Respondent cannot be permitted to unsettle the agreement by stating that it was not bound by the acts of the IPL Chairman & Commissioner, who I have already found was authorised to enter into the contracts relating to media rights.
>
> 178) To ascertain ratification, the entirety of the facts and circumstances has to be taken into account. After taking into account the entirety of facts, I am of the view that the Respondent had elected to ratify (expressly and even impliedly) the 2nd BCCI-WSGI Agreement. It had also ratified the other media rights transactions in relation to the Indian sub-continent done by the IPL Chairman and Commissioner. Such ratification was consciously done and implemented. I do not find that such ratification suffered from fraud or material defects, as alleged.
>
> (emphasis supplied)

68. I have set out the relevant paragraphs of the Minority Award only to show that there was enough factual material before the Tribunal in relation to the fact that the 2nd BCCI-WSGI MRLA and the 2nd BCCI-MSM MRLA were available at the meeting held on 11th August 2009. Despite all this material (as set out in the Minority Award and which is factual in nature), the Arbitrators in the Majority Award come to a finding *that there is nothing on record* to show that the 2nd BCCI-WSGI MRLA and the 2nd BCCI-MSM MRLA were available at the meeting held on 11th August 2009. This finding of the Tribunal clearly goes to show that it has

ignored the factual material before it in relation to the meeting held by the IPL Governing Council on 11th August 2009. The consideration of this material would also have an important bearing on the argument of BCCI that it had no knowledge of these Agreements until the discovery of the fraud in June 2010 and consequently, all the Agreements entered into in the year 2009 formed part of a fraudulent composite transaction, which in turn, entitled BCCI to rescind the 2nd BCCI-WSGI MRLA dated 25th March 2009. Non-consideration of this material and the effect it would have on the issue of fraud is another factor that would render the award unsustainable.

69. I have carefully gone through the Majority Award as well as the Minority Award. The reason I have examined both the Awards is not to see which view is correct. I have undertaken this exercise only because it was the case of WSGI that a lot of important material and which would have a bearing on the outcome of the dispute between WSGI and BCCI, was ignored by the Arbitrators passing the Majority Award. In fact, when I went through the Majority Award in detail, I find that one of the reasons why the Tribunal held that a fraud was played on BCCI was because BCCI was completely unaware of the Agreements entered into in the year 2009 and specifically the 2nd BCCI-WSGI MRLA and the 2nd BCCI-MSM MRLA. The argument of WSGI before the Tribunal was that Mr. Lalit

Modi acted throughout on behalf of BCCI and therefore BCCI had full knowledge of these Agreements (constructive or otherwise). Further, the Agreements in question were drafted by the *International Management Group* (**IMG**), an Agency with Global Expertise in Sports Media Rights and who was engaged by BCCI to assist in the organization of the IPL. It was argued by WSGI before the Tribunal that Mr. Paul Manning of IMG drafted all the Agreements who had complete knowledge of all the Clauses therein, including the contentious Clauses. It was, therefore, argued that the knowledge of Mr. Paul Manning must be attributed to BCCI. In support of this proposition, WSGI relied upon a case of *Bradley v. Riches (1878) 9 Ch.D.189* which states that a solicitor can be presumed to have communicated to his clients, the facts which he ought to have made known.

70. To substantiate the argument that BCCI was in the know of all the aforesaid Agreements, WSGI had also filed an Interim Application before the Tribunal on 14th October 2016. In that application, amongst other things, WSGI demanded documents exchanged between BCCI and IMG between the period 15th March 2009 to 30th May 2009 in relation to the 2nd BCCI-WSGI MRLA.

71. What is interesting to note is that the Tribunal, by its order

dated 3rd April 2017 (pages 423 to 430 of the paper book), stated that it was not necessary to direct BCCI to disclose these documents because BCCI has not denied that IMG was appointed by BCCI and was advising BCCI. The Tribunal also recorded that BCCI accepted that IMG was not Mr. Lalit Modi's personal adviser. The relevant portion of the Tribunal's order dated 3rd April 2017 reads thus:-

> **"(b)** Documents exchanged between the Respondent and the IMG on the subject Second BCCI WSGI MRLA between 15th March, 2009 and 30th May, 2009.
> These documents are asked for because according to the Claimant, the Respondent has denied involvement of IMG in the drafting, reviewing and negotiations of various contracts, including the Second BCCI WSGI MRLA. The Respondent however has not denied that IMG was appointed by the Respondent and was advising the respondent. It also accepts that IMG was not Mr. Lalit Mody's personal advisor. (Paragraphs 8, 8.1 and 8.3 of the Rejoinder). In view thereof, it is not necessary to direct the Respondent to disclose these documents."
>
> (emphasis supplied)

72. Despite this finding of the Tribunal, and recording the fact that IMG was appointed by BCCI, was advising them, and accepting that IMG was not Lalit Modi's personal adviser, in paragraph 38 of the Majority Award, the Tribunal records that in the present case it is the case of BCCI that Mr. Paul Manning was taking instructions from and reporting exclusively to Mr. Modi. The Majority Award thereafter goes on to hold that looking at the facts of the present case, the knowledge of Mr.

Manning cannot be attributed to BCCI and nor can it be said that BCCI was aware of Mr. Modi's actions. It also holds that IMG acted on the instructions of Mr. Modi as the Chairman of the IPL Governing Council and the local legal team assisting him. There was no material before the Tribunal to show that BCCI and its office bearers were aware of the disputed transactions or were consulted by IMG for preparing these Agreements, was the finding. For the sake of convenience, paragraph 38 of the Majority Award is reproduced hereunder:

> 38. The Claimant contends that Mr. Modi acted throughout on behalf of the Respondent. The Agreements in question were drafted by International Management Group (IMG), an agency with global expertise in sports media rights engaged by the Respondent to assist in the organisation of IPL. Particularly it was drafted by Mr. Paul Manning of IMG who had complete knowledge of the contentious clauses. The knowledge of Mr. Paul Manning can be attributed to BCCI. The Claimant has relied in this connection on the cases of *Bradley v. Riches (1878) 9 Ch.D.189* which states that a solicitor can be presumed to have communicated to his client the facts which he ought to have made known. It is however, stated in the said authority that this is subject to exceptions. *(cf. also Brohmo Dutt v. Dharmi Das Ghose (1898.) ILR 26 Cal. 381)*. Both these cases deal with attorney-client relationship. In the present case, it is the case of the Respondent that Mr. Manning was taking instructions from and reporting exclusively to Mr. Modi. Looking to the facts in the present case the knowledge of Mr. Manning cannot be attributed to the Respondent. Nor can it be said that the Respondent was aware of Mr. Modi's actions. Simply because IMG was engaged inter alia, to prepare these Agreements, it does not necessarily lead to the conclusion that the Respondent was aware of all the Agreements so drafted and their terms. IMG acted on the instructions of Mr. Modi as the chairman of IPL Governing Council and the local legal team assisting him. There is no material before us to show that the Respondent and its office bearers were aware

> of the disputed transactions or were consulted by IMG for preparing these agreements.
>
> (emphasis supplied)

73. I fail to understand how the Tribunal in the Majority Award has come to these findings when BCCI had conceded before the Tribunal on 3rd April 2017 that BCCI had engaged IMG (who admittedly drafted all the Agreements of 2009) and that IMG was not Mr. Lalit Modi's personal adviser. In my view, the findings of the Tribunal in paragraph 38 of the Majority Award are diametrically opposite to what is stated in its order on 3rd April 2017. As can be seen from the reproduction of the order dated 3rd April 2017, the Tribunal was of the view that since BCCI accepted that IMG was appointed by it, and the fact that it was not Lalit Modi's personal adviser, the Tribunal thought it unnecessary to direct BCCI to produce the documents sought for by WSGI in relation to the 2nd BCCI-WSGI MRLA between 15th March 2009 and 30th May 2009. Despite this, the Tribunal now holds that it is BCCI's case that Mr. Manning was taking instructions from and reporting exclusively to Mr. Lalit Modi. It was this very fact which WSGI wanted to disprove that it sought the production of those documents. Once the Tribunal recorded the statement of BCCI that IMG (Mr. Paul Manning being a part thereof) was appointed by BCCI and was advising BCCI and was not Mr. Lalit Modi's personal adviser, how

the Tribunal has come to the conclusion that Mr. Paul Manning was taking instructions from and reporting exclusively to Mr. Lalit Modi, is beyond my comprehension. In fact, this aspect has also been considered in the Minority Award at paragraphs 140 to 142 thereof which reads thus:-

> "**140)** The Claimant had relied upon Bradley v Riches [(1878) 9 CHD; Pg 189 at 195-197] as well as Brahmo Dutt v Dharmi Das Ghose [(1898) ILR 26 Cal 381; Para 8, 21-25] wherein the Court rejected the contention that notice to the attorney is not notice to the party and held that "the knowledge of the solicitor was the imputed knowledge of the client." The Courts have held that a client has constructive notice of what is known to his Solicitor. The doctrine laid down was:
>
> > "my solicitor is alter ego; he is myself; I stand in precisely the same position as he does in the transaction, and therefore his knowledge is my knowledge; and it would be a monstrous injustice that I should have the advantage of what he knows without the disadvantage. "
>
> Applying the above doctrine to the present case, unless the Respondent establishes that Mr. Manning was the lawyer of Mr. Modi (and not the Respondent), and that Mr. Manning was produced before the Tribunal to depose that he had no knowledge about the transactions / Agreements, I would be inclined to take the view that he had knowledge of all the transactions, had drafted all the Agreements executed on 15 March 2009 and 25 March 2009 and since he was the lawyer for the Respondent, his knowledge should be treated as knowledge of the Respondent. <u>The fact that Mr. Manning was not the lawyer of Mr. Modi but of the Respondent is something that the Respondent has already accepted while rejecting the Claimant's request for discovery on the submission of the Respondent, the Tribunal had held that: 'The Respondent however has not denied that IMG was appointed by the Respondent and was advising the Respondent. It also accepts that IMG was not Mr. Lalit Modi's personaL adviser</u>.

141) Not only that Mr. Manning was aware, the records show that on 11 April 2009, Mr. Modi sent an email with a copy of the 2nd BCCI MSM MRLA dated 25 March 2009 to Ms. Akhila Kaushik, Mr. Shashank Manohar, Mr. N. Srinivasan, Mr. Sundar Raman and Mr. Prasanna Kannan. This email falsifies the case of fraud and suppression raised by the Respondent. The MRLA was sent to the President, Secretary, in house legal head and COO. Anybody could have gone through it and asked for more information and referred Agreements. However, in evidence, it emerges that the Secretary had not even cared to read the Agreement. However, in evidence, it emerges that the Secretary had not even cared to read the Agreement.

[Shown Vol.l, page 465 (E-mail dated 11 1 11 April 2009 from Mr. Lalit Modi &l addressed to a number of people including yourself attaching a copy of 2nd BCCI — MSA1 A1RLA). The attachment is at pages 466-516 produced by Respondent].

> "Q, 13. Now do you agree that you had a copy of the 2nd BCCI-MSM from 11th April 2009?
> Ans. From this email, it appears that a copy of the agreement was sent amongst others to me also. However, I did not read it at all because prior to this in order to raise invoices I think Lalit Modi was asked for a copy of this agreement. No response was received from him and I may have written to Mr. Sundar Raman expressing disappointment that there was no response. This was followed, I remember by a mail from Mr. Lalit Modi copied to a lot of people and then I think Mr. Manohar intervened who was the then President and after that this mail was sent. I vaguely remember it. By that time, I was no more interested and therefore did not bother to read it."

I find this difficult to believe. The Agreement was in his possession, but still he maintains that he did not read it or only read select parts of it. Given the importance of the document, it cannot be accepted that the same as not even read.

142) On the same day, Mr. N Srinavasan, RW-4, signed as a deponent to an Affidavit in CS (OS) No 633/2009 before the Delhi High Court in a case titled- MSM Satellite (Singapore) Pte Ltd versus Mr QW Naqvi and Another. The Affidavit stated that the said Mr Srinivasan was authorised and competent to swear and depose the Affidavit and that he was aware of the agreement entered into between MSM and the Respondent dated 25 March 2009 and he had read and perused the contents thereof. Despite the affidavit, having sworn by him, his cross examination shows an attempt to distance himself from it and accepted having a copy of Agreement after being confronted with documents:

> ''Q.9. Do you remember filing this affidavit in Delhi High Court on behalf of BCCI as Hon. Secretary of BCCI in the Suit filed by MSM against one Mr. Q.N. Naqvi & Anr ?
> Ans. If I have signed it, I have filed it. ”
> “Q.10. I put it to you therefore that your answer to Q. 7 is incorrect as you had read and perused the contents of the 2nd BCCI – MSM MRLA by 11th April 2009 at the latest. What do you have to say?
> Ans. I remember that there was some dispute between Sony and somebody, may be the person mentioned here, whether Sony had rights or not, so my President asked me to go and affirm it and when I have stated that I had perused the agreement, it would be limited to whether Sony had the rights and I was instructed by my President to file this Affidavit. ”

The Affidavit is clear and especially given the receipt of the 11 April 2009 and the uncontroverted evidence we cannot accept the RW-4’s version that he was not aware of the terms of the agreement. I cannot ignore the fact that the agreement was in fact in his possession and every person can subsequently deny knowledge of a document received by him by saying he did not read it or only read select parts of it. This cannot be accepted. The 2nd BCCI-WSGI MRLA, which admittedly was known to all, contained references to the Facilitation Deed as well.**”**

(emphasis supplied)

74. Once again, at the cost of repetition, I must emphasize that I haven't reproduced parts of the Minority Award to examine which view is correct but to only see whether material evidence, and which would go to the root of the matter, has been missed in the Majority Award. When one compares the Majority Award with the Minority Award, I have no hesitation in holding that huge chunks of important evidence are missed out and/or not even referred to in the Majority Award. Such an Award, with the greatest of respect to the Arbitrators who passed the Majority Award, cannot be allowed to stand.

75. In view of the discussion above, the Petition succeeds and is allowed in terms of prayer clause (a) which reads thus:

> *"a. The Majority Award dated 13 July 2020 be set aside under Section 34 of the Arbitration and Conciliation Act, 1996"*

76. Considering that the Majority Award has been set aside on the ground that it fails to take into consideration material evidence which would have a bearing on the outcome of the dispute between the parties, I direct that in terms of Section 43(4) of the Arbitration Act, if either party chooses to once again invoke arbitration or commence fresh proceedings, the period between the commencement of the above arbitration, till today, shall be excluded in computing the time prescribed by the

Limitation Act, 1963 for commencement of proceedings (including Arbitration) with respect to the dispute so submitted.

77. The Arbitration Petition is accordingly disposed of. However, there shall be no order as to costs.

78. In view of the fact that the Arbitration Petition itself is disposed of, nothing survives in the above Interim Application and the same is disposed of accordingly.

79. This order will be digitally signed by the Private Secretary/Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

(B. P. COLABAWALLA, J.)