
(2025) 07 DEL CK 0862

In the Delhi High Court

Case No : Arbitration Appeal (COMM.) No. 31 Of 2024, I.A. 30388, 30389,
31248 Of 2024

Union Of India

APPELLANT

Vs

Vedanta Limited & Anr

RESPONDENT

Date of Decision : 11-07-2025

Acts Referred:

Arbitration & Conciliation Act, 1996 — Section 5, 17, 33, 34, 35, 36, 37, 37(2)(b)

Citation : (2025) 07 DEL CK 0862

Hon'ble Judges : Jasmeet Singh, J

Bench : Single Bench

Advocate : Sanjay Jain, Ritin Rai, Rimali Batra, Abhishek Lalwani, Rajul Jain, Krishan Kumar, Harish Salve, Anuradha Dutt, Anish Kapur, Priyanka, Chaitanya Kaushik, Kunal Dutt, Raghav Dutt, Payal Nayak, Arkaprava Dass

Final Decision : Disposed Of

Judgement

Jasmeet Singh, J

1. This is an appeal filed under section 37(2)(b) of the Arbitration & Conciliation Act, 1996 ("1996 Act") against the order dated 29.04.2024 ("Impugned Order") passed by the Arbitral Tribunal ("AT") in the section 17 application filed by the appellant in the arbitration proceedings between the parties herein.

2. Vide the Impugned Order, the AT dismissed the appellant's application seeking restraint on the respondents from "unilaterally" implementing the Final Partial Award dated 22.08.2023 (as amended on 08.12.2023) ("FPA") until the liabilities are quantified as per the mechanism outlined in the FPA.

FACTUAL BACKGROUND

3. The disputes between the parties stem from the Production Sharing Contract dated 15.05.1995 ("PSC") executed between the appellant, the Shell India Production Development ("SIPD") and ONGC for exploration, discovery, development and production of petroleum resources in relation to an onshore oil

and gas block in India known as Rajasthan Block RJ-ON-90/1 ("the RJ Block"). Originally, the PSC was for 25 years which ended in May 2020, however, it has been extended for an additional 10 years and is presently subsisting. The contract area includes three Development Areas: DA-1 (1859 sq. km.), DA-2 (430 sq. km.) and DA-3 (822 sq. km.).

4. On the same day as the PSC was entered into, SIPD and ONGC entered into an Operating Agreement for the purpose of governing their relationship in connection with exploring for, developing and producing petroleum in the RJ-Block.

5. The respondents acquired SIPD's interest in the PSC, and were effectively substituted for SIPD as Operator under the PSC and OA. The respondent No. 2 i.e. Cairn Energy Hydrocarbons Limited is a 100% owned subsidiary of the respondent No. 1 i.e. Vedanta Limited.

6. In relation to the operations of the said RJ Block, the appellant had notified audit exceptions to the respondents for the FY 2016-17 and 2017-18 under extant provisions of the PSC. Consequently, the respondents invoked the arbitration clause under the PSC and the parties submitted their respective claims and counter-claims before the AT (upto 14.05.2020).

7. The disputes in the arbitration primarily relates to the respondents' recovery of their costs incurred for Exploration, Development, and Production. The dispute also includes an issue as to their allocation amongst various DA-1, DA-2 and DA-3. The appellant alleges that the respondents failed to adhere to the terms set out in the PSC and the Accounting Procedure ("AP") in several aspects. Hence, the appellant states that the respondents improperly reduced the share of profits payable to the appellant and took other decisions which were prejudicial to the appellant.

8. The AT in the FPA noted that these issues raise significant questions regarding the interpretation of the PSC and AP. As a result, the AT framed the following preliminary issues alongwith a substantive issue:-

"68. The preliminary issues which have been raised are:

(1) The jurisdiction of the Tribunal to hear the Claim and Counterclaim in view of the petition before the courts;

(2) The status of the GOI's Audit Exceptions that implicate Years prior to the Year 2016-17, i.e., Earlier Years, given the two-year limit on raising audit exceptions under section 1.7 the AP;

(3) Whether the Claimants' objections to the Audit Exceptions are invalid because ONGC did not consent to those objections; and

(4) The status or relevance of alternative EOY Statements submitted by ONGC.

69. The principal substantive issues are: the validity of the Audit Exceptions and

the Parties' competing interpretations of the PSC and whether there have been any breaches justifying a monetary remedy. Quantum, interest on outstanding sums, and costs may also fall to be decided."

9. On 22.08.2023, the AT passed a declaratory Award wherein some declarations were made resolving issues between the parties regarding the interpretation of their ongoing contract and further observed that if the parties could not agree on precise figures, the AT would provide directions (and potentially make an order) regarding quantum. For the sake of perusal, the directions passed by the AT are extracted below:-

"592. For the reasons set forth above, the Tribunal therefore declares and orders as follows:

(1) The GOI can only challenge a figure in the Audited Accounts via the audit exception procedure set out in section 1.7 of the AP according to the time limitations set out in sections 1.7.1 and 1.7.4 of the AP;

(2) In this Arbitration, the Tribunal can only make adjustments for Years preceding Year 2016-17 where the evidence establishes that the impugned figure constitutes a breach of the PSC;

(3) The Contractor's responses to the GOI's Audit Exceptions were validly filed;

(4) The Audit Exceptions pertaining to the allocation of Development Costs are unenforceable;

(5) The GOI's counterclaim to enforce the Audit Exceptions pertaining to the allocation of Development Costs is dismissed;

(6) The Audit Exceptions pertaining to the allocation of Production Costs for the BSB pipeline are unenforceable and any related counterclaim by the GOI is dismissed;

(7) The Contractor did not properly allocate the Production Costs of the MPT between 2012 and 2018; therefore:

(1) the Claimants' Claim to have the applicable Audit Exceptions as they pertain to the Audited Accounts for Years 2016-17 to 2017-18 declared unenforceable, is dismissed;

(2) the Claimants' Claim to have the applicable Audit Exceptions as they pertain to the Audited Accounts for the Earlier Years declared unenforceable, is granted(due to the operation of section 1.7 of the AP);

(3) the GOI's counterclaim to enforce the Audit Exceptions pertaining to the allocation of the Production Costs of the MPT in the Audited Accounts for Years 2016-17 and 2017-18 is granted in an amount to be agreed by the parties or, in the alternative, on the basis of further submissions on quantum from the parties; and

(4) the GOI's counterclaim challenging the validity of the allocation of the Production Costs of the MPT in the Audited Accounts for the Earlier Years is granted in an amount to be agreed by the parties or, in the alternative, on the basis of further submissions on quantum from the parties.

(8) The Contractor improperly recovered USD 48.3 million in Exploration Costs for general exploration in the Northern Appraisal Area and therefore the GOI's relevant counterclaim is granted in an amount to be agreed by the parties or, in the alternative, on the basis of further submissions on quantum from the parties, and the Claimants' corresponding Claim is dismissed;

(9) The Contractor improperly recovered USD 1.6 million in Exploration Costs for exploration outside of the Contract Area therefore the GOI's relevant counterclaim is granted in an amount to be agreed by the parties or, in the alternative, on the basis of further submissions on quantum from the parties, and the Claimants' corresponding Claim is dismissed;

(10) All remaining Audit Exceptions pertaining to the recovery of Exploration Costs after the expiry of the Exploration Period are unenforceable;

(11) The GOI's remaining counterclaims pertaining to the recovery of Exploration Costs after the expiry of the Exploration Period, including for the avoidance of doubt those related to Audit Exceptions issues by the GOI for Years 2018-19 and 2019-20, are dismissed;

(12) The Claimants' claim for damages due to their deferred recovery of Exploration Costs is dismissed;

(13) The Audit Exceptions pertaining to the inclusion of closing stocks in the calculation of Profit Petroleum are unenforceable and the GOI's counterclaim pertaining to the inclusion of closing stocks in the calculation of Profit Petroleum is dismissed;

(14) The Audit Exceptions pertaining to inventory costs are unenforceable and the GOI's counterclaim pertaining to inventory costs is dismissed;

(15) The Audit Exceptions pertaining to royalties are unenforceable and the GOI's counterclaim pertaining to royalties is dismissed;

(16) The Audit Exceptions pertaining to site restoration obligations are unenforceable and the GOI's counterclaim pertaining to site restoration obligations is dismissed;

(17) The Audit Exceptions pertaining to land ownership are unenforceable and the GOI's counterclaim pertaining to land ownership is dismissed;

(18) The Audit Exceptions pertaining to accounting and book-keeping practices are unenforceable and the GOI's counterclaim to enforce the Audit Exceptions pertaining to accounting and book-keeping practices is dismissed;

(19) Should the Parties be unable to agree on quantum with respect to any of

the Tribunal's conclusions, they may advise the Tribunal accordingly in writing, and within 60 days of doing so make written submissions limited to 10 pages for the Claimants and 10 pages for the GOI for the purpose of seeking directions from the Tribunal as to how to proceed;

(20) Should the Parties be unable to agree on costs, they may make further written submissions on costs, limited to 20 pages for the Claimants and 20 pages for the GOI, within 60 days of the question of quantum having been resolved; and

(21) All other claims, counterclaims, and requests for relief—including any additional prayers for relief by the GOI based on the Audit Exceptions it issued in Years 2018-19 and Year 2019-20 and ONGC's challenges to costs recovered by the Claimants—are dismissed.

(22) For the avoidance of doubt, the use of the term "Audit Exceptions" in subparagraphs 4-7, 10, and 13-18 above includes the Audit Exceptions issued for Years 2018-19 and 2019-20."

(Emphasis added)

10. The above underlined paragraph categorically holds that if the parties are unable to agree mutually on the quantum with respect to any of the AT's conclusion, they may approach the AT for directions to proceed further.

11. On 21.09.2023, the parties herein filed their post-award applications under Articles 35-37 of the UNCITRAL Rules, 1976 and section 33 of the 1996 Act. Vide letter dated 25.10.2023, the AT approved the respondents' classification application, modifying the nomenclature of the Award to "partial" and confirming that it remains seized of any issues related to quantum and costs.

12. Subsequently, vide order dated 15.11.2023, the AT dismissed the appellant's application regarding the interpretation of paragraph 327 of the FPA, particularly concerning the Management Committee's ("MC") role in overseeing exploration activities. Vide order dated 08.12.2023, the AT dismissed the appellant's additional award application, allowed the respondents' classification application and accordingly amended the FPA.

13. Prior to the amended Award, vide letter dated 26.09.2023, the respondents submitted provisional estimates of profit oil and gas pertaining to DA-1, DA-2, and DA-3, purportedly in accordance with Article 15 of the PSC. Vide letter dated 19.10.2023, the appellant rejected the unilateral calculations and adjustments. The appellant also demanded the respondents to pay profit petroleum due to the appellant in Q2 2023-2024, as calculated before the issuance of FPA.

14. On 31.10.2023, the respondents submitted the final statement of Q2 2023-24, showing zero profit petroleum due to the appellant. Vide letter dated 03.11.2023, the respondents denied the appellant's claims and reiterated their stance that their calculations were in accordance with Article 15.3 of the PSC. On 22.12.2023, the respondents submitted provisional estimates for Q3 FY

2023-2024, which were later revised by the respondent on 28.12.2023.

15. On 09.01.2024, the respondent provided its calculations detailing the financial impact of the Award, along with a report from an independent third party - M/s Price Waterhouse Cooper ("PWC"), the financial experts on behalf of the respondents in the arbitration proceedings. The calculations aligned with the figures determined by the respondents in their letter dated 26.09.2023, which was issued before the revised Award of 08.12.2023.

16. Aggrieved by the unilateral deductions made by the respondents, the appellant filed an application under section 17 of the 1996 Act seeking the following urgent interim reliefs, amongst others:-

"a. ORDER restrains on the Claimants from unilaterally implementing the Final Partial Award dated 22.08.2023, as amended on 08.12.2023, pending quantification of liabilities pursuant to the mechanism as set out in the Final Partial Award;

b. ORDER the Claimant to re-adjust the amounts adjusted on the basis of unilateral calculations for Q2 and Q3 of 2023-24, as existed prior to the issuance of the Arbitral Award dated 22.08.2023 (which was also solely based on the calculation submitted by the Claimants), immediately, submit the revised statement for Q2 & Q3 of 2023-24 and pay the Profit Petroleum share of Respondent immediately along with applicable interest;

c. In the alternative, ORDER the Claimants to furnish an undertaking to the Hon'ble Tribunal to re-adjust the amounts already adjusted in Q2 and Q3, FY 2023-24 upon the issuance of a final award on computation with interest in order to secure the interest of the Government of India;"

17. After hearing both the parties on the said application, the AT passed the Impugned Order wherein it was concluded as under:-

63. The GOI's application for an order restraining the Claimants from implementing the Final Partial Award by using its Declarations in preparing its estimates and accounts is dismissed.

64. The GOI's application for an order that accounts submitted for Q2 and Q3 of 2023-24 be readjusted to as they would have existed prior to the existence of the Final Partial Award and that resulting amounts for profit petroleum be paid to the GOI with interest is dismissed.

65. The GOI's entitlement to an order for re-adjustment once quantum is agreed by the parties or ordered by the Tribunal is confirmed.

66. The Claimants are entitled to their costs of this Application."

18. In the meantime, Grant Thornton, the financial expert for the appellant in the arbitration proceedings, finalized its calculations ("GT report"). It is stated that GT Report is in variance with the PWC report. The appellant conveyed this report

to the respondents vide letter dated 06.05.2024.

19. Feeling dissatisfied with the Impugned Order, the present appeal is preferred by the appellant seeking the following substantial prayers:-

“

(a) Pass an order staying the Impugned Order dated 29.04.2024.

(b) Pass an Order staying any further unilateral deductions by the Respondents in the pending Quarters,

(c) Set aside the Impugned Order and declare the adjustment made by the Respondents in quarters Q2, Q3 and Q4 of FY 2023-24 are not in consonance with the FPA and liable to be reversed;

.....”

SUBMISSIONS

On behalf of the Appellant

20. Mr. Sanjay Jain, learned senior counsel appearing for the appellant submits that the respondents admittedly proceeded with a unilateral and self-serving financial adjustments of the FPA declarations in contravention of the FPA's directions. FPA is a declaratory Award and has decided the disputes (re audit exceptions) on principles. The AT categorically records that it has not calculated the financial impact of the declarations made in the FPA and to that effect if the parties are unable to agree on the financial consequences of the said declarations, the parties shall make further submissions before the AT on quantum.

21. Post FPA, the respondents attempted to reopen past books of accounts to purportedly account for losses allegedly incurred due to deferred cost recovery—essentially replicating the very claim for damages that had already been rejected by the AT in the FPA. Pending quantification, any enforcement of the FPA on the part of the either parties would be premature.

FPA is declaratory decree not a money decree; respondents are unilaterally making adjustments

22. Learned senior counsel for the appellant urges that the FPA is a declaratory Award and not a money decree. Reliance is placed on Union of India v. Reliance Industries Ltd., 2023 SCC OnLine Del 3538. The AT notes that the said Award is not in favour of either of the parties. The FPA partially allowed the claims of respondents and partially allowed the counterclaims of the appellant and held there was no one successful party. The AT directed that the parties to first endeavor to reach an agreement upon the financial impact of the declarations in the FPA, failing such agreement, the AT would then proceed to determine the quantum.

23. The respondents even before FPA was clarified on 08.12.2023, started computing the declaratory Award in a manner that made the petroleum profit entitlement of the appellant got significantly impacted starting September 2023 (Q2 FY 2023-24). Further, the respondents made adjustments purportedly based on the FPA starting September 2023 (Q2 and Q3 FY 2023-24) even before the report of its own financial expert, PWC, made available in January 2024.

24. Mr. Jain submits that in this process, the respondents have unilaterally deducted approximately USD 377 million from the claimed total of USD 534.3 million, without any mutual agreement or formal adjudication. As a direct consequence, the appellant's profit petroleum has been reduced to zero over the last four quarters.

25. In light of the above submissions, learned senior counsel urges that the Impugned Order is arbitrary, erroneous and legally untenable as it assumes that the calculations of the respondents are based on the FPA. It is submitted that despite the AT recognizing that the final quantum between the parties is pending settlement/agreement, it failed to appreciate that the respondents are prematurely rendering revised accounts which contradicts the mechanism specified in the FPA, i.e. either on agreement between the parties qua the final quantum or on the quantification by the AT in the absence of such agreement. The one-sided quantification by the respondents based on their interpretation of the FPA, which is only declaratory in nature, renders the entire process contrary to FPA. Additionally, it is stated that since the respondents themselves have acknowledged that their accounts are subject to final adjustments, the learned AT should have directed the respondents to maintain the status quo till final quantification.

Previous years' accounts have attained finality and cannot be re-opened

26. Learned senior counsel submits that the AT held that the Audited Accounts of a particular year are unchallengeable and the contents thereof need to be treated as free from challenge not merely for the purpose of that year but also for all future years. Consequently, it is submitted, the respondents are not entitled to adjust any costs by assigning them to past accounting periods.

27. While relying on 10.2 of the AP, the Investment Multiple ("IM") calculation is an essential part of the End of Year Statements prepared by the Contractor and hence, audited accounts. The IM is the ratio of investment to the Net Cash income of the Company. The investment by the Company is the aggregate of Exploration Costs and Development Costs. The IM calculated on the basis of the Audited Accounts of any given year is applied for calculating appellant's profit petroleum for the next year. Therefore, it follows that even IM once calculated cannot be tinkered with, in view of the findings of the AT.

28. Post FPA, the respondents, despite the AT's express holding that past accounts cannot be reopened unless in cases of breach, and the appellant has not committed any breach; reopened past accounts in their attempt to

unilaterally apply the FPA. The respondents, starting Q2 FY 2023-24, have adjusted reducing the profit petroleum payable to the appellant in an attempt to recover the excess paid appellant's profit petroleum.

Vedanta's Expert Report i.e. PWC 2024 provides unilateral adjustment under the FPA

29. He further submits that the PWC Report 2024 now seeks to allocate exploration and development costs in the year that they were incurred, therefore changing the IM and consequently, the profit petroleum. Schedule F4 to the PWC Report demonstrates the identical treatment to Exploration Costs as provided in Schedule F4 to the 2022 Report even though the AT categorically rejected the claim for damages claimed by the respondents, which was premised on the 2022 PWC Report.

30. Before the AT, the respondents sought damages based on Mr. Clemmence's Report which contained Counterfactual A that stated that, "This scenario assumes that the disputed Exploration and Development Costs were recovered in the year the costs were incurred against the revenues produced in the Contract Area, in line with the Claimants interpretation of the PSC". In this model, to reach the figure of USD 660.8 Million, USD 395 is the excess paid to the appellant profit petroleum if the Exploration Cost is notionally recovered in the year, it was incurred, and USD 266 Million is the "Lost Returns" calculated at the rate of 10%.

31. Post rejection of the claim for damages, Vedanta has unilaterally deducted these damages in the form of exploration cost. Hence, it is prayed that the adjustments made by the respondents in quarters Q2, Q3 and Q4 of Financial Year 2023-2024 and Q1 of 2024-2025 are not in consonance with FPA and liable to be reversed.

32. Lastly, without prejudice to the aforesaid submissions, Mr. Jain argues that further deductions cannot be permitted in light of the GT Report dated 27.04.2024, duly communicated to the respondents, as per which it is the respondents who owe USD 223.76 million to the appellant. Based on the same, any further adjustments sans an agreement between parties or adjudication by AT, would be illegal.

On behalf of the Respondents

33. Mr. Harish Salve, learned senior counsel appears for the respondents and submits that the appellant's argument is that the respondent is unilaterally enforcing the FPA and unilaterally making deductions in contravention to the AT's directions- are fallacious and unfounded.

The FPA is a Declaratory Award - No Enforcement Needed

34. Learned senior counsel argues that this is not a case of enforcement/ execution, as the FPA is declaratory in nature and in favor of the party who is

already in possession of the property, hence there is no need for Court assistance. He states that under the PSC, the "Operator" i.e. respondent No. 1/ Vedanta is responsible for maintaining accounts of the petroleum sale price and the contract costs incurred. It also has the right to recover these costs under the PSC. It is accordingly being carried out and hence, there is no requirement for Court assistance.

35. The Operator, i.e. the respondents are obligated under the provisions of the PSC, particularly Article 15.3 thereof, to prepare quarterly estimates and accounts and distribute provisional profit petroleum shares. As held in the Impugned Order, respondent No. 1 is obligated to prepare these quarterly estimates and accounts based on the declarations in the FPA. This does not require Court assistance.

36. Learned senior counsel states that the respondents incurred Exploration Costs amounting to USD 235 million from the year 2005-2013. In 2018, the respondents recovered the said sum of USD 235 million as contract costs. The appellant raised an audit exception, and the matter went to arbitration. The AT concluded that the PSC permitted exploration after the expiry of the exploration period and allowed recovery for the costs of this exploration, which was consistent with commercial common sense. Thus, the respondents claim for USD 184.8 million towards Exploration Costs incurred after the Exploration Period expired, was allowed. In respect of claims towards Exploration Costs, a sum of USD 49.9 million was disallowed, while the remaining sum of USD 184.8 million was allowed by the AT.

37. As per the obligations in the PSC and the FPA is a declaratory Award, respondent No. 1 proceeded to render accounts and estimates of Profit Oil and Profit Gas basis the declarations made in the FPA, including the credit to the appellant for USD 49.9 million (exploration costs) and USD 53.1 million (allocation of common production costs for the Mangala Processing Terminal) (which is admitted).

The appellant's unilateral preparation of accounts is misconceived

38. Mr. Salve, learned senior counsel submits that the argument that the respondent No. 1 has "unilaterally" prepared accounts and estimates is misconceived. The PSC obligates the Operator, i.e. respondent No. 1, to prepare the estimates and accounts. The same are to be prepared by the respondent No. 1 as per the provisions of the PSC, specifically the AP contained in Appendix C thereto.

39. In the Impugned Order, the appellant concedes that the respondents are under obligation to prepare estimates and accounts on a quarterly basis. The argument of the appellant is misconceived that respondents ought to have followed the mechanism existing prior to the FPA, even though there is no stay of the FPA and the declarations in the FPA are binding and apply with full force.

Accounts prepared by the respondent No. 1 are in accordance with provisions of the PSC

40. While relying on Article 15.3 of PSC, he submits that the estimates in turn form the basis of the parties' allocations of Profit Oil and Gas "[p]ending finalisation of accounts" at the end of each year. Further, section 3.1 of the AP specifically provides that these Contract Costs are "recoverable without any further approval from the GOI." Overall, the respondents in discharging their obligations continued to calculate the quarterly provisional estimates and final annual figures for the parties' profit oil entitlements by taking into account the declarations made by the AT in the FPA.

41. The AT has correctly observed that rendering of estimates and accounts based on the declarations made in FPA does not amount to unilaterally settling quantum in violation of the FPA and that basing the calculation of accounts for subsequent periods on the declarations do not violate the FPA but rather gives effect to it.

GT Report does not dispute the computation but the declaration made in the FPA

42. Learned senior counsel submits that the GT Report does not dispute the figures furnished by the respondents and has in fact indicated that there is "no reason to believe that the information provided is not true". However, the appellant is disputing the principles adjudicated by the AT i.e. the declarations made in the FPA. Despite the AT having specifically allowed the Exploration Costs after the exploration period, i.e. of USD 184.8 million (which had been recovered by the respondents in FY 2017-2018), the GT Report disallows recovery of this amount on the ground that recovery of these Exploration Costs ought not be allowed as have not been approved by the MC even though the AT specifically held in the FPA that no such MC approval was required.

43. Mr. Salve points out that the dispute between the parties' centers on whether the exploration cost of USD 184.8 million can be recovered without MC approval. This matter was brought up by the appellant in its clarification application dated 21.09.2023, and the learned AT vide order dated 15.11.2023 dismissed the said application and observed that MC is only required to have review and advisory functions and not approval function.

44. Learned senior counsel argues that the AT's finding on the MC's role has been contested in the petition under section 34 of the 1996 Act. However, till such time, the FPA remains binding for the purpose of Section 37. Therefore, in the current Appeal, since the FPA is binding, the objection raised by the appellant and presented to Grant Thornton, which forms the basis of the GT report, is not available to the appellant.

No Re-Opening of Accounts

45. Mr. Salve further submits that the respondents are not re-opening past accounts at all. As per GT Report, all contract costs in issue had already been

booked in the accounts for the respective years. The recovery of these contract costs was deferred by the respondent's pending resolution of disputes between the parties since the appellant had raised "audit exceptions". Recovery of the costs in the subsequent years neither means that accounts are being re-opened nor means that the parties give a go-by to the PSC mandated mechanism for calculation of the IM or the correct profit share of each of the parties.

46. The Exploration Cost of USD 184 million incurred by the respondents between 2005 and 2013 were recovered by the respondents in FY2017-2018.i.e. prior to invocation of the arbitral proceedings. Out of Exploration Costs aggregating USD [814 million] incurred by the respondents post 2013, USD [693 million] were recovered between FY [17-18] and [June 23] under the Office Memorandum of 2013 ("OM 2013").

47. The FPA permitted to recover exploration costs after the expiry of the exploration period and further observed that the OM 2013 and OM 2019 did not amend the PSC or change the terms of recovery of exploration costs for work done after the exploration period.

48. Post FPA, the accounts and estimates had to be rendered in accordance with the declarations in the FPA which required the Contractor to recover cost as per Article 14 of the PSC. Hence, the entire costs could be recovered at once. The respective profit petroleum share of the parties as well as the excess profit petroleum share paid to the appellant was computed as per the provisions of the PSC. The basis of such estimates and accounts was the costs and expenses already recorded in the books of accounts.

Rejection of the respondents' alternative claim for damages

49. The appellant has argued that the respondents have adjusted and recovered amounts under claims that have been rejected in the FPA. In reply to the counter claim raised by the appellant, the respondents also raised a claim of damages in the alternative. However, the said claims were rejected by the AT on the ground that there is no breach of PSC by the appellant.

50. What has been adjusted by the respondents is not "damages" that has been rejected in the FPA rather the effect of the declarations made in the FPA allowing/disallowing Contract Costs (including Exploration Costs) as per the provisions of the PSC viz. Article 14 read with Sections 2 & 3 of the AP and Article 15 read with Appendix D. This is strictly in accordance with the FPA and more particularly para 425.

51. In summation, he submits that the disputes between the parties are on principles rather than on figures i.e.: i) Whether Exploration Costs incurred after the expiration of the Exploration Period under Article 2 of PSC can be recovered; and ii) Whether these costs can be recovered without MC approval. He states that the AT's findings are conclusive on these disputes, since it has held: i) the Exploration Costs in the Development Areas can be recovered (while Exploration

Costs incurred outside the Development Areas are barred); and ii) there is no requirement for prior approval of MC before the recovery of these costs. Hence, it is stated that the present appeal is without merit.

ANALYSIS

52. I have heard learned counsel for the parties at length and considered the material placed on record.

Scope and jurisdiction of Section 37(2)(b) of the 1996 Act

53. Before dealing with the submissions advanced by the learned senior counsels, it is necessary to highlight the scope and jurisdiction of this Court in the present appeal.

54. Recently, in *NHAI v. H.K. Toll Road Pvt. Ltd.*, 2025:DHC:2679, I have already discussed at length the jurisdiction of this Court while exercising powers under section 37(2)(b) of the 1996 Act. Relevant paragraphs of the said judgment are extracted below:-

"54. The Hon'ble Supreme Court and this Court in catena of judgments have held that the powers of Appellate Court while exercising jurisdiction under section 37(2)(b) of 1996 Act against orders passed by the Arbitral Tribunal is very restricted and narrow and the same should be exercised when the orders seems to be perverse, arbitrary and contrary to law. The judgment of *Wander Ltd. v. Antox India (P) Ltd.*, 1990 Supp SCC 727 passed by the Hon'ble Supreme Court, followed by this Court, elaborate the ambit and scope of the appeals. Although the aforesaid judgment is not dealing with the arbitration proceedings but the same deals with the power of Appellate Court in Code of Civil Procedure, 1908 ("CPC").....

55. The said judgment is consistently followed by this Court in *Green Infra Wind Energy Ltd. v. Regen Powertech Pvt. Ltd.*, 2018 SCC OnLine Del 8273; *Sona Corporation India Pvt. Ltd. v. Ingram Micro India Pvt. Ltd.*, 2020 SCC OnLine Del 300; *Dinesh Gupta (supra)*; *Manish Aggarwal v. RCI Industries & Technologies Ltd.*, 2022 SCC OnLine Del 1285; *Supreme Panvel Indapur Tollways (P) Ltd. (supra)*; *Tahal Consulting Engineers India (P) Ltd. v. Promax Power Ltd.*, 2023 SCC OnLine Del 2069 and *Handicraft & Handlooms Exports Co. of India v. SMC Comtrade Ltd.*, 2023 SCC OnLine Del 3981. The above judgments are under the 1996 Act.

56. A perusal of the aforesaid judgments show that the Appellate Court while exercising powers/jurisdiction under section 37 of 1996 Act and more particularly under section 37(2)(b) of 1996 Act has to keep in mind the limited scope of judicial interference as prescribed under section 5 of 1996 Act. Section 5 of 1996 Act clearly reflects the legislative intent to minimize judicial interference in the arbitration process. Unlike the appeals under other statutes, the appeals under 1996 Act against the orders passed by the Arbitral Tribunal are subject to strict and narrow grounds. The 1996 Act aims at minimal court involvement, thereby

to uphold the autonomy and efficiency of the arbitration process. [Reference: Paragraphs 64, 66, 68-70 of Dinesh Gupta (supra)]

57. The Appellate Court is not required to substitute its views with the view taken by the Arbitral Tribunal which is a reasonable or a plausible view except where the discretion is exercised arbitrarily or where the AT has ignored the settled principles of law. In fact, the whole purpose to bring the 1996 Act is to give supremacy to the discretion exercised by the AT. The Appellate Court is not required to interfere in the arbitral orders especially a decision taken is at an interlocutory stage. The Appellate Court is only required to see whether the AT has adhered to the settled principles of law rather than re-assessing the merits of the AT's reasoning."

(Emphasis added)

55. For the sake of brevity, relevant paragraph from *Tahal Consulting Engineers India (P) Ltd. v. Promax Power Ltd.*, 2023 SCC OnLine Del 2069 is also extracted below:-

"38. It would thus appear to be well settled that the powers under Section 37(2) (b) is to be exercised and wielded with due circumspection and restraint. An appellate court would clearly be transgressing its jurisdiction if it were to interfere with a discretionary order made by the Arbitral Tribunal merely on the ground of another possible view being tenable or upon a wholesome review of the facts the appellate court substituting its own independent opinion in place of the one expressed by the Arbitral Tribunal. The order of the Arbitral Tribunal would thus be liable to be tested on the limited grounds of perversity, arbitrariness and a manifest illegality only."

(Emphasis added)

56. The scope of interference by this Court under section 37(2)(b) of 1996 Act is narrow, and it is only to be sparingly exercised in cases where the order passed by the AT under section 17 of the 1996 Act is vitiated by perversity, arbitrariness or manifest illegality. This Court is not to act as a fact-checking authority, or interfere with an order merely because another view is possible. This principle arises from the construction of the 1996 Act, especially section 5, which limits judicial scrutiny of the orders passed by the AT.

57. With this background, I shall now proceed to deal with the submissions advanced by the learned senior counsels for the parties.

Effect of the FPA in the present appeal

58. It is pertinent to note that the FPA is a subject matter of O.M.P. (COMM) 125/2024 and the same is yet to be argued. Hence, the merits of the FPA are not under challenge in this present appeal and therefore, the FPA is to be treated "as it is" in the present appeal.

59. On perusal, the reliefs granted in the FPA by the AT are declaratory in nature

resolving issues between the parties regarding interpretation of the terms of the PSC including the cost recovery mechanism. It further provides that if the parties fail to agree mutually for the quantification, they may approach the AT. Further, the FPA does not provide any injunction or stay on any of the terms of the PSC nor on the obligations of the parties in the PSC. The PSC is still subsisting and it is an ongoing contract between the parties.

60. The AT in the Impugned Order observed as under:-

"39. First, the Final Partial Award is Final, as its title indicates. Its provisions come into effect on issuance, unless stipulated otherwise. The Declarations were not stipulated to take effect only on some future date. The obligations they imposed became immediately effective upon issuance.

40. The GOI relies on the stipulation in the Award that it did not determine quantum, and that failing agreement by the parties, the Tribunal would resolve issues of quantum. However, the stipulation that final resolution of issues of quantum would be deferred does not mean that the Declarations did not take immediate effect."

61. I am of the view that once the FPA has been pronounced making declarations and the same has not been stayed, the parties are mandated to follow the interpretation given in the FPA for further implementation of the PSC and if not followed, the FPA would be violated and rendered a paper Award in the absence of any stay. Further, the declarations made in the FPA operate with the immediate effect.

62. For the sake of reference, Article 33.8 of the PSC reads as under:-

"33.8 The decision of the arbitral tribunal, and, in the case of difference among the arbitrators, the decision of the majority, shall be final and binding upon the Parties."

(Emphasis added)

63. Therefore, until final quantification is pending, the FPA operates as a binding legal interpretation to the terms of the PSC.

Unilateral deductions made by the respondents

64. Learned senior counsel for the appellant has argued that the FPA only provides declaratory relief and does not specify final financial amounts. It requires mutual agreement between the parties or adjudication by the AT for quantification. Despite the lack of quantification, the respondents unilaterally deducted costs even before completing internal assessments. The respondents' actions bypasses the process provided under the FPA. Hence, the AT erred in accepting the respondent's calculations as valid, even though the FPA is not enforceable until quantification.

65. The PSC provides the Contractor to perform three phases of work:

Exploration, Development and Production. The Contractor would initially bear the expenditures of each step at its own risk. But the PSC provided that the Contractor could recover its expenses for exploration, development, and production subject to the effort being successful and commercial production taking place.

66. Certain clauses from the PSC are extracted below:-

"ARTICLE 14 - RECOVERY OF COSTS FOR OIL AND GAS

14.1

14.2

14.3 The Contractor shall be entitled to recover out of the value of the Crude Oil, Condensate or Natural Gas produced and saved from the Contract Area the Exploration Costs which it has incurred in the Contract Area in any Year after the date of commencement of any Commercial Production from the Contract Area at the rate of one hundred percent (100%) per annum of such Exploration Costs beginning from the date such Exploration Costs are incurred as provided in Article 14.4.

xxxxxxxxxx

ARTICLE 15 - PRODUCTION SHARING OF OIL AND GAS.

15.1.....

15.2

15.3. The value of the Company's Investment Multiple at the end of any Year in respect of each Development Area shall be calculated in the manner provided for, and on the basis of the net cash flows specified, in Appendix D to this Contract. However, the volume of Profit Oil and/or Profit Gas to be shared between the Government and the Contractor shall be determined for each Quarter on an accumulative basis. Pending finalisation of accounts, delivery of Profit Oil and/or Profit Gas shall be taken by the Government and the Contractor on the basis of provisional estimated figures of Contract Costs, production, prices, receipts, income and any other income or allowable deductions and on the basis of the value of the Investment Multiple achieved at the end of the preceding year. All such provisional estimates shall be prepared for each Quarter by Operator and shall be submitted to the Government no later than thirty (30) days before the commencement of such Quarter. Any adjustment to such estimates required by the Government will be reflected in the estimated figures for the subsequent Quarter.

Within sixty (60) days of the end of each Year, a final calculation of Profit Oil and Profit Gas based on actual costs, quantities, prices and income for the entire Year shall be undertaken and any necessary adjustments to the sharing of Petroleum shall be agreed upon between the Government and the Contractor and made as

soon as is practicable thereafter.

ARTICLE 25 - RECORDS, REPORTS, ACCOUNTS AND AUDIT

25.1 The Contractor shall prepare and maintain at an office in India accurate and current books, records, reports and accounts of its activities for and in connection with Petroleum Operations so as to present a fair, clear and accurate record of all its activities, expenditures and receipts. The Contractor shall also keep representative samples of cores and cuttings."

(Emphasis added)

67. On perusing Article 14.3, it states that the Contractor shall be entitled to recover the exploration costs incurred in the Contract Area in any year at the rate of 100% per annum. Article 15.3 states that the Operator is specifically obligated to provide provisional estimates for production to the appellant for each quarter of the year, subject to review and adjustment by the appellant in the subsequent quarter. Article 25.1 states that the Contractor shall prepare and maintain the accounts in connection with the petroleum operations.

68. The AT in the FPA held as under:-

"2. Did the PSC allow for recovery of Exploration Costs incurred after the expiry of the Exploration Period in general?

xxxxxxx

327. The Tribunal is unable to conclude that the PSC provisions on MC oversight of Exploration Operations establishes that exploration beyond the Exploration Period would create a governance "gap", and in doing so, indicate that the Parties did not contemplate ongoing exploration. What clearly emerges from the provisions is that the Parties intended to give the MC broad and flexible powers to oversee relevant matters. The MC itself availed itself of these powers to oversee exploration activities that occurred after the expiry of the Exploration Period. The Tribunal finds that articles 5.5, 5.6, and 6.6 read together ensure that the MC is positioned to exercise a supervisory function over ongoing Exploration Operations whether carried out during or after the Exploration Period. The Tribunal is not persuaded that there is a governance gap regarding post-Exploration Period exploration in the PSC.

.....

365. Having reviewed the various arguments put forward by the Parties on this issue, the Tribunal concludes that the PSC permitted exploration after the expiry of the Exploration Period and allowed recovery for the costs of this exploration. The terms of the PSC, read as a whole, compel this conclusion, the conclusion is also consistent with commercial common sense, and none of the arguments brought forward by the GOI alter this result. Importantly, the article 14 provisions for recoverability of Exploration Costs do not confine recovery to costs incurred in the Exploration Period and such practice is not inconsistent with a

proper reading of the remaining relevant provisions, understood in light of their text, context, and purpose.”

(Emphasis added)

69. On perusing, the AT, in clear terms, holds that the PSC permits recovery of costs for exploration conducted “after the expiry of the exploration period”. In addition, MC is positioned to exercise a supervisory function over ongoing Exploration Operations whether carried out during or after the Exploration Period.

70. With respect to para 327 of the FPA, the appellant moved an application for clarification which was dismissed vide order dated 15.11.2023 by the AT. The operative paras of the said order are extracted below:-

“17.....As set out at paragraphs 318 and 327 of the Award, the PSC provides that the MC should review and have advisory functions (as opposed to an approval function as contemplated in article 5.6(a) of the PSC) with respect to WP&Bs for exploration operations throughout the lifetime of the RJ Block project.

18.....The Respondent’s disagreement with the Claimants’ recovery of exploration costs has no bearing on the Tribunal’s interpretation of the scope of the MC’s role under articles 5.5, 5.6, and 6.6 of the PSC, as set out in the Award.”

71. The interpretations as noted above operates as final and binding interpretation not only for the present appeal but also for the terms of the PSC including interpretation given to Articles 14 and 15 of the PSC even if the FPA does not set out any exact monetary liability payable to any of the parties to each other. Hence, these interpretations are not provisional rather they are final.

72. In the present case, the respondents acting in furtherance of the said interpretation given by the AT in the FPA and following other provisions of the PSC made deductions for Q2 and Q3 of FY 2023-24. The appellant’s only grievance is that the deduction cannot be done unilaterally as the same violates the direction given by the AT to either mutually agree or approach the AT with respect to the quantification and making deductions amount to enforcement of FPA.

73. To my mind, the absence of mutual agreement between the parties, on quantum, does not suspend the respondent’s obligation/entitlement under the PSC as the PSC is still in existence. The AT was conscious of the fact that if the parties were unable to agree mutually, the liberty was given to approach the AT for final quantification. Relying on the declaratory findings given under the FPA is not “enforcement” but rather the fulfillment of contractual duties that are consistent with the FPA’s declarations. The FPA is not a money decree as the final quantification is still to be carried out by the AT. The respondents were following the PSC obligations interpreted in the FPA. The FPA clearly permit recovery of costs of post exploration period.

74. In addition, it is recorded in the Impugned Order that the appellant “accepts”

that the respondents were contractually obliged to render the accounts for the periods at issue. Hence, the respondents were not acting unilaterally on the declarations rather it were the obligations under the PSC.

75. Had the direction to approach the AT for quantification not given then it would have been the case of unilateral deduction. In the absence of any stay on the FPA and terms of the PSC, the respondents were bound to follow the interpretation given by the AT in the FPA. As a result, the respondent's actions are not "unilateral" but rather contractually obliged conduct.

76. Reliance placed on Reliance Industries Ltd. (supra) is misplaced. Relevant paragraphs of the said judgment are extracted below:-

"47. The CRL constitutes a major and, in fact, determinative ingredient in computing CP as well as PP.

.....

xxxxxxx

49. It cannot, therefore, be disputed that, so long as the CRL remains fluid, there can be no definitive ascertainment either of the CP to which the respondents would be entitled or of the shares in which the PP would be divisible between the petitioner and the respondents.

50. Article 13.1.4(c) of the PSCs entitles the respondents to seek increase in the CRL. There is no dispute that, after the passing of the 2016 FPA, the respondents did, in fact, seek increase in the CRL thrice, that their requests were accepted on two occasions in the 2018 FPA and the 2021 FPA, and that a third request for increase of CRL to cover the entire DC was pending before the learned AT.

51. It is obviously in arbitral recognition of this contractual position that the learned AT, in the PO dated 13th January 2014, as well as in the 2016 FPA, the 2018 FPA, the 2019 FPA and the 2021 FPA, clearly fixed a schedule for hearing the applications filed by the respondents for CRL increase and also clarified, unequivocally, that the findings and decisions of the learned AT in the 2016 FPA could be implemented only at the final state of reconciliation of accounts, after all issues had been decided by the learned AT.

52. Perhaps even more significantly, the petitioner itself acknowledged this position, in its application dated 10th October 2018, whereby the petitioner sought extension of time to file its response to the respondents' CRL application [in which it was acknowledged that "there are only two phases remaining in this arbitration now which is the issue of whether there is a case made out for CRL increase and if so what extent and in the computation of the investment multiple and the statement of the accounts"] and affidavit dated 10th August 2020. No request for reconsideration of the PO dated 13th January 2014, which specifically fixed schedules in that regard, was ever made by the petitioner. Nor, in its challenge before the UK High Court to the 2021 FPA, did the petitioner choose to

challenge the finding that the decisions in the 2016 FPA could be implemented only by the learned AT itself after all outstanding issues, including the respondents' CRL increase applications, were finally decided. It is truly surprising, therefore, that, in derogation of the clear views expressed by the learned AT as well as their own acceptance of the position that the findings in the 2016 FPA would call for application and implementation only after all issues had been arbitrated upon, the petitioner has chosen, midway, and, even while the third CRL increase application of the respondent is under consideration - two having already been allowed - to file the present Execution Petition.

53.It is fundamentally not possible, therefore, to determine the amount due from the respondents to the petitioner, or vice versa, unless the CRL is finally determined. So long as the request for CRL increase, made in accordance with Article 13.1.4(c) of the PSCs, was pending, therefore, there can be no determination of the entitlements of the petitioner or the respondents in the CP or PP. It is for this reason that, even while directing amounts payable to the respondents by the petitioner, which did not involve any element of CRL, to be paid, the 2016 FPA does not direct payment of any amount whatsoever by the respondents to the petitioner. The liability of the respondents to the petitioner being, at that stage, not therefore definitively quantifiable, it was obviously both illogical and illegal for the petitioners to contend that any specific amount was payable by the respondents to the petitioner merely on the basis of the findings in the 2016 FPA which were by themselves insufficient to work out liability, till the CRL was definitely known. The very basis of the present Execution Petition is, therefore, flawed.

54. Essentially, therefore, the petitioner is seeking execution of an award which does not determine all the elements which are required to be determined in order for the liability of the respondents to the petitioner, if any, to be fixed. In doing so, the petitioner is proceeding unmindful of the specific clarification, voiced many times over by the learned AT, and also acknowledged by the petitioner itself, that application of the findings in the 2016 AT would have to await resolution of all issues by the learned AT and the rendering of its final quantum award thereafter."

(Emphasis added)

77. In the said judgment, the application for increase in Cost Recovery Limit ("CRL") filed by the respondents therein was pending before the AT. The CRL is an essential contractual element in determining the Cost Petroleum and Profit Petroleum entitlements of the respondents and the petitioner therein. Further, the AT therein has held that the FPA 2016 therein would only be implemented after final determination of all pending issues, including the CRL. The FPA therein does not specify any payable amount and also has not determined all the elements which are required to be determined for the liability. Hence, the Court therein observed that the FPA lacks clear quantification of liability. In the present case, the FPA is final with regard to the interpretation of the PSC and only with

respect to quantification, it is to be adjudicated by the AT. Also, there is no application pending before the AT. Moreover, the respondents, as per the provisions of the PSC, are obligated to recover costs.

Final quantification to be done by the AT

78. The fact that the appellant in its section 17 application prayed for alternative relief cannot be ignored at this stage.

79. The alternative relief sought by the appellant is to direct the respondents to give an undertaking to re-adjust the amounts already adjusted in Q2 and Q3, FY 2023-24 after the issuance of final quantification in order to secure the interest of the appellant. The AT in the Impugned Order has “confirmed” the said relief.

80. Further, in paragraphs 42, 43 and 61 of the Impugned Order, the AT has observed as under:-

“42. Second, whatever the ultimate outcome of the dispute between the parties, re-adjustment of figures past and present will very likely be required. For example, if the court grants the GOI’s s. 34 application in whole or even in part, accounts dating back to 2012 will need to be readjusted. All this to say: it is unlikely that this arbitration will ultimately yield a result where the accounts, as they stood before proceedings began, will go untouched. The ongoing recalibration and adjustment of annual accounts is part and parcel of the parties’ obligations under the PSC. While the Tribunal may have left the door open to provide guidance on quantum, it cannot be said that this was meant to somehow hold the parties in stasis with no regard to the realities of the ongoing commercial relationship. Indeed, given that the GOI accepts that the Claimants were obliged to render the accounts for Q2 and Q3, it seems contrary to principle for the GOI to complain about the accounts reflecting the legal position as determined by the Tribunal.

43. Third, and relatedly, there is no inconsistency between what the Claimants have done and a potential future requirement to adjudicate the validity of the figures. Once the GOI is in possession of its own accountants’ report, it will be able to compare its report to the PwC report and provide an informed response to the Claimants. If changes are necessary (either by agreement or by coming back to the Tribunal), the accounts can be re-adjusted—exactly as they have been by PwC and presumably by the GOI’s own team of accountants.

xxxxxxx

VIII. Alternative Relief

61. The GOI has asked, in the alternative, for an order that any necessary re-adjustment of the accounts occur once quantum is agreed by the parties or ordered by this Tribunal. The Tribunal views this as implicit in the Final Partial Award and so confirms.”

81. The AT in the Impugned Order expressly preserved the appellant’s right to

seek readjustment of accounts once quantum is finally decided. This is clear from the paragraphs quoted above that the AT has acknowledged that re-adjustment of past and present figures will be required and also recognized the ongoing contractual obligations under the PSC. The adjustments can be reversed and if needed, accounts can be re-aligned post quantification.

82. Thus, the appellant's concern and the apprehension has been sufficiently protected, and no irreparable harm or prejudice has been caused that justifies appellate interference at this stage. The AT confirmed that the appellant would retain a right to re-adjust the accounts once final quantification is done which effectively addressed the appellant's concern.

Relevance of PWC Report and GT Report at this stage and the argument on re-opening of previous year's accounts

83. Learned senior counsel for the appellant has placed much reliance on GT Report dated 27.04.2024 to urge that the respondents owe USD 223.76 million to the appellant. Further, the deductions made by the respondents amount to re-opening of the accounts which cannot be done as per the findings in the FPA. Hence, the adjustments made by the respondents should be reversed.

84. Per Contra, learned senior counsel for the respondents has stated that the amounts adjusted are not the damages which are rejected in the FPA but the declarations made in the FPA allowing to recover the cost of post exploration period. Further, the recovery of costs in the subsequent years does not mean that accounts are being re-opened or the parties give a go-by to the PSC mandated mechanism. The accounts and estimates are to be rendered in accordance with the declarations. The GT Report rejects the recovery of USD 184.8 million on the ground that the same has not been approved by the MC, whereas the MC approval is not at all required as per the FPA.

85. The AT in the Impugned Order categorically record the financial implications for the parties namely:- "(i) the allocation of development costs; (ii) the allocation of production costs; (iii) the recovery of unapproved development costs for the BSB pipeline; (iv) the recovery of exploration costs, and (v) the inclusion of a closing value for stocks of petroleum in profit petroleum." With respect to the exploration costs, it is further recorded that the exploration cost includes various sub issues and respondents "were entitled to recover exploration costs after the expiration of the exploration period in accordance with the PSC (and not in accordance with the prescriptive terms of the Office Memoranda)."

86. Article 14.8 of the PSC reads as under:-

"14.8 If during any Year the Crude Oil, Condensate and Natural Gas produced and saved from any Development Area is not sufficient to enable the Contractor to recover in full the Contract Costs due for recovery from that Development Area in that Year in accordance with the provisions of Articles 14.1 to 14.7 then, subject to the provisions of

- a) recovery shall first be made of the Production Costs; and
- b) recovery shall next be made of the Exploration Costs; and
- c) recovery shall then be made of the Development Costs.

The unrecovered portions of Contract Costs shall be carried forward to the following Year and the Contractor shall be entitled to recover such Costs in such Year or the subsequent Years as if such Costs were due for recovery in that Year, or the succeeding Years until the unrecovered Costs have been fully recovered.”

(Emphasis added)

87. On perusal, it is evident that the unrecovered portion of contract cost shall be recovered in such year or the subsequent years or the succeeding years until the unrecovered Costs have been fully recovered. Hence, the recovery or deductions (as per the appellant) made by the respondents’ stem from their obligations under Articles 14 and 15 of the PSC read with the interpretation as provided in the FPA to permit cost recovery including for post exploration period expenses. Since the PSC is subsisting and the respondents continue to perform under it, treating their accounting actions as unilateral enforcement is misconceived.

88. Whether the amounts deducted by the respondents have been already adjusted or there is excess amount pending to be recovered by the appellant is the core issue which the AT has to adjudicate upon. The appellant has been given the rights to recover these amounts once the final calculations are made.

89. As the FPA is declaratory Award and explicitly directed the parties for further proceedings for quantification if mutually not agreed upon, any findings on the validity of the deductions at this stage would impinge upon the AT’s jurisdiction to undertake that quantification. The AT’s direction allowing adjustments subject to final quantification preserves the parties’ respective rights and is, therefore, appropriate and non-prejudicial.

90. Further, the AT has not endorsed the GT Report findings, and the process of final quantification remains open, wherein both the reports of the appellant and the respondents maybe scrutinized by the AT. The reports i.e. PWC and GT Reports of the respondents and the appellant respectively is not a binding quantification rather it is each party’s own assessment. The FPA provide that if the parties are unable to agree mutually on quantification, the same is to be carried out by the AT. Hence, the GT Report cannot form the basis of interim injunctive relief. The appropriate forum for evaluating financial assessments is the AT not this Court at this stage. If the GT report is accepted later, the accounts can be revised accordingly during the final quantification.

91. As re-adjustments can be made post-quantification, and restitution is possible, hence, there is no basis for allowing the present appeal.

92. As per the appellant, assuming for the sake of argument that the

declarations made in the FPA is not given effect to and parties may follow the mechanism existed prior to the FPA till the final quantification is done by the AT, I am of the view that stopping the parties from adjustments would curtail the ongoing contractual obligations which will contradict both the letter and spirit of the PSC and the FPA.

CONCLUSION

93. For the foregoing reasons, this Court within the limited jurisdiction as noted above, is not to re-evaluate the merits or alter the view taken by the AT, particularly when the AT has passed the well-reasoned order and reserved the appellant's entitlement to seeks re-adjustment.

94. As a result, I find no reasons to interfere with the Impugned Order. Hence, the instant appeal is devoid of merit, and is accordingly dismissed.

95. Pending applications, if any, are disposed accordingly.

96. Needless to add, these observations made above are only for the purpose deciding the present appeal and AT shall not be influenced by the observations made hereinabove.