

REPORTABLE

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

+ O.M.P. NO. 395 OF 2005

% Date of Decision : 27th August, 2008.

CMDR. S.P. PURI Objector.
Through Mr. V.K. Sharma, Advocate.

VERSUS

M/S. ALANKIT ASSIGNMENTS LTD. Respondent.
Through Mr. D.S. Chauhan, Advocate.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ? YES
3. Whether the judgment should be reported in the Digest ? YES

SANJIV KHANNA, J:

1. The Objector, Cmdr. S.P. Puri (retd.) has filed objections under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the Act, for short) challenging the Award dated 13th July, 2005 passed by the Arbitral Tribunal, consisting of three Arbitrators appointed by the National Stock Exchange of India Ltd.

2. By the impugned Award, the Arbitral Tribunal has rejected claims of the Objector and allowed counter claim of respondent-M/s. Alankit Assignments Ltd. (hereinafter referred to as 'respondent or AAL', for short) of Rs.32,72,631/- less Rs.15,00,000/- deposited by the Objector as margin money.

3. At the very outset I may point out that the learned counsel for the respondent-AAL has admitted that there is a mistake/error in calculations made by the learned Arbitrators. Out of the total amount of Rs.32,72,631/-, the respondent-AAL had realised Rs.43,663.46 on 26th August, 2004 from sale of shares of Bhagyanagar Metals Ltd. and Rs.24,675/- was credited to the account of the Objector on 5th November, 2004 on receipt of dividend from Reliance Industries Ltd. Thus, Rs.32,28,968/- is claimed by the respondent-AAL as due and payable after adjustment of the said amounts. The statement is taken on record and the award is modified/corrected to this extent.

4. I do not agree with the contention of the Objector that the Award dated 13th July, 2005 should be set aside on this ground alone, as there is an error in calculation, which is apparent and can be corrected by this Court without in any manner interfering with the reasoning and the grounds given by the learned Arbitrators. It cannot be said that the error or mistake in calculation made by the learned Arbitrators goes to the root of the matter and affects the reasoning and the grounds given by the Learned Arbitrators in support of their decision.

5. The learned Arbitrators in their Award have rejected the claim of the Objector that he had invested Rs.14.40 lakhs and also deposited shares worth Rs.3.5 lakhs with the respondent on the guarantee and agreement that he would be entitled to interest @ 24% per annum on the aforesaid amount.

6. Learned counsel for the Objector had submitted that the learned Arbitrators while rejecting the claim made by the Objector and partly allowing the claim made by the respondent have not discussed various contentions and pleas raised by the objector. Learned counsel in this regard had drawn my attention to the written submissions of the Objector filed before the learned Arbitrators. It is also pointed out that in view of Section 31(3) of the Act, Arbitrators are required to give a reasoned award.

7. Learned Arbitrators have given their reasoning to reject the claim of the Objector and partly allowing the claim of the respondent as mentioned in paragraphs 13 to 18 of the award. The reasoning given by the learned Arbitrators is explicit, logical and lucid. Learned Arbitrators have referred to the pleadings of the Objector and his own averments in the complaint that there was no necessity to follow SEBI/NSE Rules. Learned Arbitrators have stated that if that be so, the arbitration proceedings were not maintainable under the NSE Rules and Bye-laws. It may be noted here that as per the NSE Rules and SEBI Guidelines, no broker can make a promise or enter into an agreement for a fixed rate of return.

8. Learned Arbitrators have given the following reasons for dismissing claims made by the Objector and partially accepting the claim of the respondent-AAL; firstly, claim of the Objector is not supported by documents. Documents in form of agreements between the parties establish that the relationship between them was that of a

broker and trader. Secondly, claims of the Objector were not legal as his claims were based on the plea that the parties did not consider it necessary to follow SEBI/NSE Rules. Thirdly, the contention of the Objector that he did not know or even have Speed-e account or password is false. The Objector had entered into an agreement for Speed-e. Fourthly, the two cheques for Rs.62 lakhs (approx.) issued by the Objector to AAL were not on account of "Accounting Generally" and no assurance was given by Mr. Ashok Aggarwal of AAL that they would not be presented for encashment. The said story concocted by the Objector is false. Fifthly, there was substantial evidence that the relationship between the parties, that is, the Objector and AAL, was that of client and a trading member. Sixthly, claim of the Objector that he was assured of a fixed return is a concocted story. The Objector has not approached the Tribunal with clean hands. Seventhly, claim of the respondent that for payment of the balance amount after adjusting the margin money should be accepted.

9. Arbitrators are not required to give elaborate judgments dealing with each and every ground or reason. They have to consider the entire facts in proper perspective and give an indication of the grounds and reasons that prevailed upon them to decide the matter. Law requires arbitrators to give reasons and nothing more. If the reasons are clear and indicate the basis for the decision, the award should be upheld and cannot be set aside. Law does not require arbitrators to give detailed judgments dealing with each and every

contention raised by the parties. What is required to be indicated is the basis on which the arbitrators have taken a particular view. Arbitrators need not legal luminaries, well versed with legal skills and having benefit of legal training. Arbitrators can be men from the trade or relatives etc. and enjoy substantial latitude and flexibility in deciding matters in a just and equitable manner. If the arbitrators have set out grounds and reasons in the award why they are taking a particular view while deciding claims, the award will be a reasoned award. Requirement in law is that the arbitrators must give reasons. It is not the requirement of Section 31(3) of the Act, that the arbitrator must elaborately discuss all contentions raised by the parties. To satisfy the requirements of the Act, reasons should be intelligible comprehensible, but need not be unnecessarily lengthy or elaborate. Reasons should indicate and provide a precise link between questions/issues and the conclusion reached in regard thereto. It is sufficient if the arbitrator makes his mind clear in the award on what and why decision is made. Short intelligible indications of the grounds should be discernible to indicate the mind of the arbitrator. Sufficiency of reasons depends upon facts of each case. (refer ***Em & Em Associates versus Delhi Development Authority***, reported in ILR (1987) 2 Del 526, ***Bank of Baroda versus B.J. Bhambani***, Reported in 1988 Supp SCC 785, ***Indian Oil Corporation versus Indian Carbon Ltd.***, reported in (1988) 3 SCC 36, ***Gujarat Water Supply and Sewerage Board versus Unique Erectors (Gujarat) (P) Ltd.***,

reported in (1989) 1 SCC 532).

10. I may note here that non-speaking awards under the Arbitration Act, 1940 are valid. Even under the present Act, an arbitration award need not have reasons if there is an arbitration agreement to that effect. Proviso to subsection 3 of Section 31 the present Act permits unreasoned award in cases where parties have agreed to such an award being passed. Such clauses in the arbitration agreement have been upheld by the Supreme Court in the cases of ***Centromade Minerals and Metals Inc. versus Hindustan Copper Ltd.*** reported in (2006) 11SCC 245 and ***Build India Construction System versus Union of India*** reported in (2002) 5 SCC 433.

11. Learned counsel for the applicant-Objector took me through various documents in support of his contention that the Objector was not a trader who had employed services of the respondent but an investor who was assured of a fixed return on investment. Specific reference was made to the entry or payment of Rs.1.07 lakhs made on 11th June, 2004 in the account of the Objector and it was submitted that the said entry is clearly relatable to interest that was payable @ 24% per annum. The said contention of the learned counsel and the reliance placed on the said entry is not acceptable, for the Objector has proceeded on reverse basis to justify his claim. The claim includes interest on shares worth Rs. 3.5 Lacs also. Entries of Rs. 1.07 Lacs and Rs. 10,000/- towards interest have

not been confirmed by the respondent-AAL. The case of the respondent-AAL is that a substantial amount was due and payable by the Objector. It is also explained that payment was made to the Objector on his request to enable him to tide over his difficult financial position. The said documents were examined by the Learned Arbitrators and upon examination and on the basis of the voluminous evidence presented by the respondent herein the claims of the Objector were rejected. They have specifically held that the claim of the Objector is not supported by even a single document and is contrary to the documents signed and executed by the objector. Reasons given by the Id. Arbitrators indicate and state the basis on which decision has been given. They are sufficient and cannot be regarded as perverse, unjust or contrary to public policy. The award is not vitiated for failure to consider relevant aspects. Contentions and case of the parties were examined but on appraisal of evidence and on conclusions drawn, the case was decided in favour of the respondent. Arbitrators are sole judges of quality and quantity of evidence and under section 34 courts cannot interfere for a different view is plausible. Section 34 of the Act does not confer appellate jurisdiction. Keeping in view the reasons given and the limited jurisdiction of this Court, this ground of challenge has no merit.

13. I am not required to adjudicate and re-examine facts, nevertheless in order to satisfy myself that no injustice has been caused to the Objector, I have examined the various contentions of

the Objector and find that they do not have any force. On the other hand, there is enough evidence and material to show that the entire claim of the Objector is completely sham and baseless and is a possible concoction. There is ample evidence and material to establish that the objector was a trader and there was no agreement between the objector and the respondent for a fixed return on alleged investment made by the objector. This is apparent from the following:-

(a) Payments of Rs.14.40 lakhs is staggered and paid by different cheques over a period of time beginning from 17th January, 2004 till 16th March, 2004.

(b) The first payment of Rs.40,000/- was made only on 17th January, 2004 and thereafter payments varied between Rs.45,000/- to Rs.3.30 lacs were made over a long period on different dates between 17th January, 2004 till 16th March, 2004. Purchase of shares in the account of the objector began earlier in point of time.

(c) The Objector had admittedly entered into an Agreement dated 2nd January, 2004 for trading in securities under Code No. NV 327 and was given a specific client I.D. for trading in shares. The Objector also maintained a separate de-mat account and had entered into a separate Agreement for the said purpose with the respondent. The Objector had entered into a third Agreement for e-Speed facility with the respondent. E-speed facility enabled the Objector to issue instructions to the

respondent and to have constant watch on his portfolio of investments. The three written documents contradict and negate the claim of the Objector.

(d) Learned counsel for the Objector had admitted before me that the petitioner herein had been indulging in sale and purchase of shares even before he started trading and utilising services of the respondent as a broker w.e.f. 7th January, 2004. His wife and brother-in-law were also engaged in trading of shares.

(e) Account of the Objector as on 31st March, 2004, the year ending, had a substantial debiting balance of more than Rs.62 lakhs. It is an admitted case of the Objector that he had issued two cheques of Rs.30 lakhs and Rs.32,32,645.31 to square up the account. These cheques on presentation were dishonoured but were retained by the respondent.

(f) The Objector being a trader in shares was very well aware of risks of the share market, it's up-swings and down-swings. It is difficult to accept the contention of the Objector that he was assured a fixed return of interest @ 24% per annum by the respondent and as a gullible new entrant made investments on different dates, signed three different Agreements, was given a client number and Speed-e facility for trading in shares. The Agreements signed by the parties clearly show that these were Agreements which a client signs with a broker when he wants

to trade and/or; buy/sale shares. They clearly warn the person signing the document about risks involved and highly volatile nature of the share market. There is not even a single document to support the claim of the Objector.

(g) It was admitted on behalf of the Objector that disputes arose between the parties on or about 30th June, 2004 with the market going into bear mod with share scrips sliding. The respondent had written a letter dated 30th June, 2004 calling upon the Objector to square up the account, which had a debit balance of Rs.1,08,56,840.24 and share scrips transferred to the pool account on instructions had been sold for total value of Rs.74,84,208.65 but this still left an outstanding balance of Rs.32,72,651.59. The Objector by his letter dated 8th July, 2004 gave para-wise reply to the said letter/notice. In his reply the Objector expressed shock at the huge outstanding and claimed that he had no knowledge about the same. He also denied giving instructions to sell the shares or having transferred shares from his DPA account to the pool account. In the reply dated 8th July, 2004, the Objector did not claim that he had made any investment on assured or fixed return. In another subsequent letter dated 22nd July, 2004 the Objector again did not make any such claim. Even in reply dated 30th July, 2004 to the legal notice dated 14th July, 2004 issued under the Negotiable Instruments Act, 1882 no such claim is made. The

claim of the said nature was made for the first time only in the letter dated 30th August, 2004 in which it was stated that the respondents had attempted to eat up his investment of Rs.14.40 lakhs along with shares worth Rs. 2 lakhs on which the respondent was supposed to pay him a fixed return of 2% per month plus sharing of profit, if any, irrespective of losses. The said arrangement seems too good to be true and too good to be accepted as true. Later on, the said stand is elaborated in his letter in the form of complaint dated 14th October, 2004. A bare perusal of the earlier letters written by the Objector show that he never disputed or questioned the statements made by the respondent that the Objector was a trader and had utilised services of the respondent as a broker and as a depository.

14. A mere credit entry of Rs.1.07 lakhs on 11th June, 2004 does not prove and establish the claim of the Objector. The respondent has explained the said entry as an amount advanced by cheque in good faith. This one entry in view of the voluminous and substantial evidence including the admissions of the Objector in the letters and written documents, issue of cheques, etc. completely belie and make dents in the story concocted by the Objector which has no legs to stand on. In view of the above findings, the challenge to the Award rejecting claims made by the Objector has to be rejected.

15. The effect thereof is that the Objector was trading in the National Stock Exchange and had engaged the services of the

respondent as a broker and as a depository. Further, the Objector had also availed of the services of e-speed to give instructions and also watch his portfolio of shares and make investments.

16. One of the main contentions raised by the learned counsel for the Objector was that the respondent had failed to produce before the learned Arbitrators the courier receipts to prove delivery of contract notes. Learned counsel for the Objector had submitted that the respondent had failed to produce courier receipts to show receipt of contract notes for sale and purchase of shares by the Objector through the respondent-broker. Even if it is assumed that the contract notes were not sent to the Objector through courier, I feel the end result would be still the same for variety of reasons. Firstly, the Objector admittedly had e-speed facility which entitled him to watch his portfolio of investments and therefore knew about sales and purchases and his portfolio. The objector was aware of the transactions. To have access to e-speed account each client is given a secret password and without the said password e-speed account cannot be accessed and viewed by the person. The objector was maintaining speed-e account and was aware of the shares held by him in his depository. Secondly, the trading account of the Objector shows that there are as many as 85 entries of transactions during the period 7th January, 2004 till 31st May, 2004. The entries have been made almost on every trading day with shares being sold or purchased. The amount involved are substantial and normally in five

figures. Thus, the Objector had made substantial investment in the share market. It is natural for him to keep a track of his portfolio and keep abreast with the market trends and know his position. The objector it is apparent has taken a somersault and has made a claim after nearly 6 months of extensive trading. It is per-se difficult to accept that all along the Objector was not aware what was happening, what was bought and what was sold and he had no knowledge about his liabilities. Thirdly, the Objector was certainly aware about his substantial outstanding as on 31st March, 2004 as he had issued two cheques of Rs.30 lakhs and Rs.32,32,645.31 to square up the said outstanding. Rs. 62 lakhs are a substantial amount and it is difficult to believe that the said cheques were issued without verification and on mere asking. The cheques were also presented for encashment but dishonoured. Issue of cheques shows that said amount was due and payable by the Objector to the respondent towards purchase of shares. Learned Arbitrators have rejected the contention of the Objector that payment of cheques was towards "Accounting Generally" and to save tax. Learned Arbitrators in this regard are judges and adjudicators of fact. The decision of the learned Arbitrators in this regard cannot be said to be perverse or based on no material. The very fact that the Objector never wrote any letter or proceeded against the presentation of cheques is enough to disbelief and reject the claim of the Objector. Even with regard to the delivery of contract notes, it was

explained by the respondents before the learned Arbitrators that they had engaged services of *Blaze Flash Courier* and the said company does not entertain any query with regard to the deliveries but they can furnish copy of receipt books.

17. Learned counsel for the Objector further contended that there was violation of NSE Guidelines and Rules. In this regard, he has drawn my attention to Regulation nos. 3.11, 3.5.1, 3.2.2, 3.2.1, 6.1.5(c)(iii) issued by the National Stock Exchange of India Ltd. and some other Regulations. It was also submitted that under Regulation 3.11 if the Objector had failed to pay for the shares the same could have been only sold by the respondent not later than 5th trading day reckoned from the date of pay in. I have examined these contentions but do not find any merit in the same.

18. The respondent-AAL has claimed that Regulation 3.11 is not applicable. The said Regulation permits and gives liberty to a trading member to sell securities, if payment is not received, not later than 5th trading day reckoned from the date of pay in. It is an enabling provision. Where a trading member proceeds under Regulation 3.11 no further claim can be entertained between the constituent and the trading member. The respondent-AAL has not proceeded under Regulation 3.11 and the enabling powers given thereunder. The shares purchased were transferred to the D-mat account of the objector and became his property. The case of the respondent-AAL which has been accepted by the learned Arbitrators is that pursuant

to Speed-e instructions shares held by the Objector were transferred from depository account to the pool account and as per the instructions given by the Objector these shares were sold in the market but even after the said sale, there was a negative balance. Learned Arbitrators have directed payment of the said negative balance. The respondents have not exercised their liberty granted under Regulation 3.11 and had not sold any shares within five days from the pay in date.

19. Even otherwise, the Objector had purchased shares and under the normal law is liable to make payment for the said purchases. Even if the respondent-AAL had made payment on behalf of the Objector, the Objector became indebted to AAL to that extent. The Objector is therefore under a legal obligation to make payment of the said balance purchase consideration.

20. Learned counsel for the Objector also submitted that there was violation of the principles of natural justice. He had drawn my attention to letters written by the Objector to National Stock Exchange of India Ltd asking the respondent-AAL to submit statement of de-mat account from January onwards, trading account, details of shares sold, time and date of sale, details of the shares in the frozen account and copy of instructions to sell the shares. AAL in reply thereto by their letter dated 21st December, 2004 had sent copy of the account statement, transaction details and confirmation of contract notes. These were duly forwarded to the Objector. The Objector has

accepted that he had received the said details and the account statement but in his letter dated 18th January, 2005 had submitted that the contract notes had been printed subsequently and he had not received contract notes for settlement nos. 4046 to 4059(in other words he had received other contract notes). He had further stated that statement of account had not been authenticated. He also made an allegation that the sale values do not reconcile. I may note that before the learned Arbitrators a similar plea was taken. The Arbitrators thereupon asked the respondent-AAL to clarify and furnish all details. On 19th May, 2005 the respondent-AAL furnished all details that could be given and thereafter hearing was held on 25th May, 2005, 9th June, 2005 and 16th June, 2005. Award was made final and published on 13th July, 2005. In these circumstances, it cannot be said that the Id. Arbitrators had proceeded in haste or violated principles of natural justice. The claim of the Objector that he was not given reasonable and fair opportunity and there was violation of the principles of natural justice is per se wrong and incorrect. I may note here that the Objector had filed written submissions on 18th June, 2005 before the learned Arbitrators after oral hearing was over. No such plea was raised in the said written submissions. No letter was also written by the Objector to the learned Arbitrators asking for further hearing or claiming that he had not been given fair and adequate opportunity for presenting his case.

21. Learned counsel for the Objector had drawn my attention to

the transaction statement with specific reference to entries dated 28th June, 2004 in which the transaction number given is 2004121. It is an admitted case of the parties that the figure 2004 stands for the year in question and the number 121 is the specific market type settlement number. In this regard, learned counsel for the respondent has drawn my attention to the Guide of National Securities Depositories Ltd. to trading and settlement and settlement instructions. The said instructions describe the process by which shares are transferred from delivery account of the seller to the pool account and then to receipt account of the purchaser. It is also pointed out that in the clearing account, the securities are always kept in a basket for the purpose of identification. It is not disputed that shares can be transferred from the depository to the pool account before or after the transaction. Thus transaction number 2004121 was given for all shares which were transferred from the depository to the pool account and were sold. Reference to transaction no.2004121 therefore stands explained by the respondent. Learned Arbitrators being familiar with the dealings in the stock exchange and why and how the transaction numbers are given have not given any importance to this contention. It has been explained that these transaction numbers are given to identify the transaction so that there is no confusion. They have no other significance.

22. Transfer from depository to pool account was made by exercising

option under e-speed. The Objector in his letters dated 8th July, 2004 and 22nd July, 2004 has denied giving any such instructions for transfer of securities from *Depository Account* to the pool account and has stated that the respondent has misused e-speed facility unauthorisedly. It is however admitted that to have access to e-speed account one must have the password, which is given only to the person enjoying the e-speed facility. Therefore, normal presumption is that it was the Objector who had given instructions from e-speed facility for transfer of securities from *Depository Account* to the pool account.

23. Thus learned Arbitrators are not wrong in proceeding and accepting that the Objector himself had given instructions for transfer of shares from the depository to the pool account on 25th June, 2004. Thereafter, the shares were sold.

24. Learned counsel for the Objector had submitted that the Objector had not given any instructions for sale of shares and made reference to the e-mail dated 27th June, 2004 that was sent by him to National Securities Depositories Ltd. He has also drawn my attention to the receipt stamp of the respondent affixed thereon wherein two dates namely, 28th June, 2004 and 29th June, 2004 are visible. It was submitted that the Objector had written to the National Securities Depositories Ltd for freezing of his Demat account with AAL and necessary instructions were received by the respondent on 28th June, 2004. It was submitted that sale of shares on 29th June, 2004

therefore was contrary to the wishes and instructions of the Objector. A careful perusal of letter dated 27th June, 2004 shows that it was faxed by National Securities Depositories Ltd to the respondent-AAL on 29th June, 2006 at about 10:59 a.m. No doubt there are two dates mentioned on the receipt stamp, but self generated FAX receipt date 29th June, 2004 at 10:59 a.m. is clearly visible. Thus the said fax could not have been received on 28th June, 2004. National Securities Depositories Ltd has also confirmed by their letter dated 28th December, 2006 that they had sent the fax to the respondent on 29th June, 2004 and not on 28th June, 2004. Shares in the Demat account was transferred to the pool account on 27th June, 2004. Instructions in this regard were given through the Speed-e account of which the Objector had the password. The letter dated 27th June, 2004 written by the Objector to National Securities Depositories Ltd also proves that the Objector had the necessary password with him and he was aware that shares in this depository account had been transferred to the pool account. Without knowing and having access to the Speed-e account, the Objector could not have written the said letter to the National Securities Depositories Ltd for freezing of the same and for cancellation of Speed-e instructions. Moreover, the case made out by the Objector before the learned Arbitrators was that the respondent-AAL had assured him of fixed rate of return and he had no concern with Speed-e or sale/transfer of shares. In view of the said plea it is not understood why the Objector had asked for freezing of his Speed-

e instructions and his Demat account. If the Objector had nothing to do with the purchase and sale of shares, he was not required to ask for freezing of his Demat account and cancellation of Speed-e instructions. This also establishes that the claim of the Objector that he had made investment under an assured return scheme is false and incorrect.

25. In view of the above, the award stands modified to the extent mentioned in paragraph 3. Other objections raised under Section 34 of the Act have no merit and are dismissed. The respondent is also entitled to costs.

(SANJIV KHANNA)

JUDGE

AUGUST 27, 2008.
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