

THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 02.04.2008

+ **OMP. No. 445/2007**

MR PRAVEEN GUPTA

...Petitioner

- versus -

M/S STAR SHARE & STOCK BROKERS LTD. ...Respondent

Advocates who appeared in this case:

For the Petitioner : Mr Rajesh Banati with Ms Babli Kala

For the Respondent : Dr Sarabjit Sharma with Ms R. Veena

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

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

BADAR DURREZ AHMED, J (ORAL)

1. This petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'said Act') has been filed challenging the Award made by the Arbitral Tribunal on 10.05.2007.

2. By virtue of the impugned Award the petitioner's claim was found to be barred by time. The Arbitral Tribunal referred to Chapter XI of the bye-laws framed by the National Stock Exchange of India. The said Chapter pertains to arbitration. Bye-law (3) of Chapter XI stipulates the limitation period for reference of claims, differences or disputes for arbitration. It stipulates that all claims, differences or disputes referred to in

bye-laws (1), (1A), (1B) and (1D) shall be submitted to arbitration within six months from the date on which the claim, difference or dispute arises or is deemed to have been arisen. It further provides that time taken in conciliation proceedings, if any, initiated and conducted as per the provisions of the said Act and the time taken by the Relevant Authority to administratively resolve the claim, differences or disputes shall be excluded for the purpose of determining the period of six months. The Arbitral Tribunal took the view that transactions between the petitioner and the respondent stopped on 01.04.2004 and that would be regarded as the starting point of limitation. The Arbitral Tribunal expressed its opinion that it cannot be believed that for more than two years a person would wait and suddenly wake up with his claim as in this case. According to the Arbitral Tribunal the period of six months had expired and therefore the claim for arbitration could not be entertained. The Arbitral Tribunal was also of the view that subsequent acknowledgment may extend the period of limitation for the purposes of a civil suit under the Limitation Act, 1963 but for the purposes of arbitration the period had already expired. The Arbitral Tribunal also took the view that a clear distinction must be drawn between the right of the claimant in a civil suit and the present proceedings. It was observed that the arbitration proceedings under the bye-laws only bars the remedy in these proceedings and does not take away the right to enforce the same under the civil law in a court. Ultimately the Tribunal held that the claim is time barred so far as the tribunal was concerned. They, however, made it clear that nothing said in the Award would amount to any expression of opinion pertaining to the disputes on merits of the matter and

that nothing restrained the claimant to take his remedy before the civil court in accordance with law because the period of limitation there is different.

3. The learned counsel for the petitioner in his submissions has assailed the impugned Award on primarily two grounds. The first ground that was taken by the learned counsel was that the Arbitral Tribunal has overlooked certain material documents, which, if considered, would bring the petitioner's claim within the period prescribed by bye-law (3) of the said bye-law. The second point urged on behalf of the petitioner was that the provision of a reduced period of limitation compared to the period prescribed under the Limitation Act, 1963 would be hit by the provisions of Section 28 of the Indian Contract Act, 1872. The learned counsel appearing on behalf of the respondent submitted that the Tribunal has correctly understood the provisions and the factual situation and has taken the view that the claim was time barred. He has also submitted that the computation of the period of limitation has been appropriately done by the Arbitral Tribunal. On the second point urged by the learned counsel for the petitioner, the learned counsel for the respondent submitted that Section 28 of the Indian Contract Act, 1872 would not come in the way of the present bye-law (3) inasmuch as Section 28 only refers to agreements between parties and does not refer to statutory provisions. The period of limitation prescribed under bye-law (3) would have to be regarded as statutory provisions inasmuch as the bye-laws have been framed in exercise of the powers granted to the National Stock Exchange under Section 9 of the Securities Contract (Regulations) Act, 1956.

4. I have considered the submissions advanced by the learned counsel for the parties. Insofar as the first point raised by the learned counsel for the petitioner is concerned, I find that there is merit in what he contends. To follow his contention, it would be necessary to set out the chronology of events. It is an admitted position that after 01.04.2004 there were no transactions between the parties. However, the learned counsel for the petitioner has referred to a letter which is placed at page 23 of the paper book and which also placed at pages 129 and 143 of the record of the Arbitral Tribunal. The said document is a letter dated 31.03.2006 issued by the respondent (Star Share & Stock Brokers Ltd.) to the petitioner in connection with confirmation of the margin security deposit of Rs 20 lacs. The said letter confirms that the margin / security deposit of Rs 20 lacs is payable by the respondent (Star Share & Stock Brokers Ltd.) and will be paid to the petitioner along with up-to-date interest as mentioned in the letter dated 01.04.2004 as soon as the financial position improves. The petitioner was requested to bear with the respondent for some more time. This letter had been placed by the petitioner both before the Arbitral Tribunal and before this Court. It is the contention of the learned counsel for the respondent that this letter is a fabrication. It was also sought to be contended that this letter did not form part of the Arbitral Tribunal record but, that grievance now seems to have been removed inasmuch as the learned counsel for the respondent was shown the original record and the letter is found at the two places mentioned above. Apart from this, there is reference to this letter at page 151 of the record of the Arbitral Tribunal.

The said page is a part of the reply filed by the respondent to the rejoinder in the application dated 14.03.2007. The said reply was received by the petitioner on 04.04.2007. It was handed over to the applicant and the panel of arbitrators during the hearing on 09.04.2007 as is clear from the endorsement at page 149 of the record of the Arbitral Tribunal. It is apparent that the said letter dated 31.03.2006 was on record before the Arbitral Tribunal prior to passing orders reserving the making of the Award.

5. Thereafter on 01.06.2006 the petitioner filed a complaint with the National Stock Exchange in respect of the non-payment of Rs 20 lacs with interest by the respondent. The said complaint was filed in Investor's Complaint Form No.1, as is the requirement. On 15.09.2006 the National Stock Exchange issued a letter to the petitioner which is at page 13 of the paper book. The letter indicates that the National Stock Exchange had taken up the matter with the trading member (the respondent) for resolving the same administratively. However, on account of conflicting claims and counter-claims made by the parties, it was observed that the petitioner may, if it so desire, take recourse to arbitration by filing an application for arbitration against the respondent. It was also indicated that the arbitration application ought to be submitted within six months from the date on which the claim, difference or dispute arose or is deemed to have arisen, otherwise the arbitrator may dismiss the arbitration application as time barred under the bye-laws of the National Stock Exchange of India. This was followed by the petitioner filing the claim for arbitration on 22.11.2006. It is apparent from a reading of the Award that the letter dated 31.03.2006 has

not even been considered inasmuch as there is no reference to the same. Of course, the Arbitral Tribunal has taken the view that acknowledgments for the purposes of a civil suit may extend the period of limitation but for the purposes of arbitration the period had already expired. In the present case what has to be seen is whether the arbitration claim has been filed within six months from the date on which the claim, difference or dispute arose. It is apparent that by virtue of the letter dated 31.03.2006, if it is to be considered, the respondent has confirmed its liability to make the payment to the petitioner. Thus, as on 31.03.2006 there is no dispute or difference between the petitioner and the respondent. It is apparent that the dispute or difference arose and some time after 31.03.2006 and before 01.06.2006, when the petitioner made the complaint to the National Stock Exchange. Being the relevant authority, the National Stock Exchange attempted at resolving the same administratively and, finally, by the letter dated 15.09.2006 informed the petitioner that such a resolution was not possible and that the petitioner may, if it so desired, go in for arbitration under the bye-laws. Even if it is assumed that while on 31.03.2006 there was no dispute between the petitioner and the respondent inasmuch as the respondent was ready and willing to make the payment but, on the very next day, that is, on 01.04.2006 the respondent resiled from its stand, the period of six months taken from 01.04.2006 would end on 01.10.2006. The arbitration claim has been filed on 22.11.2006 or in other words, 1 month and 22 days beyond that date. However, in view of the provisions of bye-law (3) itself, the time taken by the relevant authority to administratively resolve the claim has to be excluded for the purposes of determining the

period of six months. The complaint was filed before the National Stock Exchange on 01.06.2006 and the attempt at administratively resolving the same continued up to 15.09.2006 when the National Stock Exchange issued the letter that it would not be possible to resolve the same administratively. Therefore, the period starting from 01.06.2006 and ending on 15.09.2006 shall have to be excluded, that is, a period of three and a half months. Consequently, it is apparent that the claim filed by the petitioner would be within time.

6. In view of the fact that the petitioner has been able to demonstrate that the letter dated 31.03.2006 was not even considered by the Arbitral Tribunal, the Award is liable to be set aside on this ground alone. This is so because had the letter dated 31.03.2006 been considered and held to have emanated from the respondent, then the claim would clearly be within time. The Award is, therefore, set aside. There is no necessity for this Court to examine the second proposition that was expressed by the counsel for the petitioner. The record be sent back. The petitioner is granted liberty to proceed afresh for arbitration.

This petition stands disposed of.

**BADAR DURREZ AHMED
(JUDGE)**

**April 02, 2008
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