

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

Date of Reserve: 20.03.2009

Date of Order: 24.03.2009

OMP No. 140/2009

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24.03.2009

M/s Religare Securities Ltd.

... Petitioner

Through: Mr. Rohit Puri, Advocate

Versus

Hoshang K. Vajifdar & Ors.

... Respondents

JUSTICE SHIV NARAYAN DHINGRA

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

JUDGMENT

The petitioner by this petition under Section 34 of the Arbitration and Conciliation Act, 1996 has assailed an award dated 24.11.2008 passed by the Arbitral Tribunal.

2. The brief facts relevant for the purpose of deciding this petition are that the petitioner is a trading member of National Stock Exchange for trading in securities. Respondent no.1 (hereinafter referred to as respondent) was one of the clients of the petitioner. An Agreement viz. Member-Client Agreement dated 18.7.2007 was signed between the parties. The petitioner claimed that under

instructions of the respondent, the petitioner had been buying scrips/securities and was trading in derivatives segments from time to time for the respondent and maintaining records of the transactions in regular course of business. The respondent was asked to clear outstanding by a notice dated 6.2.2008. The respondent denied its liability vide reply dated 12.2.2008 and served a legal notice 3.3.2008 on the petitioner. According to the petitioner, a debit balance of Rs.94,09,820.96/- was reflected in statement of accounts. Since this amount was not paid by the respondent, in terms of the agreement between the parties, the matter was referred to the Arbitral Tribunal. Before the Arbitral Tribunal, the respondent denied its liability to pay the amount and rather filed a counter claim to the extent of Rs.33,30,217/- together with interest.

3. As the facts reveal, there was no dispute between the parties up to 17.1.2008 and the entire balance claimed by the petitioner was in respect of transaction which took place on 18.1.2008 and 21.1.2008. The learned Arbitral Tribunal framed following issue in respect of the dispute:

Whether the Applicants prove that the trades carried on for the period 18th January 2008 and 21st January, 2008 were transactions, which were authorized by the Respondent.

4. After considering the evidence of both the sides, the Arbitral Tribunal gave its award that the petitioner had not been able to prove its case and rejected the claim of the petitioner. The counter claim of the respondent was also rejected.

5. The petitioner has assailed this award on following grounds:
1. The award was bad in law.
 2. The Arbitral Tribunal failed to appreciate that the defence raised by the respondent and the counter claim made by the respondent was an afterthought.
 3. The findings of the Arbitral Tribunal were perverse since they were arrived at without consideration/appreciation of evidence
 4. The Arbitral Tribunal failed and neglected to take into consideration the tape recordings of the conversations that ensued between the petitioner and the respondent.
 5. The Arbitral Tribunal pronounced the award on conjectures/speculation that the respondent being a seasoned investor could not have invested such huge sum of money in a falling market.
 6. The Arbitral Tribunal erred in presuming that since the respondent was allowed to trade without sufficient margin hence the trades were not verified and carried on by the petitioner in accordance with the instructions of the respondent.
 7. That the Arbitral Tribunal failed to refer to the agreement between the parties which categorically provided that trade may be carried on by a

client despite non-availability of the margins at the option of stock broker (petitioner) and the same was the responsibility of the respondent.

8. That the Arbitral Tribunal overstepped the bye-laws and regulations of National Stock Exchange and went beyond the bye-laws.

6. During arguments, the learned Counsel for the petitioner insisted that though clause 40(b) of the agreement providing that the respondent had contracted that it shall not trade without adequate margin and that it shall be his responsibility to ascertain beforehand that the margin/security was made available to the stock broker, does not mean that the petitioner was precluded from carrying on trade on behalf of respondent, without margin. He submitted that the clause of the agreement gives sufficient scope to the petitioner to trade at the instructions of respondent even without margin and the respondent was bound by such trade. He submitted that the Arbitral Tribunal had not considered this aspect of the agreement.

7. Clause 40(b) of the agreement as relied upon by the petitioner reads as under:

Clause 40(b) - The Client agrees that he/she/it shall not trade without adequate margin/security and that it shall be his/her/its responsibility to ascertain before hand the margin/security requirement for his/her/its orders/trades/deals and to ensure that the required margin/security is made available to the stock broker in such form and manner as may be required by the stock broker. If the clients order is executed despite of shortfall in the

available margin, the client, shall, whether or not the stock broker intimates such shortfall in the margin to the client, make up the short fall suo moto immediately. The client further agrees that he/she/it shall be responsible for all orders including any orders that may be executed without the required margin in the client's account and/or any claim/loss/damage arising out of the non-availability/shortage of margin/security required by the stock broker and/or exchange and/or SEBI.

8. A perusal of award would show that all these arguments were advanced by the petitioner before the Arbitral Tribunal and were also dealt with in detail. The issue before the Arbitral Tribunal was not whether without margins the petitioner could trade on behalf of the respondent or not. The issue before the Arbitral Tribunal was whether in respect of the trade carried by petitioner on 18/21, January, 2008 instructions were given by the respondent or not. There is no denial of the fact that there is no written order placed by the respondent for purchase of various scrips/securities either in cash or in derivative segment in respect of the alleged dealings. The contention of the petitioner has been that he was asked to enter into alleged dealings orally on telephone. The contention of the respondent had been that he had not given instructions for the purchase of alleged scrips neither there was any probability that he could have given such instructions in view of the circumstances. The Arbitral Tribunal considered the evidence of both the sides and the affidavits filed by the both the sides and had also taken into account the previous mode of transactions, that used to take place between the petitioner and respondent. After taking into account the entire evidence including the tapes of alleged telephonic conversation filed by the

petitioner, the Tribunal gave its award that it was difficult to accept the contention of the petitioner that respondent, at the relevant time, gave orders for purchase of stock/securities without sufficient margin to create debit balance of Rs.94,09,820.96/-.

9. It is settled law that this Court does not act as a Court of Appeal while considering an application under Section 34 of the Arbitration and Conciliation Act. This Court can set aside an award only if the petitioner is able to make out a case under the provisions of Section 34. The plea taken by the petitioner in this case that the Arbitral Tribunal had not considered the evidence is baseless. The perusal of award shows that the Arbitral Tribunal had considered the entire evidence in detail. The Arbitral Tribunal had also considered the implication of the agreement between the parties. It is not a case where the Arbitral Tribunal had passed a short, non-speaking award. I find that the petition does not meet the requirements as laid down under Section 34 of the Arbitration and Conciliation Act. There is no force in the petition and the petition is liable to be dismissed. The petition is hereby dismissed in limine.

March 24, 2009
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SHIV NARAYAN DHINGRA, J.