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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Reserve: July 09, 2009
Date of Order: July 20, 2009

+OMP 341/2006

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20.07.2009

Ashwani Kumar Mittal

...Petitioner

Through: Mr. Chetan Sharma, Sr. Adv. with Mr. Sushil K. Pandey,
Advocates

Versus

Vimla Securities Pvt. Ltd.

...Respondent

Through: Mr. Jay Salva with Ms. Arundhati Das & Mr. Rajpal Singh,
Advocates

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

1. By this petition under Section 34 of the Arbitration & Conciliation Act, 1996 ("the Act" for short) the petitioner has assailed an award dated 16th March 2006 passed by learned Arbitrator rejecting the claim of petitioner on the ground that the references were barred by limitation.

2. It is submitted by petitioner that the learned Arbitrator wrongly relied upon the bye-laws of New Delhi Stock Exchange Limited (NDSL) which provided that the parties had to submit for arbitration within a period of six months from the date on which claim/dues or disputes arose. It is also submitted that the learned Arbitrator wrongly came to conclusion that the disputes /differences arose on 22nd December 2001 and the learned Arbitrator wrongly held that the reference was barred by limitation.

3. Brief facts relevant for purpose of deciding this petition are that the petitioner worked as sub-broker of respondent for National Stock Exchange during 1998-2001 and petitioner alleged that he was having a mutual running demat account with the respondent and used to carry trade as sub-broker of respondent. The petitioner had to recover certain securities from respondent for which he had made payment in 2001. Respondent closed down its office in Delhi and shifted to Mumbai. The petitioner continued sending letters to respondent. Ultimately, the petitioner addressed a letter to Stock Exchange Board of India (SEBI) about conduct of respondent on 8th December 2004 and SEBI referred the matter to Investors Grievance Cell of National Stock Exchange, New Delhi. After exchange of certain correspondences NSEIL advised petitioner to move arbitration. The petitioner then moved an arbitration application and the matter was referred to the learned Arbitrator under National Stock Exchange's Rules. When the notice of this arbitration was sent to respondent, respondent took objections that the reference was barred by limitation under Chapter II of Rules of NSEIL. Respondent also raised issue of territorial jurisdiction of the arbitrator at New Delhi. The learned Arbitrator framed two issues, one about the territorial jurisdiction and the other about limitation. The issue of territorial jurisdiction was answered in favour of the petitioner, however, the issue of limitation was answered against petitioner and the learned Arbitrator observed that Bye-Laws (2) and (3) of National Stock Exchange, under which reference was made provide for raising a dispute within six months from the date of such arising claim or dispute. The Bye-laws, however, also provides that the time taken for conciliation proceedings, if any, initiated and continued as per the provisions of the Act and the time taken by relevant authorities to administratively

resolve the claims/ disputes is excluded for the purpose of determining the period of six months. The petitioner contended that in view of the bye-laws, the entire period for which he has been corresponding with respondent and he had made complaint to SEBI and the SEBI had been administratively dealing with the disputes, should have been excluded by the learned Arbitrator.

4. The other submissions made by petitioner is that under the Limitation Act a limitation for three years was provided and this shall have precedence over the byelaws and rules of NSEIL. The period limitation cannot be curtailed by byelaws and the Limitation Act being an Act of Parliament will have supremacy over the rules framed by National Stock Exchange.

5. Both the above contentions were rejected by the learned Arbitrator and to my view rightly so. It is an undisputed fact that the while applying to National Stock Exchange seeking adjudication of its claims, the petitioner had requested for adjudication of his differences with the respondent within the purview of byelaws, rules and regulations of the Stock Exchange. Since respondent was a member of Stock Exchange and the petitioner had invoked the arbitration clause contained in byelaws of the Stock Exchange, the petitioner cannot take a stand that the provisions of byelaws of the Stock Exchange would not be applicable. These byelaws have been framed by the Stock Exchange by virtue of powers conferred under Section 9 of Securities Contracts (Regulation) Act, 1956 and these byelaws take form of subordinate legislation and it cannot be said that these byelaws are in any way inferior to the statutory provisions of Limitation Act. Moreover, it is settled law that the parties to a contract can bind themselves to a period of action different from

statutory provisions. Only those contracts can be said to be void which are covered under Chapter II of the Contract Act. If the parties had agreed that a dispute is to be referred within six months from the time of starting of cause of action, such a provision cannot be said to be void. I, therefore, consider that the learned Arbitrator rightly came to conclusion that the byelaws of NSE would be applicable in this case and the reference was to be made within six months.

6. The other plea taken by petitioner is that the start of cause of action should be considered only when he was advised by SEBI to take the matter to arbitration. The cause of action in this case arose in December 2001 when the petitioner wrote to respondent asking respondent for supply of shares mentioned in the list of claim. No response to this letter was received from respondent. Respondent in fact had shifted its office from Delhi to Mumbai. When the petitioner did not receive a response about supply of shares, the petitioner did not take steps from 2001 to 2004. I consider that the law did not permit the petitioner to keep sleeping over his rights. Even if the petitioner was not aware that the respondent had shifted from Delhi, the petitioner could have initiated proceedings against respondent to enforce his rights. Non-availability of respondent or respondent's shifting from the address known to the petitioner is no ground for extension of limitation or shifting of the date of cause of action. In fact, petitioner himself recorded in his claim petition that cause of action first arose on 22nd December, 2001 when respondent failed to supply the shares, mentioned in the list of claims. Thus, the cause of action had arisen, even as per the petitioner's version, in December 2001. The petitioner now cannot take the plea that the cause of action remain suspended because the petitioner had been corresponding with

the respondent or SEBI. Since the cause of action arose in 2001, even if the period of limitation was taken as three years, the reference made to the arbitrator for adjudication of disputes was barred by limitation.

7. I find no ground to interfere with the award passed by learned arbitrator. The petition is hereby dismissed being without merits. No orders as to costs.

July 20, 2009
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SHIV NARAYAN DHINGRA J.