

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

+ **FAO 330/2009**

Reserved on : 18.10.2010

Date of Decision: 27.10.2010

RELIANCE SECURITIES LTD ..... Appellant  
Through Mr. Joydeep Bhattacharya, Adv.

Versus

VIVEK SHARMA ..... Respondent  
Through Respondent in person

**CORAM:**  
**HON'BLE MR. JUSTICE MOOL CHAND GARG**

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

**MOOL CHAND GARG,J**

1. This appeal arises out of an order passed by the Addl. District Judge Delhi in Suit No. 757/2008 whereby vide order dated 03.08.2009, the Addl. District judge has dismissed the objections filed by the appellant under Section 34 of the Arbitration & Conciliation Act 1996 against the award pronounced by the Arbitrator Shri Ravi Kant against the appellant in this case.

2. Brief background of the case is, that appellant an incorporated public limited company doing business as Stock Broker is a member of National Stock Exchange (NSE) and Bombay Stock Exchange (BSE). Appellant company provides both online trading (internet trading) as well as off line trading to its clients as per the terms and conditions of their client member agreement. Admittedly respondent No.1 Mr. Vivek Sharma was one of their clients. As per client agreement dated 12.11.2006 respondent No.1 too had the facility of online trading. As per the statement of case put forth by respondent No.1 before Ld. Arbitrator, respondent No.1 started facing various kinds of problems and deficiencies in service on the part of the appellant Company since December 2006. In his seven odd complaints qua 18 instances, he has explained that while trading on the internet through the

appellant company he came across deficiencies in service namely viz purchase and sale order of stocks were not executed despite specific commands for hours together. It is stated that the system of appellant co., used to show messages like "IN PROCESS", "MARKET IS CLOSED", "ORDER REJECTED", "REJECTED AS NO RESPONSE FROM BANK" even though bank account & respondent No.1 had sufficient money. It is case of the respondent No.1 that despite placing order for sale of several script/ bunch of shares on account of the faults of the appellant, his instructions were not complied with for hours together and all this resulted into heavy financial losses to him. It is pointed out that there were instances where his instructions were not complied for hours together in the name of deficiencies in systems and its execution.

3. The arbitration proceedings were carried out in Delhi by the sole arbitrator wherein the appellant company also participated throughout the proceedings. After conclusion of hearings of both the sides Id. Arbitrator passed an award in question as referred to supra. Feeling aggrieved by this award appellant company has preferred these objections in hand. Detail reply was filed on behalf of respondent No.1.

4. Taking note of various pronouncements as referred to in the impugned order namely MCD Vs. M/s Gupta 2008 IX AD(Delhi) 401, Hon'ble High Court, Hindustan Construction Co. Ltd. Vs. Governor of Orissa & Ors AIR 1995 SC 2 2189, Hon'ble Supreme Court, Nalini Singh Associates Vs. M/s prime Time IP Media Services Ltd. 2000 X AD (Delhi) 60, Hon'ble High Court, it has been observed by the Addl. District Judge that the scope of review under Section 34 of the Arbitration Act is limited and not that of an Appellate Court. The Court is not required to re-appreciate and re-examine finding of the fact led and found by the Ld. Arbitrator. It has been observed by Ld. District Judge that nothing impermissible in accordance with the provisions contained under Section 34 (2) of the Act can be a ground for challenging the arbitral award.

5. In this regard I may also make a reference to provisions contained under Section 34 of the Arbitration & Conciliation Act which

lays down the scope of challenge to an award under the scheme of the new Act and which reads as under:

**“34. Application for setting aside arbitral award**

(1) Recourse to a court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3).

(2) An arbitral award may be set aside by the court only if,-

(a) the party making the application furnish proof that,-

(i) a party was under some incapacity, or

(ii) the arbitration agreement is not valid under the law to which the parties have subjected it, or failing any indication thereon, under the law for the time being in force; or

(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration:

PROVIDED that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or

(v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or

(b) the court finds that-

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or

(ii) the arbitral award is in conflict with the public policy of India.

Explanation: Without prejudice to the generality of sub-clause (ii) of clause (b), it is hereby declared, for the avoidance of any doubt, that an award is in conflict with the public policy of India if the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81.

(3) .....

6. The Addl. District Judge further observed that the objections which were filed on behalf of the appellant shows that it has raised all  
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the factual aspects in the same by referring to each and every transaction considered in detail by Ld. Arbitrator before passing the final award.

7. Taking note of the objections of the appellant & referring to a Circular issued by SEBI dated 31.01.2000 also referred to by the appellant in written submission before me & which is also relied upon by the appellant in his written submissions, the Addl. District Judge has observed that:

“The guidelines are apparently issued to stock exchanges to ensure that the stock brokers who undertake internet trading of shares should have appropriate software. The ultimate onus of having adequate system capacity installed primarily lies with the stock brokers and their companies. I also do not find any logic in the plea that Id. Arbitrator should have looked into this aspect in more detail so as to assess as to what was the capacity installed with the objector company and as to where the concerned stock exchange failed in its duties to supervise it. As rightly concluded by Ld. Arbitrator the deficiencies in services which were faced by respondent No.1 were apparently a result of deficiency in the system capacity of objector company and as such company cannot distance itself from these consequences.”

8. It has been further observed:

“12. The financial losses suffered by respondent No.1 being a client of the objector company which are attributable to the system failure of objector company cannot be regarded as notional losses. If a member of internet trading facility places an order of sale of a particular number of shares at a particular price in a highly volatile market and his order is not executed then and there for reasons beyond his control and is kept pending for hours together and then he loses valuable hardearned money. In such a scenario if delayed execution of an order results in ascertainable financial loss on this score owing to deficiency in service by stock broker, it is only the stock broker who has to account for such losses. I also do not find any strength in the plea of Ld. counsel for arbitrator that after non execution of initial orders, the orders were later on modified and the modified orders were executed. It goes without saying that necessity to modify the initial orders arise only out of failure of the broker to execute the primary orders. Respondent no.1 cannot be blamed for modifying his unexecuted orders to stop his losses.

13. Another plea taken by the objector company is that

several money transactions which were considered by Ld. Arbitrator could not be executed on A/c of failure of objector's system to connect with the bank of respondent No.1. In this regard it is conceded by Ld. counsel for objector during arguments that they have specific empaneled banks whom they have bipartite and tripartite agreements qua electronic transfer of funds. In these instances respondent No.1 cannot be blamed for system failures of either the broker company in the bank. In one of the instances shown by respondent no.1 i.e. transaction was turned down with a remark that "margin Not Available" even though there was enough cash margin in the account.

14. Also the conduct of the objector company as rightly pointed out by Ld. Arbitrator, has not been above board in redressing the grievances of respondent No.1 since the inception of their business relations with the respondent No.1. The complaints which were lodged by respondent No.1 with them were not replied for months together. Even though as per rule of SEBI such like complaints are supposed to be mandatorily replied within four weeks. It is also strange that on the one hand while the respondent complaints were not being redressed the petitioner company unilaterally decided to close his trading account. On the hind side in para 22 of his objections it is stated that these objection are being filed u/s 34 SS of Arbitration and Conciliation Act since the award is in conflict with public policy of India. After going through the entire award I do not find any finding in the same which can be said to be in conflict with public policy of our country. Rather the award upholds the public policy of safeguarding the interests of consumers who suffer financial losses on account of deficiency in service at the hand of large financial corporation and companies."

9. Before this Court also the appellant has again tried to reiterate all the submissions which were made in their objections to the award. The attempt is contrary to the provisions contained under Section 34 (2) of the Act in question inasmuch it is not a dispute between the parties; any of the parties to the arbitration agreement was under some incapacity; the arbitration agreement was not valid; the party making the application was not given proper notice of the appointment of an arbitrator or that the arbitral award was not dealing with a dispute not contemplated by or not falling within the terms of the submission to arbitration.

10. As far the submission that the award was in conflict with the

Public Policy of India, the only reason given by the arbitrator is SEBI circular dated 31.01.2000 which requires that:-

“The operational and system requirements: provides that the Stock Exchange must ensure that the system used by the broker has provision for security reliability and confidentiality of the data through use of encryption technology.

System capacity provides that the stock Exchange must ensure that the broker have adequate system capacity for handling data transfer and arrange for alternative means of communication in case of internet failure.”

11. Admittedly the appellant themselves is a stock broker. They are having online facility which enables their member-client to directly interact with them. There is no evidence on record that compliance of the directions of the respondent could not be done by them on account of say failure of system of the respondent. In fact in view of the Circular of SEBI it was for the appellant to keep a system which would have an adequate system capacity for handling data transfer and to arrange for alternative means of communication in case of internet failure.

12. The reasons given by the appellant regarding loss caused to the respondent on account of non-execution of order due to link failure with the bank, non-execution of the order by the exchange despite issuance of a transaction number of SEBI, non-execution of the order due to shut-down of the server because of the technical problem have already been taken into consideration by the arbitrator. No further benefit can be granted to the appellant.

13. I have heard the submissions made on behalf of the parties and I have also undergone the written submissions filed by the appellant. I find no reason to differ with the view taken by the Addl. District Judge in the peculiar facts of this case as I am unable to convince myself as to how system failure would be covered by Public Policy of India even though specific directions are given to the relevant authorities to keep the operational and system requirements intact. The judgment cited by the appellant are of no consequence because the scope of objections is very limited in view of the provisions now contained under the Arbitration & Conciliation Act 1996. Thus, I do

not find any merit in the objections raised by the appellant. The appeal is thus dismissed with no orders as to costs.

CM No.15325/2009

14. Interim order passed by this Court on 30.10.2009 stands vacated. CM stands disposed of.

CM No.14736/2010

15. This is an application for vacation of the interim order dated 30.10.2009. In view of the order passed in CM 15325/2009 the application is disposed of.

**OCTOBER 27, 2010**  
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**MOOL CHAND GARG, J**