

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

% *Date of Judgment: 09.11.2011*

+ **C.R.P. No. 395-396/2005**

S.P. LAMBA & ANOTHER Petitioners.
Through: Mr. Sanjeev Narula, Advocate.

Versus

PHJ SECURITIES PVT. LTD. Respondent
Through: Mr. N.S. Jain, Advocate.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

1. Whether the 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

INDERMEET KAUR, J. (Oral)

1 The order impugned before this Court is the order dated 05.10.2005 vide which the application filed by the defendants under Section 8 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'said Act') had been dismissed. This order is the subject matter of the present petition.

2 Record shows that the present suit had been filed by the plaintiff seeking a recovery of Rs.16,20,200/-; contention in the plaint was that the defendants S.P. Lamba and Saroj Lamba had utilized the services of the plaintiff company for the purpose of buying and selling shares through Stock Exchange on the promise and assurance of paying the amount of the purchase or differences of the amount of purchase and sale transacted through the defendants. Further contention is that during the financial year 2000-2001, defendant No. 1 for and on behalf of defendant No. 2 made purchase and sale of shares securities through the plaintiff company on different dates between 31.07.2000 to 28.03.2001; an amount of Rs.4,52,009.34 became payable to the plaintiff; further sale and purchase of shares were made by the defendants on behalf of the plaintiff company of dates ranging between 09.08.2000 to 28.03.2001 and a sum of Rs.18,08,664.11 become recoverable; defendant No. 1 in June,2001 had authorized the plaintiff to adjust the outstanding amount of the account of defendant No. 2 as well. The plaintiff had maintained a mutual, open and current account of both the defendants; all credit and debit entries had been correctly made by the plaintiff therein; contention is that an amount of Rs.11,15,712.87 paise was outstanding against the defendant as on 02.08.2001; inspite of

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legal notice, the defendants have failed to pay the aforementioned sum which is payable with interest @ 15% amounting to Rs.5,00,787.13 paise along with notice expense of Rs.3,500/-, the aforementioned suit in the sum of Rs.16,20,000/- was accordingly filed.

3 Before filing of the written statement, an application under Section 8 of the said Act had been filed. The contention of the defendants is that this application had been filed as a first step in the proceedings and it was not later than submitting his first statement on the substance of the disputes which is the requirement of Section 8 of the said Act; impugned order dismissing his application had called for an interference.

4 Admittedly the parties had relied upon the contract notes which contained an arbitration clause and this has in fact been admitted. As such there was an admitted arbitration clause between the parties.

5 Vehement contention of the petitioners is that when there is admittedly an arbitration agreement between the parties; the arbitration clause has also been admitted; there was a mandate upon to Court to have referred the disputes under Section 8 of the said Act to the Arbitrator and the impugned order holding that

bye-law No. 3 was applicable and period of six months from the date of disputes having since elapsed, the matter cannot be referred to arbitration clearly suffers from a perversity. This submission of the petitioner has force.

6 In a judgment of this Court reported in 2009 (6) RAJ 454 (Del) Biba Sethi Vs. Dyna Securities Ltd. a Bench of this Court had the occasion to consider the same bye-law i.e. bye-law No. 3 chapter XI of the NSE India Pvt. Ltd. wherein it had noted that the period of six months provided for submission of claims/disputes to arbitration is only contractual; it is not statutory and this part of bye-law No. 3 of Chapter XI of the NSE Bye-Laws to the extent that it had prescribed a limitation of six months for reference of disputes/claims to arbitration is void; time would be governed by the Limitation Act which is admittedly three years from the date when the disputes had arisen between the parties.

7 Suit has been filed on 30.07.2004 On this point, learned counsel for the respondent has also drawn the attention of this Court to the specific averments made by the plaintiff in paras 7 & 8 of the plaint, his contention is that the last transaction on these contract notes had been transacted between the parties on 02.08.2001 and as such the suit filed by the plaintiff on C.R.P. No.395-396/2005

30.07.2004 was well within the period of limitation. These submissions are prima-facie borne out from the averments made in the plaint. The Arbitrator will however adjudicate upon this point.

8 In (2003) 6 SCC 503 Hindustan Petroleum Corporation Ltd. Vs. Pinkcity Midway Petroleums the Apex Court has noted that wherever an arbitration clause exists and an appeal has been filed under Section 8 of the said Act there is a mandate upon the Court to refer the disputes arising between the parties to the Arbitrator and the civil court has no jurisdiction to continue with the suit. To the same effect is the judgment of the Apex Court delivered and reported in (2009) 10 SCC 103 Branch Manager, Magma Leasing and Finance Limited And Another Vs. Potluri Madhavalata & Another wherein it had been noted that Section 8 is in the form of legislative command; on fulfillment of the conditions required for the applicability of Section 8 Court has no option except to refer the parties to arbitration.

9 In the instant case all the conditions of Section 8 of the said Act have been fulfilled. The application under Section 8 of the Act had been filed in the first instance i.e. before any statement could have been submitted by the defendants; there is admittedly an

arbitration clause arising out of an arbitration agreement and the present suit is a suit in which the disputes have arisen out of the contract notes, last of which had been executed between the parties on 11.07.2001. The impugned order thus suffers from an infirmity. It was incumbent upon the Court to have referred the disputes to arbitration in terms of the arbitration clause. The disputes between the parties are accordingly referred to arbitration in terms of the arbitration clause.

10 Parties to appear before the NSE on 12.12.2011.

11 Petition disposed of in the above terms.

NOVEMBER 09, 2011
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INDERMEET KAUR,J