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IN THE HIGH COURT OF DELHI AT NEW DELHI

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FAO No.373/2011

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30th August, 2011

M/S. RELIGARE SECURITIES LTD. Appellants
Through: Mr. Sanjeev Puri, Sr. Adv. with
Mr. Arjun Segal, Adv.

VERSUS

M/S. WEALTHMOR SECURITIES (INDIA) PVT. LTD. Respondents
Through:

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

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

VALMIKI J. MEHTA, J (ORAL)

1. The challenge by means of this first appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (hereinafter 'the Act') is to the impugned order dated 15.4.2011 passed by the Court below, which has dismissed the objections of the appellant/petitioner under Section 34 of the Act to the Award of the Arbitrator/respondent no.2 dated 20.11.2009, and by which Award, the Arbitrator awarded commission charges which were due and payable by the appellant/broker to the respondent no.1/sub-broker with regard to the transactions entered into by the respondent no.1/sub-broker through the appellant/broker. In fact, though the Arbitrator had awarded a larger amount than as claimed by

the respondent no.1, however, by the impugned Order, the Court below has reduced the awarded amount from Rs.2,20,338.82 to Rs.1,91,606.02.

2. The facts of the case are that the respondent no.1/sub-broker invoked arbitration proceedings and filed a claim before the Arbitrator for recovery of monies said to be due on account of commission charges for various transactions. The appellant/petitioner, who was the respondent in the arbitration proceedings, disputed the claim of the respondent no.1 on the ground that the respondent no.1 had made a false declaration at the time of becoming a sub-broker of no complaint of being pending. The appellant alleged that a complaint filed by one Pabba Vijay Kumar was in fact pending and it therefore claimed that in terms of the relevant Rules of the Stock Exchange and the Agreement, the appellant was entitled to and thus had withheld the amount due to the respondent no.1.

3. The Trial Court has arrived at a finding, and has referred to the relevant portion of the Award, whereby, the respondent no.1 proved as per the website of the appellant itself that the commissions were due and payable to the respondent no.1 for the subject transactions. The relevant para of the impugned order in this regard is para 17, which reads as under:-

“17. Another ground raised in appeal (sic: objections) is that Ld. Arbitrator passed the impugned award without application of mind and in a mechanical manner as the respondent was not called upon to furnish details of brokerage earned by them but not paid, respondent was not called upon to prove its case and the award is passed without any material on record. Contents of para 4.2, 5.1 and para 5.2 of the award negates the contentions of the petitioner and the contents of para 5.3 of the award

reveals that petitioner did not avail of the opportunities to controvert the claim raised by respondent no.1. The allegations raised by the petitioner are false. Respondent no.1 had submitted his counter reply before he learned Arbitrator wherein it was proved with evidence by providing computer print outs of the screens shots from the back office software provided by the petitioner to sub brokers affiliated with them at the URL address <http://axis.relegare.in/axis> and <http://webdiet.religare.in/> where the actual amount due to the respondent no.1 by the petitioner is depicted clearly month wise through an automated computerized systems maintained by the petitioner. As the information available on the mentioned URLs supra is under total control of the petitioner and provides only viewing rights to the respondent no.1 and as such they cannot alter any of the contents of the website, I see no reason to interfere with findings of Id. Arbitrator in regard to allowing the claim of respondent no.1 on the basis of the computer print outs of the screens shots from the back office software provided by the petitioner to sub brokers affiliated with them at the URL address <http://axis.relegare.in/axis> and <http://webdiet.religare.in/>. A reading of the award also shows that petitioner had never raised any contentions or objections on the documentary evidence produced by them before the Id. Arbitrator and had not even contested on the claim amount made by the respondent no.1 and the Id. Arbitrator accordingly passed on arbitral award taking into consideration all the evidences and facts proved by the respondent no.1 with respect to its claim. It has been held by the Hon'ble Supreme Court in the matter of **Sudarsan Trading Co. Vs. Government of Kerala, 1989 (2) SCC 38,**

“Further, in any event, reasonableness of the reasons given by the arbitrator cannot be challenged. Appraisal of evidence by the arbitrator is never a matter which the court questions and considers. If the parties have selected their own forum, the deciding forum must be conceded the power of appraisements of the evidence. The arbitrator is the sole judge of the quality as well as quantity of evidence and it will not be for the court to take upon

itself the task of being a judge on the evidence before the arbitrator.”

4. The Court below has also arrived at a finding that the complaint in this case filed by one Mr. Pabba Vijay Kumar is dated 24th November, 2008 and though the respondent no.1 was registered as a sub-broker subsequently on 11.2.2009 however the declaration which is given by the Director of the respondent no.1 is of 28.2.2008, i.e. before the complaint dated 24.11.2008 of Mr. Pabba Vijay Kumar. Meaning thereby, when the declaration was given on 28.2.2008 by the Director of the respondent no.1, there was no complaint which was pending because the complaint which was made by Mr. Pabba Vijay Kumar was much later of 24.11.2008. Further, the complaint by Mr. Pabba Vijay Kumar is personally against the Director of the respondent no.1 in his individual capacity, (and it has not shown to me otherwise put during the course of arguments in this case), and not the respondent no.1/company and therefore, the Court below has observed that there is a difference between the legal entity of respondent no.1/company and its Directors, etc. This is a finding given in para 13 of the impugned judgment and which reads as under:-

“13. Respondent no.1 is a separate entity in the eyes of law as distinguished from the member shareholders, directors or from any natural person. Petitioner has been unable to establish that the respondent no.1 has played any fraud with the petitioner in whatsoever manner or had after the signing of Sub Broker and Stock Broker Agreement had violated any of terms and conditions as laid down.”

5. Accordingly, a resume of the above said facts show that firstly, the declaration was given on behalf of the respondent no.1 in this case on 28.2.2008 and on which date there was no complaint which was pending against the Director of the respondent no.1. Further, before exercising the right under the relevant Rules and the clause of the Agreement, it is necessary that the complaint is specifically against the broker company which is a separate legal entity than an individual Director. The Court below and the Arbitrator has also noted that the lethargy on part of Mr. Pabba Vijay Kumar and the appellant because the alleged cheque transaction which is disputed by Mr. Pabba Vijay Kumar took place on 30.6.2007, however, Mr. Pabba Vijay Kumar filed the complaint with the appellant nearly after 17 months on 24.1.2008 i.e. after a huge delay and the appellant company also leisurely replied after 6 months to Mr. Pabba Vijay Kumar on 25.6.2009.

6. The scope of hearing of objections to an Award is limited. The Court hearing objections under Section 34 interferes with the Award only if the Award is illegal, i.e. beyond the law of the land or is violative of the provisions of the Contract or is totally perverse. The Court below has rightly observed that there is no violation of any law or any provisions of contract or any perversity in view of the findings and conclusions reproduced by me above. The findings and conclusions of the Arbitrator and the Court below show that amounts were in fact payable as commission for the transactions to the respondent no.1. As on the date of declaration, there was no complaint against the Director of the

respondent no.1. Respondent no.1 is a separate entity than the Director. Commissions were in fact payable and therefore the Court below allowed such commission, however, in fairness to the appellant, reduced the Award amount from Rs.2,20,383.82 to Rs.1,91,606.02.

7. If the scope of hearing objections to an Award is limited, then, the scope of hearing of an appeal against an order dismissing the objections will have to be further limited. There has to be gross perversity or gross illegality which calls for interference by this Court.

8. In view of the detailed findings of facts and conclusions of both the Arbitrator and the Court below, and some of which findings have reproduced above, there is no gross illegality or gross perversity for this Court to interfere in appeal. Dismissed.

AUGUST 30, 2011
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VALMIKI J. MEHTA, J.