

IN THE HIGH COURT OF DELHI AT NEW DELHI

(Not reportable)

O.M.P. 217/2006

Reserved on: April 9, 2012

Decision on: April 25, 2012

DEBJYOTI GUPTA

..... Petitioner

Through: None.

versus

INDIABULLS SECURITIES LTD. & ANR. Respondents

Through: Ms. Pratibha M. Singh with
Mr. Sudeep Chatterjee, Mr. Ashwin
Kumar and Mr. Ashutosh Kumar,
Advocates.

CORAM: JUSTICE S. MURALIDHAR

JUDGMENT

25.04.2012

1. The present petition under Section 34 of the Arbitration & Conciliation Act, 1996 ('Act') is directed against the Award dated 25th January 2006 passed by the learned Arbitrator ('Respondent No.2') holding that the claims of the Petitioner in respect of Rs.10,000 and Rs.1 lakh deposited in client's account were barred by limitation as they were raised after the period of six months prescribed by the bye-laws of the National Stock Exchange ('NSE'). It was further held that the Arbitral Tribunal set up under the bye-laws of the

NSE lacked jurisdiction to deal with the claim of the Petitioner with regard to non-compliance of instructions given by him on 17th June 2005 for transfer of 4114 shares as it was an off-market transaction.

2. Respondent No.1, Indiabulls Securities Limited ('ISL') appointed the Petitioner as Remisier on 1st February 2002. A client account with ID No.10839 was opened by the Petitioner on 7th March 2002 with an initial deposit of Rs.10,000.

3. On 16th May 2002, a client account with ID No.11454 was opened and on 31st May 2002, the Petitioner transferred 4114 shares of Glaxosmithkline Beecham Consumer Healthcare Ltd. to the demat account linked with the said account.

4. The Petitioner states that on 15th February 2003, ISL, without any instructions from the Petitioner, transferred 160 of the 4114 shares to the pool account. On 30th June 2003, the Petitioner deposited a further sum of Rs.1 lakh in the said account. On 12th April and 18th May 2004, the Petitioner wrote to ISL seeking proper accounts in respect of both the client accounts.

5. On 19th July 2004, the Petitioner sought a clarification from ISL regarding transfer of 160 shares from the client account ID No.11454 to the pool account as well as the balance shares. When no action was taken by the ISL,

the Petitioner on 3rd November 2004 lodged a complaint with the NSE against ISL. On 17th June 2005, the Petitioner issued instructions for transfer of shares which were lying in client account ID Nos.10839 and 11454 but received no response. Thereafter, in September 2005, the Petitioner submitted the disputes for arbitration.

6. In the impugned Award the learned Arbitrator held in Para 3.4 as under:

“The Applicant’s Exhibits P2 and P4 clearly show that the amounts Rs.10,000/- and Rs.1,00,000/- were paid by the Applicant to the Respondent on account of the customer id No.10839 on 07.03.2002 and 30.06.2003 respectively. It is noted that the Applicant did not raise any formal complaint or dispute in respect of the sum of Rs.10,00,000/- till 31.10.2005 when he filed the Arbitration Application. As regard the claim for Rs.1,00,000/-, the formal dispute in respect of this amount was first raised on the 3rd November, 2004 (Exhibit No.P8) i.e. well after the expiry of six months from the date (30.06.2003) when this amount was placed in the hands of Respondent Company. As such there is no alternative but to conclude that the Applicant’s claim for the sums aggregating Rs.1,10,000/- is barred by limitation as per the provision contained in Byelaw No.3, Chapter XI of the Byelaws of NSEIL. It is to be further noted that the period of limitation laid down in the Byelaw no.3 cannot be extended merely by the letters raising disputes written by the Applicant and his advocate to the Respondent Company.”

7. As regards the instructions given by the Petitioner to ISL on 17th June 2005 to retransfer the 4114 shares of Glaxosmithkline Beecham Consumer

Healthcare Ltd. to the Petitioner's demat account, the learned Arbitrator held that this was an off-market transaction with which NSE was, in no way, connected and, therefore, the said issue could not be agitated before the Arbitral Tribunal set up under the bye-laws of the NSE.

8. None appeared for the Petitioner when the matter was called out for final hearing. The Court has, however, perused the petition as well as the written submissions of the Petitioner. Ms. Pratibha M. Singh appears for ISL and has made submissions. The written submissions and additional submissions of ISL have also been considered.

9. It is submitted on behalf of the Petitioner that in terms of Section 28 of the Contract Act, 1872 provisions of Chapter XI of the NSE bye-laws had to be held void to the extent that the period of limitation for the Petitioner to make a claim in terms of the bye-laws is reduced to six months. It is submitted that inasmuch as the NSE bye-laws are hit by Section 28 of the Contract Act, the learned Arbitrator could not have relied on those bye-laws to hold the Petitioner's claim barred by limitation. It is submitted that the provisions of the Contract Act should prevail over the bye-laws. This aspect was not dealt with by the learned Arbitrator. As regards the Arbitrator's jurisdiction to entertain the Petitioner's claim regarding non-compliance by ISL with the instructions to re-transfer 4114 shares, reference is made to Clause 15 of the Agreement which reads as under:

“Arbitration: Any and all disputes arising out of or in connection with this agreement or its performance shall be settled by arbitration in accordance with the Bye-Laws of NSE/BSE.”

10. On behalf of ISL it is submitted that bye-laws of the NSE are statutory in nature. Chapter XI thereof is a complete code with respect to the arbitration proceedings conducted thereunder. It is stated that as per the NSE bye-laws every claim, difference or dispute is to be referred for arbitration under the bye-laws within six months from the date on which such claim, dispute or difference arose or is deemed to have arisen. Bye-law 3 of Chapter XI of the NSE bye-laws reads as under:

“Limitation period for reference of claims, differences or disputes for arbitration – All claims, differences or disputes referred to clause (1), (1A), (1B) and (1D) above shall be submitted to arbitration within six months from the date on which the claim, difference or dispute arose or shall be deemed to have arisen. The time taken in conciliation proceedings, if any, initiated and conducted and as per the provisions of the Act and the time taken by the Relevant Authority to administratively resolve the claim, differences or disputes shall be excluded for the purpose of determining the period of six months.”

11. It is pointed out by ISL that the claim for arbitration was made in respect of transactions that took place in 2002-03 by the Petitioner only on 31st October 2005. It is, accordingly, submitted that the learned Arbitrator could have entertained claims for transactions after 30th April 2005 and not for a period prior to that. Therefore, as far as the present claims were

concerned, since they pertain to the transactions done during 2002-03, they were clearly time barred.

12. It is further pointed out by NSL that the Petitioner having made a deposit of Rs.10,000 on 7th March 2002 did not raise any formal complaint or dispute in respect of the said amount till 31st October 2005. As regards the cash deposit of Rs.1,00,000 on 30th June 2003, a formal dispute was raised only on 3rd November 2004 well after the expiry of 6 months from the date on which the money was placed in the hands of the ISL. It is further pointed out that the six months period under the NSE bye-laws has a statutory force. Reliance is placed on the judgments of Bombay High Court in *Harinarayan G. Bajaj v. LKP Securities Ltd.* 2005 (3) Comp. LJ 236 (Bom.), *Nirav Securities (P) Ltd. v. Mrs. Prabhuta Motiram Adhvaryu* 2002(6) Bom CR 745 and *Jagmohan Singh Gujral v. Satish Ashok Sabnis* 2004 (1) Arb. LR 212 (Bom.). It is pointed out that the six months limitation period prescribed in the Bye-law 3 of Chapter XI of the NSE bye-laws has been upheld by the Supreme Court in *HCG Stock and Share Brokers Ltd v. Gaggar Suresh* AIR 2007 SC 395 and *The Stock Exchange, Mumbai v. Vinay Bubna* AIR 1999 Bom 266. As regards the applicability of Section 28 of the Contract Act, it is submitted that in view of the exception to the said provision, arbitration proceedings were not covered therein. It is submitted that it possible for the parties to agree to a reduction in the limitation period and this has been recognized in *National Insurance Co. Ltd v. Sujir Ganesh Nayak & Co.* AIR 1997 SC 2049.

13. The above submissions have been considered. The following observations of the Supreme Court in ***National Insurance Co. Ltd. v. Sujir Ganesh Nayak & Co.*** make it clear that parties can agree to a period of limitation which would then prevail uninfluenced by Section 28 of the Contract Act.

“The legal position that emerges is that an agreement which in effect seeks to curtail the period of limitation and prescribes a shorter period than that prescribed by law would be void as offending Section 28 of the Contract Act. That is because such an agreement would seek to restrict the party from enforcing his right in Court after the period prescribed under the agreement expires even though the period prescribed by law for the enforcement of his right has yet not expired...
(emphasis supplied)”

14. As pointed out by learned counsel for the Respondent, the NSE bye-laws, rules and regulations would have statutory force. These statutory bye-laws were brought into effect with the approval of the Securities Exchange Board of India (‘SEBI’) under Section 9 of the Securities Contract (Regulation) Act, 1956. The said bye-laws would prevail over the Limitation Act, 1963.

15. This Court is unable to find any serious error having been committed by the learned Arbitrator in holding the Petitioner’s claim to be barred by limitation.

16. As regards the instructions given by the Petitioner in its letter dated 17th June 2005, it will be recalled that the learned Arbitrator held the said instruction to be an off-market transaction. The Award of the learned Arbitrator in this regard is based on a possible interpretation of the bye-laws. Indeed, it does not envisage the carrying out of off-market transactions by ISL. Consequently, even on this ground, no error can be found with the impugned Award.

17. For the aforementioned reasons this Court does not find any ground having been made out under Section 34 of the Act for interference with the impugned Award.

18. The petition is dismissed but in the circumstances with no orders as to costs.

Sd/-
S. MURALIDHAR, J.

APRIL 25, 2012
s.pal