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IN THE HIGH COURT OF DELHI AT NEW DELHI

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O.M.P. 67/2012

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Judgment Delivered on: 31.01.2012

VINAY KUMAR AGGARWAL Petitioner
Through: Mr.P.S. Rana, Advocate

versus

M/S PACE STOCK BROKING SERVICES
PVT LTD AND ANOTHER Respondent
Through: Mr.Rajesh Rai, Advocate

**CORAM:
HON'BLE MR. JUSTICE G.S.SISTANI**

G.S.SISTANI, J. (ORAL)

1. Present objections have been raised pertaining to the award dated 18.05.2011 and the award passed by the appellant tribunal dated 17.11.2011.
2. The necessary facts to be noticed for disposal of the present objections are that the petitioner entered into a Member Client Agreement with respondent no.1 and thus became the client of respondent no.1. Respondent no.1 is a member of the National Stock Exchange, as a stock broking firm. It is the case of the petitioner that respondent no.1 committed certain irregularities in the account of the petitioner and thus caused loss to the petitioner. On account of irregularities in the account, the petitioner raised a dispute and the same was referred to the panel of arbitrators appointed by the National Stock Exchange, comprising Justice, V.S. Aggarwal (Presiding Arbitrator), Justice M.A. Khan and Shri

Tejinder Singh Laschar. The arbitrators vide their award dated 18.05.2011 dismissed the claim of the petitioner. As per the guidelines and bye-laws of the National Stock Exchange, the petitioner herein filed an appeal before the Arbitral Tribunal, which was also dismissed by an order dated 17.11.2011.

3. Counsel for the petitioner submits that learned arbitrators failed to consider that respondent no.1 had made illegal entries in the account of the petitioner. It is also submitted that petitioner had not given any mandate to respondent no.1 to sell 2000 shares of TATA STEEL, which were purchased by the petitioner, which resulted in loss in the sum of Rs.9.50 lakhs to the petitioner. It is further contended that the petitioner had in fact entered into two agreements with respondent no.1 - the first agreement was a Member Client Agreement and the second agreement was with respect to Sub-brokerage Agreement by which the petitioner was appointed as a sub-broker by the respondent.
4. The main thrust of the argument of counsel for the petitioner is that while the arbitral tribunal has given a categorical finding that the sub-brokerage agreement cannot be a subject matter before the tribunal as the arbitral tribunal has been appointed as per the guidelines and bye-laws of National Stock Exchange, counsel submits that entries of the sub-brokerage agreement have been considered by the arbitrators while ruling that they have no jurisdiction over the said agreement.
5. Counsel for the petitioner next submits that entries in the statement of account are inter-connected and thus both the disputes should have been resolved by one set of arbitrators. Counsel further submits that even in the appeal filed, the appellate tribunal has not considered the submissions, which have been made by counsel for the petitioner.
6. I have heard counsel for the petitioner and also perused the award dated

18.05.2011 and the order of the appellate tribunal dated 17.11.2011. The Arbitrators have considered the submission made by counsel for the petitioner. As per the award 2000 shares pertaining to the TATA STEEL were sold by respondent no.1 on the basis of instructions received from the petitioner herein. Respondent had relied on a recorded conversation between the petitioner and the respondent, and the petitioner did not deny the same. Even otherwise, the arbitrators have recorded a finding that a sum of Rs.1.60 lakh was received by the petitioner in full and final settlement between the parties. The operative portion of the award dated 18.05.2011 reads as under:

“The dispute however still was raised with respect to shares of Tata Steel. The respondent’s contention, as already referred to above, is that the said 2000 shares of Tata Steel were sold with the consent of the claimant. The respondent has produced a copy of the recorded conversation with its transcription. During the course of submissions the claimant’s representative did not have the courage to deny the same. Perusal of the same clearly leads one to hold that the sale of the same was with the consent of the claimant.

Not only that pertaining to the said trading account it appears that matter had already been settled between the parties.

Annexure R-12 is the copy of the receipt given by the claimant, it reads:

“Dear Sir,

Please refer to my trading account code (SC01) in the name of Vinay Kumar Aggarwal. I would request you to please reverse the debit entry amounting to Rs.1,60,357 dated 28-03-2009 from my above mentioned account. After the reversal of this entry, my financial and securities balances with you and with Pace Stock Broking Services Pvt. And Pace Commodity Brokers Pvt. Ltd. will be NIL.”

In pursuance to the same, according to the respondent a cheque of Rs.1,60,000/- in favour of the applicant dated 11th November, 2009

was issued which is stated to have been encashed. This has not been denied in the rejoinder that has been filed. Once full and final settlement has been arrived or once it has been stated that reversal of the said entry that has been done and the cheque has been encashed without any protest, it is too late in the day now to take up an issue that the shares of Tata Steel were sold without his consent. Keeping in view the tape recording and the said receipt it must be held that claim is without merit.

For these reasons the claim must fail and is accordingly, dismissed.”

7. In the appeal the arbitral tribunal has also considered the rival submissions which have been made, and dealt with the same in the order dated 17.11.2011 in the following manner:

“10. Lastly, it has been submitted that the appellant was pressurized or coerced to sell Tata Steel shares. We are of the opinion that the submission does not merit any serious thought. The appellant did not raise the contention in the original arbitral proceedings. It is well settled that the party cannot be allowed to argue any new fact in the appeal. it also bears notice that the issue has been pressed after expiry of more than two years of the sale of shares. Even now, apart from the bald statement there is no evidence before us to support the allegation.

11. The appellant in the memo of appeal did not dispute the finding of the Arbitral Tribunal to the effect that he was paid an amount of Rs.1,60,000/- as full and final settlement of his claim. However, in the rejoinder filed during the course of hearing the appellant denied that any statement was arrived at and asserted that the dispute survived. In our view, the evidence available on record discusses us to take a view different from that arrived at in the impugned award after due discussion.”

8. The law with regard to section 34 of the Arbitration & Conciliation is well settled. The jurisdiction of the Court to interfere with the award made by an arbitrator is very limited and consequently the court while entertaining

an objection petition under Section 34 of the said Act cannot sit as a Court of Appeal and that evidence is not to be re-appreciated.

9. In **Food Corporation of India Versus Joginderpal Mohinderpal and Anr** reported in **Jmt Today 1989 (2) SC 89** it has been held that “it is not necessary for a Court to examine the merits of the award with reference to the materials produced before the Arbitrator. The Court cannot sit in appeal over the views of the arbitrator by re-examining and re- assessing the materials” (SC pg. 95, para 10). The observations of the Apex Court in the case of **State of Rajasthan Versus Puri Construction Co. Ltd And Another** reported in **(1994) 6 Supreme Court Cases 485** after **referring to a catena of decisions** are worth noting on this issue wherein it has been held that “The arbitrator is the final arbiter for the dispute between the parties and it is not open to challenge the award on the ground that the arbitrator has drawn his own conclusion or has failed to appreciate the facts. If the parties have selected their own forum, the deciding forum must be conceded the power of appraisal of evidence. The arbitrator is the sole judge of the quality as well as the quantity of the 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”. Similar view was reiterated in **Bijendra Nath Srivastava (Dead) through LRs Versus Mayank Srivastava And Others** reported in **(1994) 6 Supreme Court Cases 117** with a further observation that “the Court should approach an award with a desire to support it, if that is reasonably possible, rather than to destroy it by calling it illegal” (SCC pg. 134, para 20).
10. Reference was also made in this case to another decision of the Apex Court in **Sudarshan Trading Co. Versus Govt. of Kerala** reported in **(1989) 2 SCC 38** holding that:

“there is a distinction between disputes as to the jurisdiction of the

arbitrator and the disputes as to in what way that jurisdiction should be exercised. One has to determine the distinction between an error within the jurisdiction and an error in excess of the jurisdiction. Court cannot substitute its own evaluation of the conclusion of law or fact to come to the conclusion that the arbitrator has acted contrary to the bargain between the parties”.
(emphasis supplied).”

11. Reliance is also placed to the observations in the decision of the Apex Court in the case **Municipal Corporation of Delhi Versus Jagan Nath Ashok Kumar** reported in **(1987) 4 SCC 497** holding that “that the appraisal of evidence by the arbitrator is ordinarily never a matter which the Courts questions and considers. It may be possible that on the same evidence the Court may arrive at a different conclusion than the one arrived at by the arbitrator but that by itself is no ground for setting aside the award”.
12. Reliance is also placed in this case on **Indian Oil Corpn. Ltd Versus Indian Carbon Ltd** reported in **(1988) 3 SCC 36** wherein the Court has held that “the court does not sit in appeal over the award and review the decisions.”(SCC pg.500 - 503, para 26, 27 & 31).
13. In the light of the law laid down and applying the same to the facts of this case, I am of the view that the arbitral tribunal and also in the appeal the Arbitrators have considered the rival contention of both the parties. The Arbitrators have primarily reached a finding that 2000 shares of TATA Steel were sold with the consent of the respondent based on a copy of the recorded conversation with its transcript, which was not denied by the petitioner herein. The Arbitrators have also reached a finding that a sum of Rs.1.60 lakhs was paid to the petitioner in full and final settlement. I find no error in the Award of the Arbitrators. There is nothing to show that the Arbitrators have acted in excess of their

jurisdiction. Since, there is no infirmity in the findings of the Arbitrators the objections are dismissed.

G.S.SISTANI, J

JANUARY 31, 2012

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