

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
DECIDED ON: 08th July, 2013

+ **FAO(OS) 203/2013**

DEBJYOTI GUPTA Appellant
Through : Mr. Dipak K.Nag and Mr.
Snehasish Mukherjee, Advs.
versus

INDIABULLS SECURITIES LTD AND ANR Respondents
Through : None.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE NAJMI WAZIRI

% **MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)**

1. The appellant claims to be aggrieved by an order of the learned Single Judge dated 25th April, 2012 rejecting his petition under Section 34 of the Arbitration & Conciliation Act. Since he was not represented on the date the order was made, an application was moved for recall of the order explaining the grounds for the counsel's inability to be present. These found favour with the learned Single Judge who accepted the reasons but at the same time refused to interfere with the impugned order by the subsequent order dated 12th February, 2013.

2. Learned counsel for the appellant Mr. Nag argued that the

interpretation of Byelaw-3 of Chapter-XI of the National Stock Exchange Byelaws, adopted by the Arbitrator and endorsed by the learned Single Judge is erroneous. He relied upon the provisions of the Limitation Act, 1963 as well as Section 28 of the Contract Act, 1872. Learned counsel further stated that even agreeing to the relevant byelaw, the time taken in conciliation proceeding had to be excluded and that having regard to the facts and circumstances of the case, the benefit of that part of bye-law ought to have been considered. Counsel lastly urged that the impugned order observes erroneously that the award to the extent it dealt with off-market transactions is based on “a possible interpretation” which is impeachable. Counsel attacked on the findings of the learned Single Judge stating that it was speculative and did not contain reasons.

3. The award in this case was made pursuant to a dispute between the appellant – an investor who was also appointed as a Remisier by the respondent National Stock Exchange (NSE) in terms of the letter dated 1st February, 2002. His mandate was to introduce clients to the NSE against commission payable. Apparently, the NSE opened their books in March, 2002 and a trading account with customer

identification number was furnished to the appellant for which he paid Rs.10,000/-. At the appellant's request, the NSE opened another trading account in April, 2002 in the joint names of the petitioner and members of his family. The dispute sought to be raised pertained to certain transfer of shares of Glaxosmithkline Beecham Consumer Healthcare Limited in May, 2002. The second dispute pertained to certain off-market transaction. When the dispute was sought to be pressed – pursuant to the claim filed with the Arbitrator on 31st October, 2005 - the NSE resisted the proceedings urging that in terms of Bye-law -3, the claims were time-barred.

4. The relevant Bye-law 3 in Chapter XI of the National Stock Exchange which concededly has statutory effect reads as follows:-

“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. ”

5. The disputes concededly were arbitrable in terms of the agreement between the parties. Dealing with this contention, the award stated as follows:-

“3.2. The Transaction Statement filed as the Applicant’s exhibit No.P3 clearly establishes that as on 31.05.2002, Dhee Ranjan Sen Gupta, Suprova Sen Gupta and the applicant had a balance of 4114 shares of Glaxosmithkline Beecham Consumer Healthcare Ltd. in the Demat Account No.10026477 maintained by them with Respondent Company. The said Transaction Statement also shows that the shares in question were transferred to the Demat Account No.10026477 from the Demat Account No.11865827 with the ICICI. Exhibit No.P9 furnished by the applicant shows that on or about 17.06.2005, the aforesaid three joint owners of the said 4114 shares had instructed the respondent Company to transfer the said shares from the Demat Account No.10026477 with the respondent to the Demat Account No.11865827 maintained with the ICICI and this transfer was to be effected as an off market trade. As such this instruction was outside the purview of National Stock Exchange of India Ltd. (NSEIL).”

3.3 Exhibit No.P8 furnished by the Applicant shows that on the 3rd November, 2004, the applicant had lodged his complaint against the respondent Company with the National Stock Exchange of India Ltd. (NSEIL) on the following scores:

(a) Non-receipt of dividends amounting to Rs.25,000/- against the said 4114 shares of Smithkline Beecham Consumer Healthcare Ltd.

(b) No response as to status of the aforesaid 4114 shares and “No response for transfer of Rs.1,00,000/- from ID 10839.”

3.4 The appellant’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 format complaint or dispute in respect of the sum of Rs.10,000/- till 31.10.2005 when he filed the Arbitration Application. As regards the claim for Rs.1,00,000/-, the format 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 (30.6.2003) 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.

3.5 The applicant’s exhibit No.P3 (Transaction Statement) shows that the aforesaid 4114 shares of Glaxosmithkline Beecham Consumer Healthcare Ltd. were transferred to the applicant’s joint Demat Account No.1002647 with the respondent Company from Dhee Ranjan Sen Gupta’s Demat Account No.11865827 with the ICICI by way of an off market transaction. And the applicant’s exhibit No.P9 shows that he had instructed the respondent on 17.06.2005 to retransfer these shares back to

his aforesaid demat account with the ICICI as an off market transaction. Since the NSEIL was in on way connected with the compliance or alleged non-compliance of the said transaction and/or instruction, the matter cannot be agitated before this tribunal set up under the Byelaws of NSEIL.”

6. So far as the contention regarding inapplicability of Bye-law 3 and the further submission that it amounted to an unenforceable condition as it shortened the period of limitation is concerned, this Court notices that the impugned order had discussed and relied upon several rulings of various Courts including *HCG Stock and Share Brokers Limited v. Gaggar Suresh*, AIR 2007 SC 395. The Supreme Court ruling in *HCG Stock (supra)* had in fact extracted and discussed the import of Bye-law 3 of the NSE Regulation and further gone on to affirm the view of the Bombay High Court from which the appeal was preferred. The Bombay High Court had held that such conditions were binding and a party who had approached with a time-barred claim could not be heard to say that the conditions were unenforceable. This Court, consequently is bound by the judgment of the Supreme Court. The Court additionally notices that in terms of Section 29(2) of the Limitation Act, 1963, if a special or local law prescribes period of limitation different from the one prescribed under

the Schedule to the Limitation Act, such special law limitation would prevail over the terms of the Schedule to the Limitation Act. Therefore, even according to the statute, relied upon by the appellant, i.e. Limitation Act, 1963, the terms of Bye-law -3 had to prevail. We, therefore, find no infirmity with the reasoning of the learned Single Judge.

7. The second argument which the appellant had pressed into service was that the period spent in attempting settlement either through conciliation or any other mode had to be excluded. The Court is of the opinion that the submission is insubstantial. Neither the claim before the Arbitrator nor the objections under Section 34 set out in any specific manner, the details of such attempts for settlement of conciliation. If a party seeks the benefit of exclusion which is permissible in accordance with any law, akin to provisions of Sections 14, 18 etc. of the Limitation Act, the onus is upon such party to clearly plead and prove the attendant facts and circumstances. In the absence of any pleading or any submission in that regard, the Court holds that such arguments are without force.

8. As far as the last submission with regard to the error of the learned Single Judge in upholding the award so far it pertains to the off-market transactions, the Court does not find any reasons to interfere. Once the Arbitrator found that the claims were not entertainable, the question of going into their legality would not arise.

9. Having regard to the submissions made by the learned counsel for the appellant and the grounds mentioned in the appeal, we are of the view that there is no merit in the appeal, which is, therefore, dismissed.

**S. RAVINDRA BHAT, J
(JUDGE)**

**NAJMI WAZIRI, J
(JUDGE)**

**JULY 8, 2013
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