

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

+ **FAO 32/2012**

% 21st March, 2014

M/S SSJ FINANCE AND SECURITIES PVT LTD Appellant
Through: Mr. Sunil Goyal, Advocate.

VERSUS

PRABHAT STOCK SHARES BROKERS PVT. LTD. Respondent
Through: Mr. Amit Kumar Pandey, Advocate.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This first appeal is filed under Section 37 of the Arbitration & Conciliation Act, 1996 (hereinafter referred to as 'the Act') impugning the judgment of the court below dated 30.11.2011 by which the objections filed by the respondent herein under Section 34 of the Act were allowed and the Award dated 8.12.2009 passed in favour of the appellant for recovery of Rs.15,12,398.68/- alongwith interest @ 12% per annum simple was set aside. In the arbitration proceedings, the appellant/claimant claimed this amount as balance due on account of purchase of 50,000 shares by the

appellant/claimant/broker of the company EPIC Energy Limited for the respondent.

2. The facts of the case are that the appellant/claimant filed arbitration proceedings to recover the balance due on account of purchase of 50,000 equity shares of EPIC Energy Limited for and on behalf of the respondent. The respondent failed to make payment and consequently appellant was forced to sell the shares in the market, and consequently the claim petition was filed with respect to the balance/loss payable by the respondent to the appellant. The respondent contested the claim filed by the appellant by contending that the order was placed not for 50,000 shares as was the case of the appellant/claimant but only for 5,000 shares. It was pleaded that the mistake was brought to the notice of the appellant by telephone on the next date and the appellant had agreed to send the fresh contract note of 5,000 shares but it did not. The case of the respondent further was that ultimately it sent a letter dated 6.2.2009 putting the facts on record.

3. Before the arbitration panel, the appellant led evidence to show that the respondent was putting up a false case and in fact order was placed not for 5,000 shares but for 50,000 shares. This the appellant did by stating

that in fact employees of the respondent-company were present at the different counters when orders were placed for 50,000 shares. It was also stated before the arbitrators that 50,000 shares were not purchased at one go but were purchased in different lots at different trading counters in the appellant's company office. Appellant disputed the fact that any oral conversation as alleged by the respondent took place that only 5,000 shares were ordered to be purchased. Appellant in fact filed a statement of account showing that after ordering of 50,000 shares as many as seven payments by means of cheques were made to the appellant by the respondent-company and the cheques being of the amounts of Rs.49,800 (two), Rs.49,490, Rs.49,700/-, Rs.39,797/-, Rs.29,848/-, Rs.44,877/- and Rs.34,902/-. These are payments which were made from 28.1.2009 to 7.2.2009 after the transaction in question of purchase of 50,000 shares by the appellant on behalf of the respondent on 28.1.2009. The appellant also proved before the arbitrators that the reason for the respondent taking up a false case was that the share price of the EPIC company kept on falling everyday by touching the lower circuit every day after 28.1.2009 and that the price of this share which was bought at Rs.84/- drastically fell to Rs.27/- within one month i.e as on 27.2.2009.

4. The arbitrators panel accepted the case as pleaded by the appellant and some of the relevant observations in the Award dated 8.12.2009 read as under:-

“From appraisal of the copy of account of the respondent submitted by the applicant, apart from receipt of Rs.2,50,000 there are debit entries for account opening charges (Rs.300); and Rs.42,17,614.80 as cost of the share purchased on 28/01/2009. The various credit entries (fifteen) for Rs.49,800, 49800, 49800, 49490, 49700, 39797, 29848, 44877, 34902, 48865, 48865, 46865, 29910, 19940 and Rs.39390 totalling to Rs.6,31,849/- from 30th January 2009 to 02nd April 2009. The applicant also levied delayed payment charges. Further credited the account of the respondent with sale proceeds of the shares on different dates from 11/02/2009 to 19/02/2009 to the tune of Rs.19,51,286.61.

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From the pleadings, documents and arguments what is evident is that there are some admitted facts of the client member relationship and transaction held between the parties and that an amount of Rs.2,50,000/- was paid by the respondent to the applicants.

The copy of bank accounts filed by the respondent showed only few transactions during the relevant period, deposits mainly in Cash to clear the cheques/Fund transfers on same day.

The accounts of the respondent filed by the claimant are showing the transactions for the payment made by the respondent to them and the amount credited to the account of the respondent for the sale of shares and debit entries for the purchase of shares, delayed payment charges etc and a debit balance.

The respondent had alleged that they had not purchased 50,000 shares and ordered only for 5,000 shares and at the same time admitted the knowledge of the transaction of 28/01/2009 and receipt of the contract note. But except some verbal objections to the transactions has relied

on letter dated 06/02/2009 alleging to be posted to Mumbai office of the applicant on 10/02/2009.

The respondent has also denied any payment made to the applicant subsequent to the date of transaction but the claimant has filed statement of account from 01/01/2009 to 10/02/2009 but confirmed by Mr. Vimal Kumar Sharma, Director of the Company showing payments received from the respondent.

The claimant has filed stock prices report of Share “EPIC Energy” for the period 28/01/2009 to 28/02/2009 which tells the story of the market of this share during the period and there has been abrupt fall in the price of the stock when it fell from Rs.84/- on 28/01/2009 to around Rs.27/- on 27th February, 2009.

The claimant has also filed his attempt to square off the share in the market and submitted sell Order Log Report that there was lower circuit and claimant was able to sell the shares only from 11/02/2009 onwards and not before, due to lower circuit.

From the above, the irresistible conclusion is that after purchasing the shares, due to abrupt market fall, the respondent had made a mind to deny the transactions. Whereas the respondent had not adopted the procedure mentioned for the objection to the transaction and the contract note rather admitted that they had received the contract note. The statements of accounts had also been confirmed by the respondent. The only letter relied upon dated 06/02/2009 allegedly posted on 10/02/2009 can not be of any help to the respondent. In the circumstances of the version of the respondent seems to be an after thought to evade liability.”

5. In addition to the above said reasoning of the arbitrators, this Court would like to note the fact that respondent admittedly had paid a sum of Rs.2.50 lacs to the appellant as advance/margin money at the commencement of the business in January, 2009. If according to the respondent the trade was only to be for 5,000 shares, then, definitely the

respondent would have not only have asked for the 5,000 shares purchased on its behalf to be credited to its account but would have more importantly asked if any balance was due over and above or below the sum of Rs.2.5 lacs and which would be either payable to the respondent or payable by the respondent. Admittedly this was not done.

6. The court below has allowed objections under Section 34 filed by the respondent essentially on one point that the letter dated 6.2.2009 of the respondent to the appellant was in fact dispatched to the appellant about a day or two later and thereafter would have been received, and that there need not be strictness to objections as to be raised only within 48 hours as was the case of the appellant. However, I find that the court below has completely misdirected itself in failing to understand the stock market transactions where every day is very crucial because it is not unknown that there is considerable volatility in the market and hence the need for strictness with regard to timings of raising of objections within 48 hours. It is relevant to note that objections should have been raised by 30.1.2009 and admittedly the first written communication by the respondent to the appellant is dated 6.2.2009, has been dispatched only a day or two later as stated by the Court below, and in fact would have reached the appellant only

by about 8/9.2.2009. In a stock market scenario, even two days are vital and it is wholly impermissible in law for the court below to *suo moto* extend the time which was agreed to by the parties as 48 hours. Courts have no power to re-write the contracts much less in stock exchange transactions where share price volatility can result in difference of lacs of rupees to either of the parties. I may note that as per Section 28(3) of the Act, arbitrators and the Courts are mandated to act as per the contract entered into between the parties and not beyond the contract entered into between the parties. A Court hearing objections has no power to re-write the contract by calling the extension of time a public policy issue. *Suo moto* extension of agreed time between the parties, in my opinion, is not a matter of public policy more so in stock exchange transactions.

7. I would also like to note that once the appellant led the necessary evidence before the arbitrators with respect to payments having been made by the respondent by means of cheques from 28.1.2009 to 7.2.2009, and the share price of the company whose shares were purchased having drastically fallen, these aspects were sufficient proof to falsify the case as put forth by the respondent. I have also referred to an additional fact that respondent did not ask for crediting of the 5,000 shares in its account

with the fact of asking as to whether any difference is payable or not by the respondent to the appellant or vice-versa. Appreciation of evidence is within the jurisdiction of the arbitrators and once two views are possible and plausible, Courts hearing objections under Section 34 of the Act cannot interfere to one possible and plausible view which is taken by the arbitrators. Courts can only interfere if the findings and conclusions are perverse i.e only one view is possible yet the arbitrators take a totally different/opposite view. In the facts of the present case, arbitrators, in my opinion, had not only taken one possible view, they had taken that view which naturally arises as per the pleadings and documents which emerged in the arbitration proceedings.

8. Learned counsel for the respondent firstly argued that the arbitrators had noted that a telephonic conversation did take place between the parties, and which according to the respondent clearly shows that the respondent had objected to purchase of 50,000 shares instead of 5,000 shares, however, I cannot agree with the argument because the fact that a telephonic conversation took place is no indication of what actually transpired in the telephonic conversation. Whereas the case of the respondent is that it had pointed out the aspect of wrongly purchasing of 50,000 shares, appellant had contended to the contrary. Therefore, merely

because there was a telephonic conversation, automatically it cannot mean that the telephonic conversation had a content which was the case of the respondent.

9. Learned counsel for the respondent also argued that the payments which have been made by cheques on behalf of the respondent, and as found in the statement of account proved by the appellant before the arbitrators(which statement of account also bears the stamp and signatures on behalf of the respondent by one Sh. Vimal Kumar Sharma) cannot be taken into account because onus was on the appellant to show that the payments were made by an authorized person of the respondent. Learned counsel for the appellant however rightly refuted this argument by stating that no such case was put up by the respondent in the arbitration proceedings. Also, in my opinion, the case now set up is baseless because the payments which are deposited in the account of the appellant by the appellant is not in cash but by means of cheque and surely these are cheques of the respondent-company. If the cheques were issued without authorization, then, surely the respondent-company would have initiated very strict proceedings, possibly a criminal case, against the person who would have issued the cheques in favour of the appellant but admittedly

nothing has been filed on the record of the arbitrators or before the court hearing objections or even before this Court that the respondent has taken action against any of its official for the alleged payments totaling to a sum of Rs.8.52 lacs allegedly being wrongly made to the appellant. Therefore, the stand now taken by the respondent is absolutely baseless and totally false.

10. In view of the above, impugned judgment of the court below dated 30.11.2011 is set aside. Objections of the respondent under Section 34 would stand dismissed and the Award of the arbitrators dated 8.12.2009 will be binding and operative. Parties are left to bear their own costs.

MARCH 21, 2014
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VALMIKI J. MEHTA, J