

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **O.M.P. No.465/2007**
% **14th September, 2015**

MS. RENUKA OHRI Petitioner
Through: None.

Versus

M/S INDIABULLS SECURITIES LTD. & ORS. Respondents
Through: Mr. Ashish Kothari, Advocate.

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

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This petition under Section 34 of the Arbitration & Conciliation Act, 1996 (hereinafter referred to as 'the Act') impugns the Award dated 2.4.2007 passed by a panel of three Arbitrators of the National Stock Exchange of India Limited viz Justice (Retd.) V.S. Aggarwal (Presiding Arbitrator), Sh. R.K. Ahooja and Sh. Ravi Kant.

2. By the impugned Award, the Arbitration Tribunal has dismissed the claim petition which was filed by the petitioner whereby

petitioner sought prayer against the respondent no.1/M/s Indiabulls Securities Ltd to give benefit to the petitioner of the value of the 300 shares of M/s Indiabulls Securities Ltd of an amount of Rs.72,07,110/- said to have been purchased by the respondent no.1 on payment being made by the petitioner.

3. The facts of the case are that petitioner claims to have opened a trading account with the respondent no.1 on 18.4.2006. Petitioner states that she gave three cheques of Rs.5 lacs each dated 27.4.2006, 2.5.2006 and 17.5.2006 to the respondent no.1 for purchase of 300 shares of M/s Unitech Ltd. Petitioner claims that respondent no.1 however did not give delivery of the shares though the respondent no.1 had purchased the shares at Rs.5503/- each and had demanded payment of the balance amount from the petitioner. Petitioner further claims that she refused to pay any amount to the respondent no.1 unless a contract note was issued to her for the purchase made. Petitioner then alleges that Mr. Rohit Kumar/respondent no.2 of the respondent no.1/company persuaded her to sign certain blank papers to complete certain formalities. Petitioner then avers that respondent no.1 has wrongly shown amounts due from her to the respondent no.1 in the F&O segment although no trading was done by her in the F&O segment.

4. Respondent no.1 appeared in the arbitration proceedings and denied the claim of the petitioner. Respondent no.1 filed before the Arbitration Tribunal the transactions' contract notes alongwith the certificates of the courier agency of having sent the contract notes to the petitioner. More importantly, the respondent no.1 argued that petitioner was not a novice but had experience in share trading of six years and that the petitioner had duly signed and acknowledged the statement of accounts for the period of 22.4.2006 to 8.5.2006 showing that all the transactions in the account were entered into by the respondent no.1 at the behest of the petitioner. Respondent no.1 also offered to produce an audio CD containing the recording of the instructions given by the petitioner's/applicant's husband who was authorized representative of the petitioner.

5. The Arbitration Tribunal has dismissed the claim of the petitioner by giving the following salient and valid reasons, which this Court accepts as correct as they are not in any manner perverse:-

- “i) The applicant's claim is that she had asked the respondent to purchase 300 Unitech shares on her behalf. In paragraph 2 of her claim she states that Unitech shares was hovering around Rs.5500/-. For 300 shares the total value of such shares would be in excess of Rs.15 Lakhs. Yet the payments made were spread out in three installments i.e. Rs.5 Lakhs each given on 27.04.2006, 02.05.2006 and 17.05.2006. Clearly if the intention was to purchase and also take delivery of all the 300 shares, the payment would have been in one lump sum.

The periodical payment of Rs.5 Lakh each in thus indicative of a different purpose and supports respondent's version that these payments were meant to be margin payments.

- ii) The applicant's case is that she wrote a letter to the Investor Cell of NSE on 03.07.2006. The last payment was given by cheque dated 17.05.2006. There was thus a gap of one and a half months. The applicant had been engaged in share trading for six years. An experienced investor is hardly likely to set idle if her order for which she has paid a sizeable sum of Rs.15 Lakhs is not implemented for such a long period. This delay is more consistent with respondent's version that her complaint is an after thought.
 - iii) Clause 2.21 of the Member Client Agreement reads that "The Member's own records of the trades/transactions maintained through computer systems or otherwise shall be accepted as conclusive and binding of the client for all purposes".
 - iv) The clinching and conclusive point against the applicant is the statement of account which admittedly bears her signatures in token of verification. The learned Counsel for the applicant has sought to discredit it by referring to applicant's allegation that she had been misled to sign some blank papers and one of these had been used to super-impose the statement of account. The applicant is not a novice but has been, as already stated, engaged for some years in share trading. What persuaded her to sign the blank papers has also not been explained. In view of this her version lacks creditability. Therefore it has to be presumed that she had acknowledged the various trades given in the statement after due verification. Consequently her whole case that she had authorized no other trades except the purchase of Unitech shares falls to the ground.
4. For the aforesaid reasons we find that the applicants claim is not sustainable. The same is accordingly rejected.

Sd/-
Justice (Retd.) V.S. Aggarwal
(Presiding Arbitrator)
2.4.2007

Sd/-
R.K. Ahooja

(Arbitrator)

Sd/-
Ravi Kant
(Arbitrator)”
(underlining added)

6. The law with respect to challenge to an award under Section 34 of the Act is now well settled. This Court does not sit as an appellate court to re-apprise the findings of facts by the arbitration tribunal. This Court does not interfere with the findings and conclusions of the arbitration tribunal if the arbitration tribunal takes one possible and plausible view. This Court can interfere only if the award is against the law of the land (Section 28(1)(a) of the Act) or the provisions of the contract (under Section 28(3) of the Act) or the award is perverse. This has been held by the Supreme Court in its judgments in the cases of *Oil & Natural Gas Corporation Ltd. Vs. Saw Pipes Ltd.*, (2003) 5 SCC 705 and *Oil & Natural Gas Corporation Ltd. Vs. Western Geco International Ltd.*, AIR 2015 SC 363.

7. A reading of the aforesaid discussion of the Arbitration Tribunal shows that there is no illegality or perversity in the same more so because the petitioner was a trader for the last six years before the disputed transaction and if shares of M/s Unitech Ltd at one go were purchased by the

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petitioner then payment of all the shares should have been made in one go and not in tranches. Payments in three tranches/instalments over a period of time suggest the dealings of the petitioner in F&O segment and dealings were not only for a single transaction for purchase of 300 shares of M/s Unitech Ltd. It may be noted that the total amount of Rs.15 lacs in any case did not cover the cost of the entire 300 shares of M/s Unitech Ltd which are said to have been purchased by the respondent no.1 for the petitioner at Rs.5503/- each. Whatever doubt which existed stood removed on the signatures of the petitioner appearing on the statement of account for the relevant period showing the net effect of the transactions.

8. Though the petitioner contends that the petitioner was not given an opportunity to lead evidence, the objection is misconceived inasmuch as Section 19 of the Act lays down that the arbitration tribunal is not bound by the Code of Civil Procedure, 1908 (CPC) and the Indian Evidence Act, 1872 and the arbitration tribunal can lay down its own procedure. Also, I do not find any copy of the application which has been filed before this Court by which the petitioner had asked the Arbitration Tribunal that the petitioner be permitted to lead evidence and yet petitioner was not allowed to lead evidence. Also, there is no reason for a person like the petitioner who has

been trading in shares for six years to sign blank papers and this stand of the petitioner is unbelievable including because the Arbitration Tribunal rightly records that no reasons have been given as to why blank papers were signed by the petitioner.

9. In view of the above, I do not find any merit in the petition and the same is therefore dismissed. Parties are left to bear their own costs.

SEPTEMBER 14, 2015
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VALMIKI J. MEHTA, J.