* IN THE HIGH COURT OF DELHI AT NEW DELHI

% **Date of decision: 18th September, 2015.**

\+ **W.P.(C) No.6591/2015 & CM No.12016/2015 (for stay)**

RAKESH KUMAR GARG **..... Petitioner**
Through: Mr. Vivek Aggarwal, Adv.

Versus

DSE FINANCIAL SERVICE LTD. **..... Respondent**
Through: None.

AND

\+ **W.P.(C) No.7088/2015 & CM No.12989/2015 (for stay)**

MALTI GARG **..... Petitioner**
Through: Mr. Vivek Aggarwal, Adv.

Versus

DSE FINANCIAL SERVICES LTD. **..... Respondent**
Through: None.

CORAM :-
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The petitioner in the two petitions being husband and wife have filed these petitions impugning the "Appellate Award" dated 26th December, 2014 and 1st October, 2014 respectively of the arbitration under the Bye-laws of the National Stock Exchange of India Limited (NSE). The petitions were

filed on 2nd July, 2015 and 22nd July, 2015 and though were listed first on 13th July, 2015 and 27th July, 2015 but were adjourned from time to time on the request of the counsel for the petitioners, without issuing notice therefor. The counsel for the petitioners has been heard.

2. It is the case of the petitioners that (i) they were associated with the respondent DSE Financial Services Limited (DSEFSL) as clients and also as SEBI registered sub-brokers in NSE Capital Market Segment and as authorized persons in NSE F&O Segment and in BSE Cash Agreement Segment respectively; (ii) that the respondent DSEFSL made a claim against the petitioners separately and which claims were referred to arbitration in accordance with the NSE Bye-laws; (iii) that the Arbitral Tribunal to whom the claim of the respondent DSEFSL against the petitioner in W.P.(C) No.6591/2015 was referred vide Arbitral Award dated 30th July, 2014, directed the petitioner to pay Rs.31,18,979/- with interest; (iv) the sole Arbitrator, to whom the claim of the respondent DSEFSL against the petitioner in W.P.(C) No.7088/2015 was referred, vide Arbitral Award dated 1st April, 2014, dismissed the claim of the respondent DSEFSL; (v) that the petitioner in W.P.(C) No.6591/2015 preferred an appeal to the Appellate Tribunal for setting aside of the award against him and the respondent

DSEFSL filed an appeal to the Appellate Tribunal for setting aside of the Arbitral Award of dismissal of its claim against the petitioner in W.P.(C) No.7088/2015; and, (vi) that the Appellate Tribunal vide Award dated 26th December, 2014 has dismissed the appeal of the petitioner in W.P.(C) No.6591/2015 but has vide Award dated 1st October, 2014 allowed the appeal of the respondent DSEFSL and allowed the claim of the respondent DSEFSL against the petitioner in W.P.(C) No.7088/2015 for a sum of Rs.22,94,338.70p.

3. Though the petitioners in their respective petitions have set out the grounds of challenge to the impugned Awards of the Appellate Tribunal but since I entertain doubts as to the very maintainability of these writ petitions in the face of availability of alternative remedy under Section 34 of the Arbitration and Conciliation Act, 1996, need is not felt to elaborate on the same.

4. I may in this regard notice that I have in :-

A. ***Roshan Lal Gupta Vs. Shri Parasram Holdings Pvt. Ltd.*** MANU/DE/0146/2009 held a suit, subject matter whereof was subject matter of arbitration under the Bye-laws of the NSE, to be not maintainable under Section 5 of the Arbitration Act and held a petition under Section 34 of the Arbitration Act, with respect to an Award of arbitration under the Bye-laws of NSE, to be maintainable;

B. ***Motilal Oswal Securities Ltd. Vs. Sandeep Paul*** MANU/DE/2045/2009 entertained a petition under Section 34 of the Arbitration Act with respect to an Arbitral Award under the Bye-laws of NSE;

C. ***Rajive Stock Brokers Limited Vs. Smt. Saroj Bala*** MANU/DE/1817/2009 again entertained objections under Section 34 of the Arbitration Act with respect to the Arbitral Award under the Bye-laws of NSE;

D. ***Biba Sethi Vs. Dyna Securities Limited*** MANU/DE/1325/2009, relying upon ***Harinarayan G. Bajaj Vs. Rajesh Meghani*** (2005) 10 SCC 660 held that the arbitration proceedings as provided for in the Bye-laws and Regulations of NSE are subject to the provisions of the Arbitration Act supra to the extent not provided for in the Bye-laws and is a contractual, though having a statutory flavor; (FAO(OS) No.253/2009 preferred thereagainst was dismissed as withdrawn on 30th March, 2011); and,

E. ***Sharad P. Jagtiani Vs. M/s. Edelweiss Securities Limited*** 208 (2014) DLT 487 again held a suit subject matter whereof was the subject matter of arbitration under the Bye-laws of the NSE to be not maintainable.

5. Being thus of the view that these writ petitions would not be maintainable, the counsel for the petitioners was asked to address on the same.

6. The counsel for the petitioners drew attention to ***Surya Dev Rai Vs. Ram Chander Rai*** AIR 2003 SC 3044 and to ***Cadre Estate Pvt. Ltd. Vs. Salochna Goyal*** MANU/DE/2597/2010.

7. While in the former, it was held that interlocutory orders passed by the Courts subordinate to High Court are open to challenge and subject to certiorari and supervisory jurisdiction of the High Court, in the latter, a Single Judge of this Court held a writ petition against the order of the Arbitral Tribunal to be not maintainable and further held that the mere fact

that waiting till the award to challenge the said order may cause inconvenience to the party / parties is not ground to entertain a writ petition at an interim stage. The counsel for the petitioner relies on an observation in para 25 of the latter judgment, that no party could be left remediless and on a reference in para 27 to a judgment of the Calcutta High Court holding a writ petition to be maintainable.

8. I fail to see as to how the aforesaid judgments come to the rescue of the petitioners on the aspect of maintainability of these writ petitions. What is sought to be done by the petitioners by these writ petitions could have very well been achieved by them by taking proceedings under Section 34 of the Arbitration Act and which the petitioners do not claim to have taken; perhaps realizing that the time within which the petitioners could have taken the proceedings under Section 34 had lapsed, these writ petitions have been filed.

9. Else, as far as the maintainability of writ petitions in arbitration matters are concerned, I have recently in judgment dated 15th September, 2015 in W.P.(C) No.8085/2015 titled ***Rajeev Gupta Vs. Delhi Metro Rail Corporation Limited*** on a consideration of a host of case law held the writ petitions to be not maintainable against an award / order of an Arbitral

Tribunal. It is not deemed appropriate to burden this judgment with the case law cited in the said judgment.

10. Though having held the writ petitions to be not maintainable but I am intrigued by the concept of an 'Appellate Award'. Having not found a provision in the NSE Bye-laws of appeal against the Arbitral Award while dealing with the judgments supra, I perused the Bye-laws of the NSE on the website of NSE and find that a provision with respect to appeal has been introduced in accordance with a Circular of Security and Exchange Board of India (SEBI) of the year 2010.

11. Chapter XI of the said Bye-laws deals with arbitration and it is deemed appropriate to set-out the relevant portions thereof hereunder:-

> *"**ARBITRATION***
>
> ***Definitions***
> *'Arbitrator' shall mean a sole arbitrator or a panel of arbitrators.*
> *'Act' shall mean the Arbitration and Conciliation Act, 1996 and includes any statutory modification, replacement or re-enactment thereof, for the time being in force.*
> *'Admissible claim value' shall mean the claim value admissible to the Constituent as ascertained by the Investor Grievance Redressal Committee or Panel and recorded in the directions or order.*
> *'Arbitral Award' shall mean an award passed by the Arbitrator.*

'Appellate Arbitrator' shall mean a panel of arbitrators who hears the appeal filed against the Arbitral Award.
'Appellate Arbitral Award' shall mean an award passed by the Appellate Arbitrator.

Reference to Arbitration

(1) All claims, differences or disputes between the Trading Members inter se and between Trading Members and Constituents arising out of or in relation to dealings, contracts and transactions made subject to the Bye-Laws, Rules and Regulations of the Exchange or with reference to anything incidental thereto or in pursuance thereof or relating to their validity, construction, interpretation, fulfilment or the rights, obligations and liabilities of the parties thereto and including any question of whether such dealings, transactions and contracts have been entered into shall be submitted to arbitration in accordance with the provisions of these Byelaws and Regulations. The Exchange shall be entitled to facilitate arbitration for such disputes and parties as mentioned in the provisions of Byelaw 1, including the arbitration reference filed by Trading Member against the directions or order of the Investor Grievance Redressal Panel (IGRP), by adopting such procedures as may be prescribed by it under this Chapter.

Arbitration proceedings subject to the provisions of the Act

(14) The arbitration proceedings as provided for by the provisions of these Byelaws and Regulations shall be subject to the provisions of the Act to the extent not provided for in these Byelaws or the Regulations.

Construction of references

(15) For the purposes of section 2(6) of the Act, in all claims, differences or disputes which are required to be submitted to arbitration as per the provisions of these Byelaws and the Regulations, wherever Part 1 of the Act leaves the parties free to determine a certain issue, the parties shall be

deemed to have authorised the Relevant Authority to determine that issue.

<u>Jurisdiction</u>

(17) *The arbitration and appellate arbitration shall be conducted at the regional centre nearest to the address provided by Constituent in the KYC form or as per the change in address communicated thereafter by the Constituent to the trading member. The application under Section 34 of the Act, if any, against the decision of the Appellate Arbitral Award passed by the Appellate Arbitrator shall be filed in the competent court nearest to the address provided by Constituent in the KYC form or as per the change in address communicated thereafter by the Constituent to the trading member.*

<u>Appellate Arbitration</u>

(19) *(a)A party aggrieved by an Arbitral Award may appeal to the Appellate Arbitrator against Arbitral Award within one month from the date of receipt of Arbitral Award and in such manner as prescribed by the Relevant Authority from time to time notwithstanding the provisions contained under Byelaw 3.*

(b) The Appellate Arbitrator shall consist of three arbitrators who shall be different from the ones who passed the Arbitral Award appealed against and such Appellate Arbitrators shall dispose of the appeal by way of issue of an Appellate Arbitral Award within three months from the date of appointment of the Appellate Arbitrator.

(c) <u>A party aggrieved by the Appellate Arbitral Award may file an application in accordance with Section 34 of the Act before the court of competent jurisdiction nearest to the address provided by Constituent in the KYC form or as per the change in address communicated thereafter by the Constituent to the trading member</u>."

12. Having entertained a doubt as to the applicability of Section 34 of the Arbitration Act with respect to an Appellate Award and having researched in the said aspect I find a Single Judge of this Court in ***Steel Authority of India Ltd. Vs. Engineers Project India Ltd.*** MANU/DE/2793/2014 to have after considering a host of case law held that there is no provision in the Arbitration Act that proscribes a two tier arbitration procedure and thus held a writ petition thereagainst also to be not maintainable. I do not find anything to the contrary.

13. There is thus no merit in the petitions.

Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J.

SEPTEMBER 18, 2015
'pp'
(***corrected and released on 21st October, 2015***)