IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO. 599 OF 2016

Westlite Infra Projects Pvt. Ltd ...Petitioner
V/s.
Anand Rathi Sharesh and Brokers
and anr. ...Respondents

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Mr. Anoshak Davar a/w. Mr. Rinku Valanju, Mr. Nikita Hinger, Mr. Vivek Shah i/by. Mr. Rinku Valanju, Advocate for the petitioner.

Mr. Simil Purohit i/by. M/s. Purohit & Co., Advocate for respondent no.1.

CORAM :- SMT. R.P. SONDURBALDOTA, J.
DATED :- 19TH OCTOBER, 2016.

P.C. :-

1). This petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 challenges Award dated 24th November, 2014 of the Tribunal consisting of three Arbitrators. Respondent no.1 is a share and stock broker duly registered with Stock Exchange Board of India and is a trading and clearing member of Stock Exchange Limited. Respondent no.2 is duly registered as a Sub-Broker of respondent no.1 in the Bombay Stock Exchange Limited (Capital Market Segment). The petitioner had also executed Member-Client Agreement dated 30th March, 2011 through respondent no.2. Along with it, it had executed Risk Disclosure document including KYC. The petitioner was alloted Client Y-Code No. VDR-33-W-00-1. The petitioner was an offline client and started trading in Bombay Stock Exchange (Capital Market Segment) through the oral instructions given to the representative of respondent no.1. It was issued and delivered contract notes-cum-bills, settlement bills through Digital name System on the email id furnished to respondent no.1. Respondent no.1 had maintained a Ledger Account. In its books, the petitioner had posted all the entries of the transactions in the ordinary and regular course of business. A statement of the Ledger Accounts was delivered to the petitioner at the registered address on quarterly basis. On 14th May, 2014 there was debit balance lying in the petitioner's Ledger Account to the sum of Rs.3,15,20,000.33p which remained due and payable to respondent no.1 in respect of the transactions on the Bombay Stock Exchange Ltd (Capital Segment). Thereafter, on 29th July, 2011 the petitioner had released a sum of Rs.64,00,000/- through its ING Vyasa Bank Ltd by way of RTGS payment. The second such payment released was of

Rs.1.00 crore through the same bank and the third payment was of Rs.3,00,000/- on 4th August, 2013. However, balance amount of Rs.3,15,00,000/- was not forthcoming. In view of the demands, the petitioner through its Director sent a Memorandum of Understanding (MOU) to settle the matter on 6th April, 2012 by email in which the petitioner had admitted the liability of Rs.2.5 crores in its Ledger Account. The MOU contained detailed proposals to pay and had requested for waiver of 15% interest and brokerage. Later, one more MOU was sent by the petitioner to the Director on 4th May, 2013.

2). Respondent no.1 sent Advocate's notice dated 23rd December, 2013 making demand for the payments. When the payment did not come through, arbitration was invoked.

3). The petitioner had contested the claim contending that, the claim of respondent no.1 was barred by the law of limitation. As far as the merits of the case are concerned, the petitioner disputed all the contentions of respondent no.1, except for execution of the Member-Client agreement, the three payments through its bank account and receipt of notice through email. The petitioner disputed any agreement with respondent no.1. As regards the substantial payments of money, through its bank account, it claimed that the money had come from some unknown source and the petitioner is not concerned with that money. Strangely, however, the petitioner did not even consider it necessary to make enquiries about deposits of huge amounts in its Bank Account. The petitioner also disputed receipt of the contract notice, bills etc. The Arbitral Tribunal disbelieved the entire denial on the part of the petitioner and passed the Award impugned in the petition.

4). Mr. Davar, the learned Advocate appearing for the petitioner, does not press the objection of claim of respondent no.1 being barred by the law of limitation. As regards the other claims, the Tribunal has held that denial of the petitioner of execution of all documents including KYC other then the Member Client Agreement is clearly an after-thought. It has observed that, respondent no.2 is not an illiterate lady but is a Director of the Company, a registered Company incorporated under the Indian Companies Act and the documents have not been just signed by Directors of the Company but also bear the rubber stamp of the Company. As regards the receipt of contract notes and bills etc. the Arbitral Tribunal at para-27(C) has observed that there was substantial undisputed communication by the petitioner through the very same email Account. In that case, it is difficult to believe that the petitioner had not received any of the documents sent through mail.

5). Mr. Davar then submits that the Arbitral Tribunal has not considered the extensive documents submitted by the petitioner and therefore the Award suffers from non-application of mind. I find no substance in the submission. Since the signatures on the Member Client Agreement, exchange of emails have been admitted, it was not necessary for the Tribunal to discuss every specific transaction in detail. Hence, the Arbitration Petition is dismissed.

(SMT. R.P. SONDURBALDOTA, J)