IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :21.09.2016

CORAM

THE HONOURABLE MR.JUSTICE **RAJIV SHAKDHER**

O.P.No.249 of 2010

Geojit Financial Services Ltd.,
5th Floor, Finance Towers
550 ½ Kaloor, Kochi - 682 017 .. Petitioner

.Vs.

1.N.Radhakrishnan
2.Mr.M.V.Badrniath
sole Arbitrator
(deleted as per order dated 08.06.2016 in
OP.No.249 of 2010 .. Respondents

* * *

Prayer : Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 praying to set aside the Award dated 30.07.2007.

* * *

For Petitioner : Mr.M.S.Murali

For R1 : Mr.V.P.Rajendran

O R D E R

1. This is a petition filed under Section 34 of the Arbitration and Conciliation Act 1996.

1.1. By virtue of this petition, challenge is laid to the Award dated 30.7.2007.

2. I am informed that the Arbitrator was appointed by the concerned Exchange, i.e., National Stock Exchange of India Limited, (NSEIL), Chennai.

3. The dispute arose in the background of claim made by the respondent that he had suffered a loss on account of the petitioner herein, abruptly taking a decision to square off an open position, with regard to the shares purchased by him.

4. The record shows that the respondent had placed an order for purchasing 300 units of GLAXO in the F&O segment of the NSEIL, on 09.05.2016.

5. Admittedly, the period of settlement stretched till 25.05.2006, which was the close out date.

6. It appears that in the evening of 16.05.2016, the petitioner abruptly closed the position; a decision, which according to the respondent, resulted in a loss being caused to him qua the shares in issue. This grievance of the respondent led to initiation of arbitration proceedings.

7. To be noted, it was the petitioner's decision of unilaterally closing the position at the rate of Rs.1281.15 on 16.05.2006 at 3.17 p.m., which apparently caused a loss to the respondent.

7.1 It was the respondent's case before the Arbitrator that he had a confirmed purchase order available with him at the rate of Rs.1485/- per share.

8. On the other hand, the petitioner's stand, before the learned Arbitrator, was that, the respondent had been called upon to pay the margin money, and, since the needful was done, it proceeded to close the position, on 16.05.2015.

8.1. It is not disputed by the learned counsel for the petitioner that, a cheque in the sum of Rs.1,10,000/- was furnished by the respondent towards margin money.

8.2. Counsel for the petitioner, however, says that the cheque was received after 4.45 p.m, on 16.5.2006.

9. The record shows that the Arbitrator has examined this aspect of the matter and, thereafter, recorded a finding of fact that the petitioner, in the past, had accepted cheques from the respondent, and that, such cheques issued in the past included penal charges spanning the intervening period, i.e., the period between the date of issue till the date of realization.

9.1. The findings to this effect are recorded in paragraph 5.1 of the Award. For the sake of convenience, the same are extracted herein below:

"…..5.1. The Claimant had purchased 300 units of Glaxo in F&O on 09.5.2006 which was confirmed at the rate of Rs.1485.00 and he was entitled for a settlement period till 25.05.2006. **He was called upon to pay Rs.1,10,000/- towards margin requirements and a cheque was deposited on 16.05.2006 morning but his position was squared off by the respondent unilaterally on the same day at a rate of Rs.1281.15 at 3.15 pm.** The submissions made by the Respondent in writing and orally during the hearings and that of the Claimant **lead me to the conclusion that the respondent had acted unilaterally and closed the position on 16.5.2006 despite the Claimant depositing a cheque for the amount demanded. His argument that the accounts statement did not show the credit is not acceptable. The Respondent had been accepting cheques and as per the same practice the deposit of the cheque would amount to payment since the Respondent had been collecting penal charges from the date of issue to the date of realisation of the cheques all along.** He had also not produced the committed documents viz., receipt issued by brokers for cheque deposit, statement of accounts showing the credit/debit balance leading to the squaring off, margin requirement etc., I have reasons to believe that the Respondent had squared off the position in Glaxo arbitrarily. **I agree that the respondent had no right to close the Claimant's position before the settlement period without his consent when he had paid the amount demanded towards the margin requirement.”**

(emphasis is mine)

10. Having regard to the aforesaid, I find no reason to disturb this finding of fact returned by the learned Arbitrator in favour of the respondent.

11. As far as damages are concerned, the observations of the learned Arbitrator are set out in paragraph 5.2 of the Award. These observations are also set forth herein below for the sake of convenience:

> “....5.2. The argument adduced by the Respondent, as may be seen from the historical contract-wise price, that the position had never gone above Rs.1,330/- (High on 17-05-2006) and the High on the closing date i.e., 25.5.2006 was only Rs.1170/- is not acceptable since seeing in retrospective he would now be able to arrive at the loss/profit. As pleaded by the Claimant it would be a different matter if he had to wait for the rise of the price and finally had to close out with a loss, he

would be without any demur accepting the same. On the other hand, the Respondent had no right to square off arbitrarily and state that by his act, the loss of the Claimant was minimized. As pointed out by the Claimant, on account of the personal problems of the respondent with his Branch, the gullible small investors should not be penalized. **The hypothetical calculations of the Respondent would not apply and the Respondent could not be allowed to take advantage of its own wrong. I am, therefore, inclined to allow the arbitration claim in full since the compensation of Rs.65,000/- demanded by the claimant being the difference between the purchase rate of the Claimant and the squaring up rate by the Respondent, according to me, is reasonable.** This will also set up as a precedent that the Trading Member should always be looking to the interest of the constituents regardless of the differences with their Branch people".

(emphasis is mine)

12. Having regard to the above, I am of the view, that no ground has been made out by the petitioner, which will come within the ambit of Section 34 of the 1996 Act. The view taken by the Arbitrator is a plausible view, since the respondent was caused injury due to the hasty and untenable action of the petitioner of prematurely closing the

position.

13. The captioned petition is, accordingly, dismissed with cost of Rs.10,000/- (Rupees ten thousand only). The said cost will be paid within seven (7) days from the date of receipt of a copy of this order.

sd/.R.S.A.J

21.09.2016

//Certified to be a true copy//
Dated this the day of 2017

R.s/18.01.2017 COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.