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

Date of Decision: July 21, 2016

+ **FAO 639/2003**

INTEGRATED CAPITAL SERVICES LTD. Appellant

Through: Mr. Vishwa Bhushan Arya,
Advocate

versus

ROHIT DHAWAN PROPRIETOR ROHIT INVESTMENTS

..... Respondent

Through: Mr. Bhuvan Gugnani, Advocate

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

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Appellant's objections under Section 34 of *the Arbitration and Conciliation Act* stands dismissed by trial court vide impugned order of 3rd May, 2003 while noting that the trial court cannot sit in appeal over the findings returned by the learned Arbitrator. Appellant is a stock broker, who had entered into a Member-Constituent Agreement on 15th June, 1997 with the appellant and thereafter another agreement of 5th June, 2000 was executed. Undisputedly, the transaction between the parties were smooth till 2nd March, 2001, a dispute arose thereafter as respondent claimed to have suffered loss. It is also undisputed that

respondent herein had opened 5 interconnected accounts in the names of different family members with appellant but according to the appellant, trading in these accounts was done by respondent herein with the assistance of his wife, who is also a respondent in connected appeal. As per the final statement of accounts prepared by the appellant-claimant there was a debit balance of ₹11,31,126.27/- as on 31st March, 2001.

The stand of the respondent herein before the learned Arbitrator was that there was no transaction done beyond 2nd March, 2001 as he had clearly directed the appellant-claimant to close all outstanding transactions as on that date and settle the account. The appellant relies upon contract notes issued after 2nd March, 2001, which is strongly refuted by the respondent herein. According to respondent, the appellant-claimant had not taken any written authority to link the 5 accounts referred to as above. The learned Arbitrator in his Award of 19th April, 2002 has awarded a sum of ₹1,28,820.56/- to appellant-claimant. The objections filed by the appellant before the trial court were that the handwriting expert's report has been erroneously commented upon by the learned Arbitrator while observing that the said report has not been produced. This according to learned counsel for appellant is patently illegal which justifies setting aside of the award. It is submitted by learned counsel for appellant that impugned order notes that the respondent had admitted the liability of ₹3,63,620.43/- but has perversely failed to award even the admitted amount and there was no justification for excluding the contract notes because the contents of contract notes relied upon by the appellant were never disputed by the respondent before

the learned Arbitrator. Thus, it is submitted that the impugned order deserves to be set aside and appellant's objections and the claim petition deserve to be allowed.

Learned counsel for respondent supports the impugned order and relies upon Apex Court's decision in *Associate Builders v. Delhi Development Authority* (2015) 3 SCC 49 to submit that there cannot be any re-appreciation of evidence. Learned counsel for respondent vehemently submits that the trading terminal was never made available to him and infact it was being operated by staff of the appellant and that the existence of contract notes is strongly refuted. Lastly, it is submitted that there is no illegality or infirmity in the award or the impugned order and so this appeal deserves to be dismissed. Nothing else was urged by either side.

After having heard learned counsel for the parties and on perusal of the impugned order, the Award, the material on record and the decision cited, I find that the scope of interference under Section 34 of *the Arbitration and Conciliation Act, 1996* is quite limited one and unless the Award is unfair or so unreasonable that it shocks the conscience of the court or there is patent illegality which renders the Award nugatory, the appellate court refrains from interfering with the Award.

In this background, the objections of the appellant have been considered in the light of the decisions cited and thereafter, this Court finds that even if the handwriting expert's report is excluded from consideration, still the trial court was well within its right to compare the admitted signatures of the respondent with the disputed signatures of the

respondent on the credit notes in question. Even this Court has seen the admitted signatures of the respondent and the initials of the respondent on the credit notes and I find that there is no basis to reach to a reasonable conclusion that respondent has personally received the credit notes by hand from the appellant.

During the course of hearing, it was brought to the notice of this Court that as per the rules and regulations of National Stock Exchange, the credit notes have to be sent by post to the concerned party. The mere assertion of appellant of having handed over the credit notes to respondent does not inspire confidence. Once the credit notes are excluded from consideration, the case of the appellant needs to be considered in the light of the admitted liability of ₹3,63,620.43/- of the respondent.

According to the appellant, this liability is admitted in the written submissions filed by the respondent before the learned Arbitrator and these written submissions are on record of the arbitral record. On this aspect, the stand of the respondent's counsel was that this is an admitted liability qua all the four accounts and not in respect of the account in question. This is not so qualified in the written submissions filed by the respondent. Otherwise also, clubbing of accounts is prohibited by the Rules and Regulations of National Stock Exchange. So, in such a situation, it has to be taken that this admitted liability of ₹3,63,620.43/- is in respect of this case only. The patent illegality committed by the learned Arbitrator and the trial court is that this vital aspect has been totally overlooked and therefore, the Award and the impugned order deserves to

be modified only to the extent that appellant shall be entitled to the amount of admitted liability of ₹3,63,620.43/- with reasonable interest at the rate of 6% per annum from the date of the Award till realization.

To the above extent, the Award and the impugned order stands modified. This appeal is partly allowed to the extent indicated above while leaving the parties to bear their own costs.

JULY 20, 2016
vn/s



(SUNIL GAUR)
JUDGE