

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

% Judgment reserved on: 12th October, 2015
Judgment delivered on: 02nd February, 2016

+ FAO(OS) 65/2015 & CM 2127/2015

M/S SAI SOFT SECURITIES LTD Appellant

versus

MANJU AHLUWALIA Respondent

Advocates who appeared in this case:

For the Appellant : Dr Anurag Kumar Agarwal, Advocates.

For the Respondent : Respondent in person.

+ FAO(OS) 68/2015 & CM 2243/2015

M/S SAI SOFT SECURITIES LTD Appellant

versus

MANJIT AHLUWALIA Respondent

Advocates who appeared in this case:

For the Appellant : Dr Anurag Kumar Agarwal, Advocates.

For the Respondent : Respondent in person.

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED
HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGEMENT

SANJEEV SACHDEVA, J

1. Both these appeals arise out of the common judgment dated 27.01.2015, dismissing the objections filed by the appellant under section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the Act) to the respective award of the Arbitral Tribunal in the respective claim petitions filed by the respondent. The facts in both the cases are identical and as are such being referred to together. The respondents in these appeals are husband and wife.

2. The respondents in order to carry out their investments opened trading accounts with the National Stock Exchange (NSE) through the appellant in July, 2011 and signed the documents including the KYC (Know Your Customer) document at Delhi. As per the case of the respondents before the Arbitral Tribunal, the Appellant had assured to send copies of KYC documents to them from its Moradabad office but the same were not sent. The e-mails sent on November 19, 2011 proved futile. On July 31, 2011, the respondents gave the first cheque to the Appellant herein for an amount of Rs.25 lacs from a bank account jointly operated by them towards initial deposit. On August 01, 2011, certain trades were conducted in their account, for which they received contract notes from Sai Soft Securities. It was their case that they could not make out the difference between the appellant company and Sai Soft Securities. The respondents have also averred that in addition to signing the KYC and other documents, they had also executed a written agreement on September 24, 2011 with Sai

Soft Securities signed by Dr. Mayank Dubey as its authorized signatory, wherein they had given specific instructions as to how the trades in their account were to be conducted.

3. As per the respondents, the Appellant had suggested that the respondents could enhance the value of the trade by giving securities as margin. On such representation, the respondents transferred securities as margin to Demat account of the persons nominated by the Appellant. Regular transactions thereafter took place. These transactions were in the name of Sai Soft Securities. According to the respondents, on November 05, 2012 they had noticed that trades were not verified on the exchange's portal. When the matter was taken up by the respondents with the NSE, no response was given, though they had followed up the matter with the Exchange thereafter. In consultation with the respondents, on July 26, 2013, the Appellant trading member carried out hedging trades and through e-mail of July 31, 2013, contract notes were forwarded to the respondents with positions to close on October 31, 2013. As per the respondents, the trading transactions took place after July 31, 2013 as well. Certain instructions given by the respondents to the Appellant with regard to trades and return of money to them were not carried out by the Appellant herein. Their complaints made to the Investor Grievances Redressal Forum of the Exchange resulted in an order dated January 09, 2014 whereby amounts of Rs.1.70 Crore and Rs.1.50 Crore

became admissible to both the respondents herein. In effect, the case of respondents was that the Appellant had carried out unauthorized transactions fraudulently. The respondents in their claim petition had claimed an amount of Rs.1.93 Crore and Rs.1.57 Crore respectively.

4. The Appellant contested the claims and filed a counter-claim. As per the learned single judge, the counter claim by the Appellant primarily impugned the order dated January 09, 2014 passed by the Investor Grievance Redressal Forum on the ground that the same was illegal and that the action of the Exchange, withholding the amount of the Appellant pursuant to the order of the Forum, was without jurisdiction. The appellant sought setting aside of the said order and release of the amount by the Exchange.

5. The contention of the appellant as noted by the learned single judge was that the Forum or the Arbitral Tribunal did not have the jurisdiction to consider any claim against the Appellant because it had not conducted any trades on behalf of the respondents on the platform of the exchange. It was also contended that there was no written agreement between the parties to refer the dispute to the arbitration as per the byelaws of the Exchange. The Appellant further contended that the agreement dated September 24, 2011, in relation to portfolio management, was of no consequence as it has not been executed by the Appellant and had never been acted upon. The Appellant also contended that the contract notes put up by the respondents were

never issued by the Appellant and were fictitious. The Appellant however admitted the receipt of cheque of Rs.25 lacs jointly signed by the respondents.

6. The Arbitral Tribunal by its award dated 31.05.2014 considered the first question as to whether the Arbitral Tribunal had the jurisdiction to entertain the disputes or not. The Tribunal referring to the agreement dated September 24, 2011 concluded that the agreement was signed by Dr. Mayank Dubey on behalf of Sai Soft Securities. He was one of the two Directors of the Appellant while Mr. Mayur Dubey, the only other director of the respondent had signed it as a witness. This fact was admitted by the Appellant during the hearing before the Tribunal.

7. The Arbitral Tribunal returned a finding of fact that Sai Soft Securities was represented in the agreement to be a body corporate and Dr. Mayank Dubey its authorized signatory. The agreement further represented that Sai Soft Securities is registered with SEBI and the Exchange and specific registration numbers were given. The Arbitral Tribunal further held that the contract notes were sent to the respondents by Sai Soft Securities. The tribunal noted that the address of the appellant Sai Soft Securities Ltd. and Sai Soft Securities is the same. Their e-mail addresses admittedly were the same. The Tribunal lifted the corporate veil to ascertain the real state of affairs, particularly when there were allegations of fraud and serious

misdemeanor. The learned single judge has noted that the arbitral tribunal in paras 20 and 21 of the award have enumerated the facts for lifting the corporate veil. The arbitral tribunal has noted the various admitted inter-se transactions in the Demat account of the respondents and that of the directors of the Appellant.

8. The learned single judge has noted that based on the material produced before it, the arbitral tribunal has concluded that the respondents executed the KYC and other documents and gave them to the appellants and deposit was made by the respondents towards initial margin as a client of the appellants after executing KYC and other documents. The Arbitral Tribunal returned a finding of fact that the respondents executed KYC and other documents and were duly enrolled as constituents of the appellant. The arbitral Tribunal thus concluded that the respondents were entitled to take proceedings under the bye-laws and regulations of the Exchange for redressal of their grievances.

9. The Tribunal relying upon Clause 1 of Chapter 11 of the bye-laws of the Exchange held that the claims, disputes or differences were within the jurisdiction of the Tribunal. The tribunal concluded that trading was done at the portal of the Exchange and the contract notes held to have been sent to the respondents by appellant clearly stated that disputes were to be referred to the arbitration under the bye-laws of the Exchange. The contention of the appellant that the

agreement dated September 24, 2011 related to portfolio management was also rejected as the Appellant was not registered with SEBI or any other authority under portfolio management service regulations and thus could not provide portfolio management services.

10. The order of the Arbitral Tribunal was upheld by the Appellate Arbitral Tribunal (hereinafter referred to as the Appellate Tribunal) of the National Stock Exchange of India Limited by its appellate award dated 12.12.2014. The Appellate Tribunal confirmed the finding of facts returned by the Arbitral Tribunal and further justified the lifting of corporate veil to ascertain the real state of affairs. Reliance was placed on the judgment of the Supreme Court in **Madan Mohan Rajgaria vs. Mahender R. Shah & Brothers 2003 (7) SCC 138** to hold that even in the absence of a member constituent agreement, the claims of a stock broker against the client/constituent would be arbitrable in accordance with the bye-laws of the stock exchange and also relied upon the judgment of the Supreme Court in case of **LIC vs. Escorts Ltd. AIR 1986 SC 1370**, with regard to the lifting of the corporate veil.

11. The counterclaim of the appellant challenging the order dated January 09, 2014 of the Investor Grievance Resolution Panel and the withholding of the amount of the Appellant by the NSE was rejected by the Arbitral Tribunal and the rejection upheld by the Appellate Tribunal.

12. The findings of the Arbitral Tribunal and the Appellate Tribunal have been upheld by the learned single judge. The learned Single Judge has noted that it was not denied that trading in the accounts of the respondents had started immediately on the initial deposit of Rs. 25 lacs by them. The receipt of payment by the Appellant was not denied. Even the transfer of securities by the respondents to the Demat account of Mr. Mayur Dubey and one of the employees of the Appellant was found to be pursuant to the opening of the trading account and as per the desire of the respondents to trade through the Appellant.

13. The learned single judge has noted that the fact that the Appellant itself had made a counterclaim before both the authorities challenging the order dated 09.01.2014 and seeking a prayer for setting aside the action taken by the NSE withholding the deposit of the Appellant in both the cases amounted to an estoppel that the Arbitral Tribunal and the Appellate Tribunal had jurisdiction to arbitrate the claims and counterclaim of the parties. However, the learned Single Judge has noted that the counter claim of the Appellant was rejected on the ground that the counter claim concerned the Exchange and the Appellant inter-se and the reliefs were not within the jurisdiction of the Arbitral Tribunal. Reference has been made to the circular dated September 26, 2013 with regard to Investor Grievance Redressal Mechanism. By filing a counter claim, the

Appellant is deemed to have submitted to the jurisdiction of the Arbitral Tribunal in terms of the clause (g) of circular dated September 26, 2013.

14. The learned single judge has refused to interfere with the finding of facts in exercise of its jurisdiction under Section 34 of the Act and rightly so.

15. It is no longer *res-integra* that where the arbitrator has assessed the material and evidence placed before it in detail, the court while considering the objections under Section 34 of the said Act does not sit as a court of appeal and is not expected to re-appreciate the entire evidence and reassess the case of the parties. The jurisdiction under section 34 is not appellate in nature and an award passed by an Arbitrator cannot be set aside on the ground that it was erroneous. It is not open to the court to interfere with the award merely because in the opinion of the court, another view is possible. The duty of the court in these circumstances is to see whether the view taken by the Arbitrator is a plausible view on the facts, pleadings and evidence before the Arbitrator. Even if on the assessment of material, the court while considering the objections under section 34 is of the view that there are two views possible and the Arbitral Tribunal has taken one of the possible views which could have been taken on the material before it, the court would be reluctant to interfere. The court is not to substitute

its view for the view of the Arbitrator if the view taken by the Arbitrator is reasonable and plausible.

16. The appeal before us, in fact, is the fifth round between the parties. The first round was before the Investor Grievances Redressal Forum of the Exchange which by its order dated 09.01.2014 found the respondents entitled to the amount. The second round was before the Arbitral Tribunal which passed its award dated 31.05.2014 in favour of the respondents and against the appellant. The third round was before the Appellate Arbitral Tribunal of the National Stock Exchange of India Limited which by its appellate award dated 12.12.2014 confirmed the award of the Arbitral Tribunal. The fourth round was before the learned single judge who by the common impugned judgment dated 27.01.2015 refused to interfere with the award in exercise of powers under section 34 of the Act. The fifth round is before us and, in our view, should meet the same fate.

17. The appeals are accordingly dismissed, leaving the parties to bear their own costs.

SANJEEV SACHDEVA, J

BADAR DURREZ AHMED, J

FEBRUARY 02, 2016

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