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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
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+ **O.M.P. 535/2015**

SHRI PRAMOD KUMAR ..... Petitioner
Through: Mr. Harsh Pathak, Mrs. Shveta Mahajan, Mr. Siddhartha Shukla, Mr. Mohit Choubey, Advocates.

versus

RELIGARE SECURITIES LTD ..... Respondent
Through: Mr. Rohit Puri, Mr. Akul Mehandru, Advocates.

CORAM: JUSTICE S.MURALIDHAR

ORDER

% **19.10.2016**

IA No. 23247/2015 (for condonation of delay)

1. This is an application filed by the Petitioner seeking condonation of delay of 42 days in re-filing the petition.

2. The reason stated is that the Clerk of the Advocate for the Petitioner misplaced the file during the period the Registry had returned it with defects.

3. Learned counsel for the Respondent vehemently opposed the condonation of delay by relying on a decision of this Court in ***Delhi Transco Limited v. Hythro Engineers Pvt. Ltd. 2012 (3) Arb.LR 349 (Del) (DB)***. He also referred to the relevant rules of the Volume V of the Delhi High Court Rules.

4. This Court has in ***Delhi Development Authority v. M/s. Durga***

Construction Co. 2013 (139) DRJ 133 laid down the parameters on which the delay in re-filing can be condoned. Having considered the submissions of learned counsel for the parties, the Court is satisfied that the explanation offered for the delay of 42 days in re-filing the petition is satisfactory. The delay is accordingly condoned.

5. The application is disposed of.

OMP No. 535/2015 & IA No. 23245/2015 (for stay)

6. This is a petition under Section 34 of the Arbitration and Conciliation Act, 1996 ('Act'), challenging the Award dated 18th December 2014 passed by the NSE Arbitral Tribunal in a dispute between the Petitioner and the Respondent arising out of Member-Client Agreement dated 31st May 2010 and the appeal order dated 25th May 2015 of the NSE Appellate Arbitral Tribunal ('AAT').

7. It is stated that in terms of the said Agreement, the Petitioner opened a DEMAT account with the Respondent for equity trading. According to the Petitioner, at the time of opening of the said account, it was made clear to the Respondent that the Petitioner was interested in investing in equity shares as a long-term investment and was not interested in short-term trading and that in any event, these will not be traded without authorisation of the Petitioner. According to the Petitioner, a limited power of attorney was given by him to the Respondent for opening of the share trading account. The Petitioner was then allotted CRN number, Depository client ID and trading user ID. Thereafter, the Petitioner's shares with Indiabulls Securities Ltd. got transferred to the Petitioner's client ID with the Respondent. The lot

of 15 scrips got transferred on 14th August 2010 and 5 scrips on 26th August 2010. According to the Petitioner, shares worth approximately Rs. 52,00,000 got transferred from the Petitioner's account with Indiabulls Securities Ltd to the Respondent.

8. The Petitioner alleges that the Respondent started unauthorized trade in the futures and options ('F & O') segment w.e.f. 16th August 2010. He claims that he never authorized the Respondent to do so. This according to the Petitioner carried on between August 2010 to February 2011 and during this period, the Respondent, according to the Petitioner "zeroed the entire investment" of the Petitioner. The Petitioner claims to have been visiting Ukraine for business frequently in the period 16th June 2010 and 29th December 2010. When the Petitioner got to know about the unauthorized trading, he called upon the officers of the Respondent repeatedly asking them to stop trading in F & O segment which has resulted in heavy losses. The total loss in F&O trading of the Petitioner's share up to 1st February 2011 was Rs. 4671840.79. According to the Petitioner, the Respondent assured the Petitioner that they would compensate him for the loss by way credit note and dissuaded him from filing complaint.

9. Ultimately, the Petitioner filed the complaint to 'Wecare', the Respondent's customer care email ID on 5th February 2011. It is stated that on 7th February 2011, the Petitioner received SMS from the NSDL converting stocks to margin account and that all the stocks of the Petitioner were moved from beneficiary account to broker margin account despite the Petitioner not authorising it. The Petitioner then withdrew the power of

attorney issued in favour of the Respondent.

10. With no progress in his complaint with 'Wecare', the Petitioner filed a complaint against the Respondent with the Investor Service Cell of the National Stock Exchange (‘NSE’) on 9th March 2011. The dispute between the parties was thereafter referred by NSE to the Arbitral Tribunal (‘AT’) comprising of three members. The hearings took place on 6th June 2014 and 4th September 2014. As far as the Respondent is concerned, a counter claim was filed claiming that there was a balance of outstanding amount of Rs.1,02,833.23 as on 11th February 2011 and that the said amount grown to Rs.1,78,020.44 as on 21st May 2014.

11. The findings of the AT in the impugned Award dated 18th December 2014 were as under:

(i) The plea of the Respondent that the allegation made by the Petitioner Claimant of cheating and fraud etc. had to be examined by the Court and not by the AT.

(ii) The Respondent had been regularly sending contract notes of the transactions to the registered email and postal address of the Claimant followed by confirmation call in the evening. Further the Claimant availed the facility of internet trading and had the access to the website of the Respondent. t was shown that the Claimant and his authorized representative had been logging on to the NSE website to view the details of trades.

(iii) The transcript of the recorded conversation of 9th November 2011 showed that the Respondent got the Petitioner to confirm trades of cash transaction i..e sale of the shares of various companies as well as transactions of F&O segment i.e. both cash and F&O transaction. There were numerous other transcript of confirmation calls with regard to of transaction undertaken during the day. These were not disputed by the Claimant or his authorised representative. The confirmation calls were supported by emails and ECN.

(iv) Going by the transcript of various conversations between the parties, the assertion that all the F&O transactions in the Petitioner's account being unauthorised could not be accepted.

(v) The non-compliance of SEBI guidelines were curable and did not absolve the Claimant of its liability under the agreement with the Respondent.

(vi) The claim of the Petitioner was dismissed. The counter claim of the Respondent was allowed. The Petitioner was asked to pay Rs. 1,02,833.23 being the balance amount as on 11th February 2011 with simple interest of 10% pa.

12. Aggrieved by the above order, the Petitioner filed an appeal before the AAT which was comprised of three members. In the detailed impugned order dated 25th May 2015, the AAT rejected the appeal, *inter alia* on the following grounds:

(i) The authorization given by the Appellant to place the orders in his behalf was not in dispute. No evidence was placed on record by the Appellant to show that the said authorisation was not in place. The presumption therefore was that the said two persons, being capable of authorized to do so may have carried out trades on the Appellant's behalf. The call record showed that during one of the calls i.e. on 14th September 2010, the Appellant handed over the phone to one of the said AR.

(ii) In terms of the NSE Regulations, the provision of voice recording facilities to record the placing of verbal orders was not mandatory in nature.

(iii) The AT was justified in holding that the trades in the Appellant's account were with his knowledge and consent as he received the SMS and confirmation calls but failed to take steps to object to said transactions till much later.

13. The AAT concurred with the findings of the AT.

14. Before this Court, it was sought to be urged by the learned counsel for the Petitioner that both the AT as well as the AAT erred in holding that the transactions in the Petitioner's account were not illegal. Further no reasonable and effective opportunity of hearing was afforded to the Petitioner by the AT. At the initial stage, the matter was fixed for 4th September 2014, but on that date, the Appellate Arbitral Tribunal took up the matter last and the Petitioner's counsel was forced to conclude his arguments. Each transaction had to be separately judged and therefore the findings of the AT was perverse. Likewise, the Appellate Arbitral Tribunal also failed to follow the judicial discipline, particularly not following the another decision of the Appellate Arbitral Tribunal in Appeal AM No. F&O/D-0085/2912 ***(Mr. Manmohan Singh v. SMC Global Securities Ltd.)***

which according to the Petitioner squarely covers its case.

15. Having heard the submissions of learned counsel for the parties and having examined the documents placed on record, the Court is not persuaded to hold that either the AT or the AAT erred in law in negating the claim of the Petitioner. Both the Awards i.e. of the AT and AAT are detailed and sets out all the facts and circumstances. Both the Awards discuss the evidence thoroughly. The Court is also not persuaded to hold that the Petitioner was deprived of an effective opportunity of being heard before the AT or the AAT.

16. With there being concurrent findings of two levels of Arbitral Tribunals, the ground for interference with such findings of facts has to meet a high threshold. The Court, however, observes that the Petitioner has not been able to point out any single finding in the said two Awards which can be said to be perverse and contrary to the records of the case.

17. The Court is satisfied that none of the grounds of interference with the impugned Award is made out in this petition under Section 34 of the Act. The petition is accordingly dismissed but in the circumstances with no orders as to costs.

S.MURALIDHAR, J

OCTOBER 19, 2016
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