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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
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\+ **ARB.P. 578/2015**

WINSTAR E COM PRIVATE LIMITED ..... Petitioner
Through: Mr. Yogesh K. Jagia with Mr. Amit Sood and Ms. Sushma Yadav, Advocates.

versus

UNICON SECURITIES PVT. LIMITED & ANR ..... Respondents
Through: Mr. Sanjay Bhatt with Mr. Abhishek Anand, Advocates for R-2

And

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\+ **O.M.P. 18/2015**

WINSTAR E-COM PVT LTD ..... Petitioner
Through: Mr. Yogesh K. Jagia with Mr. Amit Sood and Ms. Sushma Yadav, Advocates.

versus

UNICON SECURITIES PVT LTD & ORS ..... Respondents
Through: Mr. Sanjay Bhatt with Mr. Abhishek Anand, Advocates for R-2

CORAM: JUSTICE S.MURALIDHAR

O R D E R
% **15.12.2016**

1. Arbitration Petition No. 578 of 2015 under Section 11 (6) of the Arbitration and Conciliation Act, 1996 (‘Act’) has been filed by the Petitioner seeking the appointment of an Arbitrator to adjudicate the

disputes between the Petitioner, Winstar E-Com Private Limited ('WEPL'), and Respondent No. 1, Unicon Securities Private Limited ('USPL') arising out of the Agreement dated 19th March 2010 titled "Agreement between Stock Broker and Client (NSE)".

2. OMP No. 18 of 2015 has been filed by the same Petitioner under Section 9 of the Act seeking to restrain Respondent No. 1 from selling, alienating or parting with the possession or creating any third party interest in the shares 1855 stocks of ESS Dee Aluminium Limited ('EDAL') and 5616 equity shares of Techno Electric Private Limited ('TEPL').

3. Pursuant to the agreement entered into between the Petitioner and Respondent No. 1, the Petitioner purchased total of 55728 equity shares of TEPL through Respondent No. 1 as its stock broker between 15th April 2013 to 18th November 2013. The Petitioner purchased 1900 equity shares of EDAL on 3rd December 2013.

4. The case of the Petitioner is that the aforementioned 1900 equity shares as well as 5616 equity shares of TEPL were illegally withheld by Respondent in its pool account. Despite assurances to the Petitioner by Chief Executive Officer ('CEO') of Respondent No. 1 by *email* on 21st February 2014 that the pending equity shares would be transferred to the Petitioner's demat account within seven working days, no action in that regard was taken. Ultimately, the Petitioner had filed complaint with BSE and NSE respectively through Stock Exchange Board of India ('SEBI').

5. The Petitioner states that on 26th May 2014 SEBI passed an order under

Section 19 read with Section 11 (1), 11 (4), 11B and 11D of the SEBI Act, 1992 restraining Respondent No. 1 and its directors from accessing the securities market. On 5th September 2014 NSE expelled Respondent No. 1 from its membership. Likewise on 10th September 2014 BSE expelled it. The Petitioner states that on 29th September 2014 it received formal *email* letter from NSE giving option to lodge claim with its Default Claims Committee ('DCC'). Thereafter OMP No. 18 of 2015 was filed by the Petitioner in this regard under Section 9 of the Act. In the said petition till date no interim order as such has been passed. Meanwhile, the Petitioner has also filed Arbitration Petition No. 578 of 2015 seeking the appointment of an Arbitrator.

6. As far as Respondent No. 1 is concerned, a reply was filed in OMP No. 18 of 2015 on 6th April 2015 stating that there were two separate agreements contemplating separate arbitration clauses and the claims under both agreements are sought to be clubbed. It is further pointed out that the Petitioner was aware that the assets, deposits and collaterals of Respondent No.1 relating to the securities transactions, including the books of account and document now vest with Respondent Nos.2 and 3, namely, NSE and BSE as per the orders of the SEBI. Accordingly, it is pointed out that the prayer in this petition i.e., OMP No. 18 of 2015 has been rendered infructuous.

7. The above stand was endorsed by Respondent No. 2, NSE, which is in its reply pointed out that after expulsion of Respondent No. 1 its assets lying with NSE and National Securities Clearing Corporation Limited ('NSCCL')

have been vested with the Default Committee (DC), which is a statutory committee empowered to asses such claims under the bye-laws of NSE. It is further pointed out that under the bye-laws and regulations of the NSE, the securities deposits or other monies of trading member would be subject to first clearance by the NSE. Further once a trading member is declared as a defaulter or expelled, the DC called in and realizes the security deposits in any form, margin money, other monies lying to the credit of and securities deposits and for recovering the monies payable to the defaulter by any other trading member. It is pointed out that NSE has been directed by SEBI to deal with the securities held by Respondent No. 1 in Demat Account and utilize such securities for the settlement of claims in terms of the bye-laws.

8. Learned counsel for the Respondent No. 2, NSE, further informs the Court that a sum of Rs. 20 lakhs has already been paid to the Petitioner in respect of the claims lodged with the DC and this has been accepted by the Petitioner. The shares in question have already been sold and out of the amounts realized the payments have been made.

9. Learned counsel for the Petitioner does not dispute that the Petitioner has received the above amount. Reliance was placed on the decision in ***Harinarayan G. Bajaj v. Rajesh Meghani (2005)10 SCC 660*** to contend that right of the Petitioner to seek arbitration in respect of the shares in question. It was repeatedly stressed by learned counsel for the Petitioner that the Petitioner was not seeking compensation but for the actual delivery of the shares which was purchased on its behalf.

10. As far as the said submission is concerned, learned counsel for the NSE points out that the relief prayed for is not capable of being granted as the shares in question which stood initially vested with the NSCCL have since been sold. Out of the proceeds, Rs. 20 lakhs has been paid to the Petitioner.

11. With the proposed prayer in the arbitration proceedings not capable of being granted, the Court sees no purpose in referring the dispute seeking such relief to arbitration. Further, the Petitioner does not appear to have reserved its right to seek further relief immediately upon receiving the sum of Rs. 20 lakhs. The Court sees no purpose to be served, in the circumstances, in referring the dispute between the Petitioner and Respondent No.1 to arbitration.

12. The petitions, Arbitration Petition No. 578 of 2015 and OMP (I) No. 18 of 2015, are dismissed, but in the facts and circumstances of the case, with no orders as to costs.

S.MURALIDHAR, J

DECEMBER 15, 2016
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