AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Arbitration Appeal No.21 of 2017

Karvy Stock Broking Limited, Karvy Centre, 8-2-609/K, Avenue-4, Street 1, Banjara Hills, Hyderabad (Andhra Pradesh) through authorized signatory Gopal Prasad Mohanty, Assistant Manager, Karvy Stock Broking Limited, Bhubaneshwar (Odisha)

---- Appellant

Versus

Mohammad Ashraf Khan, aged about 50 years, behind Jamal Mill, Kalaram Choudhary Marg, Shyama Prasad Mukherjee Marg, Kumharpara, Jagdalpur, District Bastar (CG)

---- Respondent

For Appellant	:	Mr.Ashish Surana and Mr.Anand Dadariya, Advocate
For Respondents	:	Mr.Matin Siddique, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

25/08/2017

1. Impugning legality, validity and correctness of order dated 25.3.2017 (Annexure A/1) passed by learned District Judge, Bastar at Jagdalpur rejecting the application filed by the appellant under Section 34 (2) of the Arbitration and Conciliation Act, 1996 (hereinafter called as 'Act of 1996'), this arbitration appeal under Section 37 of the Act of 1996 has been preferred by the appellant.

2. In order to resolve the arbitral dispute arisen between the parties as per National Stock Exchange bye-laws, the matter was referred to the Investor Grievance Redressal Panel (hereinafter called as 'IGRP') constituted under the National

Stock Exchange bye-laws which have been framed by the National Stock Exchange under section 9 of the Securities Contracts (Regulation) Act, 1956. Said IGRP held its meeting at NSE, Indore on 12.2.2016 and passed an award in favour of the respondent that he is entitled for claim of ₹2,40,000/-. The appellant feeling aggrieved by order dated 12.2.2016 preferred an arbitration reference as per bye-laws No.1 of Chapter-XI of National Stock Exchange bye-laws. The sole arbitrator-Hon'ble Mr.Justice S.P. Khare by award dated 14.7.2016 dismissed the appellant's claim. Thereafter, the appellant preferred an appeal to the Appellate Arbitrator consisting of three members under bye-laws 19(a) of Chapter-XI of the National Stock Exchange bye-laws. The said Tribunal also affirmed the order passed by the sole arbitrator. Feeling aggrieved against that order, the appellant preferred an application under Section 34(2) of the Act of 1996, which has been dismissed by learned District Judge by impugned order holding that it is second appeal, which is barred under Section 37 (1) (c) of the Act of 1996. Questioning that order, this arbitration appeal has been preferred.

3. Mr.Ashish Surana, learned counsel for the appellant, would submit that such an appeal is maintainable as there is two-tire arbitration admissible to the parties and arbitration proceedings under the bye-laws and regulations are subject to the provisions of the Act of 1996, therefore, the impugned order deserves to be set aside.

4. On the other hand, Mr.Matin Siddique, learned counsel for the respondent, would support the impugned oder.

5. I have heard learned counsel appearing for the parties, considered their rival submissions made hereinabove and also gone through the record with utmost circumspection.

6. Bye-law 1 of Chapter XI of the National Stock Exchange bye-laws provides for reference to Arbitration which states as under:-

> "(1) All claims, differences or disputes between the Trading Members inter se and between Trading, Members and Constituents arising out of or in relation to dealings, contracts and transactions made subject to the Bye-Laws, Rules and Regulations of the Exchange or with reference to anything incidental thereto or in pursuance thereof or relating to their validity, construction, interpretation, fulfilment or the rights, obligations and liabilities of the parties thereto and including any question of whether such dealings, transactions and contracts have been entered into shall be submitted to arbitration in accordance with the provisions of these Byelaws and Regulations. The Exchange shall be entitled to facilitate arbitration for such disputes and parties as mentioned in the provisions of Byelaw 1, including the arbitration, reference filed by Trading Member against the directions or order of the Investor Grievance Redressal Panel (IGRP), by adopting such procedures as may be prescribed by it under this Chapter."

7. Bye-law 19 of Chapter XI of the National Stock Exchange bye-laws also provides for Appellate Arbitration which states as under:-

> "19 (a) A party aggrieved by an Arbitral Award may appeal to the Appellate Arbitrator against Arbitral Award within one month from the date of receipt of Arbitral Award and in such manner as prescribed by the Relevant Authority from time to time

notwithstanding the provisions contained under Byelaw 3.

(b) the Appellate Arbitrator shall consist of three arbitrators who shall be different from the ones who passed the Arbitral Award appealed against and such Appellate Arbitrators shall dispose of the appeal by way of issue of an Appellate Arbitral Award within three months from the date of appointment of the Appellate Arbitrator.

(c) A party aggrieved by the Appellate Arbitral Award may file an application in accordance with Section 34 of the Act before the court of competent jurisdiction nearest to the address provided by Constituent in the KYC form or as per the change in address communicated thereafter by the Constituent to the trading member.

(d) The above provisions of Byelaws 1 to 18 shall be applicable to Appellate Arbitration."

8. A focused glance of the aforesaid bye-laws would show that there is two-tire arbitration provided under the applicable bye-laws and the party aggrieved by the arbitral award is entitled to prefer an appeal to the Appellate Arbitrator consisting of three arbitrators and the Appellate Arbitral Award is subject to an application under Section 34 of the Act of 1996, therefore, application under Section 34 of the Act of 1996 is maintainable against the Appellate Arbitral Award dated 30.11.2016 under the provisions of the Act of 1996.

9. Recently, the Supreme Court in the matter of **Centrotrade Minerals and Metal Inc. Vs. Hindustan Copper Limited**[1] has clearly held that two-tier arbitration i.e. adjudication of an appeal by another arbitrator, sitting in appeal against an award passed in first arbitration is maintainable. It was

1 (2017) 2 SCC 228

observed as under:-

> "27. The learned counsel would like us to read sub-section (1) of Section 34 of the A&C Act in conjunction with Section 35 thereof and thereby conclude that an arbitral award would be final and binding unless it is challenged and set aside by a court and that the setting aside can be only by a court and none else. The acceptance of this submission would be possible only if we were to first accept the interpretation given by learned counsel to sub-section (1) of Section 34 of the Act. However, since we do not agree with learned counsel on the interpretation of sub-section (1) of Section 34 of the A&C Act, acceptance of the contention of learned counsel does not arise.
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> 28. In our opinion, on a combined reading of sub-section (1) of Section 34 of the A&C Act and Section 35 thereof, an arbitral award would be final and binding on the parties unless it is set aside by a competent court on an application made by a party to the arbitral award. This does not exclude the autonomy of the parties to an arbitral award to mutually agree to a procedure whereby the arbitral award might be reconsidered by another arbitrator or panel of arbitrators by way of an appeal and the result of that appeal is accepted by the parties to be final and binding subject to a challenge provided for by the A&C Act. This is precisely what the parties have in fact agreed upon and we see no difficulty in honouring their mutual decision and accepting the validity of their agreement.
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> 29. The fact that recourse to a court is available to a party for challenging an award does not ipso facto prohibit the parties from mutually agreeing to a second look at an award with the intention of an early settlement of disputes and differences. The intention of Section 34 of the A&C Act and of the international arbitration community is to avoid subjecting a party to an arbitration agreement to challenges to an award in multiple forums, say by way of proceedings in a civil court as well under the arbitration statute. The intention is not to throttle the autonomy of the parties or preclude them from adopting any other acceptable method of redressal such as an appellate arbitration.
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> 36. It is therefore quite clear that the "final and binding" clause in Section 35 of the A&C Act does not mean final for all intents and purposes. The finality is subject to any recourse that an aggrieved party might

have under a statute or an agreement providing for arbitration in the second instance. The award is binding in a limited context.

37. Unless this interpretation is accepted, a second instance arbitration would be per se invalid in India. This would be going against the grain of a long line of decisions rendered by various courts in the country which have accepted the validity of a two-tier arbitration procedure under institutional rules and have not taken the view that a two-tier arbitration procedure is per se invalid. Reference in this regard may be made to a somewhat recent decision rendered in Shri Lal Mahal Ltd. v. Progetto Grano Spa[2] wherein an award by the Board of Appeal of the Grain and Feed Trade Association, London was considered and upheld. Similarly in Subhash Aggarwal Agencies v. Bhilwara Synthetics Ltd.[3] the decision of an appellate Tribunal constituted under the Delhi Hindustan Mercantile Association Rules and Regulations was under consideration. Several other instances could be cited but that is not necessary. There are several decisions of several High Courts to the same effect and we see no error in the implicit acceptance of the general principle of two-tier arbitrations."

10. Thus, two-tier arbitration is clearly permissible and admissible as per bye-laws applicable between the parties and the Appellate Arbitral Award is subject to the provision contained in Section 34 of the Act of 1996, therefore, the finding recorded by learned District Judge that application filed by the appellant under Section 34 (2) is in fact barred under Section 37 (1) (c) of the Act of 1996 is clearly unsustainable an bad in law.

11. As a fallout and consequence of the aforesaid discussion, the impugned order dated 25.3.2017 passed by the District Judge, Bastar at Jagdalpur is set aside and application filed by

2 (2014) 2 SCC 433
3 (1995) 1 SCC 371

the appellant under Section 34 of the Act of 1996 is restored to the original file of District Judge, Bastar at Jagdalpur for hearing and disposal in accordance with law. The parties are at liberty to proceed in accordance with law.

12. The arbitration appeal is allowed to the extent indicated hereinabove. No order as to cost(s).

Sd/-

(Sanjay K. Agrawal)

Judge

B/-