

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.01.2017

Coram

The Hon'ble Mr.Justice T.S. SIVAGNANAM

O.P.No.352 of 2009

M/s.India Infoline Ltd.,
No.75, Nirlon Complex,
Off Western Express Highway,
Goregaon (E), Mumbai-400 063.
Rep. by its Associate Vice President,
S.Hariharan
Office at No.393/280, Anna Salai,
Teynampet, Chennai - 600 018. ... Petitioner

vs

1.P.S.Thangapandian
S/o.Sanga Pilla,
KPR Cotton Mills P Ltd.,
252, Periyar Colony, Anupparpalayam,
Tirupur - 641 652, Tamil Nadu.

2.S.Subramanian,
Sole Arbitrator,
C/o.National Stock Exchange of India Ltd.,
No.123 and 124, 2nd Floor,
Ispahani Centre, Nungambakkam High Road,
Chennai - 600 034. ... Respondents

Prayer: Petition is filed under Section 34 of the Arbitration and Conciliation Act, 1996, to set aside the award dated 30.09.2008 in proceedings AM No.F&O/CH-0099/2008 by the second respondent herein.

For Petitioner : Mr.G.Surya Narayanan

ORDER

Heard Mr.G.Surya Narayanan, learned counsel appearing for the petitioner. None appears for the first respondent though they have been served.

2.This petition is filed under Section 34 of the Arbitration and Conciliation Act, 1996 to set aside the award dated 30.09.2008 in and by which the learned Arbitrator who was appointed by the National Stock Exchange of India Limited to consider the petitioner's claim petition dated 21.05.2008.

3.It may not be necessary for this Court to examine the merits of the matter since the challenge to the impugned award is only on the ground that the petitioner did not have proper notice of the arbitral proceedings as a result of which they were unable to present their case. The undisputed fact is that the claim petition submitted by the petitioner was entertained by the learned Arbitrator and initially hearing was held on 13.08.2008. The first respondent herein was absent in spite of receipt of notice. The learned Arbitrator heard the petitioner's officials and directed them to produce three documents, namely:

- a) Log Register Copy for sending the CNs by Email
- b) Proof of dispatch or delivery of the CNs

and statement of account

c) Proof of delivery of lawyer's notice

4.The learned Arbitrator however recorded the submission made on behalf of the petitioner that a request was made for granting time to produce those documents. In fact, the learned Arbitrator has referred to the letter of the petitioner dated 26.08.2008, wherein they prayed for seven days time to produce the records. However, the learned Arbitrator did not assign any specific date for hearing the matter after the petitioner's request for adjournment vide letter dated 26.08.2008, however, passed an award.

5.The petitioner's case is that they were under the earnest belief that fresh hearing dated would be intimated by the learned Arbitrator and the petitioner could have produced those records since by then it would be available at their hands.

6.In the light of the same, this Court is of the considered view that the petitioner did not have appropriate opportunity and notice of the arbitral proceedings as the learned Arbitrator did not intimate the date of hearing pursuant to the petitioner's request for adjournment vide letter dated 26.08.2008. Hence, for the above reason the impugned award is set aside and the matter

is remanded to the National Stock Exchange of India Limited for appointment of an Arbitrator to consider the petitioner's claim afresh in accordance with law.

sd/.T.S.S.J
10.01.2017

//Certified to be a true copy//

Dated this the day of 2017

R.s/07.04.2017

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.



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