

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.01.2017

Coram

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

O.P.No.586 of 2009

Jai Prakash Moolchandani
Residing at Flat No.008,
Skyline Apartments,
548, Langford Road,
Bangalore - 560025

.. Petitioner

vs

1.M/s.IL&FS Investsmart Securities Limited,
Having its Registered Office at
The IL & FS Financial Centre, 8th Floor,
Plot C-22, G.Block, Bandra Kurla Complex,
Bandra Kurla Complex,
Bandra (E), Mumbai - 400 051

2.M/s.Annapoorna Stock & Share Brokers
Private Limited,
Rep., by its Managing Director Mr.Jagdish Ahuja,
Andree Capitol, 8/1, Andree Road,
K.H.Road, Cross, Bangalore -560 027.

3.Mr.R.Subramaniam
Sole Arbitrator,
National Stock Exchange of India Ltd.,
2nd Floor, Ispahani Centre, Door No.123-124,
Nungambakkam High Road,
Nungambakkam, Chennai - 600034.

.. Respondents

Prayer: Petition is filed under Section 34 of the Arbitration and Conciliation Act, 1996, to set aside the Award passed by the third respondent, dated 17.07.2009 in Arbitration Matter (A.M.) no:F&O/C-0481/2008.

For Petitioner : Mr.P.V.Balasubramaniam

<https://hcservices.ecourts.gov.in/hcservices/>

For Respondent : Mr.C.Prasanna Venkatesh

ORDER

This petition has been filed under Section 34 of the Arbitration and Conciliation Act, 1996, (Act), to set aside the award passed by the learned Arbitrator dated 17.07.2009.

2. The only ground on which the impugned award is challenged, is by contending that the claim statement has been thrown out on the only ground that in terms of Article No.(3) of bye-laws of National Stock Exchange, the claim is barred by limitation. This issue had come up for consideration in the case of **A.Chandrasekaran vs. M/s.Yoha Securities limited & Anr.**, reported in **2014(1)CTC 87** and the Court, after considering the bye-laws of the National Stock Exchange and the Limitation Act, held that the award passed therein cannot be sustained. In fact, this Court had an occasion to consider an identical issue in O.P.No.728 of 2009, dated 04.01.2009, and also took into consideration as to what relief, the party would be entitled to and while allowing the Original Petition and setting aside the impugned award remanded the matter for fresh consideration. This course could be adopted in this instant case also, as there has been no adjudication of the merits of the matter and to keep this petition pending before this Court for the learned Arbitrator to pass a fresh award would be very cumbersome procedure, taking note of the fact that a fresh Arbitrator has to be

nominated for conducting fresh proceedings and the present Original Petition is of the year 2009.

3. For all the above reasons, the Petition is allowed and the impugned award is set aside and the matter is remanded to the NSE of India for constituting an Arbitral Tribunal to hear the petitioner as well as respondents and decide the claim and the counter claim afresh on merits and in accordance with law. It is made clear that this Court has not adjudicated the merits of the claim nor the learned Arbitrator done so and in the fresh arbitration proceedings, the parties are at liberty to raise all factual and legal issues.

sd/.T.S.S.J

19.01.2017

//Certified to be a true copy//
Dated this the day of 2017.

P.M./13.06.2017

COURT OFFICER

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

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