IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04-01-2017

CORAM:

THE HONOURABLE MR. JUSTICE T.S. SIVAGNANAM

Original Petition No.728 of 2009

M/s. Aditya Birla Money Limited
(formerly known as M/s. Apollo Sindhoori
Capital Investments Limited)
Ali Towers
55 Greams Road
Chennai – 600 006 .. Petitioner

Vs

1. Mr. M. HussainAhmed
67/73, Municipal Colony
Nehruji Nagar
Dindigul – 624 001

2. Mr. Sarvashri C. Rangamani
Presiding Arbitrator
National Stock Exchange of India Limited
2nd Floor,Ispahani Centre
Door No.123-124
Nungambakkam High Road
Chennai – 600 034

3. Mr. S. Subramanian
Arbitrator
National Stock Exchange of India Limited
2nd Floor, Ispahani Centre
Door No.123-124

Nungambakkam High Road
Chennai – 600 034

4. Mr. R. Subramanian
Arbitrator
National Stock Exchange of India Limited
2nd Floor, Ispahani Centre
Door No.123-124
Nungambakkam High Road
Chennai – 600 034 ... Respondents

Original Petition under Section 34 of the Arbitration and Conciliation Act, 1996 to set aside the award dated 14-08-2009 insofar as it relates to the claim of the petitioner for Rs.27,65,575.91/- from the first respondent.

For petitioner : Mr. S. Shivathanu Mohan
for M/s.Ramasubramaniam & Associates

For respondents : Mr. P.M. Vijayakumar
for Mr. S.S. Swaminathan

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ORDER

Heard Mr. S. Shivathanu Mohan for M/s. Ramasubramaniam & Associates, learned counsel for the petitioner and Mr. P.M. Vijayakumar for Mr.S.S. Swaminathan for the respondent.

2. This petition has been filed under Section 34 of the Arbitration and

Conciliation Act to set aside the award passed by the panel of Arbitrators namely the respondents 2 to 4 herein insofar as it relates to the claim of the petitioner for Rs.27,67,575.91p from the first respondent. It may not be necessary for the Court to go into the factual aspects of the matter as the claim made by the petitioner herein which in fact was a counter claim to the claim made by the first respondent, was thrown out on the ground of limitation.

3. It appears that the first respondent has not filed a separate petition under Section 34 of the Act to set aside that portion of the award rejecting the first respondent's claim petition on the ground of limitation. The first respondent is a constituent of the petitioner-Company which is a stock broker with The Securities and Exchange Board of India (SEBI) and also a part of the National Stock Exchange Limited (NSE) and Bombay Stock Exchange Limited (BSE) in both equity and derivative segments. As a result of disputes and differences between the parties, the first respondent namely the constituent of the petitioner approaches the NSE for initiation of arbitration proceedings with a claim of Rs.47,66,544/- towards the loss incurred by him by the unwarranted squaring off his open positions on 21-01-2008 and 22-01-2008 and that he had provided three blank cheques to the petitioner herein on 21-01-2008 on being informed that there was margin shortage and the petitioner have

gone ahead even before depositing the first respondent's cheques on 21-01-2008. The petitioner herein was arrayed as the respondent, has filed a reply denying the claim made by the first respondent and stating that the first respondent had insufficient margin to the extent of Rs.4,24,381.74p on 21-01-2008 and this was increased to 18,43,329.29 on 22-01-2008.

4. Further, the first respondent failed to bring any funds to cover the insufficient margin despite request and therefore, they were constrained to sell the securities of the first respondent to recover the deficiency in margin. With regard to the cheques received by the petitioner, it is submitted that it was dishonoured by the Bank for insufficient funds. Apart from the above, both the parties have raised various contentions both on merits with regard to the terms and conditions of the agreement between the parties and the bye laws of the NSE. There is also reference to a litigation initiated by the first respondent in the matter where he has secured an order of injunction from this Court from not selling the shares in DEMAT account.

5. The Arbitral Tribunal framed four questions for consideration viz., (i) whether the first respondent/applicant's claim is time barred; (ii) whether the first respondent/applicant has established his claim on the respondent on merit; (iii)

whether the petitioner/respondent's counter claim is time barred and (iv) whether the petitioner/respondent have established their counter claim on the applicant on merits. Though there is reference to the factual aspects in the Preamble portion of the award, the Arbitral Tribunal dismissed the claim petition filed by the first respondent on the ground that the application was received beyond the prescribed time limit on six months in Chapter XI-3 of the NSE's bye–laws and accordingly, issue No.1 was decided against the first respondent. Similarly, the issue No.(3) which also pertains the limitation was also decided against the petitioner on similar grounds. The petitioner is before this Court challenging the award contending that as per the law of limitation, the application is not time barred and the law of limitation would prevail over the bye-laws of the NSE.

6. An identical issue came up for consideration before the Court in *Mr. A. Chandrasekaran Vs. M/s.Yoha Securities Limited and Mr.M.V. Badrinath(2014 (1) CTC 87)* wherein the question which arose for consideration is whether the claim for consideration before the NSE could have been thrown out if fild beyond the period of six months as mentioned in bye-law. In the said case, the claim petition was rejected since as on the date of rejection, bye-law no.(3) prescribed time limit of six months and it was held further that a circular has been issued by SEBI dated 11-08-2010

streamlining the procedure for arbitration mechanism available at Stock Exchanges and it was also indicated therein that period of limitation for filing a reference should be governed by the provisions of Limitation Act, 1963. Ultimately, the Court after referring to several decision of the Honourable Supreme Court and other High Courts held that the impugned award therein cannot be sustained.

7. In the light of the said decision, necessarily the impugned award in these proceedings has to be interfered with. This leads us with two other questions. If this Court is convinced that the impugned award requires interference, in the light of the law laid down by this Court in *Yoha Securites Limited case (cited supra),* whether the Court has to remand the matter for fresh consideration or otherwise. The second issue is whether the award only in respect of the counter claim of the petitioner alone requires interference as the prayer sought for is restricted to that extent or whether the award in its entirety should be interfered with. On the first aspect, this Court is of the view that the limitation in the instant case is purely a question of law. Admittedly, the Arbitral Tribunal did not go into the merits of the contentions raised by both parties. Therefore, while setting aside the impugned award, the matter should be remitted back to the Arbitral Tribunal. Admittedly, the petitioner herein did not approach the Arbitrator, though the reasons stated is that because securities were available with

them. Be that as it may, the claim made by the petitioner herein before the Arbitral Tribunal was only a counter claim and the award is a comprehensive award deciding both the claim petition as well as the counter claim and both the claims have been rejected solely, on the ground of limitation. Therefore, this Court is of the view that justice and equity will be best served if the award is set aside in its entirety and the matter to be decided by the Arbitral Tribunal afresh on merits, after hearing both parties, regarding the claim as well as counter claim.

9. For all the above reasons, the impugned award is set aside, not restricting it only to the counter claim of the petitioner, but also the claim made by the first respondent and the matter is remanded to the NSE of India for constituting an Arbitral Tribunal to hear the petitioner as well as first respondent and decide the claim and the counter claim afresh on merits and in accordance with law.

04-01-2017

glp

T. S. SIVAGNANAM,J.

glp

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