IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Revision No.7081 of 2015
and other 12 connected revisions
Date of Order: 21.09.2017

National Spot Exchange Limited

...Petitioner

Versus

M/s LOIL Health Foods Ltd. & Anr.

...Respondents

CORAM: HON'BLE MR. JSUTICE ANIL KSHETARPAL

Present: Mr. Puneet Jindal, Sr. Advocate, with
Mr. Vikas Kuthiala, Advocate,
for the petitioner(s)

Mr. Sanjay Kaushal, Sr. Advocate, and
Mr. Anand Chhibbar, Sr. Advocate, with
Mr. R. Kartikey, Advocate,
for the respondents.

ANIL KSHETARPAL, J.

By this common judgment, I shall be disposing of Civil Revision Nos.7081, 7082, 7084, 7109, 7114, 7116, 7122, 7174, 7179, 7180, 7181, 7256 of 2015 and 7658 of 2016.

The common issue which needs determination is whether the parties by an agreement confer exclusive jurisdiction on a Court of a particular place, where a part of cause of action has arisen.

It is clear case of Forum shopping by the plaintiff. National Spot Exchange Limited (hereinafter referred to as 'the NSEL') is petitioner in all these revision petitions. NSEL is a web portal forum for trading in the commodities. It is a company incorporated under the Companies Act. It is under the control of Department of Consumer Affairs, Union of India and Forward Market Commission.

A citizen can trade in various commodities particularly foodgrains through this forum either through an authorized/enlisted agent or himself, but if one wish to become a member then one has to fulfill the form and complete the formalities. NSEL has framed Bye-laws. The relevant clauses of the Bye-laws are extracted as under:-

"3.3 JURISDICTION

These Bye-Laws shall be applicable on all the members and participants of the exchange, authorized persons, approved users, clients and all entities involved in trading, clearing and settlement of transactions, to the extent specified herein. These shall be subject to the jurisdiction of the Courts in Mumbai, where the Exchange is situated, irrespective of the place of business of the members of the Exchange in India or abroad. All transactions entered into or executed through "NEST" or any other trading system of the Exchange located at the premises of the Exchange at any place shall be deemed to have taken place in the city of Mumbai only and the place of contracting as between the members of the Exchange shall be at Mumbai, irrespective of the locations of the Trader Workstations of the members connected thereto. All disputes under these Bye-Laws shall be subject to the exclusive jurisdiction of the Courts in Mumbai, irrespective *of the location of the place of business of the members of the Exchange and of their clients or the place where the concerned transaction may have taken place. The Bye-Laws, Rules, Business Rules and Regulations of the Exchange shall be governed by and construed in accordance with the laws in force in India. Every exchange member shall expressly provide in the contract notes to be issued by him that only the Courts in Mumbai shall have the exclusive jurisdiction for claims in relation to any dispute arising out of or in connection with or in relation to such contract notes.*

4.27 *Indian law shall apply to the commodities entered between the members of the Exchange and jurisdiction shall be the courts in Mumbai.*

15. ARBITRATION

15.1 ***XX*** ***XX*** ***XX***

15.2 ***XX*** ***XX*** ***XX***

15.3 ***XX*** ***XX*** ***XX***

15.4 *Reference to Arbitration All claims, differences or disputes between the members inter se or between a member and a constituent member or between a member and a registered nonmember client or arising out of or in relation to trades executed on the Exchange and made subject to the Bye-Laws,* *Rules, Business Rules and Regulations of the Exchange or with reference to anything incidental thereto or in pursuance thereof or relating to their validity, construction, interpretation or fulfillment and/or the rights, obligations and liabilities of the parties thereto and including any question of whether such transactions have been entered into or not shall be submitted to arbitration in accordance with the provisions of these Bye-Laws and Regulations that may be in force from time to time. Provided these Bye-Laws shall not in any way affect the jurisdiction of the Exchange on the clearing member through whom such member has dealt with or traded in regard thereto and such clearing member shall continue to remain responsible, accountable and liable to the Exchange in this behalf*

15.5 *XX XX XX*

15.6 *Jurisdiction All parties to an arbitration under these Bye-Laws, Rules, Business Rules and Regulations and the persons, if any, submitting claims under them, shall be deemed to have submitted to the exclusive jurisdiction of the Court in Mumbai for the purpose of giving effect to the provisions of the Act, these Bye-Laws and Rules, Business*

Rules and Regulations in force."

Respondent-plaintiff is authorized agent and member. It is not in dispute that before becoming authorized agent, plaintiff did submit the form. The relevant extract of the form is as under:-

> " *I am/we are desirous of becoming a Trading-cum-Clearing Member of National Spot Exchange Limtied (NSEL). I/We, hereby apply for said membership and, undertake to conform to and to abide by the Memorandum & Articles of Association and the Rules, Bye-Laws, Regulations, Business Rules, Circulars and Orders, issued by the Exchange from time to time. I/We shall be liable for all contracts and transactions in the Exchange entered into by us or by our authorized representatives and I/ we shall comply with the requirements of the Exchange relating to settlement thereof. I/we shall also abide by all decision of the Exchange with respect to the operations of the Exchange and would perform accordingly in meeting my/our financial, regulatory and operational responsibility as decided by the Exchange from time to time. I/we agree to be responsible for all non-compliance and the Exchange shall reserve all rights of disciplinary action for any non-compliance by me/us."*

Apart from that the authorized agent also files an undertaking. It is not in dispute that every agent has to maintain a bank account in Mumbai. It is the case of the plaintiff that it had opened the account in HDFC Bank, Fort Mumbai Branch.

Plaintiff filed a suit for declaration, permanent injunction and mandatory injunctions at Fatehgarh Sahib, Punjab. Paragraphs 14, 20, 21, 22, 23, 24, 26, 27 and the prayer clause in paragraph 29 are extracted as under:-

> "*14. In view of the representations made by and on behalf of defendant no.2, plaintiff agreed for trading on Defendant no.2's portal and vide letter dated 25.09.2012 issued by the Defendant no.2 to the plaintiff, the plaintiff was provided the Trading Member ID bearing No.14470. Consequently, plaintiff opened two bank accounts viz., LOIL Health Foods Limited-NSEL Settlement account bearing No00990680026564 maintained at Fort, Mumbai branch of the said HDFC Bank and LOIL Health Foods Limited-NSEL Client Account bearing No.01070340001209 maintained at Sector 8-C, Chandigarh branch of the HDFC Bank for the purposes of trading on the online platform of the Defendants.*
>
> *20. That between 17.07.2013 to 24.07.2013, the plaintiff in order to meet the settlement obligations with respect to "Buy positions taken by it on the NSEL's trading platform*

had deposited in the aforesaid Settlement Account No.00990680026564 a total sum of Rs.73,75,00,000.00 (Rupees Seventy Three Crores and Seventy Five Lacs only). It is submitted that on settlement date title to goods/merchandise (subject to Plaintiff's Buy position) passed to the plaintiff. Custody of said goods thus legally and jurally vested with the plaintiff. It is pertinent to mention here as per the practice prevailed in the market, consequent to the aforesaid sale, the defendant no.2 further transferred the said amount or part thereof to defendant no.1 as payment for the purchased commodities (which already stood appropriated to the sale to plaintiff) and such goods/merchandise (that thus became under entrustment with ARIHANT were to be delivered (as per the contract) to the Defendant No2 for ultimate delivery to the plaintiff. Plaintiff has also come to know that till date the Defendant no.1 has not done so nor accounted for the merchandise entrusted to it nor delivered supplied the commodities to the defendant no.2 and as such the defendant no2 has failed to deliver any commodity whatsoever to the *plaintiff. In fact, the plaintiff has never been offered even inspection of the commodities to be delivered it for the said payment.*

21. *That between 20.08.2013 to 26.08.2013 on the assurance of defendant no.2 that the agreed commodities will be supplied to the plaintiff very soon, plaintiff has further deposited an amount of Rs.7,00,00,000/- in the aforesaid settlement amount. However, till date the plaintiff has not received or been delivered any commodity.*

22. *That time and again plaintiff has called upon the defendants to deliver stocks against the aforesaid payments. However, till date defendants have failed to do so. The defendants are duty bound to deliver the commodities title which stands transferred to the plaintiff for which the plaintiff has made the entire payment and admittedly the said payments have been received by them thereby rendering the transaction complete. Since the aforesaid amount has been paid by the plaintiff through exchange (being operated by the NSEL) to defendant no.1, NSEL was obliged to have ensured the transaction to be completed in all respects viz. delivery of*

stocks and issuance of invoices etc.

23. *It is pertinent to mention herein that defendant no.1 has its office in Amritsar, Punjab and substantial transaction with regard to the BUY Position took place in Fatehgarh Sahib District of Punjab. The amount paid by the plaintiff through the exchange to defendant no.1 was credited into the accounts of the defendant no.1 in Punjab. The defendant no.1 had stocked its commodities in warehouses in Punjab which were to be handed over to the plaintiffs in Fatehgarh Sahib, Punjab. Thus substantial part of cause of took place in Fatehgarh Sahib, Punjab. The sale took place in the District of Fatehgarh Sahib, within the territorial jurisdiction of this Hon'ble Court. The plaintiff claims a declaration to the effect of its title to goods (the subject of it Buy position) as stated above. The plaintiff also seeks a prohibitory injunction against the defendants no.1 and 2 restraining them in perpetuity from interfering in plaintiff's rights to recourse to the merchandise referred to above. The plaintiff is also entitled to a mandatory injunction mandating defendants*

to provide inspection and documents enabling plaintiff access to the merchandise in question.

24. That vide repeated communications defendant no.2 has reported and hold out a hostile stand to the legitimacy of inter alia transactions dated 17.07.2013, 18.07.2013, 19.07.2013, 22.07.2013, 23.07.2013, 24.08.2013, 20.08.2013 and 26.08.2013. In such adoption of stand defendant no.2 has questioned the bonafide of the transactions and the plaintiff's claim for purchase of commodities based on the said transactions contended by the plaintiff to be valid, legal and complete. The defendants have also through letters and communications in particular dated 23.11.2013 questioned the plaintiff's claim to title of the commodities, the subject matter of the suit. The plaintiff respectfully submits that it is the aforesaid stand of the Defendants which inter-alia, causes the institution of the present suit.

26. That the cause of action for filing the present suit in favour of the plaintiff and against the defendants first time accrued in the month of June, 2012 when the representatives of the *defendants approached the plaintiff and requested the plaintiff to trade on teh portal of defendant no.2. The cause of action further accrued in favour of the plaintiff and against the defendants on 25.09.2012 when the plaintiff was provided membership of the defendant no.2 and accordingly plaintiff opened bank accounts for the purpose of trading on the online platform of NSEL. The cause of action further accrued in favour of the plaintiff and against the defendants between 17.07.2013 to 24.07.2013, when the plaintiff in order to meet the settlement obligations with respect to purchase positions taken by it on defendant's trading platform deposited in the Settlement Account No.00990680026564 a sum of Rs.73,75,00,000.00 (Rupees Seventy Three Crore Seventy Five lacs). The cause of action also accrued in favour of the plaintiff and against the defendants in the month of July 2013 when the aforesaid amount or part thereof has been transferred to defendant no.1 through the exchange for purchase of the commodities. The cause of action further accrued in favour of the plaintiff and against* *the defendants between 20.08.2013 to 26.08.2013 when on the assurance of defendants that the commodities will be delivered to the plaintiff, the plaintiff deposited an amount of Rs.7,00,00,000/- (Rupees Seven Crore) in the aforesaid settlement account and the said amount or part thereof was further transferred to defendant no1 through exchange. The cause of action again arose on the various dates set out in the foregoing paragraphs of the plaint when the defendants jointly and /or severally held out in hostility to the claim of the plaintiff both regarding the validity and legality of the transactions dated 17.07.2013, 18.07.2013, 19.07.2013, 22.07.2013, 23.07.2013, 24.08.2013, 20.08.2013 and 26.08.2013 as also with regard to the plaintiff's title to the commodities/merchandise, the subject matter of the suit. The cause of action thereafter arose on the various dates when the plaintiff refuted the stand of the defendants in this behalf and despite such position taken by the plaintiff, defendants continued to hold out their position and hostility to the stand of the* *plaintiff The rights of the plaintiff to seek injunction is founded on the cause of action of the defendants in preventing the plaintiff in exercise of its legitimates rights both in terms of seeking access to the commodities/merchandise as also in denying. Plaintiff the right to inspect of goods and documents of title thereto. The exercise of such right has been denied by the defendants and the same continues to be so. The cause of action is therefore a continuing one and it arises day to day.*

27. That this Hon'ble Court has got the jurisdiction to try and entertain the present suit as the entire cause of action accrued within the territorial jurisdiction of this Hon'ble Court. The defendant no.1 has its office in Amritsar, Punjab and substantial transactions with regard to the BUY Position took place in Fatehgarh Sahib District of Punjab. The amount paid by the plaintiff through the exchange to defendant no.1 was credited into the accounts of the defendant no.1 in Punjab. The defendant no.1 had stocked its commodities in warehouses in Punjab and that were to be handed over to *the plaintiff in Fatehgarh Sahib of Punjab. Thus substantial part of the transaction took place within the jurisdiction of Fatehgarh Sahib of Punjab and in view of the fats as enumerated herein this Hon'ble Court has jurisdiction to entertain the present suit.*

29. That the present suit is being filed well within the period of limitation.

PRAYER

(i) pass a decree of declaration to the effect that the transactions dated *17.07.2013, 18.07.2013, 19.07.2013, 22.07.2013, 23.07.2013, 24.08.2013, 20.08.2013 and 26.08.2013 whereby the plaintiff has deposited an amount of Rs.80,75,00,000.00 (Rupees Eighty Crore Seventy Five Lacs only) in settlement account No.00990680026564 maintained at Fort, Mumbai branch of the HDFC Bank for purchase of commodities are valid, legal and complete;*

(ii) pass a decree of declaration to the effect that the title to the commodities vests with the plaintiff;

(iii) pass a decree of prohibitory injunction against the defendants no.1 and 2 restraining them in perpetuity from interfering in

plaintiffs rights to recourse to the merchandise;

(iv) *pass a decree of mandatory injunction mandating defendants to provide inspection and documents enabling the plaintiff to access to the merchandise in question;*

(v) *award costs of the suit in favour of the plaintiff and against the defendants;*

(vi) *pass such further order(s) and/or direction(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case and in the interest of justice."*

Arihant Futures & Commodities Ltd., 596, Ist Floor, above Bhandari Namkeen, Lawrence Road, Amritsar, Punjab, was impleaded as defendant no.1, whereas National Spot Exchange Limited, (FT Tower, CTS No.256 & 257, 4th Floor, Suren Road, Chakala, Andheri (East), Mumbai-400 093 was added as defendant no.2.

NSEL filed an application under Order 7 Rules 10 & 11 read with Section 15 CPC. It was pointed out that no part of cause of action has arisen in the territorial jurisdiction of Fatehgarh Sahib and as per the agreement between the parties, the Courts at Mumbai had been agreed to be given exclusive jurisdiction. It was pointed out that the plaintiff has opened and maintained their settlement account with HDFC Bank in Mumbai for the purpose of trading on the Web Portal and all pay-ins and pay-outs in respect of the trading carried out by the plaintiff were debited/credited in that account in Mumbai. The settlement and delivery in respect of transactions executed by the plaintiff (including the suit transactions) took place at Mumbai. It was further pleaded that the plaintiff is claiming relief in respect of certain commodities/goods for which the plaintiff claims that it had deposited the amount in its settlement account in the HDFC Bank, Mumbai. Clause 3.3 of the Bye-laws was also referred to.

The jurisdiction of the Civil Court at Fatehgarh Sahib to entertain and adjudicate upon such dispute was also disputed in view of the Arbitration Clause. In reply, plaintiff did not specifically deny these assertions made in the application.

The learned trial Court dismissed the application by treating it to be an application under Order 7 Rule 11 CPC and held that at the time of disposal of an application under Order 7 Rule 11 CPC, only the assertions made in the plaint are to be seen.

NSEL had filed these revision petitions against similar orders passed by the learned trial Court in various suits.

Learned senior counsel for the petitioner has submitted that as per Clause 3.3 of the Bye-laws, the Court at Mumbai have been conferred exclusive jurisdiction. He has further submitted that it is not in dispute that major part of the cause of action had arisen in the territory of Mumbai and, therefore, as per settled law, parties are free to confer exclusive jurisdiction by an agreement to have Court at one place where a part of cause of action had arisen, hence Court at Fatehgarh Sahib did not had jurisdiction to entertain such suits. He has relied upon following judgments passed by the Hon'ble Supreme Court of India, reported as ***M/s Hanil Era Textile Ltd.* v. *M/s Puromatic Filters (P) Ltd.*, (2004) 4 SCC, 671**, ***A.B.C. Laminart Pvt. Ltd. And another* v. *A.P.Agencies, Salem* (1989) 2 SCC, 163**, ***New Moga***

Transport Company* v. *United India Insurance Co. Ltd. and Ors.*(2004) 4, *SCC 677, and ***India Mobile Distribution Private Limited* v. *Datawind Innovations Private Limtied & Ors* AIR 2017(SC), 2105**.

He has further submitted that neither of the defendants is having its office in Fatehgarh Sahib nor any of the defendants is residing or carrying on its business within territorial jurisdiction of the Fatehgarh Sahib, therefore, the Court at Fatehgarh Sahib did not have any jurisdiction.

On the other hand, learned senior counsel for the respondent-plaintiff has submitted that the role of NSEL is only of a facilitator. He has further submitted that NSEL is maintaining a godown in Fatehgarh Sahib. He has submitted that NSEL is managing the settlement account maintained in HDFC Bank, Mumbai, whereas delivery is to be taken from the godown at Fatehgarh Sahib. He has further submitted that a part of cause of action had arisen within territorial jurisdiction of Fatehgarh Sahib because the plaintiff operated a Web Portal from Fatehgarh Sahib to purchase paddy/rice and, therefore, Court at Fatehgarh Sahib has the jurisdiction.

I have heard the arguments of learned counsels for the parties at length and with their able assistance gone through the facts available on the Court file.

As noticed earlier, plaintiff-respondent is neither disputing that it is authorized agent/trading member at NSEL nor it is disputing that plaintiff is maintaining their settlement account at Mumbai. It is further not in dispute that all transactions are required to take place at Mumbai. It is further not in dispute that some part of the payment is lying in the account at Mumbai. A look at the prayer made in the suit would show that the plaintiff had sought decree for declaration to the effect that transactions whereby the plaintiff deposited amount in the settlement account maintained at Mumbai Branch are valid, legal and complete. The prayer made in the suit has already been extracted.

In these circumstances, I find force in the submissions of learned counsel for the NSEL. It has been held by the Hon'ble Supreme Court of India in catena of judgments that parties by agreement can confer exclusive jurisdiction to the Court at a place where part of the cause of action has arisen. In this case, parties had signed the form to abide by the Bye-laws and these Bye-laws provide that Courts at Mumbai would have exclusive jurisdiction, therefore, Court at Fatehgarh Sahib lacks territorial jurisdiction.

Second argument of learned counsel for the petitioner is that no part of cause of action has arisen within the territorial jurisdiction of Fatehgarh Sahib. He has further submitted that none of the defendants reside or carry out the business at Fatehgarh Sahib.

On the other hand, learned senior counsel for the respondents-plaintiff has submitted that NSEL maintains a godown at Khammano within the territorial jurisdiction of Fatehgarh Sahib. However, respondents-plaintiff could not point out pleading in the plaint to support this assertion. In these circumstances, it is clear that Courts at Fatehgarh Sahib did not had territorial jurisdiction.

It is even the argument of learned counsel for the respondents-plaintiff that they are maintaining the settlement account at Mumbai. Therefore, pay-ins (the amount payable to the plaintiff) and pay-outs (i.e. amount receivable from the plaintiff) in respect of the trading carried out by the plaintiff on Web Portal/Exchange are debited/credited in that account at

Mumbai.

In these circumstances, it is not a case where no part of cause of action has been arisen within territorial jurisdiction of Mumbai.

In view of the discussion made above, all the revision petitions are allowed, with costs of Rs.1,00,000/- each payable by the plaintiff in each case. The orders passed by the learned trial Court dismissing the applications under Order 7 Rules 10 and 11 read with Section 151 CPC are set aside.

The Civil Courts at Fatehgarh Sahib shall take steps to return the plaint and fix a date for appearance in the Court where the plaint is to be presented after return in compliance with Order 7 Rule 10 and Order 7 Rule 10A CPC.

The costs of Rs.1,00,000/- each shall be deposited by the plaintiff with the Punjab State legal Services Authority, within a period of one month from today.

September 21, 2017 **(ANIL KSHETARPAL)**
nt **JUDGE**

Whether speaking/reasoned : YES/NO
Whether reportable : YES/NO