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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **OMP 294/2014**

Date of decision:2nd November, 2017

M/S ARCADIA SHARES AND STOCK BROKERS PVT LTD
..... Petitioner

Through Mr. PR Raghav Bansal and
Mr. Shaswat, Advs

versus

HARMANPRIT SINGH SIDHU ..... Respondent
Through Mr. Anand Shankar, Adv

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (Oral)

The present petition has been filed by the petitioner, M/s Arcadia Shares and Stock Brokers Pvt. Ltd challenging the Award dated 10th September, 2013 passed by the Appellate Arbitral Tribunal, National Stock Exchange of India in Appeal. A. M. No. F&O/D-0081/2012.

2. The respondent had opened a D-MAT account with the petitioner and had issued a cheque No. 418234 dated 14th June, 2011 for an amount of Rs.13.5 lacs in favour of the petitioner for trading in equity segment. Claiming that various transactions had been

transacted by the petitioner without the consent or knowledge of the respondent, including transfer of sum of Rs.6,86,671.65 from petitioner's account to MCX, the respondent filed a claim for recovery of Rs.13.5 lacs with interest. The claim was referred by the National Stock Exchange of India to Sole Arbitrator, who vide his Award dated 21st January, 2013 dismissed the same.

3. Aggrieved of the above Award, the respondent filed an appeal before the Appellate Tribunal, National Stock Exchange of India Ltd.

4. During the pendency of the above appeal, on a complaint made by the respondent, FIR No. 197 dated 12th June, 2013 under Section 420 and 120-B, IPC was registered at Chandigarh Police Station and Vice President of the petitioner Mr.Puneet Singh was arrested.

5. The parties thereafter entered into a Compromise Deed dated 31st August,2013 where under the petitioner paid a sum of Rs.12 lacs towards full and final satisfaction of the claim of the respondent "which had led to the filing of the aforesaid FIR". Clause 4 and 5 of the Compromise Deed are relevant and are therefore quoted herein below:

> *"4. That both the parties have further resolved that they shall not press any claim which may be ancillary to or related to the claim/dispute mentioned in the above said FIR, against each other."*
> *5. That the second party resolves that he is the authorized representative of the companies i.e. Arcadia Shares & Stock Brokers Pvt LTD and Arcadia Commodities & Trading and after the execution of this Compromise Deed, neither of the said companies shall raise any claim against the first party which may be*

ancillary to or connected with the claim/dispute mentioned in the FIR and the second party also undertakes that neither he nor any of the said companies mentioned above shall press any pending legal proceedings in connection with the transaction mentioned in the FIR, it is also specified that the second party shall also withdraw the legal notice dated 24.8.2013 which was communicated to the first party by R.S. Pimpalakar, Advocate for the recovery of Rs. 8,47,400/- as on 17.8.2013."

6. A bare perusal of the above Compromise Deed would show that the respondent agreed not to press any claim which may be ancillary to or related to the claim/dispute mentioned in the above said FIR.

7. The petitioner claims that pursuant to the Compromise Deed, it filed a request with the Appellate Arbitral Tribunal on 6th September, 2013 requesting for closure of the arbitration proceedings. This fact is not disputed by the counsel for the respondent. It is contended that in spite of the above said request, Appellate Arbitral Tribunal proceeded to pass impugned Award dated 10th September, 2013 Awarding a sum of Rs.6,86,671.65 in favour of the respondent. It is contended that the impugned Award has been passed without making even a reference to the Compromise Deed and/or the request for closure of proceedings made by the petitioner.

8. Counsel for the petitioner further submits that based on the same Compromise Deed, the arbitration proceedings filed by the

respondent before the arbitral tribunal appointed by MCX was closed vide Award dated 13th December, 2013.

9. Learned counsel for the respondent on the other hand submits that the Compromise Deed is being wrongly relied upon by the petitioner. Under the Compromise Deed only the FIR was sought to be settled and, in fact, it is for this reason that no reference was made to the arbitration proceedings in the said Compromise Deed. He further submits that reference to the "ancillary to or related to the claims/dispute mentioned in the above said FIR, against each other" does not include the arbitration proceedings that were pending before the Appellate Tribunal. He further draws my reference to the emails dated 1st September, 2013 and 2nd September, 2013 wherein the petitioner had earlier called upon the respondent to withdraw the arbitration proceedings as a condition for withdrawing its demand for a sum of Rs.8,47,400/- as also the legal notice dated 24th September, 2013 but had later proceeded to withdraw the same unconditionally. He therefore submits that from the above two emails, it can be gathered that withdrawal of the arbitration proceedings before the Appellate Arbitral Tribunal were not a part of the compromise.

10. I have considered the submissions made by the counsels for the parties. At the outset, I must mention that the Appellate Arbitral Tribunal has not made any reference to the Compromise Deed in spite of the same having been brought to its notice by the petitioner. In my opinion this itself is a ground sufficient to set aside the impugned Award. The Arbitral Tribunal should have at least called upon the

respondent to respond to the prayer of the petitioner seeking closure of the arbitration proceedings on the basis of this Compromise Deed. Section 30 of the Arbitration and Conciliation Act, 1996 mandates that if, during arbitral proceedings, the parties settle the dispute, the Arbitral Tribunal shall terminate the proceedings. It was, therefore, incumbent on the Appellate Arbitral Tribunal to seek the view of the respondent on the Compromise Deed before proceeding to publish the Award.

11. In spite of my above finding, I proceed to examine the submission made by the counsel for the respondent that the Compromise Deed does not include the arbitration proceedings which were pending before the Appellate Arbitral Tribunal. To appreciate the said argument, it is necessary to first quote the relevant portion from the FIR referred above.

> *"(9) That I had given the cheque of Rs. 13, 50, 000/- in the name of Arcadia Share and Stock Broker Pvt Ltd on 14th June 11, Which enchased on 15th June 2011, However, they started trading on 14th June 2011 itself and conducted a large number of transaction in Annexure 4.(10) That while the KYC forms were singed here in Chandigarh on 13th June 2011, the copies received later from Arcadia mentions the place as Panji (Goa) and dates as 10,11 and 13 June. These are all created documents and proves that they freely change after and overwrite documents to serve their purpose (Annexure 5(11) That while I gave cheque for Rs. 13.5 Lacs in favour of Arcadia Share and Stock Brokers Pvt. Ltd which is listed with NEC, they traded with my money in Arcadia Commodities and Trading which is a partnership company listed with MCX without my consent or*

permission. These two companies cannot be treated as sister companies as one is a Private Limited and the other a Partnership company and money cannot be transferred from one to another without a tripartite agreement and my specific permission, which was not there. Adjustments of funds between securities exchange and commodities exchange is illegal and not permitted as per the Government of India's exchange notification (Annexure 9) That is the reason that when Arcadia caused me loss me the MCX account by banging it down to Rs. (-) 12.59 lacs on 24th October 2011, which became Rs. 12.98 lacs by 31th March 2012 they did not send me a demand not for over 10 because Arcadia know they were at fault it is for this reason that Mr. Puneet Singh always promised me on phone he would neutralize this account and at one stage did tell me that he had brought it down to Rs. 90,000/- only which was a lie (12) That in the statement pertaining to my account NSE Capital sent by Arcadia (Annexure8,Page5l) they have injected Rs . 1lacs into my account on 10th October 2011 vide cheque No. 418236 and reversed the entry on 13. October 2011 due to Non Clearance of cheque. They have also traded during this period. This is fake entry as the above cheque number of Punjab Sind-Bank was issued by me to Chandigarh Golf Club on 28th June 2011 for an amount of Rs.9000/- and was encased on 1st July 2011 (Annexure 4) There were on cheque issued' by me, or any that bounced between the time I left for Canada on 30th June 2011 and returned on 17th January 2012 Arcadia has made this Frauduent entry to raise limits to due trading (13)That I have received two sets of Ledger Statements (AT3775) sent to me by Arcadia employee Poonam Kashyap on 25th April 2012 (Annexure6) and 9th November 2012 (Annexure 7). Which are identical However another ledger statement submitted by Mr. Puneet Singh(Annexure 8) does not match these and is distinctly forged and altered (14) That in ledgers received by me (Annexure 6) that statement show that in the NSE Future and Option Segment there is *a negative balance of Rs. 655, 380.78/- non 1st November 2011 (page-22) which was not adjusted till it became Rs 664,730.81 on 21st January 2012 in the same lagers in the MCX segment, it shows a negative balance of Rs. 1,259, 380.61 on 24th September 2011 (page 25) which was not adjusted till it became Rs 1,298,079.60 on 31st March 2012 However, in order to beat the Government of India-Forwarded market commissions circular and dated 16th December 2011 (Annexure 9- Pg-57) which forbids adjustment of funds among securities and commodities exchange Arcadia has forged and attired it's ledgers (Annexure 8 page 51 and 56) to take out the positive balance of Rs. 688,761.65 as indicated in the NSE ledgers (Annexure 6 page 16) insert it in their ledgers (Annexure 8 page 51 and 56) as amount transferred to MCX on 29th September 2011 this is clearly an intentional forgery as the amount Rs.6,86,761.65 was legally due to me and they wanted to deprive me of it ledger statements sent to me from the Arcadia office by Poonam Kashyap are genuine authenticated and can be verified copy of emails attached at Annexure 10."*

12. From the bare reading of the content of the FIR it would be apparent that all disputes that were the subject matter of the arbitration proceedings before the Appellate Arbitral Tribunal form part of the FIR including the transfer of Rs.6,86,761.65 to MCX. In my opinion, therefore, the counsel for the respondent is not right in contending that the Compromise Deed would not cover the dispute that was pending before the Appellate Arbitral Tribunal. It is also not denied that based on the same Compromise Deed, MCX closed the arbitral proceedings denying the claim by the respondent and the said Award was not challenged by the respondent.

13. As far as reliance on the email dated 1st September, 2013 and 2nd September, 2013 is concerned, in my opinion they would have no bearing to the facts of the case. The Compromise Deed itself records that even the petitioner would withdraw the demand as also the legal notice referred above. It was, perhaps, wrong on its part to put pre condition in the email dated 1st September, 2013 and it seems that on being correctly advised it did so withdraw the email on 2nd September, 2013. The same, however, cannot take away from the fact that the respondent had also unequivocally agreed to withdraw all its claim against the petitioner.

15. In view of the above discussions, I hold that the Arbitral Award dated 10th September, 2013 cannot be sustained and is liable to be set aside.

16. The petition is allowed and impugned Award dated 10th September, 2013 passed by the Appellate Arbitral Tribunal, National Stock Exchange of India Limited is set aside with no order as to costs.

NAVIN CHAWLA, J

NOVEMBER 02, 2017/nk