

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 2798 OF 2015

Master Capital Services Limited	.. Petitioner
Vs.	
National Stock Exchange of India Limited and anr.	.. Respondents

Mr.Nikhil Sakhardande a/w Mr.Ravichandra Hegde, Ms.Aashni Dalal, Mr.Ananth Balaji I/b J.Sagar Associates, for the Petitioner.

Dr.Birendra Saraf a/w Ms.Sanaya Dadachanji I/b Manilal Kher Ambalal & Co., for Respondent No.1.

Mr.Parag A. Vyas a/w Mr.Y.R.Mishra, for Respondent No.2 – Union of India.

Mr.Shantanu Mitra & Mr.Anubhav Ghosh I/b Desai & Diwanji, for Respondent No.3.

Mr.Abhay Patki, Addl. G.P. for Respondent – State.

**CORAM : R.M.SAVANT &
M.S.KARNIK, JJ.
DATE : 21st SEPTEMBER, 2018**

P.C. :

. The Petitioner is faced with an Award dated 27/04/2015 which is to be read with the additional arbitral Award dated 14/05/2015. The said Award has been passed in the Arbitration proceedings between the Petitioner and

Respondent No.4 - Madan Sharma. The Petitioner has filed an Appeal against the said arbitral Award and by application dated 22/05/2015, the Petitioner requested that the Appellate Arbitral proceedings be held at the regional centres of the National Stock Exchange at Kolkata, New Delhi or Mumbai or in the alternate if that is not possible, then the Arbitrators to be appointed to the Appellate Tribunal in the present matter be selected from the panel of the Arbitrators of the National Stock Exchange regional Centres at Kolkata, New Delhi or Mumbai. The said application came to be rejected by Respondent No.1 by order dated 27/05/2015 which is taken exception to by way of above Petition.

2. During the pendency of the above Writ Petition, the Securities and Exchange Board of India (for short 'the SEBI') has issued a Circular dated 23/02/2017 amending the regulations pursuant to comprehensive review of the grievance mechanism.

3. Insofar as the place of arbitration/appellate

arbitration is concerned, relevant clause H reads thus :

“In case award amount is more than Rs. 50 lakh (Rs. Fifty lakh), the next level of proceedings (arbitration or appellate arbitration) may take place at the nearest metro city, if desired by any of the party involved. The additional cost for arbitration, if any, to be borne by the appealing party.”

4. The learned Counsel appearing on behalf of the SEBI does not dispute the said position insofar as the change which has been brought about by the said Circular dated 23/02/2017. In our view, since the Circular has been issued during the pendency of the above Writ Petition, the said Circular can be made applicable to the Petitioner.

5. The learned Counsel appearing for the Petitioner on instructions therefore seeks withdrawal of the application dated 22/05/2015 filed by the Petitioner with liberty to file a fresh application for the relief which was sought by the said application dated 22/05/2015. The application is accordingly allowed to be withdrawn.

6. In view of the withdrawal of the said application dated 22/05/2015, the order dated 27/05/2015 would not survive. The challenge in the above Writ Petition has therefore turned infructuous. If any fresh application is filed by the Petitioner within 2 weeks from date, we direct the Respondent No.1 to consider the said application within 4 weeks thereafter.

7. Needless to state that the said consideration would be on the touchstone of the Circular dated 23/02/2017, and the decision to be communicated to the Petitioner thereafter.

8. With the directions as aforesaid, the Writ Petition is disposed of. Since an ad-interim relief is granted in the above Writ Petition by virtue of the order dated 16/07/2015 and continued thereafter, the same would continue till the application is decided by the Respondent No.1. In the event, the Appellate Arbitration results in an adverse order against the Petitioner in the matter of payment of interest, the same shall

not be given effect to for a period of 2 weeks of the communication of the said order to the Petitioner.

(M.S.KARNIK, J.)

(R.M.SAVANT, J.)