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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO. 1055 OF 2012

Arjit Bagchi … Petitioner

vs.

M/s. Geofin Comtrade Limited … Respondent

Ms.Usha Srivastava i/b. M/s. Consulta Juris for the Petitioner.
Mr. Nimay Dave a/w. Mr. Gaurav Jangle i/b. I. V. Merchant & Co. for the Respondents.

CORAM : A.K. MENON, J.
DATE : 13th JUNE, 2018

P. C.

1. By this petition under Section 34 of the Arbitration and Conciliation Act, 1996 an award dated 21st May, 2012 made by the Tribunal consisting of three arbitrators under the auspices of the National Spot Exchange Limited is challenged by the petitioner. The petitioner an individual entered into a Member Client agreement with the respondent company under which the petitioner agreed to invest and trade in diverse commodities in accordance with the terms and conditions specified therein.

2. Over a period of time between 3rd January, 2011 and 24th August, 2011 it appears that numerous trades were carried out, of which some are assailed by the petitioner as having been carried out without authority of the petitioner. Excess purchases are alleged to have been made for which the petitioner was charged at an

exorbitant rate. It is contended by the petitioner that respondent had agreed to fund the excess purchase and eventually the petitioner contended that the respondent's have caused a loss. The petitioner has also made various grievances about the execution of the agreement between the parties and alluding to its invalidity. Accordingly a claim was made for Rs.49,00,000/- with 18% interest as seen from the statement of claim.

3. In its reply, the respondent denied various allegations including those pertaining to the execution of the agreement. I may mention here the fact that disputes pertaining to execution of the agreement are no longer relevant since the petitioner had authorised trades pursuant to the Member Client agreement. To that extent there was no dispute between the parties that was required to be adjudicated by the Arbitral Tribunal. After the reply and documents were filed, the parties were heard on the merits of their respective cases. The solitary issue framed by the Tribunal reads as follows :

"Whether the claim of the applicant is true and acceptable?"

4. The award dated 21st May, 2012 the Tribunal dismissed the petitioners claim. It is this award that has been challenged under Section 34 of the Arbitration and Conciliation Act, 1996. The learned counsel for the petitioner submitted that the challenge is under Section 34 (b)(ii) of the Act, the award being in conflict with the public policy of India. To elaborate, the learned counsel for the petitioner submitted that various aspects of the petitioners contentions before the Tribunal had not been properly considered. In the course of submissions and on a query from the

Court as to which of the authorised grounds set out in the petition in paragraph 8 of the petitioner are being pressed, learned counsel for the petitioner fairly stated that the only ground that is being urged is that the award is violation of the public policy of India.

5. Learned counsel for the petitioner relied upon the observations in the award on the authorised transaction between the parties as referred to in the statement of claim and as dealt with in the reply. It was contended that the various aspects in the statement of claim had not been gone into by the Tribunal and that the Tribunal had failed to observe rules and bye-laws of the Exchange. No particulars whatsoever have been pleaded in these ground apart from a bare statement that rules and bye-laws of the exchange had not been complied with.

6. In the affidavit in rejoinder in paragraph 7 it is contended that the award is passed in violation of various clauses 5, 6, 7 and 8 of the Member Client Agreement. However, none of these are seen to have been pleaded before the Tribunal and equally no reliance on such violation has been pleaded as grounds of challenge. The contentions in the rejoinder appear to be merely as afterthought. Furthermore it has been the case of the respondent before the Tribunal and as observed in the award that the petitioner has only gained from the transaction and he has not suffered any loss due to alleged unauthorised trade of e-gold and e-silver. In fact one of the findings in the award are to the effect that during the inquiry the applicant who had admittedly appeared in person before the Tribunal had admitted

that he had not sustained any loss as a result of alleged sale of e-gold and e-silver which were available in his account as on 24th August, 2011. This aspect has not been challenged. None of the grounds in the petition has sought to assail these findings of the Tribunal. In my view the petitioner has failed to make out any case of interference under Section 34 of the Arbitration and Conciliation Act. In the circumstances, the challenge fails and I pass the following order :

(i) Petition is dismissed.

(ii) No order as to costs.

(A.K. MENON, J.)