IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO.3473 OF 2018

Kaynet Finance Limited and another ..Petitioners
Versus
National Stock Exchange of India Limited and another ..Respondents

Mr. P. N. Modi, Senior Counsel a/w Mr. Kunal Katarija I/by M/s. Fedral & Rashmikant, Advocate for the Petitioners.

Dr. Birendra Saraf a/w Mr. Sachin Chandarana, Mr. Vivek Dwivedi, Ms. Shreya Anuwal I/by M/s. Manilal Kher Ambalal & Co., Advocate for Respondent No.1.

Mr. Simil S. Purohit a/w Mr. Girish M. Agarwal and Faran Khan I/by M/s. Purohit & Co., Advocate for Respondent No.2.

CORAM : B. R. GAVAI &
M. S. KARNIK, JJ.
DATE : 9th OCTOBER, 2018

P.C.

1] The Petitioners have approached this Court being aggrieved by the communication addressed by Respondent No.1, thereby directing the Petitioners to submit defence in Form II with necessary supporting documents. Vide the said communication, the Petitioners have also been informed that on the Petitioners failing to submit Form II and defence statement within the prescribed time, the arbitrator would be appointed and he may proceed with the arbitral proceedings and make the award ex-parte. Vide the said communication, the Petitioners have also been informed that on the appointment of the Panel of Arbitrators, the applications of the Petitioners dated 12th September 2018, 21st September 2018 and 28th September 2018 would be placed before them.

2] Respondent No.2 herein had opened its trading account with Petitioner No.1. The Respondent No.2 in the name of Verona Capital Ltd. had filed a complaint with Respondent No.1. The complaint filed by Respondent No.2 has been referred to the Investor Grievance Resolution Panel. The said Investor Grievance Resolution Panel of Respondent No.1 informed the Petitioners that Respondent No.2 has invoked the arbitration and as such, informed that the date of the hearing scheduled on 5th September 2018. A statement of claim also came to be filed on behalf of Respondent No.2. The Petitioners addressed various communications to Respondent No.1 stating therein that Respondent No.2 could not have invoked arbitration clause and as such, the arbitration proceedings are not tenable. In reply to the said communications, the impugned communication has been issued by Respondent No.1 to the Petitioners.

3] Mr. P. N. Modi, learned senior counsel for the Petitioners submitted that as a matter of fact Verona Capital Ltd. stands dissolved by the notification issued by the Union of India. He further submits that the directors of the said Verona Capital Ltd. have also been held to be disqualified as per the notification issued by the Union of India. He further submits that arbitration at the instance of the director of Verona Capital Ltd. who is disqualified could not have been initiated. Learned counsel further submits that these facts having been brought to the notice of Respondent No.1, it ought to have initiated arbitration proceedings earlier.

4] We have heard Dr. Birendra Saraf, learned counsel for Respondent No.1 as well as Mr. Simil Purohit learned counsel for Respondent No.2. Learned counsel submits that in view of the judgment of the Hon'ble Apex Court in the case of ***SBP & Co. Vs. Patel Engineering Ltd. and another***[1], it will not be permissible for this Court to entertain the present Petition. It is submitted that all questions as to whether the arbitration at the instance of the disqualified director of Respondent No.2 could be initiated or not will have to be decided by the Arbitration Panel. It is further

1 (2005) 8 SCC 618.

submitted that under the Regulations framed by the National Stock Exchange and particularly 5.4 and 5.6 thereof, the said question will have to be decided by the learned Arbitrator or Panel of Arbitrators.

5] Under the Regulations framed by Respondent No.1 and particularly under Regulation 5.4, if a value of the claim is more than 25 lakhs, the said dispute has to be referred to a Panel of three Arbitrators and if the value of the claim is less than 25 lakhs, the same has to be referred to the Sole Arbitrator. Regulation 5.6 carves out a detailed procedure as to in what manner the application submitted before Respondent No.1 has to be considered. The Regulation provides for choice of Arbitrator to the Applicant as well as to the Respondent. The procedure as to how Arbitrators are to be appointed is also provided under the said Regulation.

6] By the impugned communication, what has been informed by Respondent No.1 to the Petitioners is that the objections as to the maintainability of the arbitration proceedings could be placed before the Panel of Arbitrators, who shall take a decision on the said objections, after the Petitioners complied with the requirements which are required to be complied as per the regulations.

7] The Apex Court in the case of *SBP & Co. (supra)* in paragraph 46 has observed thus : -

> “46. The object of minimising judicial intervention while the matter is in the process of being arbitrated upon, will certainly be defeated if the High Court could be approached under Article 227 or under Article 226 of the Constitution against every order made by the Arbitral Tribunal. Therefore, it is necessary to indicate that once the arbitration has commenced in the Arbitral Tribunal, parties have to wait until the award is pronounced unless, of course, a right of appeal is available to them under Section 37 of the Act even at an earlier stage.”

8] In that view of the matter, it cannot be said that the communication as addressed by Respondent No.1 to the Petitioners is erroneous or contrary to the legal position. On the contrary, the said communication is in consonance with the law laid down by the Hon'ble Apex Court in the case of *SBP & Co. (supra)*. In that view of the matter, we do not find any merit in the Petition. The Petition is rejected.

[M. S. KARNIK, J.] **[B. R. GAVAI, J.]**