

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

**C.R. No.3420 of 2016 (O&M)
Date of Decision.19.11.2018**

M/s Nirmal Bang Commodities Pvt. Ltd.

....Petitioner

Vs

M/s Sadashiv Holdings Pvt. Ltd. and another

...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Ms. Amrita Panda, Advocate &
Ms. Neha Sonawane, Advocate
for the petitioner.

Mr. Aalok Jagga, Advocate
for the respondents.

-.-

AMIT RAWAL J. (ORAL)

The present revision petition is directed against the impugned order dated 29.02.2016 whereby the application submitted by the petitioner for rejecting the objection petition filed under Section 34 of the Arbitration and Conciliation Act, 1996, was dismissed on the ground of territorial jurisdiction.

The respondent No.1-M/s Sadashiv Holdings Pvt. Ltd. entered into an agreement dated 27.03.2012 for carrying the investment and trading in contracts of commodities and derivative transactions at Multi Commodity Exchange of India Ltd. (hereinafter called as “MCX”) and undertook to be bound by the Bye Laws of MCX.

Clause 3 of the Agreement extracted, below, envisaged that all trades, transactions and contracts would be subject to Rules, Bye Laws and Business Rules of the exchange to be performed in the

city of Mumbai for the purpose of giving effect to.

“3. All trades, transactions and contracts are subject to the Rules, Bye Laws and Business Rules of the exchange and shall be deemed to be and shall take effect as wholly made, entered into and to be performed in the city of Mumbai for the purpose of giving effect to the provisions of the Rules, Byelaws and Business Rules of the Exchange.”

In view of the aforementioned clause, a dispute arose between the parties and the matter was referred to the arbitration. Arbitration proceedings concededly were held at Delhi in terms of Clause 3.3 of the Bye Laws and an arbitration award dated 25.09.2014 (Annexure P-4) came to be passed by the Arbitration Tribunal. The aforementioned award has been objected to by an objection petition under Section 34 of the Arbitration and Conciliation Act, 1996 before the District Judge, Chandigarh.

Ms. Amrita Panda, learned counsel appearing on behalf of the petitioner submitted that Clause 3.3 of the MCX Bye Laws confers jurisdiction for settlement of dispute only by the Court at Mumbai and no other Court. Though the arbitration proceedings, subject to the convenience of the parties were held at New Delhi, objections could not have been entertained at Chandigarh Court. Clause 15.6 also oust the jurisdiction of Chandigarh Court. In this regard, an application was submitted before the Principal Court but the same has erroneously been rejected. The Ld. Judge has erred in interpretation of the MCX Bye Laws as respondent No.1 had

undertaken to be bound by the Bye Laws, Rules and Business Rules of the Multi Commodity Exchange of India Limited. The aforementioned Bye Laws envisage jurisdiction of Mumbai Court only. Clause 15.6 of the MCX Bye Laws provides that all parties to a reference to arbitration under these Bye Laws, 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. In support of the aforementioned argument relied upon Section 42 of the Arbitration and Conciliation Act, 1996 and the ratio decidendi culled out in *B.E. Simoesse Von Starabug Niedenthal and another Vs. Chhatisgarh Investment Limited (2015) 12 SCC 225*. The aforementioned judgment has been rendered by taking into consideration the landmark judgment of the Hon'ble Supreme Court in *Swastic Gasses (P) Ltd. Vs. Indian Oil Corpn. Ltd. (2013) 9 SCC 32* and *State of West Bengal Vs. Associated Contractors (2015) 1 SCC 32*.

Per contra, Mr. Aalok Jagga, learned counsel appearing on behalf of the respondent supported the order under challenge by relaying upon provisions of Clauses 15.40 and 15.41 of Bye Laws, envisaging that award could be set aside under the relevant provisions of the Arbitration and Conciliation Act and therefore, for entertaining the objection petition under Section 34 of the Arbitration and Conciliation Act, Clauses 3.3 and 15.5 would not come into play. In support of aforementioned submissions, relied upon the unreported judgment of Division Bench of this Court in FAO –CARB No.13 of 2018 decided on 12.09.2018 titled as “NHPC Ltd. vs. M/s Jaiparkash

Associates Ltd. and others” and other connected matters. The aforementioned judgment has been rendered by relying upon various authorities.

I have heard learned counsel for the parties, appraised the paper book, judgments cited at bar and is of the view that there is no force and merit in the submissions of learned counsel for the petitioner. It would be in the fitness of things to refer Clauses 3.3., 15.6 relied upon by the petitioner and clauses 15.40 and 15.41 on behalf of the respondent:-

“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 the ATS 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 Tender Workstations of the members connected them. 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 their clients or the place where the concerned transactions may have taken place. The Bye-Laws, 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 at 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.”

15.6 Jurisdiction. *All parties to a reference to arbitration under these Bye-Laws, Rules and Regulations and the person, 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 and Regulations in force.*

15.40 Right to Appeal

15.40.1 Award Final and Additional Risk Containment Measures Applicable. *A party to a reference who is dissatisfied with an award of the arbitral tribunal may appeal to the competent court of jurisdiction as provided in the Arbitration and Conciliation Act. The award shall be final under these Bye-Laws and Regulations of the Exchange and vis-à-vis the Exchange in terms of any action, which is required to be initiated, as may be provided in the Bye-Laws or notifications issued from time to time. Provided that the party to the reference shall be required to deposit the amount of award with the Exchange before filing the appeal and such amount shall be kept with the Exchange in abeyance and shall be disposed of eventually as per direction of the Court.*

15.40. 2 Enforceability of Award as a Decree: *When the time for preferring an appeal has elapsed and no appeal has been preferred or the appeal has been preferred but the same has been rejected and when the time for making an application to set aside the award under the relevant provision of the Arbitration and*

Conciliation Act has expired, or such application having been made, it has been refused, the final award shall be enforceable by the Exchange in the same manner as if it were a decree of the Court, if the award is against an exchange member or a clearing member.

15.41 Setting aside of Award and Fresh Reference

15.41.1 An arbitral award may be set aside or modified by the court on an application made under relevant provision of the Arbitration and Conciliation Act, on the grounds mentioned in that provision.

15.41.2 Whenever an award made under these Bye-Laws and Regulations of the Exchange is set aside or modified by the court, the matter shall be disposed of in accordance with the direction of the Court.”

Section 42 of the Arbitration and Conciliation Act, 1996 starting with a non-obstante clause, excludes the jurisdiction of other Courts where in respect of arbitration agreement an application has been made to a Court. The same is reproduced herein below:-

“42. Jurisdiction.—Notwithstanding anything contained elsewhere in this Part or in any other law for the time being in force, where with respect to an arbitration agreement any application under this Part has been made in a Court, that Court alone shall have jurisdiction over the arbitral proceedings and all subsequent applications arising out of that agreement and the arbitral proceedings shall be made in that Court and in no other Court.”

Section 20 of the Arbitration and Conciliation Act gives free hand to the parties to agree on a place of arbitration. Since the parties submitted to the exclusive jurisdiction of the Court in Mumbai

but participated in the arbitration proceedings for convenience at Delhi, Clauses 15.40 and 15.41 do not restrict entertainment of the application under Section 34 of the 1996 Act by a court other than the Court at Mumbai. There is no dispute to the ratio decidendi culled out in the judgments supra as that was only for the purpose of initiation of the arbitration proceedings and entertainment of application under Section 9 of 1996 Act and not otherwise. All these Bye laws limited the jurisdiction of the Court in Mumbai only vis-à-vis disputes which have arisen out of trading entity and stock exchange but not disputes of private nature. Clause 15.41 also provides remedy of appeal against the arbitration award under the purview of 1996 Act. In these circumstances, court of competent jurisdiction would have jurisdiction to adjudicate the dispute.

In view of the aforementioned observation, I do not find any infirmity or illegality in the impugned order dated 29.02.2016 dismissing the said application. No ground for interference is made out. The revision petition is dismissed.

(AMIT RAWAL)
JUDGE

November 19, 2018
Pankaj*

Whether Reasoned/Speaking	Yes
Whether Reportable	No