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

Date of decision: 24th July, 2018

+ **O.M.P. 249/2009**

TIKA RAM SAINI

..... Petitioner

Through: None.

versus

ABHIPRA COMMODITY CONSULTANT PVT. LTD.

..... Respondent

Through: Mr. Kamal Mehta, Advocate (M-9810475712).

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. The present petition was restored on the last date, subject to payment of Rs.7,500/- as costs which has not been paid.
2. The Petitioner has preferred this petition under Section 34 of the Arbitration & Conciliation Act, challenging the arbitral award dated 19th November, 2007 passed by Justice V.S. Aggarwal (Retired) - Ld. Sole Arbitrator in arbitral case no. NCDEX/72/2007.
3. The award arises out of an agreement through the National Commodities and Derivates Exchange Ltd. of which the Respondent Abhipra Commodity Consultant Pvt Ltd (*Abhipra*) is a member. Abhipra is engaged in the business of share/commodity broking as a member of various

stock and commodity exchanges. It is guided by the National Commodity and Derivatives Exchange Limited ('NCDEX'). The NCDEX is the organization through which the matter was referred to a Sole Arbitrator. A complaint was made by Mr. Tika Ram Saini on the ground that some fraudulent transactions were carried out through his account and that he did not carry out any transactions. Initially conciliation was attempted and upon the same having failed, the matter was referred to the Sole Arbitrator. His allegation was that no amount was due from him to Abhipra and his code was being used to conduct '*Benami transactions*'. In the arbitration proceedings, notice was issued to Mr. Saini as is recorded by the process server in his report dated 17th July, 2007. The address of Mr. Saini was given as 281, North Gandhi Colony, Muzaffarnagar, U.P.-251001. The notice was not accepted at the said address although it was confirmed that he was a resident of the said address. Upon repeated notices being given by the Arbitrator, no appearance on behalf of Mr. Saini was made, leading to the Arbitrator passing the impugned order. It is a short award which is set out below:

"The claimant Abhipra Commodity Consultants Pvt. Ltd. alleges that in course of regular business the constituent/respondent had approached the claimant for carrying out trade and commodities at National Commodities and Derivate Exchange Ltd. The documents like Client Registration Form, Risk Disclosure Document had been executed.

On execution of the same the respondent started dealing under Code MA 012. It carried on trade till 28th February, 2007. On 28th February, 2007 a sum of Rs.30,70,878.71 were found to be due and payable by the respondent. The claimant had reminded the respondent and issued even a notice but no reply was

sent. Despite personal visits payment has not been made. The present application has been filed for recovery of the above said sum with interest.

The notice had been issued to the respondent. The same is reported to have been served, a photocopy of the postal acknowledgment even was made available but there was no appearance of the respondent on the date fixed for hearing i.e. 22nd October, 2007 and even on 30th October, 2007.

The claimant has filed the affidavit of Shri Abhinav Aggarwal on behalf of the company. In addition to that in support of the claim the copy of the legal notice has been placed on the record. There has been no reply on behalf of the respondent. It is not that when reply is not received the claim is stated to have been proved.

The support of the aforesaid is available from the statement of account filed by the claimant as copy of which is annexed as Annexure P4. It was stated to have been regularly been maintained in due course of the business and it clearly reveals that the amount claimed is due.

Not only that the trade done and reports and the contract notes, copies have even been filed. Otherwise also there is precious little on the record to indicate that the amount claimed is not due. When the contract notes were being sent without any objection and the accounts revealed that the amount is due. I find no reason to hold that the claim can be disallowed.

However, the amount of interest claimed is excessive. It should only be 12% p.a. Resultantly the award is passed for a sum of Rs.30,70,878.71. The claimant would also be entitled to interest from 28th February, 2007 till the date of the award. It is directed further that if the said amount is not paid within one week the claimant would be entitled to further interest @ 12% p.a. on the principal amount till the amount as such is paid.”

4. Thus, the award was passed in the absence of Mr. Saini who chose not to appear. The present objections were filed on the ground that the Arbitrator never served Mr. Saini and the main ground taken is that the address given of Muzaffarnagar belongs to the aunt (*Buva*) of Mr. Saini. Since, he did not have any other address, he had submitted the said address, however, by the time dispute had arisen, he had moved out of the same premises. It is also claimed in the objections that he was induced by Abhipra's local employee to give the Muzaffarnagar address and sign the various forms. The petition was initially listed on 13th May, 2009 on which date notice was issued to the Respondent. A perusal of the record shows that the counsel for the Petitioner appeared sometime till 2011. However, thereafter there was no appearance and on 16th December, 2016, the petition was dismissed for non-prosecution.

5. On 17th January, 2017, an application was filed seeking restoration of the petition which was finally restored on 12th February, 2018 subject to payment of Rs.7,500/- as costs. Today, the matter is listed for hearing, but none appears for the Petitioner. The costs have also not been paid. The court has gone through the arbitral award which was made in the absence of Mr. Saini. The Arbitrator took the statement of accounts which was submitted by the claimant i.e. Respondent as being true and correct and accordingly proceeded to pass the award. Since, there is no appearance on behalf of the Petitioner and the costs have not been paid, this court has no option but to dismiss the objections. The petition is accordingly dismissed.

PRATHIBA M. SINGH
JUDGE

JULY 24, 2018/Rahul