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

Date of Decision: 30th July, 2018

\+ **O.M.P. 359/2009**

SH. PARVEEN GUPTA ..... Petitioner

Through: Mr. Rajesh Banati and Mr. Ankit Banati, Advocates. (M:9810294894)

versus

M/S STAR SHARE & STOCK BROKERS LTD. ..... Respondent

Through: None.

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

I.A. 7671/2017 (revival of petition)

1. Petition is revived in view of the RTI reply dated 17th April 2018, issued by the Registrar, Bombay High Court, placed on record which clearly mentions that the Winding up Petition has been dismissed.

2. I.A. is disposed of.

O.M.P. 359/2009

3. This petition is filed under Section 34 of the Arbitration & Conciliation Act, 1996 (*hereinafter, '1996 Act'*) praying that the award dated 6th March, 2009, passed by the Panel of Arbitrators constituted by National Stock Exchange India Ltd., be set aside.

4. Brief background is that the Petitioner was the claimant before the National Stock Exchange (*'NSE'*) and had filed a claim in respect of the security deposit of Rs.20 Lakhs. The said claim was filed on 1st June, 2006. On 10th May, 2007, the complaint of the claimant/Petitioner was dismissed

as being barred by limitation in view of the byelaws of the NSE.

5. The said award dated 10th May, 2007 came to be challenged before this Court in OMP 445/2007. The learned Single Judge of this Court, after perusing the byelaws, as also on merits, held that the cause of action arose, in fact, not on 1st April, 2004 but on 31st March, 2006. This Court was of the view that either by applying byelaws and considering that the cause of action arose on 31st March, 2006, or by excluding the period during which the administrative resolution of the disputes was pending, the claim of the Petitioner was within the time. Relevant portion of the said judgment dated 2nd April, 2008, is extracted herein below:

> *"..................................*
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> *5. Thereafter on 01.06.2006 the petitioner filed a complaint with the National Stock Exchange in respect of the non-payment of Rs 20 lacs with interest by the respondent. The said complaint was filed in Investor's Complaint Form No.1, as is the requirement. On 15.09.2006 the National Stock Exchange issued a letter to the petitioner which is at page 13 of the paper book. The letter indicates that the National Stock Exchange had taken up the matter with the trading member (the respondent) for resolving the same administratively. However, on account of conflicting claims and counter-claims made by the parties, it was observed that the petitioner may, if it is so desire, take recourse to arbitration by filing an application for arbitration against the respondent. It was also indicated that the arbitration application ought to be submitted within six months from the date on which the claim, difference or dispute arose or is deemed to have arisen, otherwise the arbitrator may dismiss the arbitration application as time barred under the bye-laws of the National Stock Exchange of India. This was followed by the petitioner filing the claim for arbitration on*

22.11.2006. It is apparent from a reading of the Award that the letter dated 31.03.2006 has not even been considered inasmuch as there is no reference to the same. Of course, the Arbitral Tribunal has taken the view that acknowledgments for the purpose of a civil suit may extend the period of limitation but for the purposes of arbitration the period had already expired. In the present case what has to be seen is whether the arbitration claim has been filed within six months from the date on which the claim, difference or dispute arose. It is apparent that by virtue of the letter dated 31.03.2006, if it is so to be considered, the respondent has confirmed its liability to make the payment to the petitioner. Thus, as on 31.03.2006 there is no dispute or difference between the petitioner and the respondent. It is apparent that the dispute or difference arose and some time after 31.03.2006 and before 01.06.2006, when the petitioner made the complaint to the National Stock Exchange. Being the relevant authority, the National Stock Exchange attempted at resolving the same administratively and, finally, by the letter dated 15.09.2006 informed the petitioner that such a resolution was not possible and that the petitioner may, if it is so desired, go in for arbitration under the bye-laws. Even if it is assumed that while on 31.03.2006 there was no dispute between the petitioner and the respondent inasmuch as the respondent was ready and willing to make the payment but, on the very next day, that is, on 01.04.2006 the respondent resiled from its stand the period of six months taken from 01.04.2006 would end on 01.10.2006. The arbitration claim has been filed on 22.11.2006 or in other words, 1 month and 22 days beyond that date. However, in view of the provisions of bye-law (3) itself, the time taken by the relevant authority to administratively resolve the claim has to be excluded for the purposes of determining the period of six months. The complaint was filed before the

National Stock Exchange on 01.06.2006 and the attempt at administratively resolving the same continued up to 15.09.2006 when the National Stock Exchange issued the letter that it would not be possible to resolve the same administratively. Therefore, the period starting from 01.06.2006 and ending on 15.09.2006 shall have to be excluded, that is, a period of three and a half months. Consequently, it is apparent that the claim filed by the petitioner would be within time.

6. In view of the fact that the petitioner has been able to demonstrate that the letter dated 31.03.2006 was not even considered by the Arbitral Tribunal, the Award is liable to be set aside on the ground alone. This is so because had the letter dated 31.03.2006 been considered and held to have emanated from the respondent, then the claim, would clearly be within time. The Award is, therefore, set aside. There is no necessity for this Court to examine the second proposition that was expressed by the counsel for the petitioner. The record be sent back. The petitioner is granted liberty to proceed afresh for arbitration.

The petition stands disposed of."

6. Thereafter, a fresh Arbitral Panel was constituted by the NSE which, has, again surprisingly, held that the claim is not within the time. Relevant para of the award is set out herein below:

"....................

13. Having fully considered the letter of 31.03.2006, in view of what has been stated above, we do not consider that this letter has emanated from the Respondent Company. In this view of the matter, following the judgment of the Hon'ble Delhi High Court the claim filed by the Applicant is, therefore, not within the time prescribed under the NSE Bye-Law Chapter XI, clause 3 and we decide accordingly. "

7. Mr. Benati, learned counsel for Petitioner submits that this is the second time that the NSE Arbitrator's Panel has dismissed the claim of the Petitioner as being barred by limitation and this shows that the Arbitral Tribunal is showing scant regard to the Judgment of this Court as also settled precedents. He relies upon the following judgments.

- ***Smart Commodity Broker Pvt. Ltd. v. Beant Singh, [FAO No. 438/2013, Decided On: 21.09.2017]***
- ***Anuradha Shastri v. Religare Securities Ltd., 2014(144)DRJ441***
- ***Pandit Construction Company v. Delhi Development Authority & Anr., 2007 (98) DRJ 96***

8. None has appeared for the Respondents for the last several hearings, though they have been served in the matter. Accordingly, on 10th July, 2018 since none had appeared, the matter was adjourned for today.

9. The issue that has arisen in the present case has been settled by various decisions of this Court. The bye-laws of the NSE, which prescribe a period of six months as the limitation period for filing of a complaint and making claims, are contrary to the provisions of Limitation Act. The bye-laws of NSE that deal with the limitation period, as applied in the present case is as under:

> ***"Limitation period for reference of claims, differences or disputes for arbitration***
> ***(3)*** *All claims, differences or disputes referred in Bye laws (1), (1A), (1B) and (1D) above shall be submitted to arbitration within six months from the date on which the claim, difference or dispute arose or shall be deemed to have arisen. The time taken in conciliation proceedings, if any, initiated and conducted as per the provisions of the Act and the time*

taken by the Relevant Authority to administratively resolve the claim, differences or disputes shall be excluded for the purpose of determining the period of six months.

Explanation:-

(1) *In cases where date of claim, difference or dispute is not ascertainable, it shall be deemed to have arisen o the date of expiry of six months from the date of transaction in respect of which the claim, difference or dispute has aisen.*

(2) *In cases where the date of claim, difference or dispute arising out of Bye-law 1D of Chapter XI of the Bye-laws is not ascertainable, it shall be deemed to have arisen as follows:-*

(a) In cases where the issuer fails to communicate to the Constituent the transfer of shares, the date of dispute shall be deemed to have arisen on the date of expiry of six months from the date of expiry of 30 days from the date of lodgment of shares by the Constituent for transfer with the Issuer; or

(b) In cases where the Issuer refuses to transfer the shares, the date of dispute shall be deemed to have arisen on the date of expiry of six months from the date of receipt of communication of Issuer refusing to transfer the shares in favour of the Constituent.

(c) In cases where the Issuer delays the transfer of shares of the Constituent beyond the stipulated period, the dispute shall be deemed to have arisen on the date of expiry of six months from the date of expiry of 30 days from the date of lodgment of shares by the Constituent for transfer with the Issuer; or the date of receipt of communication of the Issuer to the Constituent intimating the transfer of shares in favour of the Constituent, whichever is later.

10. Various decisions of this Court have, after considering the legal aspects, held that the limitation period of six months, prescribed by the

above bye-laws is contrary to law. The said judgments have clearly held that the rationale behind the provision of six months has no legal basis. The award is, therefore, liable to be set aside since it has held by the Tribunal that the claims are barred by law.

11. It is completely shocking and surprising that despite repeated judgments of this Court and especially the specific judgment of learned Single Judge of this Court passed on 2nd April, 2008 holding that the claim is within time and claim has to be adjudicated on merits, the Arbitral Tribunal has blindly held that claim is barred by time. Such an approach is completely against the judgment passed by this Court and is not liable to be sustained.

12. It has been brought to the notice of this Court that subsequent to the various decisions of this Court, the NSE has changed its bye-laws. The limitation period now prescribed is as under:

> *"Limitation period for arbitration*
> *(3)* ***The limitation period for filing an arbitration application shall be governed by the law of limitation i.e. The Limitation Act, 1963 as specified under section 43 of the Act****.*
> *Explanation:* ***Arbitration Applications filed prior to September 1, 2010, where the Arbitration application has been dismissed solely on grounds of limitation and three years from the date of dispute have not yet elapsed will be covered in the limitation period stated above****."*

Thus, even as per the prevalent bye-laws, the present case is covered by the Explanation.

13. The Arbitral Tribunal thus is under an obligation to decide the matter

on merits and not holding that the claims are barred by time.

14. Award dated 6th March, 2009 is, accordingly, set aside. Claim of the Petitioner is liable to be adjudicated on merits. Petitioner is permitted to file a copy of this judgment and seek fresh appointment of arbitrator.

15. OMP is disposed of.

PRATHIBA M. SINGH
JUDGE

JULY 30, 2018/*dk*