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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**ARBITRATION PETITION NO.573 OF 2017
WITH
NOTICE OF MOTION NO.1544 OF 2017
IN
ARBITRATION PETITION NO.573 OF 2017**

M. N. Investment	...	Petitioner.
V/s.		
Satish Ashok Sabnis	...	Respondent

Mr. Manaswi Agrawal I/by Charles De'Souza, for the
Petitioner.

Mr. A. S. Khandeparkar, a/w Prerak Sharma, for
respondent.

CORAM : G. S. KULKARNI, J.

DATE : 18th FEBRUARY, 2019.

P.C. :

1] Heard learned counsel for the petitioner and learned counsel
for the respondent.

2] This Petition is filed under Section 34 of the Arbitration and
Conciliation Act, 1996 (for short, "ACA"), praying that the impugned award
dated 29.3.2012, passed by the sole Arbitrator and confirmed by the Arbitral
Tribunal by its order 17th August, 2012 be set aside.

3] The original claimant was trading in shares and securities. It is the case of the respondent that on 30th September, 2011, the petitioner sold all the shares and the total sale proceeds were credited in the account of the petitioner. After selling these securities, the petitioners account showed debit balance of Rs.9,59,127.97. Later shares worth Rs.60,655.42 were sold on October 14, 2011 and dividend amounting to Rs.25,582.50 was also received in the account. Thus, on 14th October, 2011, the petitioner's net balance of shares was Rs.8,72,890.05, after sale of securities.

4] The petitioner informed the respondent that the petitioner would not be in a position to immediately clear the debit balance and that he would settle the account by instalments and asked for a week's period to give the schedule of instalments. However, the petitioner did not make the payment. The respondent accordingly invoked arbitration proceedings as per the Regulations of the National Stock Exchange, as applicable under the contract between the parties. A Statement of Claim was filed on behalf of respondent on 21.11.2011.

5] The Petitioner appeared and filed Statement of Defence on 8.12.2011. Under the Rules and Regulation of National Stock Exchange,

arbitral proceedings were adjudicated at the initial stage by a sole arbitrator. Considering the material on record, the sole Arbitrator allowed the claim as made by the respondent. It needs to be noted that in paragraph No.7 of the award dated 21.3.2012, the sole Arbitrator observed that the petitioner had confirmed the statement of account till October, 2011 as also a copy of the same was placed on record. It was also noted that the respondent on 20th November 2011, had submitted a settlement proposal of debit balance and could pay only 50% of the debit balance.

6] Learned sole Arbitrator, considering the rival pleas and evidence on record, allowed the claim as made by respondent. It would be appropriate to quote the relevant paragraph No.10 of the award, which reads thus :-

“10. On going through the various submissions made by the Applicant and the Respondent, it is noted that the respondent was regularly receiving the ECN, hard copies of Contract notes and the ledger balances. The respondent has also not denied the fact that the trades were done as per her instructions. The defence of the Respondent is that her instructions to sell the securities whenever, the difference between the valuation of securities held and the debit balance in ledger account is near Rs.25,000.00, were not followed by the Applicant. The Applicant has, however, denied that such instructions were ever issued by the Respondent. The Respondent has failed to produce any documentary evidence to support the contention that such instructions were issued to the Applicant. Considering the above facts, I have come to the conclusion that the Respondent is liable to pay the Applicant, the debit balance in the Ledger account. At the same time, it is also noted that the Applicant had issued cheques to the Respondent for Rs.1,00,000.00, Rs.25,000.00, Rs.44,000.00 even when there was debit balance in the ledger account. The debits on account of issue of these cheques obviously, do not pertain to any trade done in NSE segment and therefore, these debits can not be

considered under the present Arbitration proceedings. Further, an amount of Rs.600.00 was credited in the account of the Respondent after the commencement of Arbitration proceedings. In view of above, the claim of the Applicant is accepted for Rs.7,03,290.05 as against Applicant's claim of Rs.8,72,890.05".

7] Being aggrieved by the award passed by the sole Arbitrator, the petitioner filed an appeal before Appellate Bench of Arbitral Tribunal comprising of three Arbitrators. The Appellate Arbitral Tribunal, by the impugned award, confirmed the award passed by the sole Arbitrator, by dismissing the appeal of the petitioner.

8] The learned counsel for the petitioner, while assailing the impugned award has three fold submissions. Firstly, proper opportunity of hearing was not given to the petitioner by the Appellate Tribunal. Secondly, it is submitted that certain documents were placed on record after the proceedings were closed by the Arbitral Tribunal on 21.7.2012, for award to be pronounced and, thus, no opportunity was given to the petitioner to contest these documents. These submissions are made on the basis of letter dated 25.7.2012, which is produced at page No.92 of the paper book. The next submission of the learned counsel for the petitioner is that there was a differential treatment meted out to the petitioner in inasmuch as it would be clear from the petitioner's appeal that certain submissions of the petitioner stand rejected and on the other hand the submissions of learned

counsel for respondent are accepted. There are no other submissions of learned counsel for the petitioner to contend that the impugned award is one sided.

9] On the other hand, Mr. Khandeparkar, learned counsel for respondent has submitted that none of the submissions as urged on behalf of petitioner are tenable. He submits that the debit balance in the petitioner's account is admitted. It is submitted that there was no adjustment of any nature for the petitioner not to discharge its liability to make the payment of the amounts due to the respondent. It is submitted that the petitioners contention that certain evidence was placed before the Appellate Tribunal after the matter was closed for award, is not correct inasmuch as there is no such material which is referred in the arbitral award and there is nothing on record to accept the said submission as made on behalf of the petitioner. It is submitted that there was no material whatsoever of the nature which can be called as fresh material. In regard to the third submission as urged on behalf of the petitioner that there was differential treatment as meted out to the petitioner, it is submitted that this submission is without any basis. It is submitted that considering both the awards, there is no material to accept this submission.

10] Having heard the learned counsel for the parties and having perused both the awards namely as made by the sole Arbitrator as also the award as passed by the Appellate Tribunal, I am not persuaded to accept the submissions urged on behalf of petitioner.

11] This, firstly, for the reason that it clearly appears that there was debit balance, which was due and payable to the respondent. There was also a proposal of the petitioner to settle the accounts, however, it was not accepted by the respondent. There is no material to show that the amount which was claimed by the respondent was without any basis or that respondent was not entitled to the said amount as clearly reflected in the accounts and informed to the petitioner from time to time by the respondents as per the normal procedure in the course of the transactions. A perusal of the reasons set out in the award as recorded by the Sole arbitrator clearly indicates that the learned Sole Arbitrator allowed the claim of the respondent on the basis of material which certainly could not be disputed by the petitioner.

12] As to contention of the petitioner that there was additional evidence which was produced by the respondent also cannot be accepted as the learned counsel for the petitioner is not in position to demonstrate what

was material and whether the same was referred by the appellate Tribunal in adjudication of the Appeal. Thus, the contention of the petitioner is totally untenable.

13] As regards the next contention as urged on behalf of the petitioner, that no opportunity of hearing given to the petitioner by the appellate tribunal, also cannot be accepted. In fact this argument appears to be clearly an afterthought, as can be clearly seen from the letter which is addressed two days after the Appellate Tribunal closed the matter for pronouncement of the award. The minutes of the meeting in this regard dated 23.7.2012, are quite clear.

14] To conclude none of the grounds as urged on behalf of the petitioner merit any consideration and of a nature which would fall within the purview of the jurisdiction of this Court under Section 34 of the ACA so as to set aside the award.

15] In view of above discussion I find no merit in the petition. The petition accordingly dismissed. No cost.

16] At this stage, learned counsel for the petitioner seeks stay of this order. Considering the facts and circumstances of the case, this prayer cannot be granted as the execution of the award is yet to proceed and the petitioner will certainly have notice of the execution proceedings.

17] In view of dismissal of petition itself, the Notice of Motion No.1544 of 2017 does not survive and the same is accordingly disposed of.

[G. S. KULKARNI, J]