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

ARBITRATION PETITION NO.963 OF 2013

Prarthana Brahmbhatt … Petitioner
Versus
Arihant Capital Markets Ltd. … Respondent

ALONG WITH
ARBITRATION PETITION NO.965 OF 2013

Tarun Brahmbhatt … Petitioner
Versus
Arihant Capital Markets Ltd. … Respondent

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Mr. Anoshak Daver a/w Ms. Rinku Valanju and Mr. Akshit Jain I/b R.V. Legal for the Petitioners in both petitions.
Mr. Simil Purohit a/w Mr. Wahab Mukri and Mr. Faran Khan I/b Purohit & Co. for the Respondent.

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CORAM : S.C. GUPTE, J.

DATE : 12 MARCH 2019

P. C. :

ARBITRATION PETITION NO.963 OF 2013

. This arbitration petition challenges an award passed by an arbitral tribunal constituted under the Rules, Bye-laws and Regulations of Bombay Stock Exchange Ltd. The reference concerns the claim of the Respondent herein (trading member and original claimant before the arbitral tribunal) against its constituent, the Petitioner herein.

2 The Respondent's case before the arbitral tribunal was that on 23 March 2011, on the Petitioner's instructions, the Respondent purchased 6150 shares of Sampada Chemicals Limited ("SCL") for a sum of Rs.25,46,663.22. So also, on 30 March 2011, pursuant to further instructions of the Petitioner, 4100 shares of SCL were purchased by the Respondent for Rs.16,06,444.52. It is an admitted position that barring an initial payment of Rs.12,50,000 towards purchase of these shares, the Petitioner had not paid any amount to the Respondent towards the purchase. The Respondent submitted that in addition to the payment of Rs.12,50,000, the Petitioner had sent a scanned copy of another cheque for Rs.15,00,000 vide her e-mail dated 30 March 2011; the Petitioner, however, never sent this cheque of Rs.15,00,000 and as a result, the Petitioner's account fell into large debit. After giving credit for the shares of SCL, sold by the Respondent, to recover dues owed by the Petitioner, a sum of Rs.28,33,152.70 was claimed as due from the Petitioner to the Respondent.

3 The Petitioner's defence before the arbitral tribunal was that she had deposited 37,500 further shares of SCL with the Respondent. It was submitted that, thus, the Respondent had in all 47750 shares of SCL with it, which the Respondent ought to have sold in the market and adjusted the sale proceeds towards her dues.

4 There was a serious controversy between the parties as to (i) whether 37500 further shares of SCL deposited by the Petitioner with the Respondents were with instructions to sell and (ii) whether the Petitioner had actually instructed the Respondent to sell 10250 shares of

SCL purchased on 23 March 2011 and 30 March 2011. The arbitral tribunal held that the further shares of 37500 were given by the Petitioner to the Respondent towards security or margin. The arbitral tribunal held that no stock broker was under obligation to recover his dues owed by the constituent by sale of the constituent's shares available with him. (It is important to note that the relationship between the parties was in cash segment and not in F & O segment.) The arbitral tribunal held that the Respondent was accordingly under no obligation to square off the outstanding by sale of shares.

5 These views of the arbitral tribunal are clearly possible views on the material placed by the parties before the tribunal. Learned Counsel for the Petitioner submits that the Respondent had actually sold 950 shares out of 47750 shares lying with the Respondent. That may be so. In case of default by a constituent, the stock broker is within his rights to sell the constituent's shares and recover his dues. There is, however, no obligation on him to do so. He can always approach the arbitral tribunal to seek a money decree against the constituent.

6 Accordingly, there is no merit in the petition. The arbitration petition is dismissed. No order as to costs.

Arbitration Petition No.965 of 2013

7 It is agreed between the parties that in so far as the companion petition, namely, Arbitration Petition No.965 of 2013, is concerned, the facts of the case are more or less similar to the facts stated above save and

except the amounts of shares purchased as well as deposited by the constituent with the share broker; these are of different values and as a result have given rise to a different claim. It is agreed that this companion petition may be disposed of in the same manner and for the same reasons as indicated above in connection with Arbitration Petition No.963 of 2013. Accordingly, for the reasons stated above, even this arbitration petition is dismissed. No order as to costs.

(S.C. GUPTE, J.)