IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.1661 OF 2014

Kadar Sajanbhai Tamboli ....Petitioner
vs
LKP Securities Ltd. ...Respondent
.....
Mr. Prashant P. Kulkarni, for the Petitioner.

Mr. Anoshak Daver, a/w. Mr. Sumit Raghani, i/b. Agrud Partners, for the Respondent.
……

CORAM : S.C. GUPTE, J.

DATED: 21 JANUARY, 2019

P.C.:

. This arbitration petition challenges an award passed by an appellate arbitral tribunal under the Rules, Bye-Laws and Regulations of BSE Limited. The Petitioner before the Court was a constituent (original Applicant in the reference), whereas the Respondent was a trading member (original Respondent). The dispute was about an alleged unauthorized sale of 100 equity shares of Larsen and Toubro Limited by the Respondent on behalf of the Petitioner. The sole arbitrator appointed in the matter allowed the Petitioner's application and held that the Respondent herein had caused loss to the Petitioner without sufficient cause and by unlawful means. The arbitrator, accordingly, directed the Respondent to pay Rs.3,84,078/- towards the unauthorized sale and also make good the corporate benefits, which would have accrued to the Petitioner through dividend. When the matter was carried by the Respondent Company before the appellate bench of BSE arbitration, the arbitrators held that though the question of limitation was not raised specifically as a defence by the Respondent herein, Section 3 of the Limitation Act being mandatory, the lower court ought to have considered the point of limitation. The appellate tribunal held that there was no dispute about the core issue in the arbitration, namely, the alleged unauthorized sale of 100 equity shares of L & T sold in different lots, the last of these lots being sold in May 2009. Therefore, the closing balance towards sale of 100 shares of L & T was struck as of 5 May 2009. The arbitrators held that the reference having been filed by the Petitioner herein on 15 May 2013, the same was beyond limitation. It is not in dispute that the invocation of the arbitration agreement under the BSE Rules is by way of filing of a complaint through Investors Grievance Redressal Committee ('IGRC'). It is also not in dispute that this complaint was filed on 11 December 2012. Thus, the arbitrators held that even with reference to this date, the claim was clearly barred by the law of limitation. There is no effective answer to the case on limitation. The last of the shares of L & T being sold on 5 May 2009, the cause of action for recovering the amount towards unauthorized sale of shares arose on 5 May 2009. The invocation made on 11 December 2012, is, thus, beyond time.

2. Learned Counsel for the Petitioner submits that the Petitioner did not have notice of these trades, since he did not have contract notes. Learned Counsel submits that the Petitioner came to know of these trades later. There is nothing either in the correspondence of the Petitioner or even in the present petition that the Petitioner's

knowledge of the unauthorized sale of shares was as of December 2009. In the premises, there is nothing on record to show that the IGRC complaint was within the period of limitation reckoning the approval of cause of action as the date, on which the Petitioner came to know of the unauthorized sale of shares. There is, accordingly, no merit in the challenge. The arbitration petition is dismissed.

(S.C. GUPTE, J.)