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

ARBITRATION PETITION NO. 1095 OF 2014

Ramkripa Securities Pvt.Ltd. …Petitioner
vs
Seema Securities Pvt.Ltd. (CLG NP.534) ...Respondent

WITH
COMMERCIAL ARBITRATION PETITION NO. 2 OF 2015

A.G. Shares and Securities Ltd. …Petitioner
vs
Ramkripa Securities Pvt.Ltd. ...Respondent

Mr.Saurabh Bachawat with Sumit Rai I/b. Mr.P.B. Gujar for Petitioner in ARBP 1095-2014 and for Respondent in CARBP 2-2015.
None for Respondent in ARBP 1095-2014 and for Petitioner in CARBP 2-2015.

CORAM : S.C.GUPTE, J.

DATE : 28 JANUARY 2019

P.C. :

These two arbitration petitions, respectively, filed by the parties against each other, challenge two separate awards in stock exchange related arbitrations. Arbitration Petition No.1095/2014, filed by a constituent, Ramkripa Securities Pvt.Ltd. (hereinafter referred to as 'constituent'), challenges an award passed by an arbitral tribunal of Bombay Stock Exchange ('BSE'), whereas Commercial Arbitration Petition No.2/2015 is filed by a trading member, A.G. Shares and Securities Ltd. ('trading member'), against the constituent Ramkripa Securities Pvt.Ltd. challenging an award passed by an arbitral tribunal of National Stock Exchange ('NSE'). The trading member, Seema Securities Pvt.Ltd., Respondent in Arbitration Petition No.1095/2014) and the Petitioner trading member in Commercial Arbitration Petition No.2/2015 are sister concerns. Both are referred to in the following order as “trading member”.

2 The trading member is not represented by anyone in these arbitration petitions, though there is vakalatnama on record on its behalf in both petitions. None appeared for the trading member for the last three consecutive dates, i.e. on 13 December 2018, 11 and 21 January 2019. Since none appears even today, the matters are heard in its absence.

3 It is the case of the constituent that it was introduced to one Dharmesh Purohit by a friend of its director with a view to open a trading account with the trading member. The trading member was introduced as an established broker having its registered office in Agra in Uttar Pradesh and a corporate office in Mumbai. The constituent agreed to open a trading account with the trading member. KYC and other related documents duly completed were provided to Dharmesh, who in turn forwarded the same to the trading member. Due to confusion at the latter's end, the documents were not received by it. It is submitted that Dharmesh thereafter requested the constituent to send across another signed KYC assuring the latter to fill the same carefully with the help of details and documents provided by the constituent in its earlier email. The constituent accordingly sent signed KYC documents to Dharmesh. The constituent was later on informed that its trading account was duly opened and a client code was allotted to it for executing transactions on the exchanges. The constituent transferred through RTGS an amount of Rs.1.50 crores as an upfront exposure margin towards purchase of shares, instructing the trading member to buy 40,000 shares of Glodyne Technoserve Ltd. at the prevalent market price. This

purchase resulted in a total pay in obligation of about Rs.1.52 crores. The constituent thereafter requested the trading member to transfer the shares to its account and send a copy of the contract notes. In reply, the trading member insisted on the constituent first clearing its debit balance outstanding in its account and offered to transfer the shares only upon such payment. Even after this episode, in spite of repeated requests, no contract notes/bills were provided to it for the trades executed on its behalf. It is the constituent's case that suddenly after August 2012, it came to know of an ad-interim exparte order passed by SEBI, which *inter alia* referred to transactions executed by the constituent in its trading account through various brokers, including the trading member herein. As a result of this order, the constituent claims to have realised that there were certain sale/purchase transactions carried out in its account on the basis of which allegations were made by SEBI against it and which were reflected in the ad-interim exparte order. Upon making further inquiries, the constituent received contract notes, ledger statement and other trade details, which shockingly reflected a large number of transactions in its account with the trading member without any proper authorisation or instructions from its end. It appears that during the period from 25 June 2012 to 26 July 2012, a total number of 2,08,576 and 1,52,921 shares were purchased and sold from the constituent's account, respectively, on NSE and BSE, running an aggregate turnover of about Rs.23,46,63,638/- and a debit position of about Rs.2.95 crores as of 12 July 2012 and finally, of 1.17 crores as of 31 July 2012. The constituent, thereupon, demanded copies of documents submitted on its behalf including KYC documents. On receipt of the same, the constituent noticed that the KYC form included various erroneous details which were never supplied by it to the trading member. The details, for example, gave a wrong address of the constituent as also a wrong contact number and email id, and even the trade authorisation was in the name of a wrong person. Instead of the authorised representative, Suresh Sharma, the name of Dharmesh was shown in KYC form. The constituent thereafter approached the Investor Grievance Cell of both BSE and NSE, in pursuance whereof arbitral tribunals were constituted, respectively, under the Bye-laws of BSE and NSE. The awards impugned in the two petitions herein, one by the constituent and the other by the trading member, were rendered in these references.

4 The main question, which the arbitral tribunals of both NSE and BSE, had to consider was whether the trading member could have carried out trades for the constituent on the instructions of Dharmesh or in other words, whether Dharmesh was an authorised representative of the constituent. In its award delivered on 18 December 2013, the NSE tribunal held that Dharmesh was not an authorised representative of the constituent and had no authority to give any trading instructions on its behalf. The tribunal considered KYC form submitted for opening of the trading account. The tribunal noted that it was the specific case of the constituent that it had submitted a blank KYC form to Dharmesh. The tribunal noted that in the affidavit of the trading member's representative (Lokesh Goel), it was confirmed that email Id and contact details in the KYC form were inserted by Dharmesh in his presence. The tribunal observed that this confirmed that blank KYC forms signed by the constituent were sent to the trading member through Dharmesh and they were filled up by the latter in the presence of a representative of the trading member. The tribunal noted that brokerage sharing emails between the parties submitted by the

constituent would establish the business connection between one S.K. Singh (representative of the trading member), Lokesh and Dharmesh. The emails showed that these three had an understanding for sharing of brokerage with regard to transactions of different parties including the transactions in the account of the constituent herein. The arbitrators also noted that one of the emails was sent to Dharmesh through another email id, which was not reflected in the signed KYC form. The arbitrators observed that this established that Dharmesh had close connections with the trading member's business and his email id was known to the trading member's team. In the premises, the arbitrators found it impossible to accept the plea of the trading member that Dharmesh was a representative of the constituent. The arbitrators also noted that KYC form had a specific requirement to obtain a board resolution and specimen signatures on behalf of a corporate entity; similar was the requirement under SEBI circular dated 22 August 2011. The arbitrators noted that the constituent had given a copy of the resolution (resolution dated 25 April 2012) authorising one Suresh Sharma, director of the constituent, to take a decision on all financial matters. The trading member had accepted receipt of authority letter in favour of Suresh Sharma. The arbitrators noted that no such resolution or letter providing specific authority in favour of Dharmesh was produced by the trading member. The arbitrators, in the premises, concluded that no authority was given by the constituent to Dharmesh to carry out any trade on its behalf and there was no justification why the trading member should have carried out the alleged trades in the account of the constituent on the instructions of Dharmesh. The arbitrators also noticed that it was the case of the trading member that two lakh shares were pledged by Dharmesh on behalf of the constituent, whereas in this case in the pledged form, there was no mention of the name of the constituent. The arbitrators noted that this showed that the trading member knew that the shares had come from a source other than the constituent. So also, the arbitrators noted that the trading member could not justify release of shares only to the extent of 1,50,000 out of these two lakh shares and why 50,000 balance shares were retained or explain what it had done with these remaining 50,000 shares. Considering all this material, the arbitrators held that the constituent had not given any authority to Dharmesh and the transactions, which were not admitted by the constituent, were all unauthorised. The award was carried to the appellate tribunal of NSE. The appellate tribunal went through each of the reasons cited by the first tribunal and confirmed the same. These are clearly reasonable views expressed after assessment of evidence. The award does not admit any interference under the provisions of Section 34 of the Arbitration and Conciliation Act, 1996 ('Act'). The award is clearly supported by evidence. There is no irrelevant or non-germane material considered, or germane or relevant material disregarded by the arbitral tribunal whilst making its award. In any case, no cause is shown by the trading member at the hearing of the petition to justify interference.

5 Coming now to the BSE award, which is the subject matter of challenge in Arbitration Petition No.1095/2014, it is pertinent to note that by a strange logic, or rather speculation, the arbitral tribunal has come to a conclusion that there was substance in the trading member's case that Dharmesh was an authorised person of the constituent and consequently, the transactions were authorised. The tribunal noted that Dharmesh was a disowned man, i.e. disowned by both constituent and trading member,

though he appeared to be a key person in the whole episode, as the tribunal put it, 'not as a hero but a villain of piece'. The tribunal then proceeded to consider 'personality' of Dharmesh and his 'plight'. After noting the contents of his affidavit (Dharmesh had filed an affidavit in the matter), the arbitrators noted that the affidavit appeared to be 'in the form of confirmation on behalf' of the constituent. The arbitrators were of the view that the affidavit was not attested in a proper way and there was 'no registration entry of notarization register mentioned in the said document'. The arbitrators treated this affidavit as 'invalid'. There may not be any objection *per se* with how the arbitrators treated the affidavit of Dharmesh. It was part of their mandate to assess the evidence including the testimony of Dharmesh and come to their own finding. But what is shocking is that based on this affidavit, the arbitrators claimed to be 'persuaded to believe ourselves that there is a substance in the statement of the Respondent that Mr.Dharmesh is an authorised person of the applicant'. This is nothing but a sheer and naked speculation. There is absolutely nothing in either the evidence of Dharmesh or the supposed want of genuineness or truthfulness of his affidavit to suggest that he was an authorised person of the constituent. The arbitrators appear to have proceeded to speculate on the authority of Dharmesh merely on the footing that Dharmesh's affidavit appeared to have been tendered at the instance of the constituent. This was strange, to say the least. What is more distressing is that the arbitrators thereafter appear to speculate on the possibility of the constituent being aware of the transactions entered into on its behalf and this they do purportedly on the basis that the constituent was a seasoned client; its director was also director in another company, one M/s.Sanchay Fincom, who was a registered broker on NSE. Based on these circumstances, the arbitrators observed that the constituent would be termed as someone who was fully aware of the importance of member-client agreement, KYC requirement, the method of communication of trades executed, SMS alert, authorization for the order and the entire mechanism of the securities market. From these, the arbitrators deduced that the constituent was 'totally aware' of the transactions entered into on its behalf. The arbitrators supported this by observing that in their understanding, accordingly, the constituent "must have given the instructions for the trades executed on BSE through Mr.Dharmesh Purohit". This was nothing once again but naked speculation and without there being even a method to it. The arbitrators, though they noted in their award that the trading member had not taken proper mandate including KYC documents from the constituent, attributed this probably to the haste of doing business, where documentation was reduced to an idle formality or a clerical work for which "top brasses have no time and is left to be done by some lesser mortals". Even if one overlooks the dramatic turn of the phrase, what is clear is that though the arbitrators, in the backdrop of the facts noted above, did not miss out on the shortcomings of the KYC form and related documents used by the trading member for carrying out trades, and yet, on a pure and simple speculation, accepted the trading member's case on the transactions being authorised. The award cannot satisfy the standards of legitimacy, which the provisions of Section 34 of the Act expect of any arbitral tribunal. It is shocking to the conscience of the court and exhibits an impossible view. It is practically an award based on no evidence and cannot be sustained under Section 34 of the Act.

6 Accordingly, Arbitration Petition No.2/2015 is dismissed and

Arbitration Petition No.1095/2014 is allowed by setting aside the impugned award dated 22 August 2014 read with the impugned award dated 18 December 2013. No order as to costs.

(S.C. GUPTE, J.)