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

ARBITRATION PETITION NO.1149 OF 2018
with
IPA NO.31 OF 2019

Bonanza Portfolio Ltd .. Petitioner
vs
Meeta Parikh .. Respondent

Ms.Mugdha Modi I.b Juris Link for Petitioner
Ms. Meeta Parekh Respondent present in person

CORAM : S.C.GUPTE, J
DATE : 22 AUGUST, 2019

P.C

1. Heard learned counsel for the Petitioner and the Respondent appearing-in-person.

2. This Arbitration Petition challenges an appellate award passed by the Appellate Panel of Arbitrators of National Stock Exchange of India Ltd. The controversy concerns the open position of the Respondent (who is the Constituent of the Petitioner trading member and who was the appellant before the Appellate Panel) and its squaring-off by the Petitioner. The controversy involves interpretation of Regulation No.3.10 (a) and 3.10 (b) of National Stock Regulations for F and O segment.

3. On 8.11.2016 at 17.15 hours, an SMS was sent by the

trading member to the constituent on account of a tentatively estimated short-fall in margin subject to final figures. The final figure of short-fall, in margin was communicated the same day at 21.45 hrs. The final margin short-fall, according to the margin statement submitted on that day, was said to be Rs.9,77,408.34. The Petitioner appears to have squared off the open position of the Respondent the very next trading day, i.e. 9.11.2016, at 9.16 hrs. This was found fault with by the Appellate Panel of Arbitrators on the ground that, if there was an open position, in accordance with Regulation No.3.10 (b), the trading member was at liberty to close out the transactions by effecting sales/purchases of derivative contracts but that was subject to the constituent being given a chance to meet his/her obligations in respect of the open position on the next trading day. The contract note or Statement of account was delivered by the trading member to the constituent late in the evening, i.e. at 21.45 hrs, of 8.11.2016, without giving an opportunity to the constituent to meet her obligations, in respect of her open position on the next trading day, i.e. on 9.11.2016, the trading member squared off the position by selling the shares and derivatives of the constituent, immediately after the market opened on the very next day i.e.at 9.16 hrs. This act on the part of the trading member was found to be un-authorized and in breach of the stipulations contained in Regulation No.3.10 (b). This view of the Arbitrators may very well be described as a possible view, which is supported by material on record and exhibits a fair assessment of the legal position.

4. Learned counsel for the Petitioner submits that the open

position of the Respondent had continued to exist as far back as from 22.10.2016; that the open position, which was communicated to the constituent on 8.11.2016, was not created as a result of any margin short-fall on 8.11.2016 but was in existence since 22.10.2016. Learned counsel relies on the Judgement of this Court ***(ARBITRATION PETITION NO.512 OF 2010 ANOOP V.MOHTA, J on 14.3.2013)*** delivered in the case of ***M/s ANGEL CAPITAL & DEBT MARKET LIMITED VS. MRS RAJKUMARI LADDHA*** in support of her case that merely because the trading member accommodates his constituent by not insisting on his open margin deficit being immediately replenished and gives him time to do so, his right to square off the open position for want of adequate margin cannot be denied. There is no quarrel with the proposition of law, but what is important is that in such a case the trading membet must indicate a clear demand of margin short-fall which puts the constituent to a notice that if the margin is not replenished, the open position may be squared off. There is nothing to indicate in the present case that the trading member had given any such notice to the constituent. There is nothing to indicate that the trading member had insisted on the constituent replenishing the deficit in margin at any time between 22.10.2016 and 8.11.2016. Learned counsel relies on Daily Margin Statement issued by the trading member as also a communication of the constituent issued on 2.11.2016. Whether these communications actually amount to, or suggest, demand for replenishing of the deficit margin or not is a question of fact. The Arbitrators appear to have gone by the communications of 8.11.2016 as the demand for replenishment of the margin and not the earlier communications. This is perfectly legitimate.

It does not exhibit any perverse view. For laying a successful challenge to an award, the challenger must elevate his case to the case of breach of a public policy in passing the impugned award. If, and so long as, the award exhibits a possible view of the material, and not an impossible view or a view which no fair or judiciously minded-person would take, the award is not amenable to a challenge.

5. In the present case, as noted above, the impugned award clearly exhibits a possible view. It warrants no interference at the hands of this Court under section 34 of the Arbitration and Conciliation Act, 1996. Accordingly, there is no merit in the challenge.

6. The Arbitration Petition is dismissed.

(S.C.GUPTE, J)