Reserved on :20.06.2019

Pronounced on :25.06.2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Original Petition No.123 of 2009

Mr.M.Kuppusamy ... Petitioner

Vs

1. JRG Securities Ltd.,
   Trading Member,
   JRG House, Ashoka Road,
   Kaloor,
   Kochi – 682 017, Kerala.

2. Mr.S.Subramanian
   Arbitrator,
   National Stock Exchange of India Ltd.,
   2nd Floor, Isphani Centre, Door No.123-124,
   Nungambakkam High Road, Nungambakkam,
   Chennai – 600 034. ... Respondents

Prayer :- This Original Petition has been filed under section 34 of the Arbitration and Conciliation Act to set aside the Award passed by the second respondent dated 28.11.2008 in respect of Arbitration proceedings between the petitioner and the first respondent.

For Petitioner : Mr.P.J.Rishihesh

For Respondents : Mr.Hari Radhakirshnan – R1

ORDER

Challenge has been made against the impugned Award passed by the Sole Arbitrator dated 28.11.2008.

2. Brief facts leading to filing of this Original Petition is as follows :

The petitioner was holding a position in the F & O segment. On the opening of the trade on 22.01.2008, its value was about Rs.21,18,871.01 and there was M to M loss of Rs.12,98,799.85. At that time, the petitioner's running account was also on debit sale. Therefore, he was asked to pay those amounts immediately. Hence,the petitioner issued three cheques each for Rs.5 lakhs, totalling to Rs.15 lakhs. However, the petitioner has issued stop payment Order. Hence, the cheques were not honoured. Hence, the respondent had squared off the positions which they had on 22.01.2008. Therefore, they claimed Rs.14,13,124,95 with penalty interest till April, 2008.

3. It is the case of the petitioner/respondent that they had credit balance of Rs.8,79,584.42 as on 21.01.2008. The Claimant's franchisee at Solasimani requested the respondent to make a payment of Rs.17 lakhs. Accordingly, the respondent had issued four cheques, one for Rs.2 lakhs and three other cheques for Rs.5 lakhs each on the same day. After closing of the trading on

21.01.2008, his account showed a debit balance of Rs.11,84,669.19. But on 22.01.2008, even without informing anything, the applicant had unilaterally closed all the F & O positions of the respondent. If the petitioner had informed that the respondent has to make further payments due to the loss caused by market fall on 22.01.2008, he would have paid the amount. But the applicant had squared off all the positions at a low rate which had caused the loss.

4. The learned Arbitrator had framed the following issues :

1. Whether the claim of the applicant is true and acceptable?
2. To what relief, the applicant is entitled to?

5. After analysing the entire evidence, the learned Arbitrator has found that the petitioner sensing the market trend, is not only willing to pay his liability, but also stopped payment for the three cheques on 22.01.2008. The learned Arbitrator considered the entire matter and the trade practice in the stock exchange, has found fault with the respondent and passed the Award. The said Award was put into challenge in the present petition.

6. The learned counsel for the petitioner submitted that the learned Arbitrator without any evidence had observed that the petitioner was informed telephonically to pay the real time margin amount on 22.01.2009 and for such finding there is no evidence available on record. It is his further contention that

the email sent by Namakkal Branch of the respondent has not been considered by the Arbitrator and the same clearly indicate that there was Rs.11 lakhs debit and it was enough to cover two lots of RNRL only. But the respondent has covered all the 12 lots and equity positions also. The above document has not been considered by the Arbitrator. Therefore, the Award is not in terms of the contract. It is his further contention that as per Chapter 10 of the bye-laws of the National Stock Exchange of India Limited, the trading member has a right to demand from its constituent the margin deposit. The same clearly indicate that the constituent from time to time shall be called upon to do so to provide a margin deposit and furnish additional margin as required in the bye-law. The same makes it very clear that there must be demand in writing. Whereas, no such demand is made in writing in this Case. On the other hand, as per the request of the respondent, considering the debit, he has paid Rs.17 lakhs on 22.01.2008 for the margin loss. However, without any intimation, his accounts have been squared off on 22.01.2008. Therefore, the Arbitrator has not taken into account all these facts. Hence, the Award has to be set aside. He has also relied upon the judgment in **Chettinad International Coal Terminal Private Limited V. Kamarajar Port Limited** reported in **2018 SCC OnLine Madras 638**.

7. Whereas, it is the contention of the learned counsel appearing for the respondent that the Arbitrator has considered the entire evidence and factually

found that the petitioner, sensing the market trend, has made stop payment to the cheques issued by him. It is his further contention that the agreement entered between the parties makes it very clear that there is an agreement to the effect that if the constituent fails to make payment of consideration in respect of any one or more securities purchased by him before the pay-in date notified by the Exchange from time to time, the respondent is at liberty to sell the securities received in pay-out in proportion to the payment not received by him. Hence, the Arbitrator has considered the entire aspects and passed the Award on merits and the Award cannot be set aside.

8. The Division Bench of this Court in **Chettinad International Coal Terminal Private Limited V. Kamarajar Port Limited** reported in **2018 SCC OnLine Madras 638**, has held that even if there is another plausible interpretation to the covenant, that cannot become a ground for interference either under Section 34 or under Section 37 of the Arbitration and Conciliation Act and only when what has not been agreed upon by the parties or when the new covenant or new principle which was not the intention of the parties read into a contract, can there by any scope for interference under section 34 or Section 37 of the Arbitration and Conciliation Act.

9. On a perusal of the entire Award, the Arbitrator has considered the entire facts and found that the petitioner has issued stop payment, knowing very

well about the market. The Arbitrator has taken note of the entire facts, particularly, the market value on the particular date and has come to the conclusion that the petitioner is aware of the market value and therefore, he issued stop payment for the cheques. Further, Annexure 4 of the Voluntary Document, which was referred by the learned counsel for the respondent, reads as follows :

> "I/We refer to the Member Constituent Agreement dated 28.04.07 entered into by us.
>
> With reference to the same, I/We hereby agree that if I/We failed to make payment of consideration to you in respect of any one or more securities purchased by me/us before the pay-in date notified by the Exchange from time to time, you shall be at liberty to sell the securities received in pay-out in proportion to the amount not received, after taking into account any amount lying to mine/our credit, by selling equivalent securities at any time on the Exchange. I/we agree that the loss, if any, on account of the close out shall be to mine/our account.
>
> I/We further agree that if I/We fail to deliver any one or more securities to your pool account in respect of the securities sold by me/us before the pay-in date notified by the Exchange from time, such undischarged obligation in relation to delivering

> any any one or more securities shall be deemed to have closed out at the auction price or close-out price, as may be debited to you in respect of the security for the respective settlement, to the extent traceable to me/us on mine/our failure to deliver; otherwise the close out price on the date of pay-out in respect of the relevant securities, declared by the Exchange. I/We further agree that the loss, if any, on account of the close out shall be to mine/our account.
>
> I/We further agree that if for any reason, schedule of pay-in and pay-out is modified the aforesaid shall be made applicable reckoning the actual date of pay-in and or pay-out, as the case may be."

The above agreement makes it clear that the respondent is at liberty to sell the securities received in proportion to the payment not received, after taking into account any amount lying in the credit of the petitioner herein. Therefore, when the Contract gives such a right, the respondent's action in squaring the F & O account cannot be faulted. At any event, the learned Arbitrator has analysed the entire facts and found that the petitioner has issued stop payment, knowing very well about the market. Therefore, when the Arbitrator has recorded a factual finding on the basis of the evidence, this Court cannot re-appreciate the same as an appellate Court. On a perusal of the entire Award and the petition, the petitioner has not made out any ground to interfere with the well reasoned Award and as such, the Award cannot be interfered.

10. Accordingly, this Original Petition is dismissed. No cost.

25.06.2019

Index : Yes/ No
Internet : Yes
Speaking/Non-speaking Order

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To

1. JRG Securities Ltd.,
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   JRG House, Ashoka Road,
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2. Mr.S.Subramanian
   Arbitrator,
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N.SATHISH KUMAR, J.

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