* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

%   *Date of decision: 20th March, 2019*

\+   W.P.(C) 2816/2019, CM Nos. 13100-13101/2019

I VENTURS CAPITAL PVT. LTD.   ..... Petitioner
Through: Mr. Arun Kathpalia, Sr. Adv. with Mr. Rishab Raj Jain, Adv.

versus

BOMBAY STOCK EXCHANGE   ..... Respondent
Through: Mr. Pratap Venugopal and Ms. Surekha Raman, Advs.

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO

V. KAMESWAR RAO, J. (ORAL)

CM. No. 13101/2019 (for exemption)

Exemption allowed subject to all just exceptions.

Application stands disposed of.

W.P.(C) 2816/2019

1. The present petition has been filed by the petitioner with the following prayers:

"Thus in the light of the aforesaid facts, circumstances, and grounds averred hereinabove it is humbly prayed that this Hon'ble Court may be pleased to:

a) Issue a writ, order or direction in the nature of mandamus directing the Respondent to desist from seeking deposit of the awarded amount from the petitioner in terms of bye-law 18 of the bye-laws and in terms of its e-mail dated 05.03.2019 till the pendency of the Appeal before the Arbitral Appellate Tribunal;

b) *Issue a writ of mandamus, or any other appropriate writ and / or pass any order or direction, directing the Respondent to desist from any action prejudicing the Petitioner by means of unfair and arbitrary implementation of the Bye Law 18 of the BSE Bye Laws or declaring Petitioner a defaulter, till final disposal of Arbitration Appeal;*

c) *And pass any such further order(s) as this Hon'ble Court may deem fit in the interest of justice.*

2. It is the submission of Mr. Arun Kathpalia, learned Sr. Counsel appearing for the petitioner that the petitioner is aggrieved by the e-mail dated March 5, 2019 issued by the respondent to the petitioner thereby stating that irrespective of the pendency of the appeal or stay application, respondent will immediately debit the awarded amount from the deposits of the Trading Member, i.e., the petitioner herein as per the award. According to him, the said decision would be illegal, unjust, and detrimental to the petitioner, as the debit of the awarded amount, shall result in the base minimum capital falling short of the minimum requirement as per the trading profile of the petitioner and the respondent shall deactivate the trading terminals due to such shortfall. He submits that petitioner cannot be penalized for inaction on the part of the respondent in not constituting the Arbitral Tribunal on urgent basis so that the petitioner's application for stay can be considered. He

further states, it is not a case where the interest of the investor is not secured. He would draw my attention to an order passed by the Additional Sessions Judge dated February 20, 2017, in whose court, the amount of Rs. 20,00,000/- has been deposited. Further the shares have also been secured.

3. On the other hand, Mr. Pratap Venugopal, learned Counsel appearing for the respondent has opposed the petition on the ground that the awarded amount is being debited to the deposits of the trading member in terms of the Circular dated July 9, 1999, issued by the SEBI. According to him, the vires of the said instructions have been upheld by the Bombay High Court. That apart, it is his submission that BSE bye-laws, more specifically by-law 18 contemplates debit of the awarded amount from the deposits of the trading member. He also submits that BSE is within its right to constitute a Tribunal within 30 days and the said time has not expired. He further states, there is no power of stay with the Arbitral Tribunal. He states that any order passed by this court shall amount to modifying the Circular issued by the SEBI and also Bye-law 18.

4. Having heard the learned counsel for the parties, this court is of the view that since the action is being taken by the BSE in terms of the Circular issued by the SEBI and bye-law 18 of the BSE bye-laws, no order contrary to the same can be passed. The Circular reads as under:

> *"The stock exchange should, on receipt of the arbitration award, debit the amount of the arbitration award from the security deposit or any other monies of the member (against whom an award has been passed) and keep the amount in a separate account. Thereafter, a confirmation may be obtained from the concerned member that he has not filed any appeal within the stipulated time under section 34 of the Arbitration and Conciliation Act, and only then, may the payment be made to the awardee. If an appeal if filed and the same is pending in a court of law, the amount so kept in the separate account be paid to the awarded in accordance with the court orders.*
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> *At the time of debiting the amount, the stock exchange may, if so desire, inform him that the exchange will not be liable for loss of interest, business etc., in case the award is modified by the court. The exchange may also indicate that if any amount of interest is still payable to the awardee, e.g., from the date of debiting the member's account till the date of payment of the award amount to the awardee, the same be recoverable from the concerned member and the stock exchange shall not be liable in this regard."*

5. It is Mr. Kathpalia's plea that the shares and the amount of Rs.20,00,000/- having been secured by the petitioner before the court of ASJ, interest of the person in whose favour the award has been made has been secured. On a pointed query to Mr. Kathpalia,

as to whether the complete awarded amount has been secured, he stated that such a submission cannot be made. Even otherwise, this court is of the view that the happenings in the Criminal Court have no relation to the impugned action of the BSE inasmuch as the BSE is following the Circular issued by the SEBI to protect the interest of investor who has been awarded the amount in Arbitration Proceedings. This court is of the view that the Circular of the SEBI and the bye-law 18 of the BSE Bye-laws need to be given effect to in letter and spirit, and any direction, as sought by the petitioner shall have the effect of amending the Circular and also the bye-law 18, which is impermissible.

6. I do not find any merit in the petition. The same is dismissed.

CM No. 13100/2019 (for Stay)

Dismissed as infructuous.

Dasti.

V. KAMESWAR RAO, J

MARCH 20, 2019/*jg*