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

\+ **RFA No. 385/2017**

% ***14th January, 2019***

FIVE SQUARE AGRO GOLD PVT. LTD. ..... Appellant

Through: Mr. N.M. Popli, Advocate for Mr. K.N. Popli, Advocate (Mobile No. 9868487642).

versus

MAYANK MOHAN AGARWAL ..... Respondent

Through: Mr. Rishi Sehgal and Mr. Rathore, Advocates (Mobile No. 9891758831).

CORAM:
HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. Appellant/Plaintiff impugns the Judgment of the trial court dated 24.09.2016 by which the trial court has dismissed the suit for recovery of Rs. 6,27,137.51 filed by the appellant/plaintiff against the respondent/defendant by observing that the courts at Mumbai had territorial jurisdiction and the suit could not have been filed as the parties were governed by the arbitration clause as per the rules of the

concerned stock exchanges being NCDEX and MCX. The appellant/plaintiff was the broker and the respondent/defendant was the client, and there were Member-Client Agreements between the parties with respect to broking transaction in commodities.

2. Indubitably, the Member-Client Agreement between the parties (Net Trading Agreement), contains a Clause 10, as per which it is provided that parties are aware that parties will be governed by the mechanism of arbitration provided by the rules and regulations of the commodities exchange. The commodities exchanges are the NCDEX and MCX. This Clause 10 reads as under:-

> "10. The Member and the Client are aware of the provisions of the Bye-Laws, Rules and regulations of the Exchange relating to resolution of disputes/differences through the mechanism of arbitration provided by the Exchange and agree to abide by the said provisions."

3. In the suit, the respondent/defendant at the earliest stage had filed an application under Section 8 of the Arbitration and Conciliation Act, 1996, but this application was held over for being decided at the stage of final arguments in the suit.

4. I may note that the respondent/defendant is situated at Ghaziabad, and not only for the sake of convenience, the

respondent/defendant would not have any benefit for going to the courts at Mumbai, the objection taken for lack of jurisdiction of the courts at Delhi is to only harass the appellant/plaintiff by raising unnecessary objection inasmuch as the fact of the matter is that as per the record, the transactions of net trading took place at the counters and stations of the appellant/plaintiff at Delhi as the appellant/plaintiff is admittedly situated at Delhi. Just because there is a deeming clause being Clause No. 3 of the Member-Client Agreement (MCX) entered into on the same date on 04.05.2009 that transactions are deemed to be entered at Mumbai, the same would not mean that courts at Mumbai will have jurisdiction because there is no deemed provision possible in law for those courts to have jurisdiction where actually the transactions are not conducted. Parties by consent cannot confer jurisdiction on a court which has none, and in the present case since the broking transactions took place between the parties at the stations of the appellant/plaintiff at Delhi, in my opinion, the Clause 3 of the Member-Client Agreement, MCX dated 04.05.2009 is otiose and futile. Therefore, the courts at Delhi will have territorial jurisdiction as the transactions were entered into between the parties through the monitors and stations of the appellant/plaintiff with respect to booking transactions in commodities.

5(i). So far as the arbitration clause is concerned, being Clause 10, the same is an undisputed clause, and therefore the ld. counsel for the appellant/plaintiff states that appellant/plaintiff has no objection to get the issues decided by the mechanism of arbitration as per Clause 10, however, it is pleaded that in view of the *bonafide* disputes created by none else than the respondent/defendant, including of territorial jurisdiction at Mumbai, hence, the time spent for prosecution of the suit and also this appeal should be liable to be excluded under Section 14 of the Limitation Act, 1963, with respect to arbitration proceedings which the appellant/plaintiff intends to initiate.

(ii). I agree with these arguments urged on behalf of appellant/plaintiff that for the time spent by the appellant/plaintiff to pursue the suit as also this appeal, for these periods exclusion will be available to the appellant/plaintiff under Section 14 of the Limitation Act, and the concerned arbitration tribunal will liberally consider the application filed by the appellant/plaintiff under Section 14 of the

Limitation Act when disputes are raised for being decided in the arbitration proceedings.

6. In fact, in my opinion, the factum of filing of the application under Section 8 of the Arbitration and Conciliation Act by the respondent/defendant will amount to invoking of the arbitration clause, and thus, and in fact the limitation will stop running as from the date of filing of the application under Section 8 of the Arbitration and Conciliation Act by the respondent/defendant. Once the limitation stops running, it would stop running possibly even so far as the appellant/plaintiff is concerned, however, this aspect of limitation will be finally decided in the arbitration proceedings.

8. In view of the aforesaid discussion, this appeal is disposed of by directing the appellant/plaintiff to seek resolution of the disputes by the mechanism of arbitration of the NCDEX and MCX exchange and as per the relevant by Bye-Laws, Rules and Regulations of the exchanges. All pending application are hereby also disposed of.

JANUARY 14, 2019/AK **VALMIKI J. MEHTA, J**