IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 21.09.2020
CORAM:
THE HONOURABLE Mr.JUSTICE M.SUNDAR
OP.No.594 of 2009
and
WP.No.234 of 2014

OP.No.594 of 2009

Mr.C.S.Sivanandan (Constituent),
Old No.11, New No.4, South Mada Street,
Flat No.1-A Srinagar Colony,
Saidapet, Chennai-600 015. ... Petitioner

- Vs -

1. M/s.Karvy Stock Broking Ltd (Trading Member),
   F3, Adyar Business Court,
   Old No.25, New No.51,
   Gandhi Nagar, 1st Main Road,
   Adyar, Chennai-60 020.
2. Mr.Justice S.Jagadeesan (Retired)
   C/o.National Stock Exchange of India Ltd.,
   2nd Floor, Ispahani Centre,
   No.123-124, Nungambakkam High Road,
   Chennai-600 034.

... Respondents

WP.No.234 of 2014

Mr.C.S.Sivanandan (Constituent),
Old No.11, New No.4, South Mada Street,
Flat No.1-A Srinagar Colony,
Saidapet, Chennai-600 015.

... Petitioner

- Vs -

1. Securities and Exchange Board of India (SEBI)
   Rep.by its Chairman,
   Plot No.C4-A, "G" Block,
   Bandra Kurla Complex,
   Bandra (East), Mumbai-400 051.
2. The Regional Manager,
   Securities and Exchange Board of India (SEBI),
   "Overseas Towers", 7th Floor, 756-L Anna Salai,
   Chennai-600 002.

3. The Executive Director,
   Legal Affairs Department (LAD)
   Securities and Exchange Board of India (SEBI),
   Plot No.C4-A, "G" Block,
   Bandra Kurla Complex,
   Bandra (East), Mumbai-400 051.

4. The Executive Director,
   Investigation Department (IVD),
   Securities and Exchange Board of India (SEBI),
   Plot No.C4-A, "G" Block,
   Bandra Kurla Complex,
   Bandra (East), Mumbai-400 051.

5. M/s.Karvy Stock Broking Ltd (Trading Member),
   F3, Adyar Business Court,
   Old No.25, New No.51,
   Gandhi Nagar, 1st Main Road,
   Adyar, Chennai-60 020.
   (R5 impleaded as per order dated 07.01.2020 made in WMP.No.35129/2019 in WP.234/2014)

... Respondents

Prayer in OP.594/2009: Original Petition filed under Section 34 of The Arbitration and Conciliation Act, 1996, praying to set aside the Arbitration Award dated 15.07.2009 made in A.M.No.F & O/C-0045/2009 on the file of the 2nd respondent.

Prayer in WP.234/2014: Writ Petition filed under Article 226 of The Constitution of India, praying to issue a writ of Certiorarified Mandamus, calling for the records from the 1st respondent vide Reg. No.SEBI E/ MH13/0011618/1 and quash the order dated 05.9.2013 made therein and consequently direct the 1st respondent to investigate into the petitioner's complaints dated 19.06.2008 and 16.07.2013 independently and take appropriate penal action against the erring stock broker namely M/s.Karvy Stock Broking Ltd., in accordance with the provisions of Securities and Exchange Board of India Act, 1992 after giving due opportunity to the petitioner within the time to be stipulated by this Honourable court.

For Petitioner in OP & WP : Mr.Omprakash, Senior Advocate instructed by Mr.Ashokpathy of M/s.Pass Associates (Law Firm)

For Respondents in OP : Mr.T.K.Bhaskar for R1
R2-Arbitrator

For Respondents in WP : Mr.C.Prasanna Venkatesh for R1 to R4
Mr.T.K.Bhaskar for R5

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COMMON ORDER

Captioned 'Original Petition' ['OP' for the sake of brevity] is an application under Section 34 of 'The Arbitration and Conciliation Act, 1996 (Act No.26 of 1996)', which shall hereinafter be referred to 'A and C Act' for the sake of brevity.

2. Captioned 'Writ Petition' ['WP' for the sake of brevity], is with a prayer for Certiorarified Mandamus inter-alia assailing an order dated 05.09.2013 made by 'Securities and Exchange Board of India' ['SEBI' for the sake of brevity].

3. Petitioner in captioned OP as well as WP is a constituent and Respondent No.1 in captioned OP, who is respondent No.5 in captioned WP is a Trading Member qua 'National Stock Exchange India Limited' [hereinafter 'NSE' for the sake of brevity].

4. Trade between the constituent and Trading Member led to some dispute, which went before an 'Arbitral Tribunal' ['AT' for the sake of brevity] constituted by a sole Arbitrator, who is a former Hon'ble Judge of this Court. The Constituent was the claimant before AT and obviously Trading Member was the respondent. AT passed an 'arbitral award dated 15.07.2009' (hereinafter 'impugned award' for the sake of brevity) dismissing the claim of the Constituent. Assailing the impugned award captioned OP has been filed by the Constituent. Pending captioned OP, constituent filed a complaint dated 19.06.2008 followed by an online complaint dated 16.07.2013 with SEBI and the same came to be disposed of by SEBI by an 'order dated 05.09.2013' [hereinafter 'impugned order' for the sake of brevity]. Inter-alia assailing the impugned order of SEBI, captioned WP was filed in this Court by constituent on 13.10.2013.

5. Owing to the overlap in the matters, captioned matters were placed before Hon'ble Chief Justice for orders regarding tagging and listing. Hon'ble Chief Justice, vide proceedings dated 05.08.2019, directed captioned OP and WP to be tagged and directed both to be listed before 2009 roster bench. Thus captioned OP and WP are before me today.

6. Mr.Om Prakash, learned Senior Advocate instructed by Mr.Ashokpathy of M/s.Pass Associates (Law Firm) on behalf of constituent, Mr.T.K.Bhaskar, learned counsel on behalf of Trading Member and Mr.C.Prasanna Venkatesh, learned counsel on behalf of SEBI are before me. To be noted, learned counsel for SEBI is for respondents 1 to 4 in captioned WP.

7. Aforementioned learned counsel informed this Court that the suit in the City Civil Court, Hyderabad filed by the Trading Member, which has been referred to by AT in the impugned order has since been numbered as O.S.No.2720 of 2010 and taken on the file by IV Senior Civil Judge, Hyderabad. This Court is informed that constituent has filed an application under Section 8 of A and C Act, which was negatived, carried to the jurisdictional High Court, which has granted an interim order and this Court is informed that interim order of stay of civil suit is operating.

8. When the matter was taken up, as between learned Senior counsel for the constituent and learned counsel for Trading Member, there is no disputation or disagreement that the arbitration is governed by 'National Stock Exchange bye-laws' [hereinafter 'NSE bye-laws' for the sake of brevity]. Chapter XI of NSE bye-laws to captioned 'ARBITRATION' serves as the arbitration agreement between the parties being arbitration agreement within the meaning of Section 2(1)(b) read with Section 7 of A and C Act.

9. Regarding Chapter XI of NSE by-laws, what is of utmost relevance for the captioned OP on hand is bye-law (19) captioned Appellate Arbitration, which reads as follows:

> 'Appellate Arbitration
>
> (19) (a)A party aggrieved by an Arbitral Award may appeal to the Appellate Arbitrator against Arbitral Award within one month from the date of receipt of Arbitral Award and in such manner as prescribed by the Relevant Authority from time to time notwithstanding the provisions contained under Byelaw 3.

(b) The Appellate Arbitrator shall consist of three arbitrators who shall be different from the ones who passed the Arbitral Award appealed against and such Appellate Arbitrators shall dispose of the appeal by way of issue of an Appellate Arbitral Award within three months from the date of appointment of the Appellate Arbitrator.

(c) A party aggrieved by the Appellate Arbitral Award may file an application in accordance with Section 34 of the Act before the court of competent jurisdiction nearest to the address provided by Constituent in the KYC form or as per the change in address communicated thereafter by the Constituent to the trading member.

(d) The above provisions of Byelaws 1 to 18 shall be applicable to Appellate Arbitration.'

10. Captioned OP, as already alluded to supra, has been filed under Section 34 of A and C Act assailing the award made by the AT, which is the second tier of the three tiered/multi tiered arbitration mechanism provided for under Chapter XI of NSE Byelaws. Therefore, the third tier of arbitration mechanism [extracted and reproduced supra] i.e., by-law (19) has not been exhausted. In this scenario, this Court is of the considered view that it would be appropriate to relegate the parties to Appellate Arbitral Tribunal under Chapter XI (19) of NSE by-laws leaving open all questions, rights and contentions of the parties.

11. Captioned OP will stand closed preserving the rights of petitioner to approach the Appellate Arbitral Tribunal in accordance with (19) of Chapter XI of NSE bye-laws. As already alluded to, all rights and contentions of all parties are left open. More importantly, the right of petitioner to seek exclusion of time spent in captioned OP is preserved and if the petitioner chooses to do so, the same shall be considered on its own merits by Appellate Arbitral Tribunal.

12. This takes us to captioned writ petition.

13. In the light of the trajectory the captioned OP has taken, it is appropriate to dispose of the captioned writ petition also as closed albeit leaving the question of contentions of statutory body SEBI regarding enquiry into the complaint pending Arbitral proceedings open. In other words, no opinion or view is expressed by this Court in this order and this question is also left open. To put it differently all

questions in the writ petition are also left open and all rights/contentions of all parties in the writ petition also stand preserved. Right of the petitioner to commence fresh proceedings qua SEBI, if the need arises, subject to proceedings before Appellate Arbitral Tribunal, is also preserved.

Captioned OP and captioned WP disposed of as closed on above terms. There shall be no order as to costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To
1.The Sub Assistant Registrar
Original Side
High Court, Madras

2.The Sub Assistant Registrar
Writ Section
High Court Madras

OP.No.594 of 2009
and
WP.No.234 of 2014

sr(co)
aa28/10/2020