IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.01.2020

C O R A M

THE HONOURABLE Ms.JUSTICE P.T.ASHA

O.P.No.225 of 2013

M/s.India Infoline Limited,
IIFL Centre, Kamala City,
Senapati Bapat Marg,
Lower Parel,
Mumbai 400 013 .. Petitioner

-vs-

1. A.S.Chandrika
2. N.Sekar, Arbitrator
3.C.Madasamy, Arbitrator
4.Tejraj Achha, Arbitrator
Bombay Stock Exchange Ltd.,
No.4, Vijaya Towers, 3rd Floor,
Opp.Palm Grove Hotel,
Kodambakkam High Road,
Chennai 600 034 ...Respondents

Prayer: Original Petition under Section 34 of the Arbitration and Conciliation Act, 1996 praying to set aside the award in Arb.No.27 A of 2012 dated 1.01.2013 on the file of the Bombay Stock Exchange, Chennai.

For petitioner ... Mr.G.Surya Narayanan
For Respondent-1 ... Mr.V.T.Narendiran
For Respondents 2 to 4 ... No Appearance

ORDER

The challenge to the arbitration award and intra-stock exchange Appeal is the subject matter in the above Original Petition.

2. The facts in brief, which are pending for disposing of the above Petition are as follows:

(i) The petitioner is a trading member of the National Stock Exchange (NSE) and Bombay Stock Exchange (BSE) and registered with the Securities and Exchange Board of India (SEBI) in conformity with the Securities and Exchange Board of India (Stock Brokers and Sub-Brokers) Rules, 1992. The petitioner is an incorporated Company having its registered Office at Thane.

(ii) The case of the petitioner is that the first respondent had approached them with the request to open the trading and demat account with the intention to trade in cash and derivatives, for which purpose, necessary "Know Your Customer"(KYC) was also obtained by the petitioner. The petitioner would contend that the first respondent had voluntarily executed all the documents, in which, she has opted to receive copies of contract notes, confirmation notes, ledger bills etc., through her e-mail address:CHANDRIKAAAS33@YAHOO.COM. The petitioner would submit that they had not cross checked the details given by the first respondent, as the same was given in person by the first respondent. At the time of opening the account, the first respondent had given 1000 equity shares of Manapuram General Finance and Leasing Ltd. It is in respect of these shares that she had opened the dematerialisation account.

3. The case of the first respondent is that the Manager one Bashir of the petitioner-Company had assisted her in opening the demat account and she had handed over the 1000 numbers of shares to the petitioner-Company at their Thalikulam Branch Office. The first respondent was asked to sign some printed agreement papers by the Manager, who asked her for her mobile number and e-mail I.D. The first respondent made it clear that she did not have any mobile phone or e-mail I.D and she had given only her BSNL landline number. The first respondent would further submit that she was waiting for value of

shares to increase and she had no intention of trading in shares. In fact, it is the specific case that she has been visiting the branch enquiring about the price of the shares and she was always instructed by the Manager not to sell the shares, as their value was fast increasing and the same continued till the year 2010. The first respondent would submit that in the meanwhile, the Manapuram General Finance Leasing Company Ltd. shares had split to the value of Rs.2/- and 1:1 bonus share was issued. On coming to know about the same, the first respondent contacted the Manager, who told that her shares had increased to 10000 shares and that she should not sell the same. Even when the shares had touched Rs.189 per share, the Manager asked the first respondent to wait till it reaches Rs.300/-.

4. Thereafter, the petitioner heard a rumor that the Manager was absconding and he had sold his properties and the Office was also closed. Immediately, the first respondent rushed to the head Office at Trisur and it was there that she had received a shock of her life when she was informed that her shares had been sold two years back on 05.11.2008. The respondent sought for copies of the contract notes, ledger etc., and other documents and it was only then that she came

to learn that the Manager of the petitioner-Company had clandestinely inserted his mobile number in column given for mobile number and e-mail had also been created, both of which were without her knowledge. It appears that it was the Manager, who had been trading in the name of the petitioner without her knowledge. Therefore, holding the petitioner-Company liable, the first respondent had initiated arbitration proceedings before the Arbitrator for recovery of sum of Rs.9,42,000/-, which was the cost of 22,000 shares at Rs.47/- for 10 share as on the date of filing of the claim. The petitioner had defended the above claim stating that the transaction had all taken place as per the instructions of the first respondent, given in her various agreements signed by her and therefore, no liability can be mulcted upon the petitioner. The petitioner has also taken out a plea that the petition is barred by limitation, since the sale of shares has taken place on 05.11.2008 itself.

5. The learned Arbitrator, by his award dated 10.08.2012, has proceeded to allow the application as prayed for along with interest @ 12% p.a. from the date of reference to the date of final disbursement.

6. The learned Arbitrator has been persuaded to award the claim of the first respondent on the ground that the petitioner-Company had kept away the most vital documents to connect knowledge of the fact that the first respondent was not the person handling the account by net with the first respondent by providing the proof of delivery of the welcome kit to the applicant. The learned Arbitrator has opined that the welcome kit has to compulsorily be delivered directly to the applicant and the failure on the part of the petitioner-Company in producing proof of such delivery, despite contending that they had the same, would clearly indicate that the first respondent's contentions were true. The learned Arbitrator also found that the internal registers produced by the petitioner on 04.07.2012 was not accompanied by any proof of delivery from the courier Company. It is on these main grounds that the award had been passed by the Arbitrator.

7. The said award was taken up for challenge by the petitioner herein to the appellate Arbitrator of the Bombay Stock Exchange in Arbitration Appeal No.27A of 2012. The Appellate Tribunal also confirmed the award passed by the learned Arbitrator and it is challenging this order that the present petition under Section 34 of the

Arbitration and Conciliation Act, has been filed. The appellate Arbitrator had also drawn adverse inference on the petitioner's failure to produce proof of the welcome kit, though the appellant would claim that the same had been sent by Blue Dart Courier and delivered on 20.02.2008. The appellate authority was also convinced that the demat account was opened by the first respondent to dematerialise her shares and sell the same for an optimum price. Challenging the above orders, the petitioner has filed the instant petition.

8. The main ground of challenge to the award is limitation and that the issue of fraud cannot be raised in Arbitral proceedings.

9. Mr.G.Surya Narayanan, learned counsel arguing on behalf of the petitioner reiterated the above contentions. He would submit that the sale had taken place, even according to the first respondent on 05.11.2008 and therefore, the petition filed on 10.08.2012 before the Stock Exchange was highly belated. He would draw the attention of this Court to the statement of account of the first respondent, wherein, the original cheque for Rs.5,000/- issued by the first respondent at the time of opening of the account, had bounced and he would also draw

the attention of the Court to the entry on 13.10.2010, where once again the cheque for Rs.23,000/- issued had been dishonored. He would therefore contend that the first respondent had been very active and in the know of the various transactions that had taken place in the account. He would contend that the first respondent had initiated the proceedings on the ground that the erstwhile Manager-Bashir had played fraud on her and had fabricated documents to achieve his end. The learned counsel would further contend that once fraud is pleaded, in such cases, arbitral proceedings cannot be initiated, as fraud has to be proved by way of a detailed evidence. He would further contend that the petitioner has only followed the instructions of the first respondent by updating all the details to her e-mail address given at the time of opening of the account. He would further submit that the award is erroneous and liable to be set aside.

10. Per contra, Mr.V.Narendiran, learned counsel appearing on behalf of the claimant would submit that the claim was very much in time, since it is instituted within a period of three years from the date of knowledge. He would submit that the mobile number which has been provided in the account opening form is that of the Manager of

the respondent-Company and all information has only gone to this number. However, no where in the counter before the Arbitrator had the petitioner denied knowledge that the mobile number is that of the Manager. He would further argue that not a single penny had been transferred to the bank account, though specific instructions had been given to the petitioner to deposit all amounts into the first respondent's account with the Axis Bank. He would further submit that both the authorities below, who are the officials of the Stock Exchange and having the knowledge about the procedure, had drawn adverse inference on the failure of the petitioner to provide proof of delivery of the welcome kit to the first respondent at her given address. That apart, despite taking steps to produce the said document, the petitioner had failed to do so. He would therefore contend that these authorities below have considered the evidence on record and come to the conclusion that the first respondent has not been able to establish any perversity or a patent illegality. He would therefore contend that the challenge to the award should be dismissed.

11. Heard the learned counsels and perused the papers available on record.

12. As rightly pointed out by the learned counsel for the first respondent, the petitioner, apart from raising the contention that the claim was barred by limitation and that fraud had been pleaded, the petitioner has not come forward with a substantial challenge to the award. As regards the limitation, it is the specific case of the first respondent/claimant that she came into knowledge about the unauthorised sale of shares only in the year 2010 and after collecting the documents from the petitioner, the claim has been filed in the beginning of the year 2012 i.e., 16.02.2012. Further, the fraud committed by the Manager of the petitioner-Company has been tacitly admitted by the petitioner-Company, as their statement of defence is totally silent in this regard. The petitioner has not categorically or even impliedly denied the contents of the above statement. Therefore, once the act of fraud has been admitted by the petitioner with their silence, there is no necessity for the parties to be relegated to a suit to prove their case. The petitioner has not been able to make out any

case warranting the interference of this Court under Section 34 of the Arbitration and Conciliation Act and in these circumstances, the Original Petition is dismissed. No costs.

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

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