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

\+ **CRL.M.C. 2937/2018 & CRL. M.A. 10505/2018, CRL. M.A. 43033/2019, CRL. M.A. 43034/2019, CRL.M.A.10848/2020**

ABHIPRA CAPITAL LTD. & ORS ..... Petitioners

Through Mr Rahul Gupta, Advocate with Mr Shekhjar Gupta & Mohd Shahbaz, Mr Shourya Gupta, Advocates.

versus

STATE & ORS ..... Respondents

Through Mr Amit Gupta, APP for State. SI Mukesh Kumar, EOW

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

O R D E R

% **24.08.2020**

[Hearing held through videoconferencing]

1. The petitioners have filed the present petition, *inter alia*, praying that the FIR bearing No. 13/2008 under Sections 420/409,467,468, 471,477-B and 120-B of the IPC, registered with PS Economic Offences Wing, New Delhi and all proceedings emanating therefrom, be quashed.

2. The said FIR was registered at the instance of respondent no.2, Deepak Gupta acting on behalf of his wife (respondent no.3). He had alleged that his wife (respondent no.3) was carrying on business under the name and style of M/s Reena Associates and had opened a share trading account with

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petitioner no.1, M/s Abhipra Capital Ltd. (hereafter 'ACL') in May, 2002 for trading in shares and securities including in Futures and Options segment, on the National Stock Exchange of India (NSE). ACL is, *inter alia*, engaged in the business as share brokers.

3. M/s Reena Associates was allotted a client code. It is alleged that the petitioners had indulged in fraudulent activities by showing transactions entered into on behalf of respondent no.3 (M/s Reena Associates) which were completely unauthorized. It was alleged that respondent no.3 (hereafter 'the complainant') had received trade confirmation and Mark to Market (MTM) bills for the trades done by her till July, 2005. She also received physical Contract Notes in respect of transcations (trades) executed by her from May, 2002 to January, 2004. However, thereafter, ACL failed and neglected to render accounts or furnish the Contract Notes. She further stated that whenever the statements of accounts were demanded, the petitioners behaved rudely.

4. The complainant verified the data relating to transactions enetered into in her account from the website of ACL and noted that there was a huge debit entry of ₹1,53,00,915/-. The same confirmed the doubt in the mind of complainant. On further checking the website it was noticed that only few Contract Notes were posted on the website. The complainant lodged a complaint with NSE and SEBI. It is alleged that as a counterblast and to create a defence ACL invoked the arbitration clause under the contract and filed an arbitration claim – CD 018/2008 – before the Arbitral Tribunal constituted by the NSE.

5. It is stated that in the course of the Arbitral proceedings, ACL filed a

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fresh Contracts Notes, MTM Bills and trade details, which did not match with the Contract Notes provided earlier. It was noticed that the Contract Notes contained a telephone number. It is alleged on inquiries made from the service provider (Airtel) it was found that the said telephone number on the Contract Notes was installed on 31.07.2004, which was subsequent to the dates of those Contract Notes. According to the complainant, this established that the said Contracts Notes filed by the ACL were not the same Contract Notes as originally posted but had been manipulated. Fresh Contract Notes had been prepared for the purpose of making a false claim against the complainant and misppropriating their funds. It was noticed that the service tax for the period was shown at the rate of 5%, whereas the service tax rate applicable at the material time was 8%. This also established that the Contract Notes had been fabricated.

6. Notwithstanding the above, ACL prevailed in the arbitral proceedings and secured an arbitral award in its favour and against the complainant.

7. Mr Amit Gupta, learned APP has referred to the charge sheet, which indicates that extensive investigations were carried out and the said investigation confirmed that the ACL had reflected several trades and transactions which were incomplete, unauthorized and illegal. These including synchronised sale and and purchase transactions (*Dabba* trades), which were essentially fictitious trades executed pursuant to the sale and purchase orders that were placed simultaneously in differrent accounts. In addition, it was found that transactions executed had been shifted from one account to another account. He also stated that on investigating two of those accounts it was found that one of them was fictitious and the account holder

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of the other account could not be found.

8. Mr Gupta earnestly contended that the investigations clearly establishes that the petitioners are guilty of forging of records, cheating and fraud. He submitted that the FIR contained the allegations of a commission of offences punishable under Sections 420, 467,468,471 of the IPC and such allegations have wider ramifications. He submitted that executing farudlent trades on a nationalized platform has a highly adverse effect on the securities market affecting general public at large. Thus, the same cannot be viewed with the prisim of a private dispute. Therefore, the FIR in this case ought not to be quashed.

9. He has also referred to the decisions of the Supreme Court in ***Central Bureau of Investigation v. Hari Singh Ranka and Others : (2019) 16 SCC 687*** and ***Mr Parbatbhai Aahir @ Parbatbhai Bhimsinbhai Karrmurand Ors. v. State of Gujarat and Anr. : 2017 SCC OnLine SC 1189*** in support of his contention that notwithstanding any civil implications regarding such transactions, the FIR containing allegations of widespread fraud affecting the economic and financial system of the country cannot be quashed.

10. The petitioners and respondent no.3 have since resolved their disputes and respondent nos. 2 and 3 do not wish to pursue the FIR against the petitioners.

11. It is also pointed out that the arbitration proceedings instituted by the ACL against respondent nos. 2 and 3 have fructified in an arbitral award in their favour. In addition to the above, ACL has also preferred a suit (***Civil Suit 57948/2016 titled Abhipra Capital Ltd v. Reena Gupta & Ors.***), whereby further claims have also been made against the complainant.

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12. It is seen that respondent no. 3 had preferred a Petition (O.M.P. (COMM) 63/2017) under Section 34 of the Arbitration and Conciliation Act, 1996 impugning the arbitral award secured by ACL, however, the said petition was withdrawn in terms of the settlement arrived at between the said parties.

13. Mr Rahul Gupta, learned counsel appearing for the petitioners also referred to the Settlement Deed dated 20.03.2018, whereby the petitioners had also agreed to withdraw the criminal complaint ***Crl. Misc. No. 953/2019 captioned Abhipra Capital pvt. Ltd. v. State and Others*** as well as ***Civil Suit 57948/2016.*** He further submitted that the petitioners/ACL were also giving up their rights under the Arbitral award in favour of ACL in terms of the said settlement.

14. In addition to the above, Mr Rahul Gupta also states that the petitioners volunteer to pay a sum of ₹10 lakhs to respondent no. 3 within a period of two weeks from today to put a quietus to the matter.

15. Mr Abhinav Aggarwal and Mr V.D. Aggarwal have also joined the present proceedings they are identified by Mr Rahul Gupta. They undertake to this Court that they shall pay a sum of ₹10 lakhs to respondent no.3 within a period of two weeks from today. The petitioners also undertake on behalf of ACL to withdraw from civil suit instituted by ACL against respondent no. 2 within a period of two weeks from date.

16. They further pray that in view of the settlement arrived at between the parties and their undertaking to pay the further sum of ₹10 lakh, the FIR in question be quashed.

17. The allegations made against the petitioners are serious and it does

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appear that the extensive investigation has been conducted by the investigation agency supports the allegations made in the chargesheet. However, it is not disputed that the allegations made in the FIR are subject matter of the proceedings before the arbitral tribunal and ACL has prevaled in those proceedings and secured an arbitral award against respondent no.3 Mr Gupta's contention that an offence of the nature as set out in the charge sheet necessarily has wider ramifications, is merited. But the extent of such effect is limited. It is undeniable that the said dispute is of a private nature, where the petitioners who were acting as brokers of respondent no 3 have allegedly cheated and caused wrongful loss to respondent no.3 and a corresponding gain to themselves.

18. The decisions of the Supreme Court rendered in ***Central Bureau of Investigation v. Hari Singh Ranka and Others : (2019) 16 SCC 687*** and ***Mr Parbatbhai Aahir @ Parbatbhai Bhimsinbhai Karrmurand Ors. v. State of Gujarat and Anr. : 2017 SCC OnLine SC 1189*** may not be strictly applicable. In those cases, the allegations were relating to defrauding banks who are dealing in public money. Frauds of such a nature undeniably have an adverse effect on the economy and financial system. Loss sufferred by banks and financial institutions have casscading effect. In the present case, the adverse effect is somewhat contained and largely borne by respondent no.3.

19. Mr Amit Gupta has also stated that there are other clients of ACL that have also been cheated in a similar fashion. However, it is not disputed that other claims have also been settled and there is no pending complaint against the petitioners in respect of their business as stock brokers.

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20. In view of the above statements made by the parties, as well as the undertaking given by the petitioners to this Court, this Court considers it apposite to allow the present petition. Accordingly, FIR No. 13/2008 under Sections 420/409,467,468,471,477-A and 120-B of the IPC, registered with PS Economic Offences Wing, New Delhi and all proceedings emanating therefrom, are quashed. It is clarified that this is subject to the petitioners complying with their undertakings to pay the sum of Rs. 10 lakhs to respondent no.3 within a period of two weeks.

21. It is further clarified that the quashing of the FIR shall not, in any manner, affect any proceedings that have or may be instituted by the Securitization and Exchange Board of India, National Stock Exchange or any other authority notwithstanding, that the same are also premised on the allegations made in the FIR or a charge sheet or are similar thereto.

VIBHU BAKHRU, J

AUGUST 24, 2020
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