O.P.No.84 of 2017

N.SATHISH KUMAR,J.

Today, the matter has come up under the caption "For Being Mentioned".

2. While passing an order on 27.08.2021 setting aside the award, this Court has not directed the first respondent to deposit the amount which he has received from NSE. In such view of the matter it is ordered as under :

"As arbitration is already in progress, the first respondent shall deposit the amount received from NSE in interest bearing Fixed Deposit Account in any of the Nationalised Bank to the credit of Arb.O.P.No.03 of 2021 within a period of one month and hand over the receipt to the learned Arbitrator."

Registry is directed to incorporate the above paragraph in the order dated 27.08.2021 and issue fresh Order copy to the parties concerned.

03.12.2021

msv

N.SATHISH KUMAR,J.

Msv

O.P.No.84 of 2017

03.12.2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date 27.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE **N. SATHISH KUMAR**

O.P.No.84 of 2017

M/s.Angel Braking Limited,
Akruti Trade Centre, Unit No.G1,
Ground Floor, MIDC Road, No.7,
Andheri [E], Mumbai – 400 093.
Represented by Mr.E.Aravindan
[Amended as per Order dated 09.11.2018
in Appln. No.8522 of.2018] . . . Petitioner

Versus

1. Mr.S.X.J.Vasan

2. The National Stock Exchange Ltd.,
   Having Office at 8th Floor, Arihant Nitco Park,
   90, Dr.Radhakrishnan Salai,
   Mylapore, Chennai – 600 004. . . . Respondents

PRAYER : Petition filed under Sections 34 of Arbitration and Conciliation Act, 1996 to set aside the award of the arbitrators on the file of the National Stock Exchange of India Ltd., Chennai in arbitration matter A.M.No.CM/C-011/2016, dated 19.10.2016.

For petitioner : Mr.G.Suryanarayanan

For respondents : A.Mudimanna – R1

O R D E R

Aggrieved over the Order of the Arbitrator of National Stock Exchange of India Limited, the present Original Petition has been filed.

2. Brief facts leading to filing of this petition is as follows :

The respondent is a client of the petitioner for trading in the securities market through the petitioner from August, 2013. The respondent opened a trading and demat account with the petitioner. Since the respondent failed to eliminate the deficit despite several requests, respondent has filed a complaint for referring the claim of Rs.44,78,899/- before Investor Grievance Redressal Forum of NSE [IGRC] and the IGRC, which is a Conciliatory Forum of the Exchange, held that the claim to the tune of Rs.16,84,600/- was admissible. As against which arbitration proceedings were conducted by the respondent. The arbitrator has confirmed the Order of IGRC against which, the present petition has been filed under section 34 of the Arbitration and Conciliation Act.

3. Heard both sides.

4. It is the contention of the learned counsel for the petitioner that the arbitrator has just confirmed the Order of IGRC. It is his contention that the main power of IGRC is to give monetary relief during the course of pendency of the proceedings. Whereas, IGRC is in the nature of Conciliation and it has to identify the amount payable to the complainant. Therefore such a finding of IGRC confirmed by the arbitrator, is against the very procedure and it has to be set aside.

5. Whereas, it is the contention of the learned counsel for the respondent that IGRC has infact identified the amount payable to the petitioner and the circular of National Stock Exchange of India dated 26.09.2013 indicate that upon conclusion of the proceedings of IGRC, in case the claim is admissible to the investor, the Stock Exchange, shall block the value from the deposit of the member and thereafter within 7 days of such IGRC directions, the party should inform whether the member intends to pursue the next level of resolution, i.e., arbitration. If the member does not opt for arbitration, the Stock Exchange shall release the blocked amount to the investor after 7 days. Hence, it is his

submission that the applicant has not invoked the arbitration within 7 days as per the circular. Therefore, now they cannot challenge the award of the learned arbitrator. In support of his contention, he relied upon the judgment of the Delhi High Court **M/s.Sai Soft Securities Ltd. Vs. Manju Ahluwalia** in **O.M.P.Nos.69 and 70 of 2015**.

6. It is relevant to note that Arbitration Mechanism and Investor Grievance Redressal Mechanism is formed by the Securities and Exchange Board of India as per PR No.94 od 20133, which reads as follows :

> With a view to streamline the investor grievance redressal mechanism at Stock Exchanges and made it more effective from the angle of investor protection, SEBI has decided to give monetary relief to investors having claims upto Rs.10 lac, during the course of proceedings from the investor Protection Fund of Stock Exchange. Further, SEBI has decided to shorten the time taken for these proceedings.

1. Some of the salient features of the initiatives taken are as under :

a] It has been decided to empower IGRC [Investor Grievance of Redressal Committee] in the stock exchange to look into admissibility of claims in addition to conciliation process. As such if the complaint s no resolved through conciliation process, IGRC, on conclusion of the proceedings may ascertain the claim amount admissible to the investor, which the Stock Exchange shall block from the deposit of the concerned Member. The Stock Exchange shall give a time of 7 days to the Member from the date of signing of IGRC directions, to inform the Stock Exchange whether the Member intends to pursue the next level of resolution, i.e., Arbitration.

b] In case, the member does not opt for arbitration, the Stock Exchange shall, release the blocked amount to the investor after aforementioned 7 days.

c] In case, the Member opts for arbitraton and the claim value admissible to the investor is not more than Rs.10 lac, the monetary relief from IPF would be given to the investor as mentioned below.

i. 50% of the admissible claim value of Rs.0.75 lac, whichever is less shall be released to the investor from IPF of the Stock Exchange.

ii. In case the arbitration award is in favour of the investor and the Member opts for appellate arbitration then a positive difference of 50% of the amount mentioned in the arbitration award of Rs.1.5 lac, whichever is less and the amount already released to the investor at clause [i] above, shall be released to the investor from IPF of the Stock Exchange.

iii. In case, the appellate arbitration award is in favour of the invesor and the Member opts for making an application under section 3A of the Arbitration and

Conciliation Act, 1996 to set aside the appellate arbitration award, then a positive difference of 75% of the amount determined in the appellate arbitration award or Rs.2 lac, whichever is less and the amount already released to the investor at clause [i] and [ii] above, shall be released to the investor from IPF of the Stock Exchange.

2. In order to address the complaints regarding 'unauthorised trades', the Stock Exchanges have been advised to ensure that the contract note issued by the member for transactions owing to non-compliance of margin calls would bear a remark specifying the same and the Member would maintain a verifiable record of havingmade suchmargin calls and that the clients have not complied with the same.

3. Further, Stock Exchanges have been asked to set up facilitation desks at all investor service centres which would interalia also assist investors in obtaining documents/details from Stock Exchanges wherever so

required for making application to IGRC and filing arbitration.

4. Further to lessen the burden of such investors, the amount payable by the investor for appellate arbitration has been reduced from Rs.30,000/- to Rs.10,000/."

7. Thereafter, a circular has been issued by Securities and Exchange Board of India on 26.09.2013, which reads as follows:

"...........2.With a view to streamline and make more effective the investor grievance redressal mechanism at Stock Exchanges, and consequent to discussions with Stock Exchanges and Depositories, it has been decided to shorten the time taken for the proceedings as well as to give monetary relief to the investors, during the course of pendency of proceedings. In this regard, Stock Exchanges are advised as under:

a) Stock Exchanges shall ensure that all complaints are resolved at their end within 15 days as mentioned in the circular No.CIR/MRD/ICC/16/2012 dated June 15, 2012. The correspondence with the Member & investor(Who is client of a

Member) may be done on email if the email id of the investor is available in the UCC database. The Member (Stock Broker, Trading Member and Clearing Member) shall provide a dedicated email id to the stock exchange for this purpose.

b) In case the matter does not get resolved, conciliation process of the exchange would start immediately after the time lines stated in sub-para(a) above.

c) Investor Grievance Redressal Committee(IGRC) shall be allowed a time of 15 days to amicably resolve the investor complaint.

d)IGRC shall adopt a two-fold approach i.e. For proceedings leading to direction to the Member to render required service in case of service related complaints and proceedings leading to an order concluding admissibility of the complaint or otherwise in case of trade related complaints.

e) In case the matter is not resolved through the conciliation process, IGRC would ascertain the claim value admissible to the investor.

f)Upon conclusion of the proceedings of IGRC, i.e. In case claim is admissible to the investor, Stock Exchanges shall block the admissible claim value from the deposit of the Member.

g)The Stock Exchange shall give a time of 7 dyas to the Member from the date of signing of IGRC directions as mentioned under sub-para(d) above to inform the Stock Exchange whether the Member intends to pursue the next level of resolution. i.e. Arbitration.

h) In case, the Member does not opt for arbitration, the Stock Exchange shall, release the blocked amount to the investor after the aforementioned 7 days.

i) In case, the Member opts for arbitration and the claim value admissible to the investor is not more than Rs. 10 lac, the following shall be undertaken by the Stock Exchange

i. 50% of the admissible claim value or Rs. 0.75 lac, whichever is less, shall be released to the investor from IPF of the Stock Exchange.

ii.In case the arbitration award is in favour of the investor and the Member opts for appellate arbitration then a positive difference of, 50% of the amount mentioned in the arbitration award or Rs. 1.5 lac, whichever is less and the amount already released to the investor at clause (1) above, shall be released to the investor from IPF of the Stock Exchange.

iii. In case the appellate arbitration award is in favour of the investor and the Member opts for making an application under section 34 of the Arbitration and Conciliation Act, 1996 to set aside the appellate arbitration award, then a positive difference of 75% of the amount determined in the appellate arbitration award or Rs. 2 lac, whichever is less and the amount already released to the investor at clause (i) and (ii) above, shall be released to the investor from IPF of the Stock Exchange.

iv. Before release of the said amounts from the IPF to the investor, the Stock Exchange shall obtain appropriate undertaking/ indemnity from the investor against the release of the amount from IPF, to ensure return of the amount so released to the investor, in case the proceedings are decided against the investor.

v. If it is observed that there is an attempt by investor/client either individually or through collusion with Member(s) or with any other stakeholders, to misuse the provision of this Circular, then without prejudice to the powers of the Board to take action, appropriate action in this regard shall be taken against any such person, by the Stock Exchange, including disqualification of the person so involved from henceforth accessing the benefits of this Circular.

vi. In case the complaint is decided in favour of the investor after conclusion of the proceedings, then amount released to the investor shall be returned to IPF from the blocked amount of the Member by the Stock Exchange and the rest shall be paid to the investor.

vii. Total amount released to the investor through the facility of monetary relief from IPF in terms of this Circular shall not exceed Rs. 5 lac in one financial year.

viii. Stock Exchanges may devise a detailed procedure with regard to release of funds from IPF and recovery thereof and necessary formats of documentation.

ix. In case the investor loses at any stage of the proceedings and decides not to pursue further, then the investor shall refund the amount released from IPF, back to the IPF. In case the investor fails to make good the amount released out of IPF then investor (based on PAN of the investor) shall not be allowed to trade on any of the Stock Exchanges till such time the investor refunds the amount to IPF. Further, the securities lying in the demat account(s) of the investor shall be frozen till such time as the investor refunds the amount to the IPF.

x. The Stock Exchanges may also resort to displaying the names of such investors on their websites if considered necessary............"

8. A perusal of the above circular makes it clear that while conducting the proceedings, the IGRC shall adopt a two-fold approach i.e., for proceedings leading to direction to the Member to render required service in case of service related complaints and proceedings leading to an order concluding admissibility of the complaint or otherwise in case of trade related complaints. In case the matter is not resolved through the conciliation process, IGRC would ascertain the claim value admissible to the investor. Upon conclusion of the proceedings of IGRC, i.e., in case the claim is admissible to the investor, Stock

Exchanges shall block the admissible claim value from the deposit of the member. The above circular also makes it clear that with a view to streamline the Investor Grievance Rederessal Mechanism at Stock Exchanges and makes it more effective from the angle of investor protection, SEBI has directed to give monetary relief to investors during the pendency of the proceedings. IGRC is like conciliation process and after such finding of IGRC, Stock Exchange shall give a time of 7 days to a member, whether he intends to pursue the next level of resolution, i.e., arbitration. The Stock Exchange shall give a time of seven days to the member from the date of signing of IGRC directions as mentioned under sub-para [d] above to inform the Stock Exchange whether the Member intends to pursue the next level resolution, i.e., Arbitration. If arbitration is not invoked, the amount identified by the IGRC shall be released. The above circular makes it very clear that to provide relief to the investors during the pendency of the proceedings. The proceedings of IGRC is like conciliation process put in place. After finding of IGRC, the Stock Exchange shall give time of 7 days to a member, whether he needs to pursue next level, i.e., arbitration.

9. Chapter X [11] of the Stock Exchange Bye-Laws reads as follows :

> "The relevant authority shall constitute an investor' Services Committee to supervise the working of the Investors' Services Cell of the Exchange and in suitable cases attend to grievances of the Investors personally. The composition of Investors' Services Committee shall be such as may be prescribed by SEBI."

The above Bye-law makes it very clear that any dispute between the members interse and the Stock Exchange has to constitute Investors Services Committee for such a dispute. Hence, any dispute is referred to resolution, the same will be adjudicated after giving opportunity to the parties. Therefore, merely because, IGRC mechanism has been formed to identify the admissible amount payable at the earliest point of time in the process of conciliation, such a finding will not attain the status of an award to make it enforcible. Even any dispute arise in that regard, it has to go to arbitration. Only the arbitral tribunal award has a binding force and it may be enforced as a decree of the Court. Therefore, merely because some amount has been identified in a conciliation proceedings on any evidence filed during such proceedings, such evidence cannot be used in the arbitration proceedings. In this regard, it is relevant to refer Section 81 of the Arbitration and Conciliation Act, which reads as follows :

Admissibility of evidence in other proceedings :

The parties shall not rely on or introduce as evidence in arbitral or judicial proceedings, whether or not such proceedings relate to the dispute that is the subject of the conciliation proceedings :-

[a] views expressed or suggestions made by the other party in respect of a possible settlement of the dispute;

[b] admissions made by the other party in the course of the conciliation proceedings;

[c] proposals made by the conciliator; and

[d] the fact that the other party had indicated his willingness to accept proposal for settlement made by the conciliator.

Therefore, any suggestion or evidence given before the forum which was constituted to conciliate the matter, such evidence cannot be used in the arbitral proceedings as per Section 81 of the Arbitration and Conciliation Act.

10. On a careful perusal of the Circular of the Securities and Exchange Board of India makes it clear that preliminary finding of the Investor grievance redressal mechanism is to receive physical complaint of the investor and if the complaint is not resolved amicably, the IGRC have to decide the claim value admissible to the complainant. After such finding by the IGRC, the parties can go for arbitration. The above circular further makes it clear that the complainant can either make a complaint to IGRC or arbitration mechanism and the complaint before the IGRC is not mandatory, but it is only optional. Even any finding has been given by the IGRC as to the admissibility of the claim, the claim is only in the nature of recommendation. Such mechanism has been formed only to redress grievance of the investor and protect the amount immediately by the Stock Exchange. Therefore, any such finding cannot acquire the character of the award or decree which could be enforced as a Civil Court decree.

11. The award passed by the Arbitrator could be enforced as the decree of a Civil Court, similarly, any settlement arrived in the conciliation proceedings provides any settlement arrived in the conciliation proceedings, such settlement shall be binding on the parties. Therefore, this Court is of the view that when the very circular of the National Stock Exchange Board indicate that the finding of the IGRC, which is in the nature of the recommendation, the same cannot be treated as an enforceable order. Even when the matter is referred to arbitration, the arbitration proceedings shall be in accordance with the procedure laid down in the Act 26 of 1996. Section 81 of the Act also makes it clear that any material or admissions or documents placed during the conciliation proceedings which are in the nature of the conciliation, the same cannot be used as an evidence by the arbitral Tribunal for the same dispute between the parties. Such being the position of law, in the given case, the learned Arbitrator appointed has just confirmed the order of IGRC, in fact, it is only in the nature of recommendation. The learned Arbitrator has not adjudicated the issue on the basis of documents. In such view of the matter, this Court is of the view that the award passed by the Arbitrator cannot be

sustained in the eye of law.

12. According, it is Ordered as follows :

i] The award passed by the learned arbitrator dated 19.10.2016 is set aside.

ii) By consent of both the parties, Mr.K.Harishankar, Advocate, HSB Partners, Capitale, 9th Floor, 554-555, Anna Salai, Teynampet, Chennai-600 018. Mobile No:9841076561 is appointed as a Sole Arbitrator to enter upon reference and adjudicate the matter.

ii] That the learned Arbitrator appointed herein, shall after issuing notice to the parties and upon hearing them, pass an award as expeditiously as possible, preferably within a period of six months from the date of receipt of the Order.

iii] That the learned Sole Arbitrator appointed herein shall fix his fees and other incidental charges and the same shall be borne by the parties equally.

iv] This Court places on record of appreciation for the assistance rendered by Mr.P.V.Balasubramaniam, learned Amicus curiae for production of materials.

13. This Original application is disposed of accordingly, leaving the parties to bear their own costs.

27.08.2021

Index : Yes / No
Internet: Yes
Speaking/non speaking order

vrc

N. SATHISH KUMAR, J.
vrc

order in:

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