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

+ **ARB.P. 1152/2021**

**GLOBE CAPITAL MARKET LIMITED** ..... Petitioner

Through: Mr. Ajay Kohli and Ms. Dipika Prasad, Advocates  
(Ph. 8800149680).

versus

**VINEET SECURITIES PRIVATE LIMITED**

& ANR.

..... Respondents

Through: Mr. Amol Sinha, Mr. Kshitiz Garg, Mr. Anshum Jain and Mr. Ashvini Kumar, Advocates for R-1 (Ph. 9999936804, e-mail: [kshitiz.31395@gmail.com](mailto:kshitiz.31395@gmail.com)).

Mr. Neeraj Malhotra,  
Sr. Advocate with Ms. Varuna Bhanrale and Mr. Nimish Kumar, Advocates for R-2.

**CORAM:**

**HON'BLE MS. JUSTICE MINI PUSHKARNA**

**J U D G M E N T (O R A L)**

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**15.09.2022**

**ARB.P. 1152/2021**

1. The present petition is being taken up for final hearing in view of the clear mandate of Hon'ble Supreme Court vide order dated 19.05.2022 in Special Leave Petition (C) No. 5306/2022, wherein Hon'ble Supreme Court has directed as follows:

*“In that view of the matter, we request all the Chief Justices of the respective High Courts to ensure that all*



*pending applications under Sections 11(5) and 11(6) of the Arbitration Act and/or any other applications either for substitution of arbitrator and/or change of arbitrator, which are pending for more than one year from the date of filing, must be decided within six months from today. The Registrar General(s) of the respective High Courts are directed to submit the compliance report on completion of six months from today. All endeavour shall be made by the respective High Courts to decide and dispose of the applications under Sections 11(5) and 11(6) of the Arbitration Act and/or any other like application at the earliest and preferably within a period of six months from the date of filing of the applications.”*

2. The present petition has been filed under Section 11 (6) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as ‘the Act’) for direction to the respondent No. 2 to constitute an Arbitral Tribunal as per its bye-laws, rules and regulations to adjudicate the claim of the petitioner against respondent No. 1 arising out of Clearing Member-Trading Member Agreement dated 07.11.2005.

3. In the present case, NSE on 30.04.2020 declared the respondent No. 1 – Trading Member as defaulter as per Bye-Law 1 (a) of Chapter XII of NSE Bye laws. Respondent No. 1 was expelled from the membership of NSE as per Rules 1 and 2 of Chapter IV of the NSE Rules. Thereafter, NSE issued a Public Notice dated 29.06.2020 and invited claims against respondent No. 1 from its client/ constituents. The petitioner, after almost 11 months from the date when the respondent No. 1 was declared as defaulter and expelled, filed an arbitration application along with statement of claim before the arbitration department of NSE and requested it to initiate arbitration



proceedings between the petitioner and the respondent No.1. The Arbitration Department of NSE vide its email dated 01.04.2021, informed the petitioner that since the respondent No. 1 had already been declared as defaulter and expelled from the Exchange around a year ago, the arbitration mechanism of NSE under its Bye-laws cannot be invoked. Thus, arbitration application of the petitioner was returned in original and the petitioner was requested to take up the matter with an appropriate forum.

4. Aggrieved by NSE's response dated 01.04.2021 intimating the petitioner that invocation of NSE's arbitration mechanism in the present case was not possible, the petitioner has filed the present petition.

5. On behalf of NSE, respondent No. 2, it is submitted that the present petition is without any merit and is liable to be dismissed since NSE's Byelaws, Rules and Regulations do not permit/provide for initiation of arbitration under their mechanism in respect of a trading member declared as a defaulter and expelled from NSE's membership.

6. Learned Senior Counsel for the NSE further submits that an identical question of law as to whether an arbitration under the aegis/bye – laws of NSE is permissible against the trading member, who has already been declared as defaulter and expelled from the membership of NSE is already pending consideration/ disposal before Hon'ble Supreme Court in *Special Leave to Appeal (C) No. 21552/2018*, titled as *National Stock Exchange of India Limited vs. Vijay Kahol & Anr.* The said Leave to Appeal was preferred by NSE against the final judgment and order dated 11.05.2018, passed by a Coordinate Bench



of this Court in Arbitration Petition No. 704/2017. By way of order dated 11.05.2018 in Arbitration Petition No. 704/2017, the Coordinate Bench of this Court had directed NSE to constitute an Arbitral Tribunal under its Bye-laws to settle dispute between defaulter trading member who had been expelled and one of its client/constituents.

7. It is the case of the respondents that only difference between the facts of Arbitration Petition No. 704/2017 and the present Arbitration Petition is that in that petition, the client/constituent of the defaulter and expelled trading member sought to invoke arbitration mechanism against the said member, under the Bye-laws of NSE. Whereas, in the present petition, the Clearing Member has sought to invoke the arbitration mechanism under the Bye-laws of NSE. However, it is the position in both the cases the arbitration is sought to be conducted with the defaulter and expelled trading member of NSE. Thus, it is submitted that issue involved in the present petition is *in lis* before Hon'ble Supreme Court, hence, this Hon'ble Court ought to adjudicate upon the present petition once the abovementioned Special Leave to Appeal is decided by Hon'ble Supreme Court.

8. On the other hand, learned counsel for the petitioner submits that stay of proceedings in another matter will not hamper the proceedings in the present petition and that this petition can be taken up for hearing on its merits.

9. Learned counsel for the petitioner has relied upon the following judgments:

- i. ***Shree Chamundi Mopeds Ltd. vs. Church of South India Trust Association CSI Cinod Secretariat, Madras***, reported as



(1992) 3 SCC 1. Following para has been relied upon:

*“10. .... While considering the effect of an interim order staying the operation of the order under challenge, a distinction has to be made between quashing of an order and stay of operation of an order. Quashing of an order results in the restoration of the position as it stood on the date of the passing of the order which has been quashed. The stay of operation of an order does not, however, lead to such a result. It only means that the order which has been stayed would not be operative from the date of the passing of the stay order and it does not mean that the said order has been wiped out from existence. This means that if an order passed by the Appellate Authority is quashed and the matter is remanded, the result would be that the appeal which had been disposed of by the said order of the Appellate Authority would be restored and it can be said to be pending before the Appellate Authority after the quashing of the order of the Appellate Authority. The same cannot be said with regard to an order staying the operation of the order of the Appellate Authority because in spite of the said order, the order of the Appellate Authority continues to exist in law and so long as it exists, it cannot be said that the appeal which has been disposed of by the said order has not been disposed of and is still pending. ...”*

- ii. **Niranjan Chatterjee and Ors. vs. State of West Bengal & Ors.,** reported as **2007 SCC Online Cal 283 (DB)**. Following para has been relied upon:

*“20. Therefore, the effect of the order of stay in a pending appeal before the Apex Court does not amount to “any declaration of law” but is only binding upon the parties to the said proceedings and at the same time, such interim order does not*



*destroy the binding effect of the judgment of the High Court as a precedent because while granting the interim order, the Apex Court had no occasion to lay down any proposition of law inconsistent with the one declared by the High Court which is impugned.”*

- iii. ***National Agricultural Co-operative Marketing Federation of India Ltd. vs. Commissioner of Income Tax, Delhi – XI & Anr.***, reported as **2017 SCC Online DEL 7950 (DB)**. Following paras have been relied upon:

*“19. The Court is unable to agree with the above reasoning of the ITAT as it runs contrary to the well-settled legal position explained by the Supreme Court in several decisions. In Shree Chamundi Mopeds Ltd. v. Church of South India Trust Association (1992) 3 SCC 1, the effect of an interim order was explained as thus:*

*“While considering the effect of an interim order staying the operation of the order under challenge, a distinction has to be made between quashing of an order and stay of operation of an order. Quashing of an order results in the restoration of the position as it stood on the date of the passing of the order which has been quashed. The stay of operation of an order does not, however, lead to such a result. **It only means that the order which has been stayed would not be operative from the date of the passing of the stay order and it does not mean that the said order has been wiped out from existence.**”*

*(emphasis supplied)*

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*“23. In the present case, with the Award having been made rule of the Court by a learned Single Judge of this Court, the mere fact that the said*



*judgment and decree was stayed by a DB would not relieve NAFED of its obligation to pay interest in terms thereof to Alimenta. Such liability commenced in the previous year in which the said judgment and decree was passed by the learned Single Judge. To borrow the phraseology of the Supreme Court in Shree Chamundi Mopeds Ltd. v. Church of South India Trust Association (supra), it cannot be said that merely because there is a stay granted by the DB of this Court that the order of the learned Single Judge has been “wiped out from existence.”*

10. Replying upon the aforesaid judgments, it is contended that it cannot be said that merely because there is a stay granted by Hon'ble Supreme Court, order passed by the Coordinate Bench of this Court in Arbitration Petition No. 704/2017, is wiped out. Learned counsel for the petitioner submits that stay of operation of an order cannot be considered as quashing of an order. He submits that merely because there is a stay by Hon'ble Supreme Court, it does not mean that the order dated 11.05.2018 passed by Coordinate Bench of this Court in Arbitration Petition No. 704/2017 is longer in existence. He submits that the effect of stay by Hon'ble Supreme Court does not, in any manner, take away the existence of order dated 11.05.2018 in Arbitration Petition No. 704/2017 and that the said order, at best, had only been stayed and not quashed. He further submits that this Court may proceed to hear the present matter on merits and direct the respondents to appoint an Arbitrator in terms of the order dated 11.05.2018 passed by this Court in Arbitration Petition No. 704/2017.

11. Opposing the submissions made by the learned counsel for the



petitioner, learned Senior Counsel appearing on behalf of the respondents relies upon judgment of this Court in the case of ***Alka Gupta vs. Medical Council of India and Anr., reported as (2014) SCC OnLine Del 2866.***

12. Learned counsel for the respondent No. 1 submits that he adopts the submissions made on behalf of the respondent No. 2.

13. There is no quarrel with the proposition as raised by the learned counsel for the petitioner that when an order is stayed by the superior Court, that does not amount to quashing of the said order. Thus, the law as laid down by Hon'ble Supreme Court in the case of ***Shree Chamundi Mopeds (supra)*** is being followed by various Courts and this Court also does not dispute in any manner the law laid down by Hon'ble Supreme Court in the aforesaid judgment.

14. However, there is no denying the fact that when an order has been stayed by the superior Court, the operation of the said order is itself stayed. Thus, in the interregnum, when the stay order by superior Court is pending, it cannot be said that the order which has been stayed by the superior Court is in effect. Thus, on that account, the order which has been stayed by a superior Court cannot held to be in operation and cannot be followed during the period when the said order is under stay order by the superior Court.

15. This Court in the case of ***Alka Gupta vs. Medical Council of India (supra)*** has held as follows:

“18. Mr. Rabin Majumder relied upon another judgment of Calcutta High Court in *Pijush Kanti Chowdhury v. State of West Bengal HC*, (2007) 2 CALLT wherein it has been held as under : -



*“10.....Such interim order is binding upon the parties to the proceedings but the law is equally settled that by mere passing of an interim order staying the operation of a judgment with certain further conditions, the existence of the said judgment is not wiped out and at the same time, for such interim orders inter parties, the authority of a decision as a precedent is never undermined. Unless a decision is set aside by the Superior Court, the said decision remains binding as a precedent though may not be binding upon the parties to the proceedings where the Superior Court has granted interim order.....but by mere grant of interim stay, the effect of a binding precedent is not destabilized.....”*

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*12.....the Supreme Court in the case of Shree Chamundi Mopeds Ltd. v. Church of South India Trust Association, Madras [1992 AIR 1439, 1992 SCR (2) 999] while pointing out the difference between an order of stay of operation of the order impugned and an order quashing the order itself:*

*While considering the effect of an interim order staying the operation of the order under challenge, a distinction has to be made between quashing of an order and stay of operation of an order. Quashing of an order results in the restoration of the position as it stood on the date of the passing of the order which has been quashed. The stay of operation of an order does not, however, lead to such a result. It only means that the order which has been stayed would not be operative from the date of the passing of the stay order and it does not mean that the said order has been wiped out from existence.....*

*13. Therefore, the effect of the order of stay in a pending appeal before the Apex Court does not amount to ‘any declaration of law’ but is only binding upon the parties to the said proceedings and at the same time, such interim order does not destroy the binding effect of the judgment of the High Court as a precedent because while granting the interim order, the Apex Court had no occasion to lay down any proposition of law inconsistent with the one declared by the High Court which is impugned.”*



19. Having heard learned counsel for parties, this Court is of the view that as interpretation of Section 24(2) of the Act, 1956 and validity of Clause 8.8 is pending consideration before the Supreme Court, it would be appropriate to await the said judgment.

20. This Court with utmost humility would like to state that it is not in agreement with the view expressed by the Calcutta High Court in *Pijush Kanti Chowdhury* (supra), as it is of the opinion that once a stay order has been passed by a superior court, the order of the lower court ceases to operate till the stay order is in effect. In fact, the judgment of the Supreme Court in *Shree Chamundi Mopeds Ltd. v. Church of South India Trust Association, Madras* (supra) relied upon in *Pijush Kanti Chowdhury* (supra) itself lays down that stay of an operation of an order means that the order would not be operative.”

16. In view of the aforesaid finding, this Court cannot follow the judgment and order dated 11.05.2018 passed by Coordinate Bench of this Court in Arbitration Petition No. 704/2017, as the operation of the said judgment has been stayed by Hon'ble Supreme Court in *Special Leave to Appeal (C) No. 21552/2018*.

17. Considering the dispute between the parties in the present case and considering the fact that the question of law, which is material in the present case is pending consideration before Hon'ble Supreme Court, it is deemed fit that the present petition be disposed of in order to await the decision of Hon'ble Supreme Court.

18. The present petition is accordingly disposed of. The legal question as raised in the present petition would be subject to the order/judgment passed by Hon'ble Supreme Court in *Special Leave to Appeal (C) No. 21552/2018*. The petitioner is given liberty to revive the present petition in case any cause of action survives in his favour in terms of the judgment passed by Hon'ble Supreme Court in *Special*



*Leave to Appeal (C) No. 21552/2018.*

19. The present petition is disposed of in the aforesaid terms.

**MINI PUSHKARNA, J**

**SEPTEMBER 15, 2022**

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