

Bombay High Court
Ise Securities & Services Ltd vs 336 on 19 December, 2012
Bench: Anoop V.Mohta
spb/

19-12arb1317-10.sxw

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO. 1317 OF 2010

ISE SECURITIES & SERVICES LTD.,
International Infotech Park, Tower No.7,
5th Floor, Sector-30, Vashi,
Navi Mumbai-400 703

... PETITIONER.

V/s.

POWER FLOW SECURITIES CO.
Through its proprietress Bina Shah

336, Marshal House, 3rd floor,
Kolkata-700 001

... RESPONDENT.

Mr. Shailesh Naidu i/by R.R. Legal for the Petitioner.

Mr. Krishna Raja a/with Mrityunjay Barai i/by LJ Law for the
Respondent.

CORAM : ANOOP V. MOHTA, J.

DATE : 19 DECEMBER, 2012.

ORAL JUDGEMNT :

Heard finally.

2 The Petitioner has invoked Section 34 of the Arbitration

and Conciliation Act, 1996. The Petitioner challenges Award dated 3 rd May, 2010 passed by the sole Arbitrator at Calcutta; because as per the agreement as well as the rules, bye-laws and regulations of spb/ 19-12arb1317-10.sxw National Stock Exchange of India Limited Rules, the parties agreed to have their place of arbitration at Calcutta.

3 The learned counsel appearing for the Respondent has raised a preliminary objection that this court has no jurisdiction to entertain section 34 petition in view of the rules.

There is an agreement between trade member broker and sub-broker. There is a separate tripartite agreement also between trade member broker/stock-broker, sub-broker and client. Xerox copies of which are on record. There is no denial to the binding agreements where the jurisdiction of courts with regard to the all trades, transactions and contracts is subject to the clauses 60 and 61 which read as under :

"60. Jurisdiction of Courts : All trades, transactions and contracts are subject to the Rules, Bye-laws and Regulations of the Stock Exchange on which the trades have been executed and the parties to such trade shall be deemed to have submitted themselves to the jurisdiction of courts in Mumbai for the purpose of giving effect to the provisions of the Rules, Bye-laws and Regulations of the Stock Exchange.

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61. The parties to this agreement agree that any dispute/claim/ difference arising out of any transaction done or entered into between the Client, Sub-broker and the Stock Broker shall be subject to the exclusive jurisdiction of courts in Mumbai to the exclusion of all other courts."

Merely because arbitration took place at Calcutta in view of the specific rules, that itself may not be the reason to accept the contention so raised by the learned counsel appearing for the Respondent that this court has no jurisdiction. The place of the

arbitration is a different concept than court's jurisdiction in dealing with section 34 application/petition. The concept "court" is defined under the Arbitration Act. The aspects of jurisdiction of courts are well known and settled.

6 The agreement dated 18th May, 2000 executed between the Petitioner and Respondent shows that the agreement took place at Mumbai on 18th May, 2000. The learned counsel appearing for the Respondent has denied even the execution of the agreement at Mumbai by placing on record a xerox copy of the first page of the alleged agreement dated 28th January, 2000 for the first time spb/ 19-12arb1317-10.sxw executed at Calcutta between the Petitioner and Respondent No.1.

Therefore, there is a dispute even with regard to the place of signing of this agreement so also its date. Even otherwise, considering the scope and purpose of Section 34 of the Arbitration Act, it is not possible for the court to consider any document for the first time in such fashion, specifically when there was no such issue and or dispute raised before the Tribunal with regard to the date and/or place of execution of the agreement between the parties.

7 This Court as well as the Hon'ble Supreme Court have already held that the parties are bound by the clause of jurisdiction specifically when out of two available court's jurisdiction, if a part of the cause of action arose in either of any court's jurisdiction, a party may waive and or accept a jurisdiction of a particular court. This is permissible in the law. In the present case, the parties at the time of entering into its commercial document selected jurisdiction of the court in Mumbai as exclusive courts for settlement of their dispute between the client, sub-broker and stock broker. This acceptance of exclusive jurisdiction of Mumbai courts, in my view, goes to the root of the matter and that itself is sufficient for rejection of the preliminary objection so raised. Even otherwise, there is a part of cause of action arose and in the present case, the involvement of spb/ 19-12arb1317-10.sxw national stock exchange, considering the nature of business and their transactions just cannot be overlooked. I am inclined to observe that this court has jurisdiction to entertain the present petition under section 34 of the Arbitration Act. The banking documents also support the same case of the Petitioner.

8 So far as the merits of the arbitration Award in question is concerned, I am inclined to set aside the Award solely on the ground of non availability of any reason on record though the learned Arbitrator has mentioned the rival submissions of the parties and the nature of dispute, yet before arriving at any conclusion no respective supportive reasons whatsoever have been provided. I am inclined to observe that mere noting of submissions of both the parties and or issues itself is not sufficient. If reasons are missing, I am inclined to observe that any order and or operative part of the order and or conclusions so arrived losses its importance. The reasons, as contended under S. 31 read with principle of natural justice, goes to the root of the matter. The judicial propriety, apart from the principles of natural justice requires that the party should be in a position to know and understand on what ground the learned court/ arbitrator has decided and or has passed the award for and or against the party.

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9 In my view section 34 of the Act, permits the court to

remand the matter. There is no bar basically when on the material available on record including the original evidence and or documents, the learned Arbitrator will be in a position to dispose of the matter, on all the issues. There is no reason that the court cannot remand the matter for reconsideration. In the present case, as there are no reason given, it is necessary to remand the matter for reconsideration.

10 All points are kept open. It is made clear that the present arbitration proceedings initiated as per the rule, therefore, the concerned National Stock Exchange Authority will take appropriate steps to set up the tribunal and or place the matter before the same learned arbitral Tribunal. The parties to take steps accordingly. 11 It is made clear that the parties are at liberty to take appropriate steps and/ or proceedings for refund of the amount if paid pursuant to the Award in question. Once the Award is quashed and set aside, all the consequential reliefs/benefits or actions also goes. The parties are at liberty to take steps in accordance with the law. Hence, the following order :

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ORDER

(a) Award dated 3rd May, 2010 is quashed and set aside.

(b) The matter is remanded back for re-hearing on all

points.

- (c) The parties to take steps in accordance with law.
- (d) The liberty is granted to settle the matter.
- (e) The Arbitration Petition is disposed of in the above terms.

(ANOOP V. MOHTA, J)

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