



पश्चिम बंगाल पश्चिम बंगाल WEST BENGAL

C 151161

BEFORE THE ARBITRATION COMMITTEE  
THE CALCUTTA STOCK EXCHANGE ASSOCIATION LIMITED

In the matter of the Arbitration and Conciliation Act, 1996

AND

In the matter of the Arbitration Case No.1/2007-2008

AND

In the matter of the dispute

Between

Mr.Barindra Nath Kundu – Claimant

AND

M/s.Sewkaran Dhelia – Respondent

A W A R D

This is the award of arbitration made this 7<sup>th</sup> day of April, 2008.

Whereas the instant arbitration case is placed before the Arbitration Committee (between member and non-member) of the Calcutta Stock Exchange Association Limited (in short CSEA) for adjudication of the disputes arising between the parties, we being the members of the Arbitration Committee entered into the reference, perused the statements of

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INDIA NON JUDICIAL

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claim and defence, counter statements and the documents filed by the parties therewith and heard the argument advanced by the parties.

Whereas in a nutshell the allegation made and claim preferred by the claimant against the respondent in the statement of claim as made out by him in his letter dated 11.4.2007 and supported by the statement of particulars of shares under the claim as on 10.4.2007 annexed therewith (which is marked Annexure C-1), are as follows :

That the respondent who is a member of CSEA has deceived the claimant who is a shareholder, by non-delivery of shares in respect of 11 (eleven) companies to his Demat Account vide client I D No.: 10018932, DP with Allahabad Bank (IN 3008531) purchased by him from the respondent on different dates during the years 2001-2003.

The names of the companies of equity shares, dates of purchase, rates of buying price, total quantity of shares not delivered and the price of the same have been shown company-wise, in the statement (Annexure C-1). As shown in the statement he has preferred a

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claim for recovery of shares price of which has been estimated to the tune of Rs.1,08,969.60 paise (Rupees One lakh eight thousand nine hundred sixty nine and paise sixty) only.

He has also alleged in the statement of claim that in every case of transaction "Buy and sell" of shares, the respondent issued a party combined statement presenting the same to be a contract note on the basis of which he made all transactions with the respondent in good faith from 2001. But the shares of 11 (eleven) companies as shown in Annexure C-1 were not delivered to his Demat Account by the respondent in spite of repeated requests made by him. At last he found that the respondent had closed down his office at 33/1, Netaji Subhas Road, Marshall House, Kolkata.700 001. He has further alleged that the respondent issued him a partial ledger account of the shares instead of full account of the same during the entire period of transaction made by him with the respondent. He has also alleged that he is being still deprived of all benefits accruing from the impugned shares which are lying in the custody of the respondent.

The respondent has in his statement of defence filed with the copy of the ledger account on 14.1.2008 which includes the account of the impugned shares for the period under report (marked as Annexure R-1), stated the following :

That the claimant has been transacting with him from August,2000. He also issued contract notes in respect of transaction made with the claimant which were used to be collected by one Mr.Siddhartha Shankar Roy on his behalf and he has never sent any party combined statement presenting the same to be a contract note as alleged. He has given an account of transaction of impugned shares purchased and disposed of on behalf of claimant in respect of the companies (referred to the statement of claim), as appended by the respondent in his statement of defence.

The claimant filed a rejoinder on 18.2.2008 to the statement of defence reiterating his claim to be true and giving company-wise comments to the statement of defence made by the respondent in respect of disposal of the shares of the claimant in separate paragraph, in his rejoinder alleging inter-alia the following :

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That the respondent has not furnished the stock statement of shares in respect of the companies viz. L&T, Relta, Zee Telefilms, Hero Honda and furnished an incomplete statement of stocks in respect Satyam Computer.

That the respondent unlawfully held stocks of his (the claimant's) shares for his personal trading benefit without delivering the same in the claimant's Demat Account as required under the Rules.

That he shall not bear any responsibility for the unfair activity of the respondent by way of unlawful holding of the shares without his knowledge or consent. In the counter statement filed by the respondent on 7.3.2008 with a letter dated 2.6.2001 addressed to the respondent by the claimant (marked Annexure R-2), he has alleged inter-alia the following :

That the shares of L&T, Zee Telefilms, Relta, Hero Honda are not in his custody but those were sold and sale proceeds were credited to the account of the claimant. The claim regarding shares of Satyam Computer has been explained in his statement of defence.

That the claimant accepted all payments of sale proceeds of shares and at the same time he is claiming those shares on the plea that those shares were illegally sold, that too, long after five years from the date of sale of such shares. That all claims made by the claimant are time barred under the Bye-laws of CSEA.

The following issues are framed on the basis of the statements of the parties for arbitration of the disputes and determining the award :

1. Is the claim for recovery of shares preferred by the claimant barred by limitation ?
2. Is the claimant entitled to any award in respect of shares, as prayed for ?

*D. Paul*

Discussion with reasons

Issue No.1

As provided under Clause 255D(2) of the Arbitration Bye-laws of CSEA (as amended) (hereinafter referred to as Bye-laws) the provision of the Limitation Act, 1963 shall apply to the instant arbitration proceeding and the arbitration shall be deemed to have commenced on the date on which the application for reference is received by the Exchange.

It is evident on the face of the record that the application for reference was received by CSEA on 11.4.2007.

Since no specific period of limitation is provided under the Limitation Act, 1963 in respect of the instant application for reference of the dispute to arbitration, submitted under Clause 253 of the Bye-laws, the question of limitation as to the instant claim shall be governed under Article 137 of the Limitation Act, 1963 and the period of limitation shall be three years from the date when the right to apply accrues.

In the instant case the claimant has preferred claim for recovery of shares which are alleged to have been sold away without his consent or left non-delivered without depositing the same to his Demat Account.

Since the instant case relates to transaction of shares by and between the broker and the shareholder by way of purchase and sale, the cause of action for recovery of shares or right to apply for reference would arise from the date of purchase of shares and accordingly the application for reference to arbitration ought to have been filed within a period of three years from the date of purchase of shares as proved under Article 137 of the Limitation Act, 1963.

In the instant case admittedly by the impugned shares were purchased on different dates of 2001, 2002 and 2003 and evidently the claim for recovery of shares has been preferred on 11.4.2007.

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Accordingly, the claim is hopelessly time barred.

Issue No.2

The allegation made by the claimant that certain shares have been sold by the respondent without his knowledge or consent and certain shares have not been delivered to him by the respondent in spite of his repeated requests for delivery and have been kept by the respondent in his custody without depositing the same in the Demat Account of the claimant, also does not hold good since the letter dated 2.6.2001 (Annexure R-2) written by the claimant to the respondent reveals that the respondent was asked by the claimant not to transfer the shares purchased from him to the Demat Account of the claimant as it would, according to the claimant, serve dual purpose, it would act as marginal money and would save the transaction cost in the Demat Account as he frequently used to buy and sell the shares. The claimant has also stated in his letter unambiguously that the shares should be transferred to his Demat Account only after receipt of instruction from him, otherwise the respondent shall keep the shares in his Demat Account.

The contents of the letter speak volume of the fact that the claimant gave a free hand to the respondent to keep the shares in his Demat Account without transferring them to the Demat Account of the claimant till he receives any otherwise instruction from the claimant.

The letter not only indicates expressive consent given by the claimant to the respondent to keep the shares in his Demat Account, but also under the law of estoppels as applicable in the instant case in the interest of the principle of natural justice, the claimant is debarred from making the allegation against the respondent that he kept the shares of the claimant in his Demat Account without his consent and he did not deliver the same to the Demat Account of the claimant in spite of his repeated requests, particularly when the claimant could not produce any evidence denying the contents of his letter dated 2.6.2001 or challenging the genuineness of it.

It is very much clear from the materials on record that there is no further controversy in respect of the impugned shares of the companies under report excepting RIL Limited and

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Penta Media Graphics. Since, it is evident from the materials on record that in some cases shares were sold and sale proceeds were deposited in the accounts of the claimant and in some other cases shares were transferred to the Demat Account of the claimants long before he preferred the claims to be referred to the arbitration.

Regarding the shares in respect of RIL Limited, there is a claim by the claimant and counter claim by the respondent which could not be denied by the claimant and none of them could substantiate his claim or counter claim, as the case may be, by any plausible evidence.

In respect of shares of Penta media Graphics apparently claim subsists to the extent of 50 shares only. But since claim for return of the shares has already been adjudicated hereinbefore, as time barred there is no scope to pass any award for return of these 50 shares or equal money value for the same to the claimant.

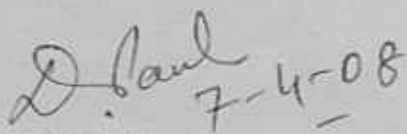
The claim preferred by the claimant and referred to arbitration, therefore, fails.

We accordingly make the award as follows :

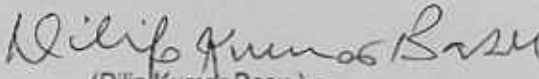
That the application of claim preferred by the claimant and referred to arbitration be, hereby, rejected.

The parties shall bear their respective costs.

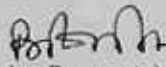
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( Debdas Paul )  
Chairman

2.

  
( Dilip Kumar Basu )  
Member 7.4.08

3.

  
( Bishnupriya Dasgupta )  
Member 7/4/08

Arbitration Committee (between member and non-member) CSEA