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Original Side Appeal (CAD) No.51 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.03.2024

CORAM:

THE HONOURABLE MR JUSTICE R.SUBRAMANIAN

AND

THE HONOURABLE MR JUSTICE R.SAKTHIVEL

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M/s. Geojit Financial Services Ltd.,
(Formerly known as
M/s.Geojit BNP Paribas Financial Services Ltd.)
Regional Office and Branch Office at
C53, Ist Avenue, Chintamani,
Annanagar East, Chennai 600 102
Registered office at No.34/659-P, Civil Line Road,
Padivattom, Kochi 680 024, Kerala.

... Appellant

Casues Title accepted vide Court Order
dated 02.08.2021 (S.B., CJ) (PDAJ)

Versus

1. Mrs.NalaniRajkumar
2. Mr.Sridharan Krishnamurthi
Presiding Arbitrator
National Stock Exchange of India,
2nd Floor, Ispahani Centre,
Door No.123-124, Nungambakkam High Road,
Chennai 600 034.



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3. Mr. A.P.Sreedharan
Arbitrator,
National Stock Exchange of India,
2nd Floor, Ispahani Centre,
Door No.123-124, Nungambakkam High Road,
Chennai 600 034.

4. Mr.V.Sekar
Arbitrator,
National Stock Exchange of India,
2nd Floor, Ispahani Centre,
Door No.123-124, Nungambakkam High Road,
Chennai 600 034.

.... 1st rrespondent

(1st rrespondent 2 to 4 are the arbitrators and are given up)

PRAYER: Original Side Appeal (CAD) filed under Section 13 of the Commercial Courts Act, 2015 read with Section 37 of the Arbitration and Conciliation Act, 1996 read with Order XXXVI Rule 9 of the Original Side Rules, to set aside the fair and decretal dated 01.10.2020 made in OP No.681 of 2012.

For Appellant : Mr.T.K.Bhaskar

For 1st rrespondent : Mr.K.Shakespeare, for R1
RR2 to 4 – Given up



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J U D G M E N T

(Judgment of the Court was delivered by R.SUBRAMANIAN, J.)

This Appeal under Section 37 of the Arbitration and Conciliation Act is at the instance of the respondent in Arbitration OP No.681 of 2012. The dispute essentially emanates out of trading in shares carried out by the appellant on behalf of the 1st respondent and the same was referred to the Arbitration Tribunal constituted by the National Stock Exchange of India Limited.

2. The claimant/1st respondent herein made a claim for a sum of Rs.6,60,20,018/- with 24% interest from December 2009 till March 2011. The essence of the claim which is necessary for the disposal of this Appeal is as follows:

3. The appellant is a stock broker registered with the National Stock Exchange of India Limited and the Bombay Stock Exchange Limited. The respondent entered into a Member Constituent Agreement with the appellant



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on 15.03.2000, in and by which, they agreed to trade in listed shares and trade codes were also assigned. During the course of the transactions, the respondent found that the appellant had entered into several unauthorized transactions and raised a complaint regarding such unauthorized transactions on 25.08.2008. Upon being informed, the main office of the appellant in Kochi assured that a due enquiry will be conducted and no further unauthorized transaction will take place. Certain corrective measures were taken and the issue that arose in 2008 was said to have been closed soon thereafter.

4. However, according to the 1st respondent, the appellant continued to commit unauthorized transactions and provided the applicant with inaccurate and false statements of accounts. These were objected to by the 1st respondent and during September 2008 to February 2009, the 1st respondent has authorised purchase of 26,245 shares of M/s.TATA Motors Ltd and in January 2009, the 1st respondent has authorised purchase of 4,25,000 shares of M/s.Electro Steel Castings Ltd.



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5. According to the 1st respondent, those shares were purchased, but, however, during May 2009, the 1st respondent were requested the account to be kept in a freeze mode which was acceded to and subsequently on 13.07.2009, the 1st respondent has authorized purchase of 50,000 shares of M/s.Electro Steel Castings Ltd., and payment for that purchase was made on 15.07.2009. The suspension was removed on 27.07.2009 and the 1st respondent instructed the appellant to sell 5,05,000 shares to M/s.Electro Steel Castings Ltd.

6. However, the said transaction was not carried out, but subsequently the appellant claims that a lesser number of shares amounting to about 1,93,462 shares were sold on 30.11.2009 and the value was credited to the account of the 1st respondent. Contending that the action of the appellant in selling only 1,93,462 shares is illegal and that the 1st respondent is entitled to the value of the entire 5,05,000 shares. The 1st respondent made a claim for the difference in price and for damages which according to them was



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quantified as Rs.6,60,20,018/-.

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7. This claim was resisted by the appellant herein contending that the 1st respondent never had 5,05,000 shares in her account to enable them to sell the same on 27.07.2009. Therefore, the crux of the issue before the Arbitration Tribunal was, as to whether, the 1st respondent had 5,05,000 shares in M/s.Electro Steel Castings Ltd on the crucial date. The claim regarding M/s.TATA Motors Ltd, was given up at the time of Arbitration. The Arbitral Tribunal went into the evidence and concluded that the 1st respondent has not shown that she held 5,05,000 shares in M/s.Electro Steel Castings Ltd on 27.07.2009.

8. The Arbitral Tribunal after the conclusion of the hearing, call for the statements from the National Stock Exchange of India Ltd., verified the same to buttress its conclusion that the 1st respondent did not have 5,05,000 shares to her credit. On the said conclusion, the Arbitral Tribunal dismissed the claim. As per the bye-laws of the National Stock Exchange of India Ltd, the



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1st respondent approached the second tier of Arbitration viz. the Appellate Tribunal. The Appellate Tribunal also concurred with the conclusions of the Arbitration Tribunal and held that the 1st respondent herein has not shown that she was holding 5,05,000 shares on the crucial date. This led to the award being challenged under Section 34 of the Arbitration and Conciliation Act.

9. The learned Single Judge, who dealt with the Section 34 Application concluded that the action of the Arbitral Tribunal in seeking details from the exchange after the conclusion of the hearing caused prejudice to the 1st respondent. The learned Single Judge also found that neither the Arbitral Tribunal nor the Appellate Tribunal had adverted to certain vital documents which demonstrated the holdings of the 1st respondent that were under dispute. The learned Single Judge therefore, felt that the award needs to be set aside for two reasons. The first one being the denial of opportunity to the 1st respondent to place on record her views on the statements that was drawn from the NSE's Website, secondly the learned Single Judge concluded that the Arbitral Tribunal has overlooked most of the documents which were placed



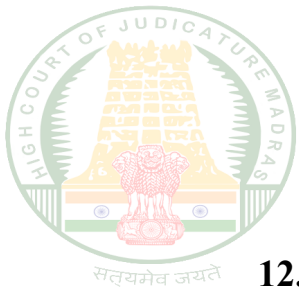
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before it and has gone only by the statement of the exchange which was marked as Ex.T1.

10. The learned Single Judge concluded that the action of the Arbitral Tribunal as well as the Appellate Tribunal in not advertng to the documents that were placed before them and having taken Ex.T1 behind the back of the 1st respondent herein and on that basis concluding that the respondent has not proved that she had 5,05,000 shares in Electro Steel Castings Ltd, on the crucial dated viz. 27.07.2009. On the said conclusion, the learned Singe Judge set aside the award of the Appellate Tribunal which confirmed the award of the Arbitral Tribunal, paving way for this Appeal under Section 34 of the Arbitration and Conciliation Act.

11. We have heard Mr.T.K.Bhaskar, learned counsel appearing for the appellant and Mr.K.Shakespeare, learned counsel appearing for the first respondent.



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12. Though the learned counsel for the parties meticulously argued this Appeal under Section 37 as an Appeal under Section 96 of the Code of Civil Procedure, taking us through almost every document that was placed before the Arbitral Tribunal and the learned Single Judge, we find that this exercise should have been done before the Arbitral Tribunal and not before us in an Appeal under Section 37 of the Arbitration and Conciliation Act.

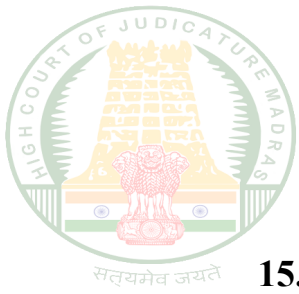
13. As rightly pointed out by the learned Single Judge Ex.T1 the statement which has been taken from the website of the National Stock Exchange of India Ltd, was taken after the arguments were concluded before the Arbitral Tribunal. Therefore, the 1st respondent had no opportunity to explain or to dispute the said document. No doubt a contention was raised before the learned Single Judge that the Appellate Tribunal had given the opportunity, but, the learned Single Judge has rightly concluded that the provision of opportunity before the Appellate Tribunal will not cure the defect.



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14. Apart from the above reasoning, the learned Single Judge has also found that vital documents, which were produced in the form of annexures which, according to the 1st respondent contains admissions to the effect that she was holding 5,05,000 shares, on the crucial date i.e. 27.07.2009, were not taken into consideration and were ignored by both the Arbitral Tribunal as well as the Appellate Tribunal. Certain documents have been disputed and in the Minutes of the Meeting dated 05.01.2010, there is a reference to the fact that these documents have been referred to a Hand Writing Expert and there is nothing to show what was the opinion of the Hand Writing Expert or whether the documents were true or not. No evidence has been produced. Furthermore, we find that the appellant had also acted as a depository participant on behalf of the respondent and it had been the depository of demat shares of the first respondent. The statements of the depository participant would demonstrate the actual holdings of the 1st respondent in M/s.Electro Steel Castings Ltd on the crucial date. For the reasons best known those documents have not been produced.



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15. All these factors have been noted by the learned Single Judge to conclude that the award has to be set aside. No doubt Mr.T.K.Bhasker, learned counsel would contend that the learned Single Judge has travelled beyond his jurisdiction under Section 34 of the Arbitration and Conciliation Act to set aside the award.

16. On the contrary Mr.K.Shakespeare, learned counsel appearing for the first respondent would submit that the learned Single Judge had set aside the award on the ground that vital material has been ignored and the respondent was under incapacity before the Arbitration Tribunal, inasmuch as, Ex.T1 was received behind her back. According to the learned counsel, these two grounds would be sufficient to set aside the award.

17. The learned Single Judge has referred to all the relevant decisions of the Hon'ble Supreme Court including the judgments in *Associate Builders vs. Delhi Development Authority*, reported in *2015 (3) SCC 49* and *SSangyong Engineering and Construction Company Ltd Vs. National Highways*



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Authority of India, reported in **2019 (15) SCC 131**. These two decisions of the Hon'ble Supreme Court virtually provide a complete set of guidelines for the Court dealing with petitions under Section 34. The learned Single Judge had followed those two decisions and had concluded that the respondent has made out grounds for setting aside the award. The crucial question, as to whether, the respondent was possessed of 5,05,000 shares in M/s.Electro Steel Castings Ltd, on 27.07.2009, in our considered opinion, has been answered in the negative without looking into the evidence that was placed on record.

18. We find that the learned Single Judge was alive to the limited jurisdiction he has under Section 34 of the Arbitration and Conciliation Act, and has found that the case falls within that limited jurisdiction and the respondent has made out a cause for setting aside the award. We also find that the action of the Arbitral Tribunal in looking into the transactions of the National Stock Exchange of India Ltd, without affording an opportunity to the respondent and it is non-consideration of several other documents, the genuineness of which were disputed leads to the award becoming vulnerable



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and offering the grounds available under Section 34 of the Arbitration and Conciliation Act, to set aside the same.

19. We therefore do not find any reason to interfere with the order of the learned Single Judge. The Appeal fails and it is accordingly dismissed. However, in the circumstances there will be no order as to costs.

(R.SUBRAMANIAN, J.) (R.SAKTHIVEL, J.)

21.03.2024

jv

Index : No

Internet : Yes

Neutral Citation : No

Speaking Order

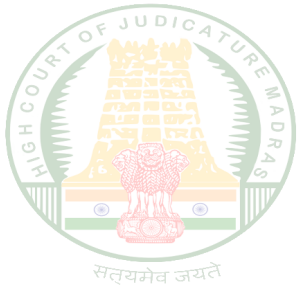
To

The Section Officer,

Original Side,

High Court of Madras

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