
(2009) 11 BOM CK 0091
In the Bombay High Court
Case No : Arbitration Petition No. 152 of 2009

Networth Stock Broking Ltd.	Vs	APPELLANT
Madhava Rao Nadella		RESPONDENT

Date of Decision : 07-11-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 38 Rule 5, Order 40 Rule 1, 20

Citation : (2010) 1 BomCR 175 : (2009) 111 BOMLR 4622 : (2010) 1 MhLj 582

Hon'ble Judges : Anoop V. Mohta, J

Bench : Single Bench

Advocate : Dipen Merchant and Dilip Rai, instructed by Aruna Singh, for the Appellant; C.H. Raman and K. Hasanuddin, for the Respondent

Judgement

Anoop V. Mohta, J.—The Petitioner has invoked Section 9 of the Arbitration and Conciliation Act, 1996 (for short, the Arbitration Act) with basic prayers against the Respondents to furnish/ to secure the amount pending the Arbitration proceedings and also for appropriate protective relief's for the value of a sum of Rs. 1,16,82,988.65.

2. The Petitioner is a corporate share and stock broker having registration of the National Stock Exchange (NSE) and the Securities and Exchange Board of India (SEBI) and also trading member of the Bombay Stock Exchange (BSE). The Petitioner has about 185 branches throughout the India. The Petitioner is a listed company on the Bombay Stock Exchange Ltd.

3. The Respondent has executed a Member-Client agreement and become constituent of the Petitioner. In view of this agreement, the parties are entitled to do the business of buying and/or selling and/or dealing in securities and trading in F & O segment (carry forward of positions in Future Stocks, index, intra-day trading etc.) through the Petitioner on the NSE. The Respondents have accordingly executed an agreement and signed the KYC form which provides various details and Arbitration Clause 18/19/23, which are as under:

18/19/23.

The member and the constituent declare and agree that the transactions executed on the Exchange are subject to Rules, Byelaws and Regulations and circulars issued there under of the respective Exchange shall be deemed to be and shall take effect as wholly made, entered into and to be performed in the city of Mumbai and the parties to such trade shall be deemed to have submitted to the jurisdiction of the Courts in Mumbai for purpose of giving effect to the Rules, Byelaws, and Regulations of the relevant exchange segments and also with regards to any claims or matters arising under the terms and conditions set out in this agreement.

4. The Petitioner, therefore, in view of the above clear and binding contract and as there arose an arbitrable dispute between the parties, has filed the present Petition in this Court at Mumbai.

5. The Respondent appeared and resisted the Petition, basically on the ground of jurisdiction. Admittedly, though the Arbitration proceeding has been commenced and pending and the stay was obtained from the Andhra Pradesh High Court, at Hyderabad, therefore, the point is whether Section 9 Petition can be invoked at Mumbai. In view of above clause and the protective relief/ measure as claimed, can be granted in this Court at Mumbai.

6. There is nothing pointed out that the agreement/ clause as entered into, is null and void and or contrary to the law specially when admittedly, based upon the said agreement the parties have entered into various transactions. Therefore, having once obtained the benefit and or accepted the said clause and having acted upon the same, the submission with regard to the jurisdiction of this Court based upon this clause, has no force. The submission, therefore, that this clause itself is contrary to the other byelaws and or provisions, is also unsustainable. The Respondent is estopped from using such plea at this late stage of the proceedings only to oppose Section 9 Petition at Mumbai. In view of above, the authorities/ citations so relied upon by the Respondent is also of no assistance. Those are distinguishable on the facts itself, specially when the Respondent himself has been doing business in the security market and trading in Stock Market, since long.

7. As contemplated u/s 9 of the Arbitration Act, there exists Arbitration Clause/ agreement between the parties. There also exists the dispute, pending between the parties. This Court u/s 9 of the Arbitration Act, has nothing to do with the merit and demerit of the claim and or counter claim between the parties. Therefore, in view of above arbitration clause, at this prima facie stage, I am of the view that this Court has jurisdiction to pass protective order/ measure at Mumbai.

8. Therefore, the submission made by the learned Counsel appearing for the Respondent based upon the merits of the matter including power and the authority of Petitioner to do the business based upon such agreement and the

issue with regard to the claim and or the counter claim arising out of the same contract need to be tackled by the Arbitrate Tribunal. The submission with regard to the various interpretation of the clauses of the agreements covering the Rules, byelaws of trading regulations, F & O segment of the NSE and the authorities cited, need no further discussion. There is no contra material to decide the issue of jurisdiction, otherwise than above, specially in view of admitted clause as reproduced above.

9. This admitted clause of Arbitration and submission to the jurisdiction of Mumbai Court in a Commercial Transaction like this, in my view, sufficient to pass interim protection/ measure as passed in other connected matters. I have already observed in number of cases by relying on various Supreme Court as well as the Bombay High Court Judgments as under:

4. The Apex Court in Rajasthan State Electricity Board Vs. Universal Petro Chemicals Ltd., has reiterated in following words about agreed territorial jurisdiction:

Paragraph No. 27:

The aforesaid legal proposition settled by this Court in respect of territorial jurisdiction and applicability of Section 20 of the Code to the Arbitration Act is clear, unambiguous and explicit. The said position is binding on both the parties who were contesting the present proceeding. Both the parties with their open eyes entered into the aforesaid purchase order and agreements thereon which categorically provide that all disputes arising between the parties out of the agreements would be adjudicated upon and decided through the process of arbitration and that no court other than the court at Jaipur shall have jurisdiction to entertain to try the same. In both the agreements in Clause 30 of the general conditions of the contract it was specifically mentioned that the contract shall for all purposes be construed according to the laws of India and subject to jurisdiction only at Jaipur in Rajasthan Courts only and in addition in one of the purchase order the expression used was that the court at Jaipur only would have jurisdiction to entertain or try the same.

Paragraph No. 32:

We may also at this stage appropriately refer to the definition of the word "court" as appearing in Section 2(c) of the Act wherein the expression "court" is defined to mean:

a civil court having jurisdiction to decide the questions forming the subject matter of the reference if the same had been the subject matter of the suit, but does not, except for the purpose of arbitration proceedings u/s 21 include a Small Cause Court.

Paragraph No. 35:

The parties have clearly stipulated and agreed that no other Court, but only the

Court at Jaipur will have jurisdiction to try and decide the proceedings arising out of the said agreements, and therefore, it is the civil court at Jaipur which would alone have jurisdiction to try and decide such issue and that is the Court which is competent to entertain such proceedings. The said Court being competent to entertain such proceeding, the said Court at Jaipur alone would have jurisdiction over the arbitration proceedings and all subsequent applications arising out of the reference. The arbitration proceedings have to be made at Jaipur Court and in no other Court.

10. The Apex Court in *Shree Baidyanath Ayurved Bhawan Pvt. Ltd. Vs. Praveen Bhatia and Others*, has reiterated by relying on *Rajasthan SEB (Supra)* that the agreement between the parties with regard to the jurisdiction of the Court needs to be accepted.

11. There is admittedly no complete ousting clause of exclusion of jurisdiction of this Court. *Nahar Industrial Enterprises Ltd. Vs. Hong Kong and Shanghai Banking Corporation*,

12. The legislative intent is that the parties are abide by the terms of the arbitration Clause. *Indian Oil Corporation Ltd. and Others Vs. Raja Transport (P) Ltd.*, .

13. In *Adhunik Steels Ltd. Vs. Orissa Manganese and Minerals Pvt. Ltd.*, , the Apex Court observed are as under:

It is true that Section 9 of the Act speaks of the Court by way of an interim measure passing an order for protection, for the preservation, interim custody or sale of any goods, which are the subject matter of the arbitration agreement and such interim measure of protection as may appear to the court to be just and convenient.

Moreover, when a party is given a right to approach an ordinary court of the country without providing a special procedure or a special set of rules in that behalf, the ordinary rules followed by that court would govern the exercise of power conferred by the Act. On that basis also, it is not possible to keep out the concept of balance of convenience, prima facie case, irreparable injury and the concept of just and convenient while passing interim measures u/s 9 of the Act.

14. I am accepting the submission raised by the learned Counsel appearing for the Petitioner with regard to the grant of other prayers of attachment of property and or appointment of receiver etc. However, considering the fact that the Arbitration Proceeding is pending and as it is stayed, the Petitioner may not be in a position to secure the amount in dispute. In such circumstances, even pendency of such Arbitration proceeding and as the prima facie the case is made out and as uncertainty of the proceedings that itself in my view, an additional factor which goes in favour of the Petitioner to ask for the relief in following terms to avoid further complications and delay in the matter. The Petitioner, in view of above, is entitled for the protective relief/ measure pending the

Arbitration Proceedings and/or till the same attains finality. The agreement unless declared invalid or void, binds the parties in all respect.

15. Therefore, merely because the respondent has no office at Mumbai, loses its importance in view of agreed clause itself. Such agreement is not prohibited nor objected at earlier point of time. The parties have acted upon the same. Therefore, also the Apex Court's decision in Jindal Vijayanagar Steel (JSW Steel Ltd.) Vs. Jindal Praxair Oxygen Company Ltd., , is not applicable in the above facts itself.

16. The Court at Bombay has jurisdiction to entertain the present Section 9 Petition. The citation/ authorities based upon Arbitration Act, 1940 are not applicable in law, as well as, on facts, in view of specific agreed clause and Section 9 of the Arbitration Act, 1996 itself.

17. The reliance on, Girish Manubhai Parekh Vs. Continental Steel Corporation and Others, , is of no assistance as Section 16 and Section 9 of the Arbitration Act, 1996 have different scheme and purpose.

18. In view of agreed clause even the seat of arbitration may not helpful to decide the jurisdiction of the Court to entertain Section 9 Petition at Mumbai. There is no agreed bar. The jurisdiction of respective regional arbitration centre cannot be equated with the power of Court u/s 9 of the Arbitration Act, in view of above clause itself.

19. The necessary ingredients as contemplated u/s 9 of the Arbitration Act, read with Order 40 Rule 1, Order 38 Rule 5 of Civil Procedure Code, (CPC) and Specific Reliefs Act are available in favour of the Petitioner. The balance of convenience, equity and irreparable injuries also tilted in favour of the Petitioner. It is also because of the conduct of the Respondent. Once, the broker claimant relationship is terminated and huge amount is due and pending, the interim measure so claimed need to be granted in the interest of justice, in view of above circumstances. The learned Counsel appearing for the Respondent, on instructions, makes statement that the Respondent is not intending to transfer the properties, which is sufficient to consider the claim of the Petitioner.

20. Having observed above, I am inclined to pass the following order.

ORDER

In view of above, the statement already recorded on 24th April, 2009 to continue till the disposal of the Arbitral proceedings and the award. It is made clear that the Respondent shall not create any third party right or interest or transfer the property to the extent of claim amount, till the award attains finality.

21. The Petition is allowed to the above extent only. No order as to costs.