**(2013) 04 BOM CK 0090**

**In the Bombay High Court**

**Case No :** Arbitration Petition No. 815 of 2009

SPS Share Brokers Private Limited — APPELLANT

Vs

Nishit Nirmal Doshi and The national Stock Exchange of India Ltd. — RESPONDENT

**Date of Decision :** 08-04-2013

**Acts Referred:**
Arbitration and Conciliation Act, 1996 — Section 2(1), 2(1)(e), 34

**Citation :** (2013) 04 BOM CK 0090

**Hon'ble Judges :** Anoop V. Mohta, J

**Bench :** Single Bench

**Advocate :** Simil Purohit assisted with Mr. Rohan Undale instructed by Markand Gandhi and Co, for the Appellant; B.K. Rai instructed by y S.S. Ravi, for the Respondent

**Final Decision :** Allowed

## Judgement

Anoop V. Mohta, J.—This petition is u/s 34 of the Arbitration and Conciliation Act, (for short "Arbitration Act"). The petitioner is challenging award dated 24th March, 2009, passed by the Sole Arbitrator under the National Stock Exchange India Ltd. (for short, "NSEI"). Admittedly, both the parties appeared before the Tribunal as per bye-laws at Delhi, as the venue/place of arbitration was at Delhi. The learned counsel, appearing for Respondent No. 1 has raised preliminary objection with regard to the jurisdiction of this Court at Mumbai to entertain this petition. The relevant clause No. 23 of Member - Client Agreement between the parties is reproduced below:-

23. LAW AND JURISDICTION

This Agreement shall be governed by and construed in all respects in accordance with the laws of the Republic of India. All trades, transactions and contracts pursuant hereto shall be deemed to be made, entered into and to be performed in the city of Mumbai and subject to the provisions of Clauses 24 and 25, the Courts at Mumbai, India shall have exclusive jurisdiction over this Agreement and the arbitration proceeding in relation to this Agreement.

2. The petitioner also relied on clause 17 of the bye-laws of National Stock Exchange of India Ltd.

Jurisdiction

17. All parties to a reference to arbitration under these Bye-laws and Regulations and the persons, if any, claiming under them, shall be deemed to have submitted to the exclusive jurisdiction of the Courts in Mumbai or any other court as may be prescribed by the Relevant authority for the purpose of giving effect to the provisions of the Act.

3. The agreement is between the petitioner-Member Sub Broker, the National Stock Exchange (for short, "NSE") and the Bombay Stock Exchange (for short, "BSE"), both are situated in Mumbai. The nature of transaction were F & O segment, governed by the NSEI, at the relevant time. The co-lateral shares were sold by the petitioner through the BSE.

4. The basic requirement is whether there is a part cause of action arose in Mumbai. In view of agreement itself, I am inclined to observe that the part of cause of action arose in Mumbai and that is sufficient for the parties to agree for such jurisdiction clause, as done in the present case. This, in my view, is valid and sufficient for the Court to proceed to entertain the section 34 petition in view of the definition of the "Court" u/s 2(1) (e) of the Arbitration and Conciliation Act. The relevant section 2(1) is reproduced below:-

(2) (1) In this Part, unless the context otherwise requires.

(e) "Court" means the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject matter of the arbitration if the same had been the subject matter of a suit, but does not include any civil court of a grade inferior to such principal Civil Court, or any Court of Small Causes;

5. While dealing with the similar circumstances, the issue in National Commodity and Derivative Exchange Ltd. -vs.- Indian Exchange of metal Ltd. (Arbitration petition (L) No. 280 of 2012, dated 9th March, 2012, I have held that this Court has jurisdiction to entertain such petition. The petitioner''s preliminary objection is accordingly rejected.

6. So far as the merit is concerned, the learned Arbitrator directed the petitioner to initiate proceeding against the respondent as per BSE bylaws at the appropriate forum by holding that the petitioner (original applicant) has no case for granting relief whatsoever raised. What is missing is the reason for such direction and the provision, as there is ample material on record to show that the basic transactions took place at NSE. The learned Arbitrator Tribunal was constituted under the NSEI bylaws only.

 

7. The adjustment of account, even if any, ought to have been taken note of while passing award as there is no denial on record that the transaction took place at NSE, but the co-lateral securities were sold through the BSE.

8. The learned Arbitrator, was wrong in directing the petitioner to initiate proceeding against the respondent under the BSE bye-laws without giving reasons and/or justification. The learned Arbitrator, while dismissing the claim of the petitioner, relied on the alleged signed statement as recorded in para 8. It is relevant to note that there is no restriction for the stock broker to sell, deal only through the BSE and/or through the NSE. The basic obligation is to sell the co-lateral and/or shares to recover the balance at the earliest. Therefore, the selling of co-lateral by the petitioner even if BSE cannot be sufficiently say that the petitioner is entitled to recover the amount as per BSE bye-laws as done in the present case. The question is of recovery of the debt in question after due adjustment. The award, therefore is illegal and requires interference. Therefore, taking overall view of the matter, by keeping all points open, I am inclined to quash and set aside the award with further directions to the Arbitral Tribunal to reconsider the whole aspect, after giving opportunity to both the parties. Hence the following order.

ORDER

i) The petition is allowed. Award 24th March, 2009 read with Award dated 16th June, 2009 is quashed and set aside;

ii) The matter is remanded back to the learned Arbitrator. The learned Arbitrator to reconsider all the points by giving opportunity to both parties.

iii) The parties to take steps accordingly.

iv) All points are kept open.