

Pramod Kumar vs.religare Securities Ltd

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Court : Delhi

Decided On : Mar-01-2018

Appellant : Pramod Kumar

Respondent : Religare Securities Ltd

Advocate for Def. : Mr. Rohit Puri, Ms. Swekcha

Advocate for Pet/Ap. : Dr. Harsh Pathak, Mr. Siddharth, Mrs. Shaveta Mahajan

Judgement :

* % + IN THE HIGH COURT OF DELHI AT NEW DELHI Decided on:

01. 03.2018 FAO(OS) 368/2016 & CM. APPL. 46533/2016 PRAMOD KUMAR Appellant Through: Dr. Harsh Pathak, Mr. Siddharth ` Shukla and Mrs. Shaveta Mahajan, Advs. versus RELIGARE SECURITIES LTD Respondent Through: Mr. Rohit Puri & Ms. Swekcha, Advocates. CORAM: HON'BLE MR. JUSTICE SIDDHARTH MRIDUL HON'BLE MS. JUSTICE DEEPA SHARMA HON'BLE MS. JUSTICE DEEPA SHARMA1 This appeal has been filed by the appellant under Section 37 of the Arbitration and Conciliation Act, 1996, whereby he has challenged the judgment dated 19.10.2016 in Original Miscellaneous Petition (OMP) No.535/2015. In this OMP, the appellant had challenged the Arbitral Award dated 18.12.2014 passed by the National Stock Exchange (NSE) Arbitral Tribunal and the order of NSE Arbitral Appellate Tribunal (AAT) dismissing his appeal vide order dated 25.05.2015. The dispute between the appellant and the respondent

was related to the Member-Client Agreement dated 31.05.2010. FAO(OS) 368/2016 Page 1 2. The admitted facts are that the appellant vide Member-Client Agreement dated 31.05.2010 opened a DEMAT account with the respondent for equity trading. According to the appellant, he had made it clear to the respondent at the time of opening of the said account that he was interested in investing in portfolio of equity shares as a long-term investment and was not interested in short-term trading. It was also his case that he had not permitted the respondent to do any trading without the authorisation from him. According to him, a limited Power of Attorney was given to the respondent for opening of the share trading account. The petitioner was then allotted CRN Number, Depository client ID and trading user ID. The contentions of the appellant were that the respondent had started unauthorized trading in the futures and options (F& O) segment w.e.f 16.08.2010, without his authorization. This trading continued between August 2010 to February 2011 and the respondent during this period zeroed the entire investment of the appellant. According to him, he had been visiting Ukraine for business purposes quite frequently during the period 16.06.2010 and 29.12.2010. On coming to know of the unauthorized trading, the appellant repeatedly asked the respondent officers to stop any trading in the F&O segment which had caused a loss of Rs. 4671840.79 up to FAO(OS) 368/2016 Page 2 01.02.2011. As per the contention of the appellant, the respondents had assured him to compensate for the losses suffered and dissuaded him from filing any complaint. As per the appellant, his shares worth approximately Rs 52,00,000/- with Indiabulls Securities Ltd. were transferred from his account. A lot of 15 scrips got transferred on 14.08.2010 and 5 scrips on 26.08.2010. He learned on receiving the SMS from the NSDL that all stocks of the appellant were moved from the beneficiary account to broker margin account. This movement was done without his permission and without authorisation from him. He thereafter withdrew the PoA issued earlier by him in favour of the respondent.

3. As per the appellant, when the respondent failed to compensate him, he filed a complaint with Wecare, the respondents customer care email ID, on 05.02.2011. In the absence of any progress on his complaint to Wecare, he filed a complaint against the respondent with the Investor Service Cell of the NSE on 09.03.2011. The dispute between him and the respondent was thereafter referred by NSE to

the Arbitral Tribunal (AT) comprising of three members. The respondent also filed a counter claim for a balance outstanding amount of Rs. 1,02,833.23 as on 11.02.2011 and the said amount grew to Rs. 1,78,020.44 as on 21.05.2017. The AT passed its FAO(OS) 368/2016 Page 3 Award on 18.12.2014 whereby the claim of the appellant was rejected and the counter claim of the respondent was upheld.

4. The appellants appeal to AAT against the order of Appellate Tribunal was also rejected.

5. Both the orders, of AT and AAT were challenged by the appellant under Section 34 of Arbitration & Conciliation Act before the Ld. Single Judge who dismissed the challenge of the appellant vide impugned order. The impugned order is challenged before us on the grounds that it is devoid of any reasoning. It is further argued that there is error in finding the facts since he had never ordered or authorized the trading in the F&O segment. It is further contended that the award of AT is against the public policy of India because the respondent did not follow the general principles of code of conduct for trading, as provided in Regulation 4.5 of National Stock Exchange (NSE) (F&O Segment) Trading Regulations and has indulged in unfair trading practices which are restricted under Regulation 4.6.2 Clause 3 and Regulations 4.3.4 and 4.3.5 and Section 18 A of Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as SCRA).

6. It is further argued that the learned Single Judge has failed to consider that the execution of transaction without margin is unsubstantial as held by FAO(OS) 368/2016 Page 4 the Bombay High Court in Arbitration Petition No.142/2009. It is further argued that the learned Single Judge has also failed to consider that the existence of the confirmation calls does not imply that the appellant had placed orders or authorized trading in the F&O segment. As per Regulations 3.4.1 and 3.4.2 of NSE (F&O Segment) Trading Regulations, the confirmation calls and contract notes cannot cure the defect of unauthorized transactions which are hit by Section 18A, SCRA.

7. It is further urged that the purported confirmation calls were not made for all the F&O transactions. It is also argued that the AT and AAT and also the learned Single Judge have failed to consider the fact that out of 112 F &O trades, the

respondent had not provided the confirmation calls for 34 F&O trades and that all confirmations were post market hours which clearly shows that the trading had been done without any instructions. It is also argued that the AT, AAT and the learned Single Judge have failed to take note of the fact that the confirmation was selective i.e. the first confirmation was given only on 14.09.2010 whereas the first unauthorized trade was carried out on 16.08.2010 and during these days huge amounts were wrongly debited from the appellants account to meet margin requirements, without any prior demand for margin and without any instructions or FAO(OS) 368/2016 Page 5 authorization for such debit. The fact that the appellant was not in India from 17.08.2010 to 13.09.2010 was also not taken note of.

8. The Court also failed to consider the findings in the case titled as Religare Securities Limited vs. Mr. Dilip R. Mohite, (Arbitration Matter No.F&O/M-0044/2010), the case which was similar to that of appellants case herein. The Court therein has observed as under:-

""In view of the circumstances stated above, the claim of the Appellant fails on the ground that it has not met the requirements of the provisions of the Bye-laws, Rules and Regulations with regard to placement of proper orders by the Respondent before executing the transactions in cash and derivative segments of the NSE and margin norms and indulging in unauthorized trading. As such the same is rejected. The counter claim of the Respondent is, therefore, maintainable with interest and corporate benefits."

9. The appellant has also relied on the findings of this Court in FAO No.65/2014 & CM No.4232/2014) titled as Angel Broking Ltd. Vs. Arti Jain & Anr., decided on 05.03.2014 alleging that the Court therein has observed that in the absence of any proof of placing orders, trade confirmation calls and sending of a contract note is not enough to hold that trades were authorized, even if the Constituent raised no objection upon receiving such calls and contract notes. The Appellate has also relied on the judgment of this Court in Aurum Infocomm Ltd. vs Shri. Desh Raj Mangal in FAO No.FAO(OS) 368/2016 Page 6 479/2013, decided on 24.03.2014, urging that the Court therein has clearly held, where the telephonic record is not filed or relied upon with respect to issuing of any instructions for the trades, such

transactions are unauthorized transactions. It is further contended that Arbitrator also took note of the fact that the trades on certain dates were so vast in number that it was not possible that such instruction would have been given on phone and the transactions would have been possible only if it were done on line, by the respondent, which was not the case. On these contentions, it is prayed that the impugned orders be set aside.

10. We have heard the arguments of the parties and perused the record.

11. Undisputedly, this is the fourth round of litigation before us. The first round of litigation happened before NSE Arbitral Tribunal, who recorded the evidences led by the parties and on the basis of material before it, the Id. AT gave its findings on the facts and applied the law on those facts. These findings of the fact has been quoted in the impugned order by the learned Single Judge in the impugned order has recorded the findings of facts noted by AT in its order dated 18.12.2014. The relevant paragraph is reproduced as under:-

"11. The findings of the AT in the impugned Award dated 18th December, 2014 were as under: FAO(OS) 368/2016 Page 7 (i) The plea of the Respondent that the allegation made by the

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Claimant of cheating and fraud etc. had to be examined by the Court and not by the AT. The Respondent had been regularly sending (ii) contract notes of the transactions to the registered email and postal address of followed by confirmation call in the evening. Further the Claimant availed the facility of internet trading and had the access to the website of the Respondent was shown that the Claimant and his authorized representative had been logging on the NSE website to view the details of trades. the Claimant The transcript of the recorded conversation of 9th (iii) November 2011 showed that the Respondent got the

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to confirm trades of cash transaction i.e. sale of the shares of various companies as well as transactions of F&O segment i.e. both cash and F&O transaction. There were numerous other transcript of confirmation calls with regard to of transaction

undertaken during the day. These were not disputed by the Claimant or his authorized representative. The confirmation calls were supported by emails and ECN. (iv) Going by the transcript of various conversations between the parties, the assertion that all the F&O transactions in the

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s account being unauthorized could not be accepted. (v) The non-compliance of SEBI guidelines were curable and did not absolve the Claimant of its liability under the agreement with the respondent. (vi) The claim of the

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was dismissed. The counter claim of the Respondent was allowed. The

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was asked to pay Rs.1,02,833.23 being the balance amount as on 11th February, 2011 with simple interest of 10% pa. FAO(OS) 368/2016 Page 8 12. In the second round of litigation in appeal before NSE AAT, the trial record of AT was perused and after perusing the record, the three members of AAT confirmed the findings of Arbitral Tribunal vide their order dated 25.05.2015. The AAT concurred with the findings on the facts and application of law recorded by AT in its order. The learned Single Judge in the impugned order has noted the findings of AAT. The same is reproduced as under:-

"12. Aggrieved by the above order, the

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filed an appeal before the AAT which was comprised of three members. In the detailed impugned order dated 25th May, 2015, the AAT rejected the appeal, inter alia on the following grounds: (i) The authorization given by the Appellant to place the orders in his behalf was not in dispute. No evidence was placed on record by the Appellant to show that the said authorization was not in place. The presumption therefore was that the said two persons, being capable of authorized to do so may have carried out trades on the Appellants behalf. The call record showed that during one of the calls i.e. on 14th September 2010, the Appellant handed over the phone to one of the said AR. (ii) In terms of the NSE regulations,

the provision of voice recording facilities to record the placing of verbal orders was not mandatory in nature. (iii) The AT was justified in holding that the trades in the Appellants account were with his knowledge and consent as he received the SMS and confirmation calls but failed to take steps to object to said transactions till much later. FAO(OS) 368/2016 Page 9 13. These orders were impugned under Section 34 of Arbitration and Conciliation Act, 1996 in OMP No.535/2015. Vide the impugned order dated 19.10.2016, the challenge to the award was dismissed.

14. After noting the findings of AT and AAT, the learned Single Judge has noted the grounds urged by the appellant while challenging the orders of AT and AAT. The relevant paragraph is quoted as under:-

"14. Before this Court, it was sought to be urged by the learned counsel for the

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that both the AT as well as the AAT erred in holding that the transactions in the petitioners account were not illegal. Further no reasonable and effective opportunity of hearing was afforded to the

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by the AT. At the initial stage, the matter was fixed for 4th September 2014, but on that date, the Appellate Arbitral Tribunal took up the matter last and the

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s counsel was forced to conclude his arguments. Each transaction had to be separately judged and therefore the findings of the AT was perverse. Likewise, the Appellate Arbitral Tribunal also failed to follow the judicial discipline, particularly not following the another decision of the Appellate Arbitral Tribunal in Appeal AM No.F&O/D-0085/2912 (Mr. Manmohan Singh v. SMC Global Securities Ltd.) which according to the

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squarely covers the case. The learned Single Judge has held as under:-

"15. Having heard the submissions of learned counsel for the parties and having examined the documents placed on record, the Court is not persuaded to hold that

either the AT or the AAT erred in law in negating the claim of the

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. Both the Awards i.e. of the AT and AAT are detailed and sets out all the facts and circumstances. Both the Awards discuss the evidence thoroughly. The Court is also not persuaded to hold that the FAO(OS) 368/2016 Page 10

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was deprived of an effective opportunity of being heard before the AT or the AAT.

16. With there being concurrent findings of two levels of Arbitral Tribunals, the ground for interference with such findings of facts has to meet a high threshold. The Court, however, observes that the

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has not been able, to point out any single finding in the said two Awards which can be said to be perverse and contrary to the records of the case.

17. The Court is satisfied that none of the grounds of interference with the impugned Award is made out in this petition under Section 34 of the Act. The petition is accordingly dismissed but in the circumstances with no orders as to costs. 15. In this appeal under Section 37 of the Arbitration and Conciliation Act, 1996, the impugned order passed under Section 34 of Arbitration and Conciliation Act, 1996. is assailed. Section 37 of the Arbitration and Conciliation Act, 1996 permits an appeal against an order passed under Section 34 of the Arbitration and Conciliation Act.

16. The Supreme Court while discussing the appellate jurisdiction of a Court in Wander Ltd. and Anr. Vs. Antox India P. Ltd., reported as 1990 (Supp) SCC727 has held as under that the appellate court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the FAO(OS) 368/2016 Page 11 court had ignored the settled principles of law regulation grant or refusal of interlocutory injunctions. 17. The scope of interference of this Court under Section 37 of the

Arbitration and Conciliation Act, 1996, is limited. This Court is only required to ascertain if while disposing of the challenge under Section 34, the learned Single Judge had acted fairly or has acted arbitrarily, capriciously or perversely ignoring the settled principle of law regulating its discretion and jurisdiction. Section 34 of the Arbitration and Conciliation Act, 1996, was interpreted by the Honble Supreme Court in its several pronouncements. The Supreme Court in the Rajasthan State Mines & Minerals Limited vs. Eastern Engineering Enterprises & Anr, reported in AIR 1999 SC3627 after considering, held as under:-

"44. From the resume of the aforesaid decisions, it can be stated that: (a) it is not open to the Court to speculate, where no reasons are given by the arbitrator, as to what impelled arbitrator to arrive at his conclusion. (b) It is not open to the Court to admit to probe the mental process by which the arbitrator has reached his conclusion where it is not disclosed by the terms of the award. (c) If the arbitrator has committed a mere error of fact or law in reaching his conclusion on the disputed question submitted for his adjudication then the Court cannot interfere. FAO(OS) 368/2016 Page 12 (d) If no specific question of law is referred, the decision of the Arbitrator on that question is not final, however much it may be within his jurisdiction and indeed essential for him to decide the question incidentally. In a case where specific question of law touching upon the jurisdiction of the arbitrator was referred for the decision of the arbitrator by the parties, then the finding of the arbitrator on the said question between the parties may be binding. (e) In a case of non-speaking award, the jurisdiction of the the parties containing Court is limited. The award can be set aside if the arbitrator acts beyond his jurisdiction. (f) To find out whether the arbitrator has travelled beyond his jurisdiction, it would be necessary to consider the agreement between the arbitration clause. Arbitrator acting beyond his jurisdiction--Is a different ground from the error apparent on the face of the award. (g) In order to determine whether arbitrator has acted in excess of his jurisdiction what has to be seen is whether the claimant could raise a particular claim before the arbitrator. If there is a specific term in the contract or the law which does not permit or give the arbitrator the power to decide the dispute raised by the claimant or there is a specific bar in the contract to the raising of the particular claim then the award passed by the arbitrator in respect thereof would be in excess of jurisdiction. (h) The award made

by the Arbitrator disregarding the terms of the reference or the arbitration agreement or the terms of the contract would be a jurisdictional error which requires ultimately to be decided by the Court..

18. In Steel Authority of India Limited vs. Gupta Brother Steel Tubes Limited, (2009) 10 SCC63 the Apex Court has further laid down the FAO(OS) 368/2016 Page 13 criteria which the Court, while dealing with the challenge to an arbitral award has to consider. The Court held as under:-

""18. It is not necessary to multiply the references. Suffice it to say that the legal position that emerges from the decisions of this Court can be summarised thus: (i) (ii) (iii) In a case where an arbitrator travels beyond the contract, the award would be without jurisdiction and would amount to legal misconduct and because of which the award would become amenable for being set aside by a court. An error relatable to interpretation of the contract by an arbitrator is an error within his jurisdiction and such error is not amenable to correction by courts as such error is not an error on the face of the award. If a specific question of law is submitted to the arbitrator and he answers it, the fact that the answer involves an erroneous decision in point of law does not make the award bad on its face. (iv) An award contrary to substantive provision of law or against the terms of contract would be patently illegal. (v) Where the parties have deliberately specified the amount of compensation in express terms, the party who has suffered by such breach can only claim the sum specified in the contract and not in excess thereof. In other words, no award of compensation in case of breach of contract, if named or specified in the contract, could be awarded in excess thereof. FAO(OS) 368/2016 Page 14 (vi) If the conclusion of the arbitrator is based on a possible view of the matter, the court should not interfere with the award. (vii) It is not permissible to a court to examine the correctness of the findings of the arbitrator, as if it were sitting in appeal over his findings. 19. Discussing the scope of interference by courts, in National Highways Authority of India vs. Unitech-NCC Joint Venture reported on 2011 (Suppl.

1) Arb. LR.94 (Delhi) DB, this Supreme Court has held as under:-

"7. It is obvious that the interpretation of the contract forms the fulcrum of the dispute between the two adversaries before us. As already mentioned, the power to interpret the contract was reposed in the Engineers as per Clause 5.2.1 of the contract. The Engineers, on a thorough and lucid examination of the contract, have concluded that escalation was contractually payable on the contract itself as well as on any variation thereto. Even under the regime of the repealed Arbitration Act, 1940, Their Lordships have opined in the celebrated judgment vs. Government of Kerala, (1989) 2 SCC38 1989(2) Arb.LR6(SC) inasmuch the court reiterated the position that -Once there is no dispute as to the contract, what is the interpretation of that contract, is a matter for the arbitrator on which the court cannot substitute its decision. The continuity of this opinion is manifest from a reading of H.P. State Electricity Board vs. R.J.

Shah & Co., (1999) 4SCC214 1999(2) Arb.LR316(SC) inasmuch the court reiterated the position that -when the arbitrator is required to construe a contract then merely of Sudarsan Trading Company FAO(OS) 368/2016 Page 15 because another view may be possible the court would not be justified in construing the contract in a different manner and then to set aside the award by observing that the arbitrator has exceeded the jurisdiction in making the award. Numaligarh Refinery Limited vs. Daelim Industrial Company Limited, (2007) 8 SCC466 2007 SCACTC471 (SC)=2007(3) Arb.LR378(SC) records that with regard to the interpretation of a contract, the decision of the arbitrator should not be interfered with by the court. After advertent to Tarapore & Company Vs. Cochin Shipyard Limited, 1984 2 SCC680 1985 Arb. LR2 (SC), Their Lordships recorded that there can be no quarrel with the proposition that -if a question of law is specifically referred to by the parties to the arbitrator for decision, award of the arbitrator would be binding on the parties and court will have no jurisdiction to interfere with the award even on ground of error of law apparent on the face of award. Very recently, in McDermott International Inc.vs.Burn Standard Co.Ltd., (2006) 11 SCC181 2006 SCACTC283(SC)=2006 (2) Arb.LR498(SC), after perusal of a plethora of precedents, Their Lordships have enunciated this aspect of the law in the following manner: 112. It is trite that the terms of the contract can be express or implied. The conduct of the parties would also be a relevant factor in the matter of construction of a contract. The construction of the contract agreement is within the

jurisdiction of the arbitrators having regard to the wide nature, scope and ambit of the arbitration agreement and they cannot be said to have misdirected themselves in passing into the award by taking FAO(OS) 368/2016 Page 16 consideration the conduct of the parties. It is also trite that correspondences exchanged by the parties are required to be taken into consideration for the purpose of construction of a contract. Interpretation of a contract is a matter for the arbitrator to determine, even if it gives rise to determination of a question of law. [See *Pure Helium India (P) Ltd. v. ONGC*: AIR 2003 SC45192003(3) Arb. LR409(SC) and *D.D. Sharma v. Union of India*, (2004) 5 SCC3252004(2) Arb. LR119(SC)]...

113. Once, thus, it is held that the arbitrator had the jurisdiction, no further question shall be raised and the court will not exercise its jurisdiction unless it is found that there exists any bar on the face of the award.

114. The above principles have been reiterated in *Chairman and MD, NTPC Ltd. v. Reshmi and Contractors*: AIR 2004 SC13302004(1) Arb. LR156(SC), *Union of India v. Banwari Lal and Sons (P) Ltd.* AIR 2004 SC19832004(2) Arb. LR81(SC), *Continental Construction Ltd. v. State of UP.* : (2003) 8 SCC4 and *State of UP. v. Allied Constructions*:

396. Arb. LR106(SC). *Constructions, Builders* (2003) 7 SCC FAO(OS) 368/2016 Page 17 20. It is a settled proposition of law that while dealing with an award under Section 34 of the Arbitration and Conciliation Act, the Courts are not supposed to sit in appeal and re-appreciate the evidences as an appellate Court. This proposition of law is emphasized in *Municipal Corporation of Delhi vs. Jagan Nath Ashok Kumar and Anr.*, reported in (1987) 4 SCC485 *Maharashtra State Electricity Board vs. Sterlite Industries (India) and Another*, (2001) 8 SCC482 and *Markfed Vanaspati and Allied Industries vs. Union of India*, (2007) 7 SCC679 This principle was again reiterated in *P.R. Shah, Shares and Stock Brokers Pvt. Ltd vs. B.H.H. Securities Private Limited and Ors*, reported in (2012) 1 SCC594 21. It therefore is a settled proposition of law that Section 34 of the Arbitration and Conciliation Act do not empowers the courts to re-appreciate and re-evaluate the evidences produced before the arbitral tribunal and thereafter to judge if the findings of the arbitral Tribunals are correct or wrong. It is so held by the Apex

Court in the case of Steel Authority of India (supra) that It is not permissible to a court to examine the correctness of the findings of the arbitrator, as if it were sitting in appeal over his findings. It means that the findings of fact by the Arbitral Tribunal, if based on evidence, even where a different opinion can be held on the basis FAO(OS) 368/2016 Page 18 of that evidences, the findings given by the Arbitrator has to be accepted and the Courts cannot substitute its opinion. The power to interpret the contract also lies with the Arbitrator. Once the courts reach to the conclusion that the Arbitrator has acted within its jurisdiction, even if the Courts are of the view that the opinion of the Arbitrator is wrong, it cannot be disturbed unless it is against the public policy. The Apex Court in steel Authority of India (supra), has categorically held that even where "the answer involves an erroneous decision on the point of law does not make the award bad on its face" . An award can be said to be bad only when it is contrary to the substantive provision of law or against the terms of the contract. The Apex Court in Steel Authority has also clearly held that "If the conclusion of the arbitrator is based on a possible view of the matter, the court should not interfere with the award."

22. In the present case, the appellant has challenged the impugned order on the ground that the Tribunal has failed to consider that the act of the respondents was in violation of the regulations of NSE (F&O segment) and SCRA. The learned counsel for the appellant however has failed to point out from the award that it was in violation of the substantive law of the land. The AT and AAT has clearly observed that the violations of the procedures, FAO(OS) 368/2016 Page 19 if any, occurred was curable. There is concurrent finding of facts that all the transactions were within the knowledge of the appellant and he was duly informed and his consent was taken.

23. It is a settled proposition of law that an award can be impeached only when it is against the public policy.

24. The Honble Supreme Court in the case of Sh. Lal Mahal Ltd. vs. Progetto Grano Spa 2013 (8) SCAL E489 followed its earlier judgment in Oil and Natural Gas Corporation Ltd vs. Saw Pipes Ltd., AIR 2003 SC2629has propounded the principles for ascertaining the meaning of public policy. The Court held that an

award can be said to be against the public policy if there is a patent illegality. The patent illegality should be such nature which goes to the root of the award. An award can be said to be against public policy if it is contrary to the substantive provision of law or against the term of Contract.

25. As is clear from the impugned order, the learned Single Judge has dealt with all the arguments raised by the appellant. It also considered the nature of evidences produced by both the parties before the Arbitrator and then reached to the conclusion that the finding of the Arbitrator is based on the findings of the facts and on these findings of the fact, there is a FAO(OS) 368/2016 Page 20 concurrent findings of AT and AAT and that the appellant had failed to point out any single finding in the award which can be said to be perverse or contrary to the record of the case. Even before us, the appellant has failed to show that the award is in violation of any substantive law. The Apex Court have repeatedly said in its various pronouncements that while dealing to a challenge of an award under Section 34 of the Arbitration and Conciliation Act, it is not open to the Courts to substitute its opinions to that of Arbitrator after re-appreciating the evidences produced before the Arbitral Tribunal. It has been held in *Municipal Corporation of Delhi (supra)*, read as under:-

"4..Appraisalment of evidence by the arbitrator is ordinarily never a matter which the Court questions and considers. The parties have selected their own forum and the deciding forum must be conceded the power of appraisalment of the evidence. In the instant case, there was no evidence of violation of any principle of natural justice. The Arbitrator in our opinion is the sole judge of the quality as well as quantity of evidence and it will not be for this Court to take upon itself the task of being a judge of the evidence before the arbitrator. It may be possible that on the same evidence the Court might have arrived at a different conclusion than the one arrived at by the arbitrator but that by itself is no ground in our view for setting aside the award of an arbitrator. 26. The learned Single Judge reached to the conclusion that the award was not against the public policy and rejected the petition under Section 34 FAO(OS) 368/2016 Page 21 of Arbitration & Conciliation Act. The jurisdiction of the Appellate Court is limited to ascertain if the learned Single Judge while disposing of the challenge under Section 34 of Arbitration &

Conciliation Act has acted in consonance to the objects of Section 34 of Arbitration & Conciliation Act. The award cannot be said to be against the public policy if it is based on some evidences. It can be said to be against a public policy if it is based on no evidence. Two views on the facts proved before AT could be possible in law but if the view of the Tribunal is based on the evidences before it, the findings of the AT cannot be said to be against the public policy. The learned Single Judge has no jurisdiction under Section 34 of the said Act to substitute its opinion to that of the Arbitrator.

27. For these reasons, we found no illegality in the impugned order and no grounds to interfere with it. The appeal has no merit and the same is dismissed with no order as to cost. MARCH01 2018/ss DEEPA SHARMA (JUDGE) SIDDHARTH MRIDUL (JUDGE) FAO(OS) 368/2016 Page 22

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