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**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE**

**APO/8/2021
WITH AP/641/2016**

**SIKHA BASU
-VS-
BMA WEALTH CREATORS LIMITED**

BEFORE:

The Hon'ble JUSTICE DEBANGSU BASAK

-AND-

The Hon'ble JUSTICE MD. SHABBAR RASHIDI

For the Appellant	:	Mr. Rupak Ghosh, Adv. Mr. Ayan Dutta, Adv. Mr. Ratul Das, Adv. Mr. Abhijit Sarkar, Adv. Ms. Abhipiya Srakar, Adv.
For the Respondent	:	Mr. Varun Kothari, Adv. Mr. A. Agarwalla, Adv. Ms. Priyanka Garain, Adv.

HEARD ON	:	27.01.2026
DELIVERED ON	:	27.01.2026

DEBANGSU BASAK, J.:-

1. Appeal is at the behest of a claimant in an arbitration proceeding.

2. Appeal is directed against the judgment and order dated June 26, 2020 passed in AP/641/2016.
3. By the impugned judgment and order, learned Single Judge, dismissed a challenge launched by the appellant to the award dated May 10, 2016 passed by the arbitral Tribunal of three Arbitrators.
4. Learned Advocate appearing for the appellant submits that, the appellant opened a demat account with the respondent for the purpose of trading in shares and securities in the stock market. He submits that, there were transactions in such demat account which was authorized by the appellant. He draws the attention of this Court to a period from February 7, 2014 till November 1, 2014 and submits that, the appellant did not authorize the respondent to undertake any trade in the demat account during this period. Nonetheless, the respondent indulged in unauthorised trade. This unauthorized trade caused loss to the appellant. Upon the appellant coming to know of such unauthorized trade taking place, proceedings under the Arbitration and Conciliation Act, 1996 were undertaken as was mandated under the relevant Rules governing the transactions of the National Stock Exchange.
5. Learned Advocate appearing for the appellant refers to the arbitration agreement between the parties. He submits that, it was a two-tier arbitration process. In both the tiers, the appellant was unsuccessful. He refers to the first award which was published on

December 29, 2015. He submits that the first award proceeds on the basis that Electronic Contract Notes (ECNs) were submitted with the arbitral Tribunal. He refers to a minutes of the first arbitral Tribunal dated September 24, 2015. He submits that, the portion with regard to the ECNs being produced by the respondent before the arbitral Tribunal was scored out. He then refers to the first award dated December 29, 2015 and submits that, the arbitral Tribunal rendering the first award proceeded on the basis that the ECNs were produced at the arbitral proceeding. He submits that the ECNs were never produced, not even as on date.

6. Referring to the counter statement of defence filed by the respondent in the arbitration proceedings, learned Advocate appearing for the appellant submits that, although in such counter statement of defence, it was averred by the respondent in paragraph 10(h) that, such ECNs were enclosed as Annexure-E but such ECNs were never annexed to the statement of defence. In fact, the ECNs never saw the light of the day till date.
7. Learned Advocate appearing for the appellant submits that, since, both the arbitral Tribunals as also the learned Trial Judge proceeded on the basis of a material which did not exist on record, the entire findings by all the three fora cannot be sustained.
8. Learned Advocate appearing for the respondent relies upon **2024 SCC OnLine SC 2632 (Punjab State Civil Supplies Corporation Limited and Another vs. Sanman Rice Mills and Others)** for the

proposition that, a Court exercising jurisdiction under Section 37 of the Act of 1996 is required to infer as to whether, the Court exercising power under Section 34 of the Act of 1996 did so correctly or not.

- 9.** In the facts and circumstances of the present case, he submits that no case for interference made out by the appellant.
- 10.** Learned Advocate appearing for the respondent draws the attention of the Court to the statement of defence submitted by the respondent in the arbitral Tribunal. He refers to paragraph 10(h) thereof and submits that ECNs were marked as annexure to such statement of defence. However, he submits that, counter statement of defence presently on record does not contain ECNs although being marked annexed as Annexure – 'E' thereof.
- 11.** Learned Advocate appearing for the respondent submits that the minutes of the first arbitral Tribunal dated September 14, 2015 cannot be construed as the minutes of such meeting. He draws the attention of this Court to the stay petition and submits that, the ECNs are annexed by the appellant to the stay petition.
- 12.** Learned Advocate appearing for the respondent draws the attention of this Court to the fact that there are SMS communications by the respondent to the appellant with regard to the contract occurring during the period. Therefore, the ignorance that the appellant claims as to the transactions between the period

from February 7, 2014 to November 1, 2014 is misplaced and not sustainable.

- 13.** Learned Advocate appearing for the respondent submits that, since, no case for interference made out, the petition under Section 37 of the Act of 1996 should be dismissed.
- 14.** In reply, learned Advocate for the appellant submits that Annexure-C to the stay petition are copies of ECNs for the period prior to February 7, 2014. Such Annexure-C to the stay petition does not contain any ECNs for the period from February 7, 2014 to November 1, 2014. Therefore, the contention of the respondent that the ECNs for the relevant period were submitted with the appellant is misplaced and not correct.
- 15.** Materials on record establish the following facts :-
 - i) Appellant opened a demat account with the respondent for trading in stock and securities on the National Stock Exchange.
 - ii) Number of transactions took place in such demat account.
 - iii) Disputes and differences arose between the appellant and the respondent with regard to transactions for the period between February 7, 2014 to November 1, 2014.
 - iv) There are SMS communications by the respondents to the appellant with regard to the alleged transactions between such period.

- v) Counter statement of defence that the respondent filed in the arbitration proceeding refers to the ECNs for the relevant period as being annexed thereto as Annexure 'E'. However, the copy of the counter statement of defence available on record with us does not contain such ECNs as Annexure 'E' or otherwise.

- 16.** Reference of the disputes between the appellant and the respondent was made to the arbitral Tribunal under the rules and regulations governing the relationship between the parties by the National Stock Exchange.
- 17.** Parties before us participated in such arbitration proceedings. The arbitration proceedings, conceived of by the rules and regulations of National Stock Exchange, are of two tiers. In the event, any of the parties to the arbitration proceedings is aggrieved by the award passed by the first arbitral Tribunal, there is a provision of appeal before the next arbitral Tribunal.
- 18.** In the facts and circumstances of the present case, the disputes and differences between the parties were considered by the first arbitral Tribunal and award dated December 29, 2015 was passed as against the appellant. By such award, the arbitral Tribunal dismissed the claim raised by the appellant.
- 19.** In the arbitration proceedings, the respondent submitted a counter statement of defence. In paragraph 10(h) thereof, the respondent claimed that, the transactions for such period were authorized by

the appellant and that, ECNs were raised and submitted by the respondent upon the appellant during such period.

- 20.** Paragraph 10(h) of the statement of defence proceeds to record that, copies of such ECNs are annexed and marked with Annexure-E. However, on the basis of the records made available to us, Annexure-E does not contain the ECNs for the relevant period.
- 21.** In the arbitration proceeding, the claim of the appellant revolved around transactions taking place in the demat account for the period between February 7, 2014 to November 1, 2014. It is the claim of the appellant that, such transactions were not authorized by the appellant. There is a minutes of meeting dated September 24, 2015 of the first arbitral Tribunal where in the first paragraph, it was initially recorded that, ECNs were produced. The first paragraph was subsequently scored out. Minutes of the meeting dated September 24, 2015, as it stands today, therefore, establishes that ECNs were never produced before the arbitral Tribunal. There is no material to establish that, ECNs were produced in the arbitration proceedings subsequently or before the Court under Section 34 of the Act of 1996. Copies of ECNs were not produced before us also.
- 22.** Stay petition filed before us contains some ECNs which are marked as Annexure-C. Such ECNs, as rightly pointed out by the

appellant, are not for the period from February 7, 2014 to November 1, 2014.

23. Therefore, the ECNs for the disputed period of February 7, 2014 to November 1, 2014 were neither produced before the two arbitral Tribunals nor before the Court under Section 34 of the Act of 1996 and certainly not before us.
24. The first arbitral Tribunal proceeded on the basis of ECNs for the disputed period. The first arbitral Tribunal recorded that ECNs were produced and considered but records establish otherwise. Finding of the first arbitral Tribunal on such score, is perverse. No person with ordinary prudence can arrive at such a finding as recorded by the first arbitral Tribunal.
25. The second arbitral Tribunal passing the award dated May 10, 2016 did not consider the issue of non-production of the ECNs. It proceeded on the basis that, ECNs were produced and considered by the first arbitral Tribunal. Similar is the finding of the Court exercising jurisdiction under Section 34 of the Act of 1996.
26. In **Punjab State Civil Supplies Corporation Limited and Another (Supra)**, it is held that, an appeal under Section 37 of the Act of 1996 is restricted and subject to the same grounds on which an award can be challenged under Section 34 of the Act of 1996. In other words, the powers under Section 37 of the Act of 1996 are not beyond the scope of interference provided under Section 34 of the Act.

- 27.** It is trite law that, in the event an impugned award is established before a Court exercising jurisdiction under Section 34 of the Act of 1996 to be perverse, then the same can be interfered with by such Court.
- 28.** In the facts of the present case, we are of the view that the two arbitral Tribunals as also the Court under Section 34 overlooked the fact that ECNs for the relevant period were never produced for consideration. The awards are therefore, on the basis of no evidence.
- 29.** In such circumstances, we set aside the impugned order dated June 26, 2020.
- 30.** We allow AP/641/2016 and set aside the award dated May 10, 2016 as also the award dated December 29, 2015.
- 31.** APO/8/2021 is disposed of without any order as to costs.

(DEBANGSU BASAK, J.)

- 32.** I agree.

(MD. SHABBAR RASHIDI, J.)