

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

DATE : 01.05.2019

Appeal No. 168 of 2019

Kaynet Capital Ltd.
24/B, Khatau Building,
A. D. Modi Marg, Fort,
Mumbai - 400 001.

.....Appellant

Versus

1. BSE Ltd.
Floor 25, P. J. Towers,
Dalal Street, Mumbai - 400 001.

2. Verona Capital Ltd.
Suite 55, 224 Mittal Court,
'C' Wing, Nariman Point,
Mumbai - 400 021.

..... Respondents

Mr. Gaurav Joshi, Senior Advocate with Mr. Kunal Kataria,
Mr. Digvijay Sarangdhar, Advocates i/b Rashmikant & Partners for
the Appellant.

Mr. Sagar Divekar, Advocate with Mr. Abhimanyu Mhapankar,
Advocate for the Respondent Nos. 1.

Mr. P. R. Ramesh, Advocate with Mr. Akhil Mahesh, Advocate i/b
Noelle-Ann Parr for the Respondent Nos. 2.

CORAM : Justice Tarun Agarwala, Presiding Officer
Dr. C. K. G. Nair, Member
Justice M. T. Joshi, Judicial Member

Per : Justice Tarun Agarwala, Presiding Officer (Oral)

1. Respondent No. 2 applied for arbitration before Bombay Stock Exchange (hereinafter referred to as, “BSE”), Respondent No. 1, in the prescribed form for arbitration of the disputes between respondent No. 2 and the appellant. The statement of claim was forwarded by BSE to the appellant with a request that they should submit the names of the arbitrators in the prescribed form. The appellant, being aggrieved by the initiation of the arbitration proceedings filed Writ Petition No. 104 of 2019 before the Hon’ble Bombay High Court contending that Respondent No. 2 had not complied with the basic requirements / regulations framed by the Respondent No. 1 in filing the arbitration proceedings and, therefore, contended that Respondent No. 1 was required to return the application as incomplete information had been furnished. The said Writ Petition was disposed of on the ground that the appellant had an alternate remedy by raising an objection before the Arbitrator. The order of the Writ Court passed by the Hon’ble Bombay High Court dated February 1, 2019 is extracted hereunder :-

“1. The learned counsel appearing for the petitioners submits that the respondent no. 2 has not complied with the basic requirements/regulations framed by the respondent no. 1 in filing the arbitration proceedings. The learned counsel appearing for the respondent no. 1 submits that in case the basic requirements are not followed by the respondent no. 2, appropriate decision will be taken. The learned counsel placed reliance on the order dated 9/10/2018 passed by the Division Bench of this Court in Writ Petition (L) No. 3473 of 2018.

2. Even if the respondent no. 2 complied with the basic requirements/regulations, the petitioners are still at liberty to raise their objection before the learned Arbitrator.

3. The petitioners, in the facts, have an efficacious alternate remedy. Without expressing any opinion on merits of the matter, we dispose of the writ petition. All issues on merits are kept open.

4. It is clarified that this order will not affect the proceedings pending before the National Company Law Appellate Tribunal (NCLAT).”

2. Based on the aforesaid order of the Hon'ble Bombay High Court, BSE issued an order dated April 5, 2019 directing the appellant to raise its grievances before the Arbitrators. The appellant being aggrieved by the direction of BSE dated April 5, 2019 has filed the present appeal contending that BSE could not have accepted the Arbitration Application of Respondent No. 2 as it was incomplete and was required to be returned mandatorily under Regulation 5.11 of the BSE Ltd. (Capital Market Segment) Regulations.

3. Having heard the learned senior counsel for the appellant, we are of the opinion that the present appeal is patently misconceived. The appellant raised a similar grievance before the Writ Court which was not accepted and it was categorically held by the Writ Court that even if the basic requirements / regulations were not complied by the respondent no. 2, the appellant was at liberty to raise such objection before the learned Arbitrator and that the appellant has an alternate

remedy of raising such grievances before the Arbitrator. Same grievance cannot now be raised again before a different forum, i.e. before this Tribunal.

4. In the light of the aforesaid decision of the Hon'ble Bombay High Court in the matter of the appellant itself, it is no longer open to the appellant to raise the same issue before this Tribunal. It may also be stated here that the role of BSE in such matters is only ministerial and secretarial in facilitating arbitration proceedings between two parties. Regulation 5.11 is apparently procedural in nature.

5. In view of the aforesaid, the appeal is devoid of any merit and is dismissed in limine.

Sd/-
Justice Tarun Agarwala
Presiding Officer

Sd/-
Dr. C. K. G. Nair
Member

Sd/-
Justice M. T. Joshi
Judicial Member

01.05.2019
Prepared & Compared by
PTM