

State Consumer Disputes Redressal Commission
West Bengal

BHABANI BHAVAN (GROUND FLOOR)
31, BELVEDERE ROAD, ALIPORE
KOLKATA – 700 027

S.C. CASE NO. : 48/R/2005

DATED : 24.08.2007

APPELLANTS/COMPLAINANTS : The Director, LKP Securities Ltd.

RESPONDENTS/O.P.S : Mrinal Kanti Bhattacharjee &
Ors.

BEFORE : HONBLE JUSTICE : Sri M. K. Basu, President.

MEMBER : Sri P. K. Chattopadhyay.

MEMBER :

FOR THE PETITIONER / APPELLANT : Mr. A. K. Sil, Advocate.

FOR THE RESPONDENT / O.P.S. : Mr. Krishnendu
Chakraborty, Advocate.

: ORDER :

SRI P. K. CHATTOPADHYAY, MEMBER.

This is a revision application under Section 17 of C. P. Act, 1986 against order dated 01.08.2005 passed by D.C.D.R.F. North 24 Pgs. in D. F. Case No. 189 of 2004, filed by the Director, LKP Securities Ltd. against Mr. Mrinal Kanti Bhattacharjee, Mr. Subhas Chakraborty and The Deputy General manager, Security & Exchange Board of India, Eastern Region.

In the complaint filed by Sri Mrinal Kanti Bhattacharjee in D.C.D.R.F. Case No. 189 of 2004 at Barasat, the Complainant alleged deficiency of service on O.P. No. 1 – LKP Securities Ltd, O.P. No. 2 – Mr. Subhas Chakraborty and O.P. No. 3 – The Deputy General Manager, SEBI wherein his complaint, citing various grounds was for realization of an investment amount to the tune of Rs. 1,10,000/- and for damages of Rs. 1,00,000/- plus interest thereon. Subsequent to filing of W.O. in the Forum O.P. No. 1 there namely LKP Securities Ltd, filed a petition under Section 8 of the Arbitration and Conciliation Act to which

Complainant filed a W.O. and the matter was heard on 06.07.2005 when after hearing both parties the Ld. Forum below, by its order dated 01.08.2005 rejected the said prayer of the O.P. No. 1 (Revisional Applicant here) for referring the matter to Arbitration. This revisional application has been filed challenging the said order following the same illegal and having been passed with material irregularity prejudicing the interest of the Petitioner.

The grounds taken by the Revision Petitioner are as under :

- (i) Section 8 of Arbitration and Conciliation Act, 1996 makes its mandatory for the Forum below to refer the matter to Arbitration so applied for by any of the parties.
- (ii) The Ld. Forum below erred in not appreciating that by entering into share trading business the Complainant in the Forum agreed to abide by the Bye Laws, Rules and Regulations framed by the NAC which are binding on all members and to appropriate consequence. The Ld. Forum below also erred in not taking note that filing copy of purchase/sale note by sub-broker the Complainant admitted the Arbitration Agreement and placed reliance thereon and is, therefore, estopped from quashing the validity of such.
- (iii) The Ld. Forum also did not take note of bylaws of the NAC under Chapter 11 Clause 1 which states as under :

"All claims, differences or disputes between the Trading Members inter se and between Trading members and Constituents arising out of or in relation to dealings, contracts and transactions made subject to Bye laws, Rules and Regulations of the Exchange or with reference to anything incidental thereto or in pursuance thereof or relating to their validity, construction, interpretation, fulfillment or the rights, obligations and liabilities of the parties thereto and including any question of whether such dealings, transactions and contacts have been entered into or not shall be submitted to arbitration in accordance with provisions of these Bye Laws and Regulations".

- (iv) The Ld. Forum below ought to have referred the dispute to the Arbitration when the Complainant himself had filed the certified true copy of the relevant Bye Laws of NAC and thus failed to exercise the jurisdiction vested according to law and acted irregularly and, therefore, the order dated 01.08.2005 passed by D.C.D.R.F. North 24 Pgs in D. F. Case No. 189 of 2004 should be set aside.
- (a) The O.P. No. 1 in this Revisional Application namely Sri Mrinal Kanti Bhattacharjee argued at length stating inter alia that : the O.P. No. 1 – Complainant became a genuine consumer/customer under the Revisional Applicant through transaction between the parties and, therefore, the dispute in the complaint should not be referred to any arbitration.
- (b) The Revisional Applicant could not produce any agreement between the parties wherefrom it can be seen that there was any clause for appointment of Arbitrator regarding dispute between the parties. No such Arbitration Agreement has also been established or proved in the Ld. Forum below.
- (c) Contending that the Ld. Forum below rightly rejected the petition under Section 8 Arbitration and Conciliation Act, 1996 filed by the Revisional Applicant here, the Complainant in the Forum and O.P. here prayed for dismissal of the revisional application.

DISCUSSION :

- (A) In the Ld. Forum below the Complainant namely Sri Mrinal Kanti Bhattacharjee through Annexure A-9 accompanying the complaint filed transaction slips on his alleged purchase of shares, which contain the Arbitration Agreement while the O.P. No. 1 in the Forum namely the Revisional Applicant LKP Securities did neither file the original Arbitration Agreement nor a duly certified copy thereof. The Ld. Forum below, in the context of no original agreement or certified copy thereof having been filed on the said Arbitration Clause, recalled a Supreme Court judgement reported in AIR 1995 which decided that to constitute

an Arbitration Agreement in writing it is not necessary that it could be signed by the parties and it is sufficient if the terms were used to writing and the agreement between the parties thereto is established. Holding that under Section 8/2 of the Arbitration and Conciliation Act, 1996 such application cannot be entertained since original or certified copy of the given agreement was not filed by Revisional Applicant, the Ld. Forum below further held that it is well settled that even if there is any Arbitration Clause the Consumer Forum will have jurisdiction to entertain the case.

(B) Section 8 of the Arbitration and Conciliation Act, 1996 reads as under:

"8. Power upto refer parties to arbitration where there is an arbitration agreement :

(1) A judicial authority before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so applies not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration.

(2) The application referred to in sub-section (1) shall not be entertained unless it is accompanied by the original arbitration agreement or a duly certified copy thereof.

(3) Notwithstanding that an application has been made under sub-section (1) and that the issue is pending before the judicial authority, an arbitration may be commenced or continued and an arbitral award made."

(C) The matter involves consideration of two issues namely (1) whether it is mandatory to refer parties to arbitration where there is an arbitration agreement between the parties. (2) Whether under the provisions of 1996 Act and with reference to (B) above the copy of the Arbitration Agreement or duly certified copy thereof was a must to be produced along with application for referring the matter to the Arbitrator.

- (D) On the point whether referral to Arbitrator is mandatory or otherwise once a party applies for so within time, Section 8(1) of the 1996 Act clearly specifies that it is mandatory. (stress on the words 'shall') In this regard we would refer to judgement in Calcutta High Court in 1998 (2) ARBLR 118 where the Hon'ble High Court held as under :

On the question on (2) of (C) we would refer to a judgement in AIR 2000 P & H – 53 Parampal Singh and Others – Vs. – Punjab State Ware House Corpn., Chandigarh and Others. In this case the Complainant having relied upon this agreement by filing the same in Annexure A-9 accompanying his complaint, the position taken by the Ld. Forum below in rejecting the application for referral to Arbitrator is erroneous and misconceived.

In AIR 1955 SC 812 it was held that "a contract not referred to in this rule or any other rule for the time being in force shall be deemed to mean and include a contract and shall have the same significance as a contract".

- (E) In above view of fact and law we find that the revision application is liable to be allowed and the impugned judgement and order dated 01.08.2005 of the Ld. Forum below is liable to be set aside being bad in law and not sustainable.

ORDER :

The revision petition is allowed on contest without cost and the impugned judgement and order of the Ld. Forum below is set aside.

LCR along with a copy of this judgement be sent down to the Forum below forthwith.

Prasanto Kumar Malhotra
MEMBER

[Signature]
PRESIDENT

Rule 7(X) of WPCPR 1987 read with
Regulation 18(6) of 2003

Free Copy issued on 13-11-09
1) Complainant 2) Opposite Party

Dictated and corrected by me.

Prasanto Kumar Malhotra