

(2012) 02 BOM CK 0024

Bombay High Court

Case No: Arbitration Petition No. 204 of 2010

India Infoline Limited

APPELLANT

Vs

Shyamlal Daulatram Vachhani

RESPONDENT

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**Date of Decision:** Feb. 27, 2012**Acts Referred:**

- Arbitration and Conciliation Act, 1996 - Section 34
- Securities and Exchange Board of India Act, 1992 - Section 11(1)
- Securities Contracts (Regulation) Act, 1956 - Section 10

**Citation:** (2012) 3 ALLMR 206**Hon'ble Judges:** Anoop V. Mohta, J**Bench:** Single Bench

**Advocate:** Ajay Khandhar assisted with Mr. Jayant Gaikwad instructed by M/s. Ajay Khandhar and Co, for the Appellant; Prachi Mhatre instructed by y M/s. M.S. Bodhanwala and Co., for the Respondent

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**Judgement**

Anoop V. Mohta, J.

The Petitioner has invoked Section 34 of the Arbitration and Conciliation Act, 1996 (for short the Arbitration Act, 1996) and thereby challenge is made to the award dated 22 September 2009 passed by the Arbitral Tribunal constituted under the Rules, Bye-laws and Regulations of Bombay Stock Exchange Ltd. (for short, BSE).

2. By the impugned award the learned Arbitral Tribunal rejected the claim of the Petitioner solely on the ground of limitation in view of the then existing provisions i.e. bye-laws 252(2) of the Rules and Regulations of the BSE when the time period was of six months from the date of cause of action. The learned counsel appearing for the Petitioner has pointed out circulars dated 11 August 2010 and 9 February 2011. These circulars are issued in exercise of the powers conferred u/s 11(1) of the Securities and Exchange Board of India Act, 1992 (SEBI Act) read with Section 10 of the Securities Contracts (Regulation) Act, 1956, with a view to protect the interests of

investors in securities and to promote the development of, and to regulate the securities market and come into effect immediately.

3. By this, the SEBI has intended to change the mechanism of settling the dispute instead of six months to three years by extending the provisions of limitation Act 1963 which are available in normal transactions. The relevant clause is as under:-

i. Where three years have not yet elapsed and the parties have not filed for arbitration with the stock exchange, or

ii. where the arbitration application was filed but was rejected solely on the ground of delay in filing within the earlier limitation period of six months; and three years have not yet elapsed.

4. In the present case, the Tribunal has considered, as per the BSE Ledger, the basic date 30 January 2008. Considering the scope and purpose and to give an another opportunity to the Petitioner to submit his case, as it falls within the ambit of this circulars/provisions, I am inclined to grant the same. The impugned award is dated 22 September 2009. The Petitioner has filed this Petition on 23 December 2009. The same is pending till this date. Therefore, taking over all view of the matter and if the provisions of Limitation Act are extended, the learned Arbitral Tribunal has to re-consider this facet by giving the opportunity to both the parties.

5. The learned counsel appearing for the Respondent, however, contended that the BSE Tribunal has no jurisdiction to deal with the subject matter. As I am not deciding any merits of the matter, I am inclined to observe that all the points are kept open for the Respondents also before the Arbitral Tribunal, in fact except the ground of limitation, there is no discussion with regard to the jurisdiction issue.

6. In the result, the award dated 22 September 2009 is quashed and set aside. The matter is remanded back to the Arbitral Tribunal. The Arbitrator to re-consider the matter. All the points are kept open.

7. The Petition is accordingly allowed. There shall be no order as to costs.