

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.19082 of 2023

Usha Rani Mishra

....

Petitioner

Mr. A.K. Panda, Advocate

-versus-

***Kotak Securities Ltd., Mumbai and
others***

....

Opposite Parties

None

CORAM: JUSTICE ARINDAM SINHA

**ORDER
16.08.2023**

**Order
No.**

03.

1. Mr. Panda, learned advocate appears on behalf of petitioner and submits, the arbitration reference is under challenge as it was not duly commenced as provided under section 21 in Arbitration and Conciliation Act, 1996.

2. There was direction for issuance of notice on 11th July, 2023. Notice was duly issued and served. Department has laid track report confirming delivery to opposite party no.1. Said opposite party goes unrepresented.

3. Mr. Panda draws attention to annexure-3 being communication dated 2nd May, 2023 from Officer-in-charge, Arbitration Department of National Stock Exchange (NSE) to his client. Text of the communication is reproduced below.

“Please find enclosed Form I along with relevant documents lodged on 02-MAY-2023 by KOTAK SECURITIES LTD.

You are required to mention in Form II (enclosed) the name of arbitrator/s chosen by you to act as arbitrator in the order of your preference, within 07 days of receipt of this letter.

Further, you are required to submit your defense in Form II with necessary supporting in three sets within 07 days of receipt of this letter. In the event of your failing to submit Form II and defense statement within the prescribed time, the arbitrator will be appointed, and he / she may proceed with the arbitral proceedings and make the award ex-parte.”

4. He submits, his client was persuaded to open a Dematerialisation (DEMAT) account by opposite party no.1. Some transactions were made and his client charged excessive brokerage. His client had complained to the Grievance Redressal Committee (GRC) of NSE. The GRC proceeding resulted in order dated 25th January, 2023 directing refund of Rs.72,360/- to her. On query from Court he submits, the refund has not yet been made. Instead, purported arbitration proceeding initiated against his client by opposite party no.1. On further query from Court Mr. Panda submits, there is no arbitration agreement between his client and opposite party no.1.

5. Perused order dated 25th January, 2023 of GRC. Two observations made therein by the GRC in said order are extracted and reproduced below.

*“I. Post opening of the trading account, the TM should have clarified in detail explaining the applicable charges and terms of operating the trading account. **TM has not produced any proof in the form of welcome letter, e-mail, voice call or any other documents***

substantiating the applicable charges was informed to the complainant TM's contention that such charges are available in online mode and can be accessed by the client does not exonerate the TM from the requirement of a formal verification of KYC, containing the applicable charges.

II. It is observed from the records that Mr. Girija Nandan Parija has given an e-mail from the domain of the TM girija.parija@kotak.com on 15-NOV-2022 at 15:26 attaching a tariff sheet which contains nil brokerage in the F&O, CDS and Co segment. Charges are applicable only in the equity segment for delivery trade. In the instant case, the trade history is limited to 22-SEP-2022 to 04-OCT-2022. This mail of 15-NOV-2022 has no consequence on the complaint per-se but looks like an attempt to pacify the hurt feelings of the complainant."

(emphasis supplied)

6. Court has findings of fact made by the GRC that petitioner opened her DEMAT account through the broker, by communicating her One Time Password (OTP). Subsequent thereto the broker did not make any communication substantiating applicable charges. It was done on 15th November, 2022, post transactions made and complain made of excessive brokerage charged. In the circumstances, there does

not appear to be arbitration agreement entered into before transactions were made in the DEMAT account. That being so, said communication dated 2nd May, 2023 given by the Officer-in-charge, Arbitration Department, even if taken to be made on behalf of opposite party no.1, cannot be seen as a request for reference of dispute in absence of arbitration agreement. In the circumstances, petitioner is entitled to declaration that opposite party no.1 cannot compel reference of disputes he may have with petitioner. As such petitioner has liberty to communicate this order to any arbitrator appointed by opposite party no.1, regarding lack of jurisdiction of such appointed tribunal to enter upon the reference.

7. The writ petition is disposed of.

(Arindam Sinha)
Judge

Jyoti/RKS

Signature Not Verified

Digitally Signed
Signed by: JYOTIPRAVA BHOL
Reason: Authentication
Location: HIGH COURT OF ORISSA
Date: 16-Aug-2023 18:55:38

