

(2012) 02 BOM CK 0057

In the Bombay High Court

Case No : Arbitration Petition No. 566 of 2010

Anand Rathi Share and Stock Brokers Ltd. formerly known as APPELLANT
Navratan Capital and Securities Ltd.

Vs

Devendra Singh Bagga RESPONDENT

Date of Decision : 27-02-2012

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 31(1), 34

Citation : (2012) 4 ALLMR 859

Hon'ble Judges : Anoop V. Mohta, J

Bench : Single Bench

**Advocate : Simil Purohit instructed by M/s. Purohit and Co, for the Appellant;
Jayesh B. Kocheta, for the Respondent**

Judgement

Anoop V. Mohta, J.—The Petitioner, who is a share broker and stock broker and also a member/broker of National Commodities Exchange (for short, "NCE") and Multi Commodities Exchange (for short, "MCE") has challenged award dated 15 October 2009 passed by the sole Arbitrator in the matter of Arbitration under the Bye-laws, Rules and Regulations of the National Stock Exchange of India Limited (for short, "NSE").

2. The Respondent (original Applicant) executed Member-Client Agreement dated 10 May 2006 and thereby appointed the Petitioner (Original Respondent) as his share and stock broker to effect the transactions on the Cash Market Segment, as well as, Futures and Options Segment at NSE. The Respondent has signed various other relevant documents. The transactions on all exchanges were carried on accordingly, since 2006.

3. The Respondent most of the time engaged in speculative transactions and basically operated through the client ID Code. The communications were exchanged on mobiles/telephones also. The Respondent used to collect the contract notes/contract-cum-bills regularly.

4. The Petitioner scored off outstanding position of the Respondent, therefore, the Respondent disputed the transaction through the Petitioner. The Respondent therefore, filed a claim Petition against the Petitioner to recover a sum of Rs. 9,62,995.27 together with interest @ 12% p.a. The Respondent opposed and resisted the same by its reply. The learned Arbitrator has passed the award on 15 October 2009 and accepted the case of the Respondent by overlooking the basic and legal submissions made by the Petitioner.

5. It is necessary to consider, in the present case, the concept of trade, operations, deposit requirements, margin requirements and margin from the constituents. The learned Arbitrator, however, without considering all of the above concepts and requirement and without giving details how amount, as awarded, is calculated and from which accounts, specially when the case of the Petitioner which was submitted with the documents shows that the Respondent had various transactions and the accounts with the Petitioner.

6. The Respondent had also finance agreement/account with one Rathi Global Finance Limited (RGFL) who was not party to the basic agreement between the Petitioner and the Respondent. The transactions and its effects of other stock exchanges, like BSE and with RGFL, how can be adjudicated by the Arbitrator appointed under the bye-laws of the NSE.

7. The consolidated claim so awarded by the Arbitrator, therefore, without considering all these facets including of jurisdiction, is apparently illegal and without jurisdiction. The learned Arbitrator, ought not to have awarded the consolidated amount without giving justification and without referring to details from which and from where the amount as claimed was liable by the Respondent.

8. The Arbitrator has not even considered the counter claim raised by the Petitioner. The learned Arbitrator ought to have considered the provisions of Section 31(1) of the Arbitration and Conciliation Act, 1996 (Arbitration Act) before granting the claim of the Respondent and rejecting the counter claim of the Petitioner. The learned Arbitrator, as noted, rejected the defence so raised by the Petitioner but then without assigning any reasons, passed the Award as if the amount so claimed was admitted by the Petitioner, basically when the basis for such claim itself was missing and/or at least not reflected in the Award.

9. The learned Arbitrator ought to have considered the provisions/bye-laws, the margin requirement for the trade operations which are basically the obligations of the constituent. If there is a constituent's default, as inspite of receipt of contract notes/delivery notes and relevant intimations, he failed to deposit and/or maintain the margin, in such situation only the trading member has power to ask for the balance amount and/or to square off the account. The discretion is always with the trading member based upon the relationship between the parties and commercial exigencies. The long standing relationship and assurance from time to time always play an important role when the trader member continues to do business even on oral instructions or telephonic instructions. The transactions

therefore if carried out though there was no margin and/or margin had fallen and though there was negative balance, it, in no way, can be stated to be in violation of SEBI guidelines. Mere allegations that the complaints were lodged before the SEBI, BSE, NSE on 18.06.2008 that itself, cannot be the reason to grant undetailed sum of Rs. 9,62,995/- with 10% interest. The trading member, continue with the business, without proper margin, if any, but on instructions, he takes the risk but it cannot be stated to be in violation of any bye-laws and/or any SEBI guidelines. The broker is responsible to stock exchange for such money and not the investor or constituent. No such guidelines are placed on record to justify the observation made in para 27 by the Arbitrator.

10. The learned Arbitrator failed to consider that the transactions for and on behalf of the Respondent were through the neat system as per the agreement. The transactions were confirmed by the Respondent from time to time. He also received contract notes and bills regularly. However, the Respondent, disputed the transactions on Future and Option Segment between April 2008 and June 2008, but never objected to the other transactions. There is a material placed on record by the Petitioner to prove that the communications made from time to time by which the Respondent confirmed the transactions executed in his accounts. The learned Arbitrator further wrong in holding that the Petitioner failed to prove that they demanded any amount from the Respondent towards margin after April 2008. All F & O transactions were executed in the Respondent's accounts. The other client's letters supporting the Respondent's case cannot justify and/or deny the facts if it was based upon the inter-se communications between the parties. It cannot be relied upon to state that the Respondent only traded on the Cash market segment and never visited the Petitioner's Branch office. There were no instructions to do the business ought not to have been accepted by the Arbitrator, on the basis of such third person's letters. In such transactions, the communications between the parties bind them. The third person who never had occasion to listen to the oral communications cannot deny and/or support what oral communications, the parties had, before and/or after entering into the transactions. The learned Arbitrator overlooked the fact that the Respondent had carried on trades even during the disputed period at the NSE and on Cash segment. The certain cheques were also paid by the Respondents after considering the ledger position.

11. It is also relevant to note that by letter dated 18 June 2008 to the Investor's Grievance Redressal Committee (IGRC) the amount of Rs. 2,50,000/- was claimed, but the Arbitrator has accepted the case of the Respondent and awarded the sum of Rs. 9,62,995/-.

12. The learned Arbitrator ought to have considered as the Respondent was holding outstanding position on Future and option Segment prior to 16 June 2008 and was required to pay a sum of Rs. 22,525/- which was squared off on 16 June 2008. As the Respondent failed to comply with the margin obligations, the Respondent's outstanding position with respect to Federal Bank was squared

off on 24 June 2008. Therefore, considering the relation between the parties and to give sufficient opportunity, the petitioner merely delayed to take action of squaring off that itself cannot be the reason to hold that the Respondent can wiped off its own liability to pay the due amount. The grant of consolidated amount by holding this delayed action against the Petitioner is nothing but granting premium to the Respondents own wrong, specifically when the Respondent had three separate account with the Petitioner i.e., NSE Cash Market Segment, NSE Future and Option Segment and BSE Cash Market Segment.

13. It is settled that the Court u/s 34 of the Arbitration Act, if case is made out of illegality, perversity, can set aside, even the reasoned award. Taking overall view of the matter as the Award is not based upon the provisions of law and the record and it is illegal, I am inclined to quash and set aside the same.

14. Resultantly, the following order:-

- i. The impugned Award dated 15 October 2009 is quashed and set aside.
- ii. The matter is remanded.
- iii. The Arbitrator to reconsider all aspects, by giving opportunities to the parties.
- iv. All points are kept open.
- v. The Arbitration Petition is accordingly allowed in the above terms.
- vi. There shall be no order as to costs.