

For M.D.C.C. BANK LTD.

Fort Branch
The Mumbai District Central
Co-operative Bank Ltd., Fort Branch,
"Mumbai Bank Bhavan"
207, Dr D. N. Road, Fort-Mumbai-400001
D-5/STP(V)/C.R.1029/03/05/1197-1200
Mr. S. A. Satam
Authorised Signatory



A.M. NO. ARB/MUM-01/2019

(In the matter of Arbitration under the Bye-laws of the Metropolitan Stock
Exchange of India Ltd.)

Between

Mr. Prafull Shantilal Barodia
through Mr. Sohesh Shah, Power of
Attorney holder, Add : A-4, Shakan
57, Jai Hind CHS Ltd., 10th Road
JVPD, Vile Parle (West), Mumbai 400 049
Mobile : 98200 99842

...Applicant

Versus

Religare Broking Limited
2nd Floor, Rajlok Building
24 Nehru Place
New Delhi 110 019

...Respondent No. 1

Mr. Anil Maniar
C/401, Rahul, Opp. Shoppers Stop
S. V. Road, Andheri (West)
Mumbai 400 058

...Respondent No. 2

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BEFORE THE ARBITRAL TRIBUNAL COMPRISING OF :

1. Mr. Ashwin Ankhad
2. Mr. D. P. Roy
3. Mr. Rajkumar S. Adukia

BACKGROUND

The present reference being Ref. No. ARB/MUM/01-2019 has been entrusted to us by the Metropolitan Stock Exchange of India Ltd. ("MSE") to consider and adjudicate the dispute between the Applicant and the Respondents mentioned above and to deliver the Arbitral Award.

STATUS OF THE PARTIES




From the Arbitration Application filed by the Applicant, we note that the Applicant Mr. Prafull Barodia is an NRI and a Constituent of the Respondent No.1 who is a SEBI registered Broker at MSE. The Respondent No. 2 is the Introducer.

BINDING NATURE OF THE RULES

The Applicant and the Respondents are bound by the provisions of the Rules, Bye-laws and Regulations of MSE, apart from laws such as Limitation Act, Indian Contract Act and the Arbitration and Conciliation Act 1996 which are applicable in the present case.

PROCEEDING

Proceedings in the present case have been initiated by the Applicant by filing Form No. 1 (Arbitration Application) on 22nd August 2019 claiming from the Respondents a sum of Rs. 33,03,011/- plus interest and further praying that certain trades executed by the Respondent No. 1 were unauthorised. To the Statement of Claim, Respondent No. 1 filed a response dated 11th October 2019 denying the claim to which a Rejoinder was filed by the Applicant on 19th November 2019. The Respondent No. 1 also filed an Application u/s. 16 of the



Arbitration & Conciliation Act 1996 ("the Act") challenging the jurisdiction of the arbitral Tribunal. The parties were heard on 21st November 2019.

STATEMENT OF CASE OF THE APPLICANT

1. The Applicant has stated that he had opened in January 2010 a Trading and a D'mat Account with the Respondent No. 1 through Respondent No. 2 and had transferred certain shares in the said account. The Applicant claims to be an NRI and not well-versed with the laws in India and therefore had relied upon the Respondent No. 2 Mr. Anil Maniar during the trade period between February 2011 and April 2015. It is the case of the Applicant that the Respondent had made various transactions in the said Account without any pre-trade confirmation from him.
2. The Applicant has also claimed that despite continuous debit balance in his account on various dates, margins were not called for in violation of the Exchange Regulations.
3. The Applicant has further claimed that to his surprise a Show Cause Notice was received by him from Income-tax authorities in December 2018 stating huge activity running into several crores of rupees in his account was detected and on receipt of such notice in December 2018, he came to know about the unauthorised trades and thereafter on investigation he has filed the present reference.
4. The Applicant has also stated that Respondent No. 2, apparently acting as an agent of Respondent No. 1 sought to reimburse the liability of Rs. 1,20,00,000 incurred in the account of Applicant by giving him 2 cheques in February 2019 which were dishonoured. In these circumstances the Applicant has stated that the cause of action in the present matter arose in December 2018 when he came to know about the said transactions done in his account and therefore his claim is within limitation under Article 91(a) of the Schedule to the Limitation Act.

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5. In the above circumstances the Applicant has prayed for an Award for Rs.33,03,111/- plus interest and for reversal of the trades in his account. In the Rejoinder the Applicant has only prayed for reversal of all trades in MSE claiming them to be unauthorised.

CASE OF THE RESPONDENT

1. The Respondent No. 1 has filed both the Applications u/s. 16 of the Arbitration Act as well as a reply on merits denying the claim of the Applicant.
2. In the Application it is stated by the Respondent No. 1 that as far as MSE is concerned, the Claimant has incurred trading loss of only Rs. 12,29,364/- in Currency Derivative trades executed on MSE. Therefore, the claim of Rs.33,00,000/- is not tenable and even trades in currency segment were authorised trades, wherein loss of Rs.12,29,364/- was incurred. The Respondent No. 1 also claimed that since the claim of the Applicant fell under different Exchanges for different amounts, the present claim for Rs.33,00,000/- be dismissed.
3. The Respondent No. 1 has also filed its response on merit as far as Currency Derivative loss of Rs.12,29,364/- was incurred on MSE. The Respondent has also prayed that the claim made by the Applicant is barred by limitation apart from the fact that all these trades were done as per directions of the Applicant who had never raised any dispute.
4. As for the commencement of cause of action is concerned, which is claimed to be December 2018 as per the Applicant, the Respondent has stated that even in February 2015 the Applicant had addressed emails to Respondent No. 1 on receipt of a Notice from the Income-tax Department and the same was attended in March 2015. The same issue was once again raised in December 2018. The Respondent No. 1 relied upon various emails exchanged between the parties in February / March 2015.

5. In the circumstances it is pleaded by the Respondent No. 1 that the cause of action arose in March 2015 and not in December 2018 and considering that the claim made in August 2019 before the present Arbitral Tribunal is barred by limitation.

REASONING AND CONCLUSIONS

1. After going through the records and considering the arguments, prima facie we are of the opinion that the claim made by the Applicant, for the currency derivative transactions done in 2010-11 and 2011-12 is barred by limitation for the following reasons :
- i) The trades were admittedly booked between February 2011 and December 2011. The same pertains to the Financial Years 2010-11 and 2011-12.
 - ii) By e-mail dated 21st February 2015 the Applicant informed the Respondent No. 1 that he had received an Income-tax notice for previous 5 years audit for stock trading and commodity trading and sought information from the Respondent No. 1 for the transactions done in his account. It was alleged in the said notice that Respondent No. 2 took advantage of the ignorance of the Applicant (being NRI) and did unauthorised trades. To this email, a reply was given in February 2015 and again in March 2015. The matter was taken up with local branch of the Respondent and the representative of the Respondent had explained the matter in detail to the Applicant.
 - iii) In view of the above, the Applicant became aware in February / March 2015 about the trades having been executed in his account. We do not accept the contention of the Applicant that he came to know about the unauthorised trades only in the year 2018 and therefore the claim would be within the limitation. In



our opinion, the date of knowledge was not in 2018 but in 2015 when the first Income-tax notice was received by the Applicant.

- iv) In the above connection we place reliance on the following Bye-law of the MSE making it clear that the provisions of the Limitation Act apply to the MSE Regulations /Arbitrations.

Bye-law (4) of Chapter XIV of MSE provides that the limitation period for filing an arbitration application shall be governed by the provisions of The Limitation Act 1963.

- v) As per Section 43 of the Arbitration & Conciliation Act 1996, the Limitation Act 1963 is made applicable to arbitrations. As per entry 55/113/137 of the Schedule to Limitation Act 1963, the limitation period is described as 3 years from the date of the knowledge. In the present case admittedly, the Applicant had the knowledge of the trades (whether authorised or unauthorised) prior to 2015. The invocation of arbitration in 2019 is therefore barred by limitation.
- vi) The claim is also hit by Sec. 3 of the Limitation Act 1963 which provides as under :

"Section 3 – Bar of Limitation –

(1) Subject to the provisions contained in Sections 4 to 24 (inclusive), every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed although limitation has not been set up as defence."

2. The argument of the Applicant that the payment made by the Respondent No. 2 should be construed as the confirmation made by Respondent No. 1 as the Respondent No. 2 had acted as an agent of Respondent No. 1 and therefore the limitation period should get extended cannot be accepted as no proof or evidence has been put up to

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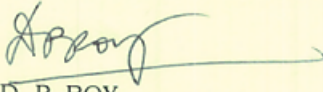
show that the Respondent No. 2 had in fact acted as the agent of Respondent No. 1 in this matter. At the most Respondent No. 2 acted as an introducer or a facilitator between the parties. Therefore also, we cannot consider the claim having been filed in time.

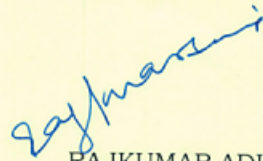
3. In view of the above, it is not necessary for us to deal with the claim on merit as it is clearly barred by limitation.

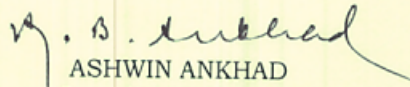
AWARD

1. We therefore decline to accept the claim of the Applicant. The Application stands rejected.
2. No order as to costs.

Mumbai dated th 20 December 2019.


D. P. ROY
Co-Arbitrator


RAJKUMAR ADUKIA
Co-Arbitrator


ASHWIN ANKHAD
Presiding Arbitrator