



महाराष्ट्र MAHARASHTRA

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In the matter of Arbitration under the Bye-law, Rules and Regulations of the
Metropolitan Stock Exchange of India Limited (MSE)

Appellate Arbitration Matter No.: ARB/MUM/APPELLATE-01/2020

प्रधान मुद्रांक कार्यालय, मुंबई
प.स. नि. क. १००००५४
10 NOV 2020
सक्षम अधिकारी

श्री. दि. क. गवई

Before The Arbitral Tribunal Comprising Of:

- | | |
|----------------------------------|----------------------|
| 1. Mr. S C Gupta | Presiding Arbitrator |
| 2. Mr. Debasish Rabindra Mallick | Co-Arbitrator |
| 3. Mr. Paresh Manilal Joshi | Co-Arbitrator |

BETWEEN

Mr. Praful Shantilal Barodia

A-4, Shakan, 57,
Jai Hind CHS Ltd., 10th Road,
JVPD, Vile Parle (West)
Mumbai

.... Appellant (Original Applicant)

AND

Religare Broking Limited

2nd Floor, Rajlok Building,
24, Nehru Place,
New Delhi-110019

.... Respondent No-1 (Original Respondent No.1)

Mr. Anil Maniar

C/401, Rahul, Opposite Shopper Stop,
S V Road, Andheri (West),
Mumbai-400058

.... Respondent No-2 (Original Respondent No.2)

Appearances:

For Appellant:

Ms. Prachi Pandya Advocate along with the Appellant in person.

For Respondent No 1:

Mr. Sachin Mittal Advocate along with Mr. Mayank Bhatia VP-Legal of the Respondent.

Appellate Award

1. The Appellant, Mr. Prafulla Barodia has filed the present Appeal dated 16th January, 2020 with MSE against the Award dated 20th December, 2019 (hereinafter referred to as "impugned Award") passed by the Lower Tribunal rejecting the claim of Rs.33, 03,011/- plus interest of the Original Applicant. The appeal was entrusted to this Appellate panel for adjudication on 5th February, 2020. The Appellate Panel had originally fixed its hearing on 4th March, 2020 which, was at the Instance of the Respondent rescheduled for hearing on 24th March, 2020. However, due to Covid pandemic, the hearing was adjourned indefinitely. After SEBI granted general exemption from conducting physical meetings till the normalization of things, with the consent of both the parties, the hearing was held on 22nd September, 2020 through video conferencing. Ms. Prachi Pandya Advocate appeared for the Appellant whereas the Respondent No.1 was represented by Mr. Sachin Mittal Advocate along with Mr. Mayank Bhatia it's VP-Legal. After hearing the arguments of both the parties at length, the reference was closed for award in due course. Both the parties also agreed to submit the brief written arguments within ten days of hearing which were received from both the parties.

Proceedings before the Lower Tribunal

2. The proceeding before the Lower Tribunal were initiated by the Applicant (the Appellant herein) on 22nd August 2019 claiming a sum of Rs.33,03,011/- plus interest from the Respondent No.1 and a further prayer that certain trades executed in his account by the Respondent No.1 were unauthorized. The Applicant stated that he had opened a trading account and a Demat account with the Respondent No.1 through Respondent No.2 in January, 2010 and had transferred certain shares in the said account. The Applicant claimed to be an NRI and not well versed with the laws of India. The Applicant stated that he had relied on 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 No.1 had executed various trades in the said account without any pre trade confirmation from him. The Applicant claimed that he had received a show cause notice from income tax department in December, 2018 stating that huge trading activity running into several crore of rupees was detected in his account. On receipt of the income tax notice, he came to know about the unauthorized trades. The Applicant further stated that the Respondent No.2, apparently acting as the agent of the Respondent No.1 sought to reimburse the liability of Rs.1,20,00,000/- incurred in the Applicant's account by giving two cheque in February, 2019 which were dishonored. In the circumstances, the Applicant claimed that the cause of action arose in December, 2018 when he came to know about the unauthorized trading done in his account. While, in the Statement of the Case, the Applicant had claimed for an award of Rs. 33,03,111/- plus interest, in the Rejoinder, the Applicant only prayed for reversal of all trades on the floor of MSE on the ground that the same were unauthorized.

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3. The Respondent No.1, in its Statement of Defence, stated that the Applicant's arbitral claim was hopelessly barred by limitation. The Respondent further stated that the Applicant was fully aware about the trades in his account as all the trades were done as per his desire/direction and he had never raised any objection or dispute about the same which proved that the trades in his account were not carried out unauthorized. The Respondent No.1 also stated that the Applicant had suppressed the material fact from the Lower Tribunal by not disclosing the fact that he had in February, 2015 addressed an email to the Respondent No.1 wherein the Applicant had stated that he was in receipt of an notice from the Income Tax Department through which he became aware about the trades and the losses in his account. The Respondent No.1 also denied the averment made by the Applicant that the Respondent No.2 was an employee/ agent/ sub broker of the Respondent No.1 and stated that it did not permit him to make any representation to the Applicant.

Award of the Lower Tribunal

4. By an Award dated 20th December 2019, the Lower Tribunal held that the claim made by the Applicant for the transactions done in 2010-11 and 2011-12 was barred by limitation. The Lower Tribunal referred to the email dated 21st February, 2015 by the Applicant to the Respondent No.1 wherein he had informed the Respondent No.1 that he had received an Income Tax notice for the last five years audit for stock and commodity trading and had sought information from it for the transactions done in his account. It was stated in the said email that the Respondent had taken advantage of the ignorance of the Applicant being an NRI and did unauthorized trades in his account. The Respondent No.1 had given a reply in February, 2015 and again in March, 2015. The Applicant had taken up the matter with the local branch of the Respondent No.1 and the representatives of the Respondent had explained the matter in detail to the Applicant. In view of the email dated 21st February, 2015 by the Applicant to the Respondent No.1 and the explanations given by the officials of the Respondent No.1, the Lower Tribunal held that the Applicant had become aware about the trades having been executed in his trading account in February/ March 2015. It, therefore, refused to accept the contention of the Applicant that he had come to know about the unauthorized trades in his account only in 2018 on receipt of Income Tax notice and therefore his claim would be within the period of limitation. The Lower Tribunal stated that in their opinion, the date of knowledge of the Applicant was not in 2018 but in 2015 when the first Income Tax notice was received by the Applicant. Since the prescribed period of limitation is three years from date of knowledge and the Applicant admittedly had knowledge of the trades (whether authorized or unauthorized) in 2015, the invocation of arbitration in 2019 was barred by limitation. The Lower Tribunal also rejected the argument of the Applicant that the payment made by the Respondent No.2 should be construed as the confirmation made by the Respondent No.1 as the Respondent No.2 had acted as the agent of the Respondent No.1 and thereby the period should get extended. According to the Lower Tribunal, no proof or evidence had been put up to show that the Respondent No.2 had in fact acted as the agent of the Respondent No.1 in the matter. The Lower Tribunal observed that the Respondent No.2 at the most acted as an introducer or facilitator between the parties. Therefore, the Lower Tribunal did not consider the claim by the Applicant having been filed in time and declined to accept the arbitral claim made by the Applicant.

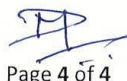
The Appeal

5. Aggrieved by the Award dated 20th December 2019 of the Lower Tribunal, the Appellant, Mr. Prafulla Shantilal Barodia has preferred the present appeal dated


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16th January, 2020 before this tribunal. The Appellant has impugned the Award dated 20th December, 2019 by which the Lower Tribunal had declined the claim of the Appellant and had rejected his application. The Appellant, in his Memo of Appeal dated 16th January, 2020 has stated that the impugned award is bad in law as the Lower Tribunal erroneously concluded that the trades executed in financial years 2010-11 and 2011-12 were barred by limitation. According to the Appellant, the Lower Tribunal wrongly concluded that the Appellant's email dated 21st February, 2015 amounted to knowledge of wrongdoings and disposal of Appellant's shares by the Respondents. The Appellant stated that the Lower Tribunal erred in concluding that the date of knowledge was in 2015 and not in 2018 and failed to consider the pleading of the Appellant that the date of knowledge could only be 2018 as it was only on receipt of the Income Tax notice did the Appellant became fully aware of the huge unauthorized trading done in his account. The Lower Tribunal failed to observe that the Appellant came to know that the Respondent had traded unauthorized in his account only on receipt of the Income Tax notice dated 18th December, 2018 and therefore the dispute fell within the period of limitation. The Appellant has stated that the Lower Tribunal ignored the established principle of law that mere suspicion or whisper of knowledge is not enough for the period of limitation to start. The Appellant also submitted that the Lower Tribunal erred in not considering that the Respondent No.2 was acting as the agent of the Respondent No.1 as also as the sub- broker of the Respondent No.1 and on that ground, the impugned Award was liable to be set aside. The Appellant has referred to Section 25(3) of the Indian Contract Act and has stated that the Lower Tribunal ought to have considered the declaration dated 10th January, 2019 by the Respondent No.2 wherein he had held himself to be an employee/agent of Respondent No.1 and whereby he had voluntarily accepted his liability of Rs.1,20,00,000/- towards the Appellant. The Appellant has stated that there was an acknowledgement of liability and thus a fresh period of limitation had started from that date when the acknowledgement was so signed. In any case, the Appellant has submitted that without admitting that the arbitral reference was not filed with in limitation, the Lower Tribunal ought to have liberal approach and should have decided on merit of the case as the Appellant had provided sufficient cause. In the premises, the Appellant has prayed that impugned Award of the Lower Tribunal be set aside, a declaration that all the trades executed in his account as unauthorized and a direction to the Respondents to pay to the Appellant a sum of Rs.33,03,011/- as also the costs and expenses.

6. The Respondent No.1, in its Statement of Defense dated 26th February, 2020, has stated that the present appeal filed by the Appellant is untenable and without any substance and deserves to be dismissed. The Respondent has requested that the Award passed by the Lower Tribunal be upheld and that the appeal filed by the Appellant be rejected. According to the Respondent, the Award passed by the Lower Tribunal is well reasoned and in accordance with the well-established and settled principles of law. It has submitted that it had, with the help of documentary evidence such as e-log, physical dispatch proof and SMS log proved that the Appellant was well aware about all the trades in his account when the same were being executed and that he never raised any objection which proved that the transactions in his account were not unauthorized. It was further stated by the Respondent that the Appellant had malafidely suppressed a material fact from the Arbitrators by not disclosing that he had February, 2015 also addressed an email to the Respondent No.1 wherein the Appellant had stated that he was in receipt of Income Tax notice through which he had become aware of the transactions in his account. The Respondent has stated that Mr. Anil Maniar, the Respondent No.2 was not its employee /agent/ sub-broker and there was no occasion/ justification for the Appellant to believe upon any alleged assurances from the Respondent No.2 (if any such assurances were ever given) when the Appellant had been receiving all information pertaining to his account through emails, SMSs and physical mode from the Respondent No.1 itself and when the Appellant had himself admittedly became aware about transactions and losses in


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his account through previous Income Tax notices mentioned in the Appellant's email of February, 2015. The Respondent has submitted that the Appellant's claim was hopelessly barred by limitation whether the limitation was counted from the date of the last trade (28th January, 2015) or from the Appellant's email of February, 2015 where in the Appellant had admitted knowledge of transactions and losses in his account through earlier Income Tax notice. The Respondent submitted that if the Appellant had no intention to trade in the securities market, he would not have executed POA nor opened the trading account with the Respondent. The Respondent stated that all agreements/account opening documents were executed between it and the Appellant and Mr. Anil Maniar was totally an outsider and beyond the privacy of contract between the Appellant and the Respondent No.1. The Respondent has stated that the Appellant failed to prove that it ever represented Mr. Anil Maniar as its employee/agent/sub-broker. The Appellant also failed to prove that the alleged affidavit/declaration executed by Mr. Anil Maniar was with the knowledge and authority of the Respondent No.1. It stated that facts and circumstances prove that there was some mutual private understanding between the Appellant and Mr. Anil Maniar. The Respondent has stated that Section 25 of the Indian Contract Act is not applicable and is irrelevant in the present case as it merely furnishes a fresh cause of action but does not stay the limitation which has expired. It is further stated that there should be a promise to pay a time barred debt. There was nothing in the affidavit of Mr. Anil Maniar which indicated that any debt was due from either of the Respondents. There was nothing on record to prove that Mr. Anil Maniar was authorized to make the alleged promise. Further, Mr. Anil Maniar was never an employee or agent of the Respondent No.1. The Appellant has also not said anything as to what action was taken by him against the Respondent No.2 for his wrong doings and for dishonor of the two cheques for 1.20 crores allegedly given to compensate the Appellant. The Respondent stated that Sections 17 and 18 of the Limitation Act do not save the Appellant's claim from being barred by limitation. As regards the Appellant's submission regarding condonation of delay, the Respondent has stated that Section 5 of the Limitation Act applies to the applications and appeals. The delay in filing of suit or arbitral claim cannot be condoned under Section 5 of the Limitation Act. The original arbitral reference was not made within the period of limitation which in any case expired in 2018. As regards Section 238 of the Indian Contract Act, there existed no principal-agent relationship between the Respondent No.1 and Mr. Anil Maniar. In the premises, the Respondent has submitted that the appellant's prayers deserve to be rejected and that the impugned Award of the Lower Tribunal be affirmed.

7. The Respondent No.2 did not appear either in person or through an authorized representative and also did not file any reply either.

The Appellate Award


8. We have carefully gone through the evidence on record and also the oral submissions made by both the parties. The Lower Tribunal had declined to accept the claim of the Appellant on the ground that his claim was barred by limitation. Ongoing through the evidence on record, it is clear to us that the Appellant had become fully aware of all the trades in his account in February-March, 2015 when he received a notice from the Income Tax Department. This is also clear from the email dated 21st February, 2015 wherein the Appellant had categorically stated that he had received an Income tax notice for audit of stock and commodities trading for the last five years which had been done in his account without any one calling him. He had further stated that it was 100% fraud and that he would be hiring lawyer to investigate this. We are, therefore, unable to accept the submission made by the Appellant that he came to know about the unauthorized trades in his account only in 2018 when he received another notice from the Income tax department. We fully agree with the finding of the Lower Tribunal that


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the date of knowledge of the Appellant was not in 2018 but in 2015 when he had received first Income Tax notice. Therefore, as the arbitration claim was filed more than three years after the date of his knowledge, the claim was clearly barred by limitation.

9. As regards the allegation by the Appellant that the Respondent No.2 Mr. Anil Maniar was acting as the employee/agent /sub broker of the Respondent No.1, it was the obligation of the Appellant to discharge this burden to prove his averment which he failed to discharge. The Client Referral Agreement, on which the Appellant has placed heavy reliance, does not, by any stretch of imagination, make the Respondent No.2 either a sub-broker or an employee of the Respondent No.1. As regards the reliance of the Appellant on Section 25 (3) of the Indian Contract Act, which provides that a promise in writing to pay a time-barred debt, in our opinion, the same is not tenable as it merely gives a fresh cause of action for claim against the promisor but does not save the limitation which has already expired? We do not find any infirmity in the Award date 20th December, 2019 of the Lower Tribunal and without any hesitation uphold the same.
10. Even though the Lower Tribunal did not record any opinion on merits, after going through the records of the case, we observe that the Appellant had been receiving e mails / ECNs and other account related documents from time to time from the Respondent No.1. This is evident from emails and SMS log annexed to the reply filed by the Respondent, despite this, the fact that the Appellant never raised any objection or considered it necessary or useful to take any action in regard to the trades in his account shows that even in 2018, the Appellant had accepted all the trades in his account as authorized.
11. In view of what is stated above, we do not find any merit in the appeal dated 16th January, 2020 preferred by the Appellant and dismiss the same and pass the following Appellate Award.
- The appeal dated 16th January, 2020 filed by the Appellant is dismissed and the Award dated 20th December, 2019 passed by the Lower Tribunal is affirmed.
 - There is no order as to the costs.
 - The Award is signed and issued in three originals, one for each of the parties and one for the record of the Metropolitan Stock Exchange of India Limited (MSE).


Mr. Debasish Rabindra Mallick
Co-Arbitrator


Mr. Paresh Manilal Joshi
Co-Arbitrator


Mr. S C Gupta
Presiding Arbitrator

Place: Mumbai, Dated _____ November, 2020


3rd December, 2020