



महाराष्ट्र MAHARASHTRA

2020

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प्रधान मुद्रांक कार्यालय, मुंबई
प.मु.लि. क्र. 1000099
- 6 OCT 2020
सक्षम अधिकारी

In the Matter of Arbitration appeal under Bye-laws, Rules and Regulations of the
Metropolitan Stock Exchange of India Ltd. (MSE)

Appellate Arbitration Matter No.: APP/ARB/ MUM/ 02/2020

Before The Appellate Panel Of Arbitrators Comprising:

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

BETWEEN

Mrs. Purnima Prafull Barodia

A-4, Shakan , 57
Jai Hind CHS Ltd, 10th Road,
JVPD, Vile Parle (West)
Mumbai-400049

...Appellant (Original Applicant)

AND

Religare Broking Limited

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

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

[Handwritten signatures]
Paresh M. Joshi

Annexure-II

- 9 OCT 2020

१. मुद्रांक विक्री नोंद वही अनु. क्रमांक-1/2

AGREEMENT 013497

२. दस्तावेज प्रकार
३. दस्त नोंदणी करणार आहेत का ?
४. मिळकतीचे थोडक्यात वर्णन-
५. मुद्रांक विकत घेणाऱ्याचे नांव व सही
६. हस्ते असल्यास त्यांचे नांव, पत्ता व सही
७. दुसऱ्या पक्षकाराचे नांव
८. मुद्रांक विकत घेणाऱ्याचे नांव व सही



Rumina V/S Beligore

१९ ऑक्टोबर २०२०
तसेच मुद्रांक विक्री नोंद वही नंबर १/२
परवाना क्रमांक १/२
मुद्रांक विक्री नोंद वही नंबर १/२
श्री. १२, बंधुवर्मा रोड, बंधुवर्मा रोड, बंधुवर्मा रोड, बंधुवर्मा रोड
(शासन आदेशानुसार)
क. खरेदी केला आहे
ग. विक्री केला आहे

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, Mrs. Purnima 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. 92,26,239.60/- 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 and 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 with in 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 92,26,239.60/- plus interest from the Respondent No.1 and a further prayer that certain trades executed in her account by the Respondent No.1 were unauthorized. The Applicant stated that she 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 she 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 her, The Applicant claimed that she had received a show cause notice from Income Tax Department in December, 2018 stating that huge trading activity running into several cores of rupees was detected in her account. On receipt of the income tax notice, she 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 cheques in February, 2019 which were dishonored. In the circumstances, the Applicant claimed that the cause of action arose in December, 2018 when she came to know about the unauthorized trading done in her account. While, in the Statement of the Case, the Applicant had claimed for an award of Rs 92,26,23.60/- 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.







3. The Respondent No.1, in its Statement of Defense, stated that the Applicant's arbitral claim made in August, 2019 was barred by limitation. The Respondent further stated that the Applicant was fully aware about the trades in her account as all the trades were done as per her desire /direction and she had never raised any objection or dispute about the same which proved that the trades in her 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 she had in February, 2015 addressed an email to the Respondent No.1 wherein the Applicant had stated that she was in receipt of a notice from the Income Tax department through which she became aware about the trades and the losses in her 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 her to make any such 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 were barred by limitation. The Lower Tribunal referred to the email dated 21th February, 2015 by the Applicant to the Respondent No.1 wherein she had informed the Respondent No.1 that she 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 her 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 her account. The Respondent No.1 had given a reply in February, 2015 and again in March, 2015. The Applicant had taken 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 21th 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 her trading account. The Lower Tribunal, therefore, refused to accept the contention of the Applicant that she came to know about the unauthorized trades in her account only in 2018 on receipt of Income Tax notice and held that her claim was barred by 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 had acted as the agent of the Respondent No.1 and thereby the period should get extended, As no proof or evidence had been led by the Applicant to show that the Respondent No.2 had in fact acted as the agent of the Respondent No.1, The Lower Tribunal held that the Respondent No.2 at the most had 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 her.

The Appeal

5. Aggrieved by the Award dated 20th December, 2019 of the Lower Tribunal, Mrs. Purnima Praful Barodia has preferred the present appeal dated 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 her application. The Appellant, in her Memo of Appeal dated 16th January, 2020 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 that the Appellant became fully aware of the huge unauthorized trading done in her account. The Lower Tribunal failed to observe that the Appellant came to know that the Respondent had traded unauthorized in her 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 of 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 stated that even without admitting that the arbitral reference was not filed within limitation, the Lower Tribunal ought to have taken a liberal approach and should have decided on merit of the case as the Appellant had shown sufficient cause. In the premises, the Appellant has prayed that the Award dated 20th December, 2019 of the Lower Tribunal be set aside, and a declaration that all the trades executed in her account as unauthorized and a direction to the Respondents to pay to the Appellant a sum of Rs 92,26,239.60/- 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 her account when the same were being executed and that she never raised any objection which proved that the transactions in her 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 she had in February, 2015, also addressed an email to the Respondent No.1 wherein the Appellant had stated that she was in receipt of Income Tax notice through which she had become aware of the transactions in her 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 her account through emails, SMS and physical mode from the Respondent No 1 itself and when the Appellant had herself admittedly become aware about the transactions and losses in her account through previous Income Tax notice 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 her account through earlier Income Tax notice. The Respondent submitted that if the Appellant had no intention to trade in the securities market, she would not have executed POA nor opened the trading account with the Respondent. The Respondent stated that all

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agreements /account opening documents were executed between itself and the Appellant. Mr. Anil Maniar was totally an outsider and beyond the privity 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 were with the knowledge and authority. The Respondent No.1 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 had already 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 her against the Respondent No.2 for his wrong doings and for dishonor of the two cheques for 1.20 crore 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 appeal deserves to be dismissed.

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 her account in February-March, 2015 after she had received a notice from the Income Tax Department. This is clear from the email dated 21st February, 2015 wherein the Appellant had categorically stated that she had received an Income tax notice for audit of stock and commodities trading for the last five years which had been done in her account without any one calling her. She had further stated that it was 100% fraud and that she would be hiring lawyer to investigate this. We are, therefore, unable to accept the submission made by the Appellant that she came to know about the unauthorized trades in her account only in 2018 when she received another notice from the Income tax department. We fully agree with the finding of the Lower Tribunal that the date of knowledge of the Appellant was not in 2018 but in 2015 when she had received first Income Tax notice. Therefore, as the arbitration claim was filed more than three years after the date of her knowledge i.e. in March, 2015, 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 the burden to prove the averment in which she failed. 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 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 a the limitation which has already expired. We do not find any infirmity in the Award date 20th December, 2019 of the Lower Tribunal and do not have any hesitation in upholding the same.


10. Even though the Lower Tribunal did not record any opinion on the merit of the case, 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 her account shows that up to 2018, the Appellant had accepted all the trades in her 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

 30th December, 