<u>IN THE HIGH COURT OF JUDICATURE AT BOMBAY</u>

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO. 491 OF 2012

Emkay Global Financial Services Ltd. ….. Petitioner

VERSUS

Chetan Rajnikant Shah ….. Respondent

Mr.Dinesh Tiwari, i/b. Dinesh Tiwari & Associates for the Petitioner.

Ms.Prachi Pandya for the Respondent.

CORAM : <u>R.D. DHANUKA, J.</u>

DATED : 27th JANUARY, 2015

<u>P.C</u>.

By this petition filed under section 34 of the Arbitration and Conciliation Act, 1996 the petitioner has impugned the arbitral award allowing the counter claim made by the respondent. The petitioner has also impugned the order passed by the arbitral appellate tribunal dated 9th November, 2011 dismissing the appeal filed by the petitioner.

2. The petitioner is a registered broker and is trading member of the Bombay Stock Exchange (BSE) and National Stock Exchange (NSE). The respondent was a constituent of the petitioner in both the Exchange. There were several transactions entered into between the parties.

3. It was the case of the petitioner before the arbitral tribunal that in so far as transactions in BSE with the respondent are concerned, there was a credit balance and in so far as ledger account of the petitioner in NSE ledger account is concerned, there was a debit balance. The petitioner accordingly made a claim for recovery of the differential amount by invoking arbitration agreement under the

bye laws of the Bombay Stock Exchange.

4. Before the learned arbitrator, the respondent raised an objection about maintainability of the claims in so far as claims raising out of the transaction in NSE are concerned. Before the learned arbitrator, the respondent made a counter claim of Rs.13,74,617.08p against the petitioner under bye law 271 of the BSE bye laws. The arbitral tribunal enquired from the petitioner as to how it had made a claim of Rs.18,11,877.34p against the respondent when even according to the petitioner in its books of accounts, the respondent had credit balance of Rs.13,74,617.08p. The learned arbitrator noticed that the claim made by the petitioner was on the basis of consolidated ledger account position which included transactions of both the stock exchange i.e. BSE and NSE, however claimed at BSE.

5. The learned arbitrator recorded the statement of both the parties that the parties had confirmed that they had no dispute on the credit balance of Rs.13,74,617.08p appearing in the books of the petitioner at the foot of the ledger account of the respondent as on 11th June, 2010. The petitioner in the hearing held on 8th July, 2011 withdrew its claim before the learned arbitrator before BSE. The learned arbitrator recorded the said statement in the impugned award and allowed the petitioner to withdraw the statement of claim. However since there was a counter claim made by the respondent based on the credit balance in the account of the respondent with the petitioner in so far as BSE is concerned, the learned arbitrator allowed the said counter claim of the respondent in the sum of Rs.13,74,617.08p as claimed with interest.

6. Being aggrieved by the said award, the petitioner filed an appeal (23A of 2011) before the Appellate Bench of the Bombay Stock Exchange. By an award dated 9th November, 2011, the Appellate Bench of the Bombay Stock Exchange

dismissed the said appeal by rendering various reasons.

7. Learned counsel appearing for the petitioner submits that in view of the circular dated 18th November, 1993 issued by the SEBI, the petitioner was entitled to set off the amount due and payable by the constituent to the petitioner in NSE as against the credit balance of the respondent with the petitioner in BSE. It is submitted that thus the appellate bench ought to have considered this aspect though the petitioner had withdrawn their statement of claim before the lower bench of the arbitral tribunal.

8. The learned counsel appearing for the respondent on the other hand submits that in view of the objection raised by the respondent before the learned arbitrator, the petitioner amended its claim before National Stock Exchange and increased the amount to the extent the claim was made before the Bombay Stock Exchange against the respondent. Only after such amendment to the claim, the petitioner had sought liberty of the learned arbitrator to withdraw the statement of claim filed against the respondent in BSE. It is submitted that once the petitioner having withdrawn its claim and had amended the claim before the National Stock Exchange, there was no question of any set off of the claim of the petitioner against the respondent in NSE against the claim of the respondent against the petitioner in BSE. It is submitted that the said proceedings filed by the petitioner before the National Stock Exchange against the respondent has culminated into an arbitral award. A copy of such award has been annexed to the affidavit in reply filed by the respondent in this proceedings.

9. A perusal of the record indicates that there was no dispute that there was a credit balance in the account of the respondent in the books of petitioner in so far as transactions in BSE is concerned. A perusal of the impugned award also

indicates that the petitioner had sought leave to withdraw its claim before the learned arbitrator before BSE. It is not in dispute that the petitioner had amended its claim before the National Stock Exchange which was subject matter of the claim before the learned arbitrator before BSE. Only after such amendment to the claim, the petitioner had sought liberty of the learned arbitrator before BSE for withdrawal of such claim. Once the petitioner has withdrawn its claim and in view of the fact that there was no dispute about the credit balance of the respondent in the books of the petitioner in so far as BSE transactions are concerned, the learned arbitrator has rightly allowed the counter claim of the respondent against the petitioner. There is thus no infirmity with the award rendered by the learned arbitrator. The amounts reflected in the account of the respondent in the books of the petitioner is BSE is not in dispute.

10. In so far as impugned order passed by the appellate bench of the Bombay Stock Exchange is concerned, the appellate bench has also rendered reasons for rejecting the appeal having found no infirmity with the award made by the learned arbitrator. In view of the admitted position that the petitioner was liable to pay to the respondent at the foot of the ledger account of the respondent with the petitioner at BSE, there is no substance of any nature whatsoever in the petition. The petitioner has already filed a separate arbitration proceedings for recovery of its claim against the respondent in NSE which has already culminated into an award.

11. Petition is devoid of merits and is accordingly dismissed with cost quantified at Rs.25,000/- which shall be paid to the respondent by the petitioner within two weeks from today.

[R.D. DHANUKA, J.]