

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION PETITION NO. 47 OF 2009

Kritika Nagpal,)
of Mumbai, Indian inhabitant, residing at)
Bungalow No.36, Atur Park,)
Sion Trombay Road, Chembur,)
Mumbai 400 071) **..... Petitioner**

VERSUS

Geojit Financial Services Ltd.)
a company incorporated under the)
provisions of the Companies Act, 1956)
and having her Registered Office at)
5th Floor, Finance Tower, Kaloor,)
Kochi 682 017) **..... Respondents**

ALONGWITH
ARBITRATION PETITION NO. 56 OF 2009

Bombay Construction and Engineering Pvt.Ltd.,)
a company incorporated under the)
provisions of the Companies Act, 1956)
and having its Registered office at)
104, Kritika Annexe, Main S.T.Road,)
Next to Union Park, Chembur,)
Mumbai 400 071) **..... Petitioner**

VERSUS

M/s.Gejit Financial Services Ltd.)
a company incorporated under the)
provisions of the Companies Act, 1956)
and having its Registered Office at)
5th Floor, Finance Tower, Kaloor,)
Kochi 682 017) **..... Respondents**

**ALONGWITH
ARBITRATION PETITION NO. 48 OF 2009**

Lalitkumar Nagpal)
of Mumbai, Indian inhabitant, residing at)
Bungalow No.36, Atur Park,)
Sion Trombay Road, Chembur,)
Mumbai 400 071) **..... Petitioner**

VERSUS

Geojit Financial Services Ltd.)
a company incorporated under the)
provisions of the Companies Act, 1956)
and having his Registered Office at)
5th Floor, Finance Tower, Kaloor,)
Kochi 682 017) **..... Respondents**

**ALONGWITH
ARBITRATION PETITION NO. 57 OF 2009**

Kapil Lalitkumar Nagpal,)
of Mumbai, Indian inhabitant, residing at)
Bungalow No.36, Atur Park,)
Sion Trombay Road, Chembur,)
Mumbai 400 071) **..... Petitioner**

VERSUS

Geojit Financial Services Ltd.)
a company incorporated under the)
provisions of the Companies Act, 1956)
and having his Registered Office at)
5th Floor, Finance Tower, Kaloor,)
Kochi 682 017) **..... Respondents**

**ALONGWITH
ARBITRATION PETITION NO. 1148 OF 2012**

Ranjana Nagpal,)
of Mumbai, Indian inhabitant, residing at)
Bungalow No.36, Atur Park,)
Sion Trombay Road, Chembur,)

Mumbai 400 071) Petitioner

VERSUS

**Geojit Financial Services Ltd.)
a company incorporated under the)
provisions of the Companies Act, 1956)
and having her Registered Office at)
5th Floor, Finance Tower, Kaloor,)
Kochi 682 017) Respondents**

Mr.Simil Purohit, a/w. Mr.Faran Khan, i/b. Purohit & Co. for the Petitioners.

Mr.Dipan Merchant, Senior Advocate, a/w. Mr.Vaibhav Bajpai, a/w. Mr.Gaurav Jangle, i/b. I.V.Merchant & Co. for the Respondents.

CORAM : R.D. DHANUKA, J.

RESERVED ON : 16th JUNE, 2016

PRONOUNCED ON : 14th JULY, 2016

JUDGMENT :

By these five petitions, the petitioners have impugned the five separate arbitral awards rendered by the arbitral tribunal constituted under the provisions of bye-laws, the rules and regulations of National Stock Exchange of India Limited (NSE) thereby allowing the claims made by the respondent and rejecting the counter claims made by the petitioners. In view of the fact that the facts in all the aforesaid matters are identical, learned counsel appearing for the parties have agreed to make submissions in the Arbitration Petition No.47 of 2009 and state that the judgment in the said arbitration petition would conclude the issues raised in the other four petitions. By consent of parties, all the five petitions were heard together and are being disposed of by a common order. Since the learned counsel have made submissions in the Arbitration Petition No.47 of 2009, some of the relevant facts for the purpose of deciding the petitions based on the

facts of the said petition setout are as under :-

2. The respondent herein is one of the broker registered with the National Stock Exchange of India Ltd. (hereinafter referred to as the Stock Exchange). It is the case of the petitioner that he was one of the high networth client of the respondent for last several years and had been carrying on trading in various transactions through the Chembur branch office of the respondent. The petitioner started effecting the transaction through the said Chembur office w.e.f. April 2007 on the F&O segment. The petitioner had provided 6500 shares of Reliance Petroleum Ltd. with the respondent as a security.

3. It is the case of the petitioner that in the evening of 16th January, 2008, the respondent informed the petitioner that there was a shortfall of approximately Rs.3,50,000/- in her account. To meet the said shortfall, the petitioner immediately issued a cheque in favour of the respondent for a sum of Rs.4,00,000/-. In the morning of 18th January, 2008, the respondent informed the petitioner that the said cheque of Rs.4,00,000/- was misplaced in their office. The petitioner accordingly instructed her bankers to mark stop payment of the said cheque and issued another cheque for Rs.4,00,000/- in the name of the respondent. The said cheque had been encashed by the respondent.

4. It is the case of the petitioner that during the course of the day on 18th January, 2008 the respondent informed the petitioner that there was a margin shortfall in her account and asked the petitioner to pay a sum of Rs.5,00,000/-. The petitioner accordingly paid a sum of Rs.5,00,000/- to the respondent on 18th January, 2008 to meet the margin shortfall in her account. The said cheque of Rs.5,00,000/- had been admittedly encashed by the respondent.

5. It is the case of the petitioner that in the afternoon on 21st January, 2008 Mr.Sabreesh from Chembur branch of the respondent informed the petitioner that the market had been souring, however assured the petitioner that in past also, although in the morning the market had been soured, however, during the course of the day and before markets closed the position had recovered. The petitioner accordingly instructed the said Mr.Sabreesh not to square off her outstanding position and assured him to pay whatever shortfall in her account immediately on the next day. It is the case of the petitioner that in the evening of 21st January, 2008, when the petitioner called the office of the respondent to know the shortfall in her account if any, the petitioner was informed that the respondent had not received the margin position from the Exchange and therefore the shortfall if any, in her account would be intimated to the petitioner in the morning of 22nd January, 2008.

6. It is the case of the petitioner that in the morning of 22nd January, 2008, when the petitioner called the office of the respondent, the petitioner did not receive any proper reply. The petitioner was informed that the market had witnessed a drastic fall and they were in the process of obtaining shortfall in the accounts of all their clients. The petitioner was however informed that there is a margin shortfall of approximately Rs.15,00,000/- in her account. The petitioner requested the office of the respondent not to square off the outstanding position in her account and assured that the petitioner would be forwarding a cheque of Rs.15,00,000/- immediately and assured the respondent that whatever would be the shortfall in her account would be paid in the evening of 22nd January, 2008 herself. The petitioner forwarded a cheque of Rs.15,00,000/- immediately and the same had been received and encashed by the respondent.

7. It is the case of the petitioner that she was shocked and surprised when in the evening of 22nd January, 2008 she received a call from the office of the respondent and was informed that all the outstanding position in her account had been squared off directly by the head office of the respondent on the instructions of the Stock Exchange alleged to have been received in the noon on 22nd January, 2008. It is the case of the petitioner that she protested the purported squaring off effected by the head office of the respondent on the alleged instructions of the Exchange and called upon the respondent to provide the proof regarding the Exchange having given such alleged instructions to its member brokers, to enable the petitioner to take up the matter with the Exchange. The respondent however avoided to provide the details of such alleged instructions to the petitioner on one or the other pretext.

8. It is the case of the petitioner that on 29th January, 2008, the petitioner came across an electronic contract note forwarded by the respondent to her e-mail ID. The petitioner came to know from the said e-mail that the respondent had sold her collateral security on 28th January, 2008.

9. By her letter dated 1st February, 2008 to the respondent, the petitioner raised strong protest in respect of the transactions carried out by the respondent in the account of the petitioner and called upon the respondent to restore her outstanding position. Vide her letter dated 2nd February, 2008 the petitioner reiterated her contentions which were raised in the letter dated 1st February, 2008.

10. On 8th February, 2008, the respondent replied to the letters dated 1st February 2008 and 2nd February 2008 addressed by the petitioner. In the said letter

it was alleged by the respondent that the Branch Manager of the respondent at her Chembur branch had informed the petitioner regarding outstanding position in her account, however, the petitioner had failed to pay the alleged shortfall in her account which compelled the respondent to square off all her transactions. In the said reply the respondent alleged that a sum of Rs.35,82,216.64 was due and payable by the petitioner to the respondent and called upon the petitioner to pay the said amount.

11. The respondent vide their letter dated 12th February, 2008 called upon the petitioner to pay an amount of Rs.36,01,536/-. The petitioner thereafter made a complaint on 26th February, 2008 with the National Stock Exchange of India Ltd. against the respondent. The respondent thereafter invoked the arbitration agreement and made a claim against the petitioner for recovery of Rs.35,19,225.42 togetherwith interest at the rate of 12% per annum from the date of accrual of alleged debit till realization and cost. The said statement of claim was resisted by the petitioner by filing a written statement. The petitioner also made a counter claim against the respondent for a sum of Rs.9,17,203.72 with interest thereon at the rate of 18% per annum from the date of filing of the counter claim till payment and/or realization togetherwith costs.

12. The learned arbitrator made an award on 24th September, 2008 and directed the petitioner herein to pay a sum of Rs.35,19,225.42 to the respondent with interest at the rate of 12% per annum from 25th April, 2008 till the date of payment. The arbitral tribunal rejected the counter claim made by the petitioner and directed that both the parties shall bear their cost of arbitration. Being aggrieved by the said arbitral award, the petitioner filed the Arbitration Petition No.47 of 2009.

13. The arbitral tribunal allowed the claims made by the respondent in other four arbitration proceedings and rejected the counter claims made by the petitioner. Those awards are subject matter of the Arbitration Petition No.46 of 2009, Arbitration Petition No.48 of 2009, Arbitration Petition No.57 of 2009 and Arbitration Petition No.1148 of 2012. By an order and judgment dated 17th September, 2012, the learned Single Judge of this court was pleased to set aside the impugned award dated 24th September, 2008 and remanded all the aforesaid petitions for reconsideration on all the issues and keeping all the points open. This court also directed the arbitral tribunal to reconsider the case after giving opportunity to all the parties.

14. Being aggrieved by the said order and judgment dated 17th September, 2012 passed by the learned Single Judge of this court, the respondent preferred five separate appeals before the Division Bench of this court. By a common judgment dated 25th June, 2013, the Division Bench held that once the arbitral award was set aside by the learned Single Judge by taking a view on merits, it was impossible to comprehend as to why the proceedings should be remanded back to the arbitral tribunal for reconsideration of all issues and keeping all points open. The Division Bench held that once an arbitral award is set aside under section 34, that brings to a conclusion to the proceeding before the court. It is held that section 34(4) does not contemplate or vest a power in the court to remand proceedings back to the arbitral tribunal once the court has set aside the award. The Division Bench accordingly set aside the impugned judgment of the learned Single Judge dated 17th September, 2012 and directed that the arbitration petitions be restored to file for fresh consideration. It was however clarified that the Division Bench had not expressed any views on merits on the admissibility of the grounds which had been raised in the challenge to the arbitration award under

section 34 and left it open to be determined by the learned Single Judge on remand.

15. Pursuant to the said order passed by the Division Bench of this court referred to aforesaid, both the parties through their learned advocates addressed this court on the merits for a fresh decision.

16. Mr.Purohit, learned counsel appearing for the petitioner invited my attention to various correspondence annexed to the petition, statement of claim filed by the respondent, statement of defence and counter claim filed by the petitioner and the findings recorded by the arbitral tribunal. He also placed reliance on various paragraphs of the judgment delivered by the Division Bench on 25th June, 2013 in Appeal No.35 of 2013 and other companion appeals arising out of the judgment delivered by the learned Single Judge in these petitions. He submits that since the Division Bench has remanded the matter for deciding afresh, this court is empowered to decide the matter without being influenced by the observations made if any made by the Division Bench in the judgment dated 25th June, 2013.

17. It is submitted by the learned counsel for the petitioner that the petitioner was a constituent of the respondent since 2007. There was no dispute between the parties that all margin money was paid by the petitioner from time to time whenever demanded by the respondent. He submits that on the basis of such demand made by the respondent, the petitioner had already a sum of Rs.4,00,000/- on 18th January 2008, a sum of Rs.5,00,000/- on 18th January 2008 and a sum of Rs.15,00,000/- on 22nd January 2008. He submits that the petitioner had sufficient balance in her bank account to meet the alleged shortfall in margin money if any.

He submits that since the demand for margin money made by the respondent on 22nd January, 2008 was only in the sum of Rs.15,00,000/-, the petitioner had deposited the said amount with the respondent.

18. It is submitted that as a matter of fact the petitioner had made an enquiry with the respondent that if there was any further shortfall, the petitioner was ready and willing to pay, however the respondent did not inform any further shortfall if any. He submits that though the petitioner was dealing with the Chembur branch office of the respondent from April 2007, without raising any further demand for alleged shortfall of margin money on 22nd January, 2008 inspite of the enquiry having been made by the petitioner, the head office of the respondent without any instructions from the petitioner and without any authority squared off the transaction of the petitioner on 22nd January, 2008 around 11.51 a.m. He submits that the respondent had admittedly accepted the said cheque of Rs.15,00,000/- from the petitioner on 22nd January, 2008 without any demur and had deposited the said cheque in their bank account on 23rd January, 2008. He submits that though the petitioner had called upon the respondent to produce the instructions if any, received by the head office of the respondent from the Stock Exchange for squaring off the said transaction to enable the petitioner to take action against the Stock Exchange, the respondent did not furnish any such alleged instructions.

19. Learned counsel appearing for the petitioner invited my attention to Regulation (F & O Segment) 3.10 framed by the Stock Exchange and would submit that under the said Regulation, it was mandatory obligation on the part of the respondent trading member to demand from the constituent the deposit of margin money which the constituent had to provide under trading Regulations in

respect of the business done by the member for such constituent. He submits that under the said Regulation, trading member can buy or sell derivatives contracts on behalf of the constituent only on the receipt of margin of minimum such percentage as the relevant authority may decide from time to time, on the price of the derivatives contracts proposed to be purchased, unless the constituent already has an equivalent credit with the trading member. The trading member is empowered to collect higher margins from the constituent as he deems fit. He submits that under the said Regulation, trading member also has to obtain the written undertaking from the constituent to provide margin deposit and/or furnish additional margin as required under the Rules and Regulations in respect of the business done for the constituent by and /or as agreed upon by the constituent with the trading member as and when called upon to do so by the trading member.

20. It is submitted by the learned counsel for the petitioner that it is mandatory obligation on the part of the trading member to demand from its constituent the amounts arising in respect of daily settlement in accordance with the Clearing Corporation Regulations for business done by the member on behalf of such constituent or such higher amounts as the trading member deems fit. It is submitted by the learned counsel for the petitioner that under Regulation 3.10(b), the respondent trading member could have closed out the transactions of selling or buying derivatives contracts only if the constituent would not have made payment of daily settlement within the next trading day.

21. It is submitted that even if according to the respondent any demand was made for the amount over and above the amount of Rs.15.00 lacs from the petitioner on 22nd January, 2008 and such balance amount was not paid by the petitioner to the respondent till 23rd January, 2008, the respondent had no liberty to

close the transactions by selling derivatives contracts and securities of the petitioner till 23rd January, 2008. He submits that admittedly the respondent in this case had closed out the transactions of the petitioner on 22nd January, 2008 itself which was in violation of Regulation 3.10(b) and thus such transactions closed out by the respondent were not binding upon the petitioner. He submits that the arbitral tribunal however, did not consider the mandatory provisions of Regulations 3.10(a) and (b). The award is contrary to Regulations framed by the Stock Exchange which were binding on both the parties.

22. It is submitted by the learned counsel for the petitioner that the respondent admittedly had e-mail address of the petitioner. The respondent did not produce any correspondence or any other communication sent by the respondent to the petitioner through e-mail demanding any higher amount over and above Res.15.00 lacs or alleging that the same was though demanded, but not paid by the petitioner. He submits that the arbitral tribunal has rendered a finding in paragraph 4.8 of the impugned award that it was an admitted position that there was neither any dispute about the transactions till 21st January, 2008 between the parties nor about the receipt of the contract notes by the petitioner herein from the respondent.

23. The arbitral tribunal has also given a finding that it was an admitted position that the market was volatile and was going downward. It is also held by the arbitral tribunal that it was an admitted position that the margin call was made on all days including the dates when alleged disputed / unauthorized / uninformed transactions were allegedly executed by the respondent herein by closing out the open positions of the petitioner herein.

24. Learned counsel appearing for the petitioner invited my attention to the statement of claim filed by the respondent herein before the arbitral tribunal alleging that the debit balance arose in the account of the petitioner as a result of trading transactions done by the petitioner in F & O on 16th January, 2008, 17th January, 2008, 21st January, 2008 and 22nd January, 2008 and at that time the petitioner was holding the position in F & O with huge MTM and margin requirement. It was also alleged by the respondent that the petitioner used to take position of more than pledged amount which was allowed by the respondent due to his requests and promises by making payment of MTM and market money in time.

25. Learned counsel for the petitioner submits that it was the case of the respondent in the statement of claim that the market had witnessed a very heavy downfall and resulted crash on 18th January, 2008, 21st January, 2008 and 22nd January, 2008 and the respondent had to take necessary steps to withstand volatility in market and therefore, the respondent was forced to apply stringent margin rules. He submits that it was the case of the respondent that while squaring off open position in F & O in trading account of the petitioner and shares pledged against the margin requirement, the account of the petitioner was having margin violation and there was huge margin requirement and MTM debit in the account. The respondent thus had alleged to have insisted all the clients of all branches to ensure sufficient margin in their trading account to hold positions in F & O.

26. According to the respondent, on 18th January, 2008 opening balance in the account of the petitioner was showing debit of Rs.27,45,689.70, including margin debit of Rs.40,20,840.55 and a cheque payment of Rs.5.00 lacs. There was MTM debit of Rs.11,83,035/- incurred on 18th January, 2008. According to the respondent, on 21st January, 2008 there was opening debit of Rs.35,38,149.64,

including margin debit of Rs.40,30,264.99. According to the respondent, on 22nd January, 2008, margin requirement due from the petitioner was due Rs.50,82,738.76 and MTM requirement was Rs.61,06,224.60 including MTM debit of Rs.21,69,848.49 incurred on 22nd January, 2008.

27. It was the case of the respondent in the statement of claim that a cheque of Rs.15.00 lacs was received by the respondent from the petitioner on 23rd January, 2008. The value of pledged position (75% haircut) towards margin on 22nd January, 2008 was only Rs.7,16,625/- and debit balance after accounting MTM for the trade day due from the petitioner was Rs.1,11,88,963.36, which was alleged to have been informed to the petitioner but the petitioner did not make payment. It was the case of the respondent that since the petitioner had not paid sufficient margin money and MTM requirement in time so as to hold the position in the market, and in order to reduce the loss that would have sustained by keeping the position long, the respondent was constrained to liquidate the same.

28. In paragraph 5 of the statement of claim, it was the case of the respondent that after squaring off that position on 22nd January, 2008, pledged position of the petitioner was having only total value of Rs.8,23,631.25 on 23rd January, 2008 and debit balance was Rs.46,15,139.99. It was alleged that in order to minimize the debit balance that had accrued in the account of the petitioner to avoid further increase in debit of that amount incurred, the respondent was forced to invoke the pledge on 28th January, 2008. After invoking pledge on 28th January, 2008, according to the respondent, the petitioner owed an amount of Rs.36,01,536/- to the respondent, which was demanded by the respondent from the petitioner by their notice dated 12th February, 2008 sent to the petitioner.

29. In paragraph 7 of the statement of claim, it was alleged by the respondent that the respondent had spoken with the petitioner on couple of occasions when the petitioner had admitted the payment to the respondent. It was further alleged that the Branch Manager of the respondent had informed the petitioner about volatility in market and also informed that it would be impossible to hold the position unless arrangement of funds was immediately made for total outstanding debit, margin and MTM requirement. It is submitted by the learned counsel for the petitioner that the respondent however, made inconsistent submissions before the arbitral tribunal at the time of hearing and took various stands which were not pleaded by the respondent in the statement of claim or in the re-joinder. The arbitral tribunal however, allowed the respondent herein to take steps inconsistent and contradictory pleas and accepted such pleas which show perversity in the impugned award.

30. It is submitted by the learned counsel for the petitioner that if the respondent would have demanded any margin amount of Rs.15.00 lacs on 22nd January, 2008, the petitioner would have paid such margin money and in support of this plea the petitioner had produced the bank account statement of the petitioner showing sufficient credit balance in the account of the petitioner. The arbitral tribunal however, did not consider such crucial document in the impugned award and allowed the claims made by the respondent against the petitioner based on no evidence. He submits that the respondent did not produce any proof or evidence before the arbitral tribunal showing demand of margin money over and above Rs.15.00 lacs. The entire award is based on presumptions and surmises and by drawing adverse inference against the petitioner which shows non-application of mind on the part of the arbitral tribunal.

31. In support of this submission that even if there was any margin requirement in the account of the petitioner since 16th January, 2008 itself or thereafter prior to 21st January, 2008, the respondent could not have waited for closing out the transactions of the petitioner till 22nd January, 2008 thought the petitioner had not alleged to have made payment of the margin money requirement during that period and thus the alleged losses, if any, suffered by the respondent could not have been recovered from the petitioner, the learned counsel placed reliance on the judgment delivered on 16th April, 2015 in case of ***Bonanza Commodities Brokers Pvt. Ltd. Vs. Roshanara Bhinder*** in Arbitration Petition No.195 of 2015 and in particular paragraphs 29, 35 and 36.

32. Learned counsel appearing for the petitioner placed reliance on the judgment of this court in case of ***Ankit Bimal Deorah vs. Microsec Capital Ltd.*** delivered on 6th August, 2015 in Arbitration Petition No.1174 of 2012 and more particularly paragraphs 8, 11, 19 to 21 and 28 and would submit that the onus to prove that the respondent had demanded the margin money on 22nd January, 2008 over and above the sum of Rs.15,00,000/- and had demanded the margin money on earlier occasion in accordance with the Regulation 3.10 and other provisions of bye-laws and regulations of Stock Exchange or not was on the respondent. He submits that the respondent had failed to discharge such onus before the arbitral tribunal. It is submitted that the arbitral tribunal however has drawn a perverse finding that it was on record that the respondent had made margin call and the petitioner had made request not to square off her outstanding position. He submits that this finding of the arbitral tribunal is totally based on presumption and surmises and is without any evidence.

33. Learned counsel appearing for the petitioner placed reliance on the judgment of this court delivered on 29th July, 2011 in case of ***Idea International Pvt.Ltd. vs. Motilal Oswal Securities Pvt. Ltd.*** in Arbitration Petition No.144 of 2007 and other connected matters in support of the submission that even if under the agreement entered into between the parties, the respondent broker is given an authority to sell all or any of the security held by it on behalf of the petitioner, such discretion has to be exercised by the broker in a reasonable way or for the benefit of its client. He submits that in this case, the respondent broker did not wait till closing of trading hours on 22nd January, 2008 but squared off the transaction in the morning hours of 22nd January, 2008 itself.

34. It is submitted by the learned counsel for the petitioner that though the arbitral tribunal on one hand has rendered a finding that till 21st January, 2008 there was no dispute raised by the respondent in respect of the margin money though there was a debit balance according to the respondent in the account of the petitioner till 21st January, 2008, on the other hand the arbitral tribunal has disbelieved the case of the petitioner that there was no demand for margin money on 22nd January, 2008 above Rs.15 lacs and thus the petitioner did not pay such margin money over and above the sum of Rs.15 lacs. He submits that the findings rendered by the arbitral tribunal in favour of the respondents is contrary to the pleadings of the respondents in the statement of claim and the rejoinder filed in the arbitral proceedings.

35. It is submitted that none of the documents produced by the respondent would show that the respondent had made any demand of margin money upon the petitioner on 22nd January, 2008 over and above Rs.15 lacs which demand also was made orally. He submits that it was not the case of the respondent that the demand

was made by the head office of the respondents upon the petitioner. He submits that though the respondents had alleged in the arbitral proceedings that the transactions were required to be squared off in view of the instructions from the Stock Exchange and though the petitioner had called upon the petitioner to produce such alleged instructions received from the Stock Exchange, the respondent did not produce any such instructions. The arbitral tribunal therefore ought to have drawn adverse inference against the respondents on this issue.

36. Mr.Merchant, learned senior counsel for the respondents on the other hand invited my attention to various paragraphs of the order passed by the Division Bench on 25th June, 2013 in Appeal No.35 of 2013 and other connected appeals by which the Division Bench had set aside the order and judgment dated 17th September, 2012 delivered by the learned Single Judge in these petitions and would submit that the Division Bench has already laid down the principles of law on the powers of court under section 34 of the Arbitration Act to interfere with an arbitral award.

37. It is submitted by the learned senior counsel that the arbitral tribunal has rendered various findings of facts on the disputed question as to whether the respondents had demanded the margin money from the petitioner or not and whether the petitioner had paid the entire amount of margin money as demanded and required. He submits that this court cannot go into the merits of the matter and interfere with the findings of fact rendered by the arbitral tribunal. He invited my attention to the paragraph 4.5 of the impugned award and would submit that even according to the petitioner, the fact that the respondent had made a demand for margin money to the petitioner was not disputed. He submits that the only dispute raised by the petitioner was that the demand was made for margin money only for

the sum of Rs. 15 lacs and not above the said amount. He submits that the statement of account of the petitioner reflected shortfall of much higher amount upto 21st January, 2008 and thus there was no question of the respondent demanding the margin money only to the extent of Rs.15 lacs.

38. Learned senior counsel placed reliance on clause 29 of the Stock Broker- Client Agreement dated 3rd April, 2007 entered into between the parties and would submit that under the said clause, it was at the discretion of the respondent broker to make demand for margin money as per the requirement from time to time. He submits that in case of “mark to market loss”, payment was not required to be made by the constituent next day of the settlement. He submits that the petitioner was required to pay margin money on the basis of the day to day transaction. It is submitted that in any event the said clause 29 gave discretion to the respondent broker to demand margin money or not. He submits that the fact remains that there was huge shortfall in margin money in the account of the petitioner and thus the respondent was entitled to square off the transactions in the account of the petitioner.

39. It is submitted by the learned senior counsel that various findings recorded by the arbitral tribunal and more particularly the findings on various admissions made by the petitioner had not been challenged by the petitioner in the arbitration petition. He submits that there was continuous debit in the account to the petitioner since 16th January, 2008. He submits that if there was no shortfall of the margin money in the account of the petitioner, the petitioner would not have requested the respondent to inform the amount of shortfall of margin money and would not have requested the respondent to square off or close out the transactions of the petitioner. He submits that the stand of the petitioner itself was

contradictory and inconsistent.

40. Learned senior counsel for the respondents distinguished the judgment of this court in case of ***Bonanza Commodities Brokers Pvt.Ltd. vs. Roshanara Bhinder*** in Arbitration Petition No. 195 of 2015 delivered on 16th April, 2015 on the ground that in the said judgment, this court had not considered the provisions of the Stock Broker-Client agreement and more particularly the clauses like clause 29 and thus the said judgment would not assist the case of the petitioner and is distinguishable in the facts of this case.

41. Insofar as judgment of this court in case of ***Ankit Bimal Deorah***(supra) relied upon by the learned counsel is concerned, the learned senior counsel distinguished the said judgment on the ground that in the said matter, it was an admitted position that there was no demand made by the broker upon the constituent whereas in this case the demand was admittedly made by the respondent broker upon the petitioner. He submits that the judgment of this court in the said judgment is clearly distinguishable.

42. Learned senior counsel for the respondent placed reliance on the judgment of Supreme Court in case of ***Ravindra Kumar Gupta and Company vs. Union of India*** (2010) 1 SCC 409 and in particular paragraph 8 thereof. He submits that this court cannot re-appreciate the evidence led by the parties before the learned arbitrator.

43. Learned senior counsel placed reliance on the judgment of Supreme Court in case of ***P.R.Shah, Shares and Stock Brokers Private Limited vs. B.H.H.Securities Private Limited and others***, (2012) 1 SCC 594 and in particular

paragraph 21 and would submit that this court cannot sit in appeal over the award by reassessing or re-appreciating evidence to find out whether different decision could be arrived at against the findings of arbitral tribunal in absence of grounds under section 34.

44. Mr.Purohit, learned counsel appearing for the petitioner in rejoinder submits that the respondent could not have placed reliance upon clause 29 of the Member Constituent Agreement which was ex-facie contrary to and inconsistent with the Regulation 3.10 framed by the Stock Exchange. He submits that the only the relation manager of the respondent could make a demand for margin money which was admittedly not made by him. He submits that the squaring off of the transaction was made by the head office and not by the Chembur Office. He submits that insofar as F&O transactions are concerned, every day the settlement of account takes place. He submits that the actual market to market loss can be calculated at the end of the day. However the respondent has squared off the transaction at 11.51 a.m. and did not wait till end of the day. Under Regulation 3.10(A) read with 3.10(B), the payment has to be made on the next day. He submits that though according to the respondent there was shortfall in the margin amount, neither any dispute was raised by the respondent admittedly till 21st January, 2008 nor the transactions were squared off on or before 21st January, 2008. He submits that if according to the respondent, there was a debit balance in the account of the petitioner since 16th January, 2008, it was duty of the respondent to close down the transaction in the account of the petitioner immediately and was not required to wait till 22nd January, 2008.

45. It is submitted that if the respondent has not closed out the transaction till 22nd January, 2008, the respondent cannot recover the loss alleged to have been

suffered from the petitioner. He submits that on the contrary the petitioner has suffered a huge loss because of such close out of the transaction by the respondent on 22nd January, 2008. The arbitral tribunal however has not considered this crucial aspect in the impugned award and not only allowed the claims made by the respondent but has also illegally rejected the counter claim made by the petitioner.

REASONS AND CONCLUSIONS

46. A perusal of the arbitral award indicates that the arbitral tribunal had framed an issue for consideration that though the shortfall of margin money was informed to the petitioner herein by the respondent on different dates, there was a dispute concerning the amount of shortfall informed or margin call made to the petitioner herein. A perusal of the impugned award however indicates that though such issue was framed by the arbitral tribunal, no finding thereon is recorded by the arbitral tribunal in the later part of the award that the petitioner was informed about the shortfall of margin money by the respondent on different dates.

47. A perusal of the statement of claim filed by the respondent in the arbitration proceedings clearly indicates that it was the case of the respondent that the market had witnessed the heavy downfall and resultant crash on 18th January 2008, 21st January 2008 and 22nd January 2008 and the respondent herein had to take necessary steps to withstand the volatility in market and therefore was forced to apply stringent margin rules. At that time the respondent had given instructions to all its office branches to comply with the margin rules thoroughly. Only those clients were allowed buying where there were sufficient credit balance in their accounts and were not allowed to set limits on the basis of fresh pledge. Trading was allowed only after collecting sufficient margins from clients. It was alleged in the statement of claim that in view of situation of huge market volatility and

resultant market crash, the respondent had insisted all clients at all branches to ensure sufficient margin in their trading account to hold the position in F&O.

48. A perusal of the record indicates that even according to the respondent herein, there was huge debit balance and the shortfall in margin amount in the account of the petitioner since 16th January 2008 onwards till 22nd January 2008. It was not the case of the respondent that the petitioner had made the payment of Rs.4,00,000/- on 17th January, 2008 and a sum of Rs.5,00,000/- on 18th January, 2008 to meet the exact amount of shortfall in the account of the petitioner. On the contrary the case of the respondent was that even after payment of the said amount of Rs.4,00,000/- and Rs.5,00,000/- on 17th January, 2008 and 18th January, 2008, there was substantial amount of shortfall and debit balance in the account of the petitioner. Even according to the respondent on 22nd January, 2008 the mark to market loss of Rs.21st January, 2008 was Rs.40,28,241.46 and the margin requirement at the opening of 22nd January, 2008 was Rs.40,30,264.99 thereby the total debit in the account of the petitioner at Rs.71,28,135.05 at the end of the day on 21st January, 2008 and opening of 22nd January, 2008.

49. It was not the case of the respondent in the arbitral proceedings that the said sum of Rs.15,00,000/- paid by the petitioner on 22nd January, 2008 was part payment of the margin money. The respondent could not produce any proof before the arbitral tribunal to show that the demand of margin money on 17th January, 2008 or 18th January, 2008 or 22nd January, 2008 was much more than Rs.4,00,000/-, Rs.5,00,000/- and Rs.15,00,000/- respectively. On the contrary it was pleaded in the statement of claim that on 18th January 2008, 21st January 2008 and 22nd January 2008, the market had witnessed a heavy downfall and resultant crash and thus the respondent had given instruction to all its branches to comply

with the margin rules thoroughly.

50. Regulation 3.10 of the Regulation (F&O segment) framed by the National Stock Exchange of India Limited is extracted as under :-

3.10 MARGIN FROM THE CONSTITUENTS

(a) The Trading Members must demand from its constituents the Margin Deposit which the member has to provide under these Trading Regulations in respect of the business done by the Members for such constituents.

The Trading Members shall buy and/or sell derivatives contracts on behalf of the constituent only on the receipt of margin of minimum such percentage as the Relevant Authority may decide from time to time, on the price of the derivatives contracts proposed to be purchased, unless the constituent already has an equivalent credit with the Trading Member. The Trading member may collect higher margins from constituents, as he deems fit.

The Trading Member shall obtain a written undertaking from the constituents that the latter shall when called upon to do so forthwith from time to time provide a Margin Deposit and/or furnish additional Margin as required under these Rules and Regulations in respect of the business done for the constituent by and/or as agreed upon by constituent with the Trading Member concerned.

The Trading Member shall demand from his constituents the amounts arising in respect of daily settlement in accordance with the Clearing Corporation Regulations for business done by the Members on behalf of such constituents or such higher amounts, as the Trading Member deems fit. The Trading Member may, if so desire, for administrative convenience maintain the daily settlement margin balance upto a pre-agreed balance level to avoid collecting and paying daily settlement amount on a daily basis, which may be referred to as maintenance margin.

The trading member may keep the unutilised margin deposits of its Constituents in bank deposits and pay interest accrued thereon to its Constituents or utilise the same as per the instructions of such Constituents.

(b) Constituent(s) in default

In case of non-payment of daily settlement by the constituents within the next trading day, the Trading Member shall be at liberty to close out transactions by selling or buying the derivatives contracts, as the case may be, unless the constituent already has an equivalent credit with the Trading Member. The loss incurred in this regard, if any, shall be met from the margin money of the constituent.

In case of open purchase position undertaken on behalf of constituents, the Trading Members shall be at liberty to close out transactions by selling derivatives contracts, in case the constituent fails to meet the obligations in respect of the open position within next trading day for the execution of the full contract or within next trading day of the contract note having been delivered, unless the constituent already has an equivalent credit with the Trading Member. The loss incurred in this regard, if any, shall be met from the margin money of the constituent.

In case of open sale position undertaken on behalf of the constituents, the Trading Member shall be at liberty to close out transactions by effecting purchases of derivatives contracts if the constituent fails to meet the obligation in respect of the open position within next trading day of the transaction having been executed on the F&O Segment of the Exchange for the concerned settlement period. Loss on the transaction, if any, shall be deductible from the margin money of the constituent.

51. Clause 29 of the agreement of Stock Broker Client Agreement dated 3rd April, 2007 entered into between the petitioner and the respondent is extracted as under :-

29. Margins :

(c) Margin in derivatives trading :

In the derivatives segment, the CLIENT is liable to pay an initial margin up-front on or before creating a position. Such margin shall be decided upon by GEOJIT or the Exchange from time to time. Furthermore, the CLIENT is liable to pay (or receive) daily margins depending on whether the price of Derivatives contract move for or against the position undertaken. The CLIENT may also be liable to pay withholding margins, special margins or such other margins as are considered necessary by GEOJIT or the Exchange from time to time. GEOJIT is permitted in its sole and absolute discretion to collect additional margins (even though not imposed by the Derivatives Segment, Clearing House or SEBI) and the client shall be obliged to pay such margins.

I(i) Shortfall in Margin

If payments/securities towards the margin or shortfall in margin is not received instantaneously to enable restoration of sufficient margin in the CLIENT's account all or some of the position of Client as well as the securities placed as margin may be liquidated by GEOJIT at its sole discretion, without any reference or prior notice to the CLIENT. The resultant or associated losses that may occur due to such squaring off or sale of securities shall be borne by the CLIENT and GEOJIT is hereby fully indemnified and held harmless by the CLIENT in this behalf. Such liquidation or close out of positions shall apply to any segment in which the CLIENT does business with GEOJIT.

52. The arbitral tribunal has placed reliance on clause 29 of the agreement entered into between the parties and has held that as per clause 29 of the said agreement, the trading member was at its sole discretion to exercise his right to liquidate position/ security on occurrence of shortfall in margin. It is held that the trading member usually makes a margin call which his client is required to fulfill. It is held that in the instance case it is on record that the respondent herein had

made margin call and the petitioner had made a request not to square off her outstanding position and had assured the respondent that whatever would be the debit/shortfall would be paid. It is held that if any such request is made by the constituent, the trading member usually considers the situation and may await the payment from the client. It is held that it is on record that there was no payment made between the time of Rs.4,00,000/- on 16th January, 2008 and payment of Rs.5,00,000/- on 18th January, 2008 except the request of the petitioner not to square off the outstanding position in her account by the respondent herein and thus in such a situation, the squaring off the outstanding position by the respondent herein on 22nd January, 2008 caused crash was justified. In my view the findings rendered by the arbitral tribunal is based on presumption and surmises and not based on evidence.

53. A perusal of Regulation 3.10 framed by the Stock Exchange clearly indicates that it is mandatory obligation on the part of the trading member to demand from its constituent the margin deposit which the member has to provide under the trading regulations framed by the Stock Exchange in respect of the business done by the members for such constituents. The trading member is permitted to buy and/or sell derivatives contracts on behalf of its clients only on the receipt of the margin of minimum such percentage as the relevant authority may decide from to time at the price of the derivatives contracts proposed to be purchased, unless the constituent was already having equivalent credit with the trading member. It is further provided that the trading member shall demand from its constituent the amounts arising in respect of daily settlement in accordance with the Clearing Corporation Regulations for business done by the members including such higher amount, as the trading member deems fit. The trading member can maintain the daily settlement margin balance upto a pre-agreed balance level to

avoid collecting and paying daily settlement amount on a daily basis, which may be referred to as maintenance margin.

54. Under Regulation 3.10(b), the trading member is at liberty to close out transactions by selling or buying the derivatives contracts, in case of non payment of daily settlement by the constituent within the next trading day. Similarly in case of open sale position undertaken on behalf of the constituents, the trading member is at liberty to close out transactions by effecting purchases of derivatives contracts if the constituent fails to meet the obligation in respect of the open position within next trading day of the transaction having been executed on the F&O segment of the Exchange for the concerned settlement period. It is thus clear that the demand of margin deposit from the constituent by the trading member is mandatory in respect of the business done by the members for such constituents at such percentage as the relevant authority may decide from time to time unless the constituent has equivalent credit with the trading member.

55. It is note the case of the respondent that during the period between 16th January, 2008 and 22nd January 2008, the petitioner had already an equivalent credit of the margin deposit or had pre-agreed balance with the respondent and thus the respondent was not required to demand from the petitioner further margin deposit. In my view, the obligation on the part of the respondent trading member to demand margin from the constituent was mandatory and not discretionary. Since according to the respondent themselves there was a substantial amount of debit balance in the account of the petitioner with the respondent since 16th January, 2008 which amount further increased day to day till 22nd January, 2008, the petitioner not having paid the sufficient margin amount as required according to the respondent, the respondent was bound to close out the transaction immediately

and was not required to wait till 22nd January, 2008 with a view to mitigate the alleged losses suffered by the respondent due to non-deposit amount of the margin money as required under the regulation and also under the agreement entered into between the parties.

56. A perusal of the impugned award indicates that the arbitral tribunal has not referred to the said Regulation 3.10 or has not considered the effect thereof which provision cast mandatory duty and obligation upon the trading member to demand margin money in the circumstances setout therein. The arbitral tribunal has only considered Clause 29 of the agreement entered into between the parties and has rendered a perverse finding that the said provision of the agreement gave an exclusive discretion upon the trading member to liquidate position/security on occurrence of shortfall in margin. The arbitral tribunal has drawn an adverse inference that the trading member always makes a margin call which the client is required to fulfill and has further held that when a request is made to the trading member by the constituents not to square off the outstanding position by the constituent, the trading member usually considers the situation and may await the payment by the client. In my view the inference drawn by the arbitral tribunal is totally contrary to the mandatory duty and obligation under Regulation 3.10 cast on the trading member.

57. Insofar as payment of Rs.15,00,000/- made by the petitioner on 22nd January, 2008 to the respondent is concerned, it was the case of the petitioner that the said amount was paid by the petitioner as demanded by the respondent. It was the case of the petitioner that there was no demand over and above Rs.15,00,000/- orally made by the respondent. The petitioner had made assurance that if it was found that any further amount of margin money was required, the petitioner would

pay such amount when communicated by the respondent during the course of the day. The respondent could not prove before the arbitral tribunal that there was a demand for any amount over and above Rs.15,00,000/- from the petitioner. The arbitral tribunal in such circumstances could not have drawn any adverse inference against the petitioner.

58. In my view, the onus was on the respondent to prove that the demand for amount of margin money as required under Regulation 3.10(a) was actually made by the respondent from the constituent and was not paid by the petitioner. Admittedly, the respondent had the e-mail ID of the petitioner. Not a single document was produced by the respondent before the arbitral tribunal to show that any demand for the margin money was made by the respondent member upon the petitioner of the amount which was demanded but not paid by the petitioner. In my view, the impugned award is without any evidence and thus deserves to be set aside.

59. The conjoint reading of Regulation 3.10 which is statutory regulation with clause 29 of the agreement entered into between the parties clearly indicates that there is inconsistency between the said Regulation 3.10 and clause 29 of the agreement insofar as duties and obligation of trading member to demand margin money and to close out the transaction upon the constituent committing the default is concerned. The Regulation 3.10 is more stringent and is mandatory which is required to be followed by the trading member for demanding margin and to close out the transaction mandatorily in case of a default whereas clause 29 of the agreement between the parties gives a discretion upon the trading member to close out the transaction or not in case of default of payment of margin money by the constituent. In my view in view of the inconsistency between Regulation 3.10

framed by the Stock Exchange which is a statutory regulation and clause 29 of the agreement, Regulation 3.10 framed by the Stock Exchange would prevail over clause 29 of the agreement entered into between the parties. In my view the arbitral tribunal has totally overlooked the mandatory provisions of Regulation 3.10 in the impugned award and has committed a patent illegality.

60. This court in case of ***Bonanza Commodities Brokers Pvt.Ltd.*** (supra) has considered the provisions similar to Regulation 3.10 framed by the Stock Exchange and has held that since the respondent member had carried out the transaction without demanding any margin money from the constituent and without any instructions from the constituent though there was debit balance in his account, the transaction carried out by the respondent member, without any instruction and without any demand of margin money were unauthorized and no debit could have been made in the account of the constituent in respect of such unauthorized transaction. It is held that the trading member who had carried out such transactions in breach of bye-laws of MCX could not make any claim against the constituent and/or debit any amount to the account of the constituent in respect of such unauthorized transactions. It is held that the member could not have squared off the open position of the constituent due to mark to market loss in any case before demanding additional funds. In my view the said judgment applies to the facts of this case. I am respectfully bound by the said judgment.

61. A perusal of the Regulation 3.10 framed by the Stock Exchange clearly indicates that the intent and purpose of demanding margin money in the event of any debit balance in the account of the constituent or if the security provided by the constituent is not sufficient for the purpose of carrying out the derivatives contract and in case of such default to close out the transaction with a

view to mitigate the loss, if any, which may be suffered by the trading member in case of any volatile market condition or otherwise. If the trading member has chosen not to demand margin money through it is mandatory in compliance with Regulation 3.10 and permits the constituent to carry out further transaction, the same would be at the risk and cost of the trading member and in such a situation, the trading member cannot be allowed to recover any alleged loss suffered by the trading member from the constituent or cannot make the constituent suffer any loss due to the non-compliance of such mandatory provisions by the trading member.

62. In my view Mr.Purohit, learned counsel for the petitioner is right in his alternate submission that under Regulation 3.10(b), the respondent broker could not have closed out the transaction on 22nd January, 2008 in respect of the alleged shortfall of the margin money in the account of the petitioner on 22nd January, 2008 without giving an opportunity to the constituent to make the payment on the next trading day on F&O segment of the Exchange for the concerned settlement period. It is not in dispute that the respondent broker had closed out the transaction in the account of the petitioner in the morning trading hours on 22nd January, 2008 itself. The arbitral tribunal has totally overlooked these mandatory provisions of Regulation 3.10 in the impugned award and has committed patent illegality.

63. This court in case of **Ankit Bimal Deorah** (supra) has considered a case where the trading member was not able to produce any document or proof in support of his plea that he had demanded any margin money on 22nd January, 2008 before squaring off the co-laterals through the clearing member and thus could not have recovered any alleged loss from the constituents. The facts of this case are identical the facts before this court in case of **Ankit Bimal Deorah** (supra)

squarely applies to the facts of this case. I am respectfully bound by the said judgment.

64. In my view, even if Clause 29 of the agreement gave the discretion upon the respondent member to demand margin money or not and to close out the transaction or not, such discretion has to be exercised by a member in a reasonable way and for the benefit of his client in relation to whom he acted as an agent. This court in an unreported judgment dated 29th July, 2011 in case of ***Idea International Pvt.Ltd. vs. Motilal Oswal Securities Pvt. Ltd.*** in Arbitration Petition No.144 of 2007 and other connected matters has held that though under the broker-client agreement, a broker has been given an authority to sell all or any of the securities held by him on behalf of the client, but that discretion which is vested by the bye laws in the broker is to be exercised by the broker in a reasonable way and for the benefits of his client in relation to whom he acts as an agent. It is held that the broker cannot exercise his discretion in such a way that the client suffers loss. A perusal of the record indicates that the respondent broker did not exercise such discretion in a reasonable way and for the benefit of the petitioner.

65. Though the petitioner was carrying on transaction with the Chembur Office of the respondent, without any knowledge of the petitioner and without any intimation, the head office of the respondent had closed out the transaction allegedly based on the instruction received from the respondent from the Stock Exchange. No such instruction alleged to have been received by the respondent from the Stock Exchange were produced on record by the respondent before the arbitral tribunal. In my view the judgment of this court in case of ***Idea International Pvt.Ltd.*** (supra) applies to the facts of this case. I am respectfully

bound by the same.

66. Insofar as submission of the learned senior counsel for the respondent that this court cannot interfere with the findings of fact rendered by the arbitral tribunal in these petitions filed under section 34 of the Arbitration Act is concerned, in my view since the arbitral tribunal has rendered various findings which are perverse and are based on no evidence and since the award rendered by the arbitral tribunal is in violation of and overlooking the mandatory regulation framed by the Stock Exchange and is based on presumption and surmises, this court has power to set aside such arbitral award under section 34 of the Arbitration and Conciliation Act, 1996.

67. There is no dispute about the proposition of law laid down by the Supreme Court in case of ***Ravindra Kumar Gupta and Company*** (supra) and in case of ***P.R.Shah, Shares and Stock Brokers Private Limited*** (supra) holding that this court cannot sit in appeal over an award by reassessing or re-appreciating evidence to find out whether different decision could be arrived at against findings of arbitral tribunal in absence of grounds under section 34. However, since the impugned award rendered by the arbitral tribunal in this case shows perversity and patent illegality, there is no bar in setting aside such award showing perversity and patent illegality. The judgment of Supreme Court in case of ***Ravindra Kumar Gupta and Company*** (supra) and in case of ***P.R.Shah, Shares and Stock Brokers Private Limited*** (supra) would not assist the case of the respondent and is distinguishable in the facts of this case.

68. Insofar as submission of the learned senior counsel for the respondent that the petitioner has not challenged the findings of various alleged admissions

made by the petitioner in the arbitration petition is concerned, there is no merit in this submission of the learned senior counsel. A perusal of the grounds raised in the arbitration petition clearly indicates that such findings are challenged by the petitioner in the arbitration petition.

69. Insofar as submission of the learned senior counsel that on one hand the petitioner had alleged that there was no demand for margin money and on the other hand had made a request to the respondent not to square off the transactions which showed contradictions and inconsistency and which would indicate that the petitioner was aware of the margin money required to be paid by the petitioner is concerned, a perusal of the record indicates that it was the case of the petitioner that the respondent had demanded only the margin money of Rs.15,00,000/- on 22nd January, 2008 which was paid by the petitioner and had requested to inform the further shortfall, if any, to enable the petitioner to pay the shortfall, if any, during the course of that day i.e. 22nd January, 2008 and in that context had requested the respondent member not to square off the transactions. The respondent on the other hand could not prove before the arbitral tribunal that the respondent had demanded margin money of the amount more than Rs.15,00,000/- but was not paid by the petitioner.

70. Insofar as counter claim made by the petitioner before the arbitral tribunal is concerned, the arbitral tribunal has rejected the counter claim on the ground that the petitioner had alleged to have accepted the position as on end of the day on 21st January, 2008. In my view this part of the award also shows patent illegality. Since the arbitral tribunal has committed patent illegality in allowing the claims made by the respondent broker for the reasons recorded aforesaid, the rejection of counter claim made by the petitioner by the arbitral tribunal on the

same basis also shows patent illegality and deserves to be set aside.

71. Insofar as other four petitions are concerned, since the parties have agreed that the reasons and conclusions drawn by this court in Arbitration Petition No.47 of 2009 would apply to those four petitions and have not addressed this court separately in respect of other four arbitration petitions, this court has not dealt with the facts in each of these four petitions separately. This court has proceeded on the basis of the statement made by the learned counsel appearing for the parties and have rendered a common judgment.

72. I, therefore, pass the following order :-

(a) Arbitration Petition No. 47 of 2009, Arbitration Petition No. 56 of 2009, Arbitration Petition No. 48 of 2009, Arbitration Petition No. 57 of 2009 and Arbitration Petition No. 1148 of 2012 of are allowed in terms of prayer clause (a) of each of those arbitration petition.

(b) The impugned awards dated 24th September, 2008 which are impugned in Arbitration Petition No. 47 of 2009, in Arbitration Petition No.48 of 2009 and in Arbitration Petition No.1148 of 2012 are set aside.

(c) The impugned awards dated 1st October, 2008 which are impugned in Arbitration Petition No. 56 of 2009 and in Arbitration Petition No.57 of 2009 are set aside.

(d) No order as to costs.

[R.D. DHANUKA, J.]