IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO. 1445 OF 2014

Dr. Girish Sanghavi ... Petitioner
V/s.
HDFC Securities Ltd. ... Respondent

ALONG WITH

ARBITRATION PETITION NO. 1659 OF 2014

Devang Girish Sanghavi ... Petitioner
V/s.
HDFC Securities Ltd. ... Respondent

ALONG WITH

ARBITRATION PETITION NO. 1474 OF 2014

Rachita Girish Sanghavi ... Petitioner
V/s.
HDFC Securities Ltd. ... Respondent

ALONG WITH

ARBITRATION PETITION NO. 1485 OF 2014

Mamata Girish Sanghavi ... Petitioner
V/s.
HDFC Securities Ltd. ... Respondent

Mr. Amrit Joshi i/by Mr. Vinod P. Sangvikar, Advocate for the petitioner.

Mr. Dinesh Tiwari a/w Mr. Swapnil Ambure, Mr. Mikhail Dey i/by Dinesh Tiwari & Associates, Advocate for the respondent.

Coram : Smt. R. P. SondurBaldota, J.
Date : 18^{th} March, 2016.

P. C. :-

1) This is a common order on the above four petitions filed under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the Act", for short). The respondents to the four petitions are the same. The petitioners are the members of the same family and the issues arising for consideration in the petitions are identical. The respondent is a Member of National Stock Exchange (NSE). The petitioner in each petition is the constituent of the respondent and holds a D-MAT Account with the respondent. There is a Member Constituent Agreement between the parties with contains an arbitration clause, wherein it is agreed that, in case of disputes, the same shall be referred to arbitration as per the rules, bye-laws and regulations of NSE. The arbitration clause which is identical in all the three members constituent agreement is as under :-

> ***"24. DISPUTE RESOLUTION :-***
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> *Any claim, dispute or difference arising between the Parties hereto in respect of Agreement or any contracts, dealings or transactions pursuant hereto or any rig obligations, terms or conditions as contained in this Agreement or the interpretation or construction of this Agreement shall be subject to the grievance redressal procedure of the concerned Exchange and shall be subject to the arbitral procedure as prescribed by the applicable Exchange provisions. The Member and the Client are aware of the provisions of the Bye-Laws, Rules and Regulations of the concerned Exchange (including those of the various segments of*

concerned Exchange) relating to arbitration.

The Client and Member agree to refer any claims and/or disputes governed by Rules, Bye-laws and Regulations of the Derivatives Segment of the BSE, to arbitrate in the city of Mumbai as per the Rules, Bye-laws and Regulations of the Derivative Segment of the BSE as amended from time to time.

The member agrees that it shall co-operate in redressing grievance of the client in respect of transactions routed through it and in removing objections for bad delivery of shares, rectification of bad delivery, etc. in respect of shares and securities delivered/to be delivered or received/to be received by the client.

The member hereby agrees that he shall ensure faster settlement of any arbitral proceedings arising out of the transactions entered between him and the client and that he shall be liable to implement the arbitration awards made in such proceedings.

The member and the client agree to abide by any award passed by the Ombudsman under the SEBI (Ombudsman) Regulation, 2003."

2) The petitioners made identical allegations and demands in their respective arbitration proceedings. Each demanded a sum of Rs.1,58,653/- towards the alleged loss caused to them by the respondent and Rs.1,00,000/- towards the alleged harassment and hardship. They did not file any formal statement of claim but referred to their two letters dated 3rd April, 2014 and 18th April, 2014 addressed to the NSE, as their complaints. The gist of the complaints of each petitioner in the two letters is as under:-

i) The petitioners were deliberately misguided given wrong advice with ulterior motives by the Relationship Manager of the respondent.

ii) The respondent deliberately misguided the petitioners in mid cap and large cap stocks which would mean that the respondent was involved in a "scam". The Team Manager and other staff of the respondents had given advise to the petitioners to suit their own convenience.

iii) The Unique Client Code of the petitioners was not disclosed to them. When the petitioner requested for DEMAT statement alongwith original purchase price, trading price on the statement, date of DEMAT and the stop loss statement, they were informed that the same would be sent not bi-monthly but annually, if no transaction is happening. This was arbitrary and with intent to get away from the responsibility. The petitioners made heavy losses in large cap scripts like L & T, Reliance and Others as the respondent did not properly advise them at the correct time. The system of the respondent is faulty and has no watchdog system. It is required to be improved.

iv) The respondent had failed to hand over tax voice recording for the trades done.

v) The Risk Disclosure Documents and Member Client Agreement were signed by the Applicant without reading the same as these were in small font.

3) Per contra, the respondent had contended that the references filed was false and frivolous and barred by limitation. Since the petitioners had not filed Statements of Claim the respondent had suffered a handicap in replying to the allegations. It was constrained to file a generalised and consolidated reply to all the grievances. The case of the respondent was that there are no trades in the account of the petitioners after 30th November, 2010. The respondent had from time to time sent the statement of funds and securities to the petitioners. According to the respondent, it is inconceivable that the petitioners signed the agreement without reading the same. It also denied it's liability in view of Clause 11 of the agreement. In any case the claim of the petitioners was notional since the petitioners still hold shares in the demat account.

4) The arbitral tribunal appointed by the National Stock Exchange (NSC) separately heard all the four references and passed separate awards. As regards the references in the first two petitions herein the tribunal has, for the reasons stated in the award, held that the same were barred by the law of Limitation. The references in the other two petitions have been dismissed on merit after holding the objection of limitation in favour of the petitioners. The tribunal has however not stated any reason for answering the question of limitation in favour of the petitioners.

5) The reasons stated by the Tribunal for holding that two of the references are barred by limitation are identical. Admittedly the last trade in the account of the petitioners was on 30th November, 2010 and the statement of case filed with the arbitration department of NSE was on 23rd April, 2014. It had been contended on behalf of the petitioners that the cause of action to proceed against the respondent arose for them on 1st November, 2013. The tribunal rejected this contention with an observation that the petitioners had failed to demonstrate and substantiate as to why the date of 1st November, 2013 should be taken as the date of dispute. It then considered Article 113 of the Limitation Act and did following calculation for the purpose of Limitation.

Date of last trade	30.11.2010
Thus the transaction fails in the quarter ending	31.12.2010
Therefore the period of limitation expires on	31.12.2013
Date of filing present arbitration reference	23.04.2014
Delay in filing present arbitration reference	113 days
Period that has to be excluded per SEBI Circular dated 02.12.2009 From 17.01.2014 (date of complaint) to 21.02.2014 (date on which IGRP has disposed the matter)	36 days
Actual delay in filing present arbitration reference	77 days

6) As regards the merits of the petitioners claim the tribunal has held that the petitioners had not substantiated the allegation that the respondent had deliberately misguided the petitioners and given them wrong advice with ulterior motives. They failed to show that either under the Member Client agreement or Risk Disclosure agreement the respondent was obligated to offer investment advice. Especially Clause 11 of the agreement governed the rights and obligations of the parties on investment advice. Besides the petitioners had not specified the transactions that were affected by “ill advice”. It disbelieved the claim of the petitioners of failure to give demat statement, showing original purchase price, trading price with stop loss statement on a monthly basis for want of substantiating material. According to the respondent, if there was no transaction happening the statements would be sent only annually and not bi-monthly. As regards any allegation of “scam” the same was held to be beyond the arbitral reference.

7) It would be worthwhile to note at this stage Clause 11 of the agreement between the parties which governs the investment advice. The same reads as under:-

> ***11. INVESTMENT ADVICE***
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> *11.1 The Member does not intend to give and the Client acknowledges that the Member shall not be liable to provide to the Client, any tax, legal or investment advice of any kind, or any advice or opinion with respect to the nature, potential value or suitability of any particular securities, transaction, investment or investment strategy. The Client understands and agrees that in the event the Client receives or accesses any investment research reports or any investment or other recommendations or advice from the Member (or any employee or official of the Member) or on the Member's Web Site, the same is on a no-liability, no-guarantee and no-obligation basis and any decision, action or omission thereon shall be entirely at the Client's risk and should be based solely on the Client's own verification of all the relevant facts, financial and other circumstances, a*

proper evaluation thereof and the Client's investment objectives and the Member shall not be responsible or liable for the same for any reason whatsoever.

11.2 The Client also acknowledges that the Member's employees are not authorized to give any such advice and that the Client will no solicit or rely upon any such advice from the Member or any of its employees. The Client agrees that in the event of the Member or any employee or official of the Member providing any information, recommendation or advice to the Client, the Client may act upon the same at the sole risk and cost of the Client, and the Member shall not be liable or responsible for the same.

11.3 The Client agrees and undertakes to assume full responsibility for all his investment decisions and transactions. The Member, its officers, directors, partners, employees, agents and affiliates will have no liability with respect to any investment decisions, transactions or losses of the Client."

8) Mr. Joshi, the learned advocate appearing for the petitioners has canvassed three grounds to challenge the impugned awards. The first ground is of the composition of the arbitral tribunal, the second is on the bar of limitation and the third is of the awards being perverse and hence opposed to public policy.

9) Mr. Joshi submits that the composition of the arbitral tribunal was not in accordance with the agreement between the parties i.e. in accordance with NSC Bye-laws and regulations. Clause 5.6 of Chapter 5 of Regulations of NSE contains the procedure for appointment of arbitrators under which the applicant along with his request for arbitration has to furnish a list of his preferred choice of arbitrators in the descending order of preference. The respondent then has to choose his preference from the list. If the applicant fails to provide the preferred choice of the arbitrators, the choice can be made from the list submitted by the respondent. In the event of failure on both the sides in submitted the preferred choices the authority would appoint arbitrator from the panel maintained by it.

10) The petitioners had given three choices. By it's letter dated 13th May, 2014 NSE informed the petitioners of the appointment of Mr. Anil Shah as an arbitrator who was not on the list of the petitioners but who is on the panel of NSE. The petitioners thereafter did not file any statement of claim. The respondent filed its statement of defence on 15th June 2014. The first meeting of the Arbitration was held on 16th June, 2014 when the parties were heard and the proceedings were concluded. The petitioners allege that their representatives who appeared for them in the proceedings felt that the arbitrator was biased towards the respondent. He had therefore raised an objection about it. The petitioners however do not disclose any particulars of the alleged act of bias on the part of the learned Advocate.

11) No doubt, the arbitrator appointed by NSE is not from the list of preference furnished by the petitioners. He is from the panel of NSE. But an objection had not been raised by the petitioners on that ground on receipt of the communication dated 13th May, 2014. Instead the petitioners made a choice of appearing before him on the first date of hearing. Therefore, the petitioners cannot be permitted to raise an objection on ground that the arbitrator was not from the list furnished by them. Considering the facts of the case and the nature of pleadings the proceedings got concluded on the very day. The petitioners allege that the arbitrator was biased towards the respondent. But the allegation is without any particulars. Hence, the challenge to his mandate will have to be held without substance.

12) The second argument of Mr. Joshi is about the manner in which the tribunal has dealt with the objection of limitation. According to him, the order on this aspect is perverse. He points out that on the same facts the tribunal has given contrary findings in the two sets of references. Since all the four references are decided independently, the only argument available to the petitioners would be challenge to the finding that the references are barred by the law of limitation. As already mentioned hereinabove, there is no dispute that the date of last trade is 30th November, 2010. In that circumstance, any complaint on the part of the petitioners of giving wrong advice with ulterior motives would be relevant only for the transactions that had taken place. There can never be a wrong advice for the transactions that have not taken place. In any case, there are no particulars whatsoever alleged by the petitioners of instances of wrong advice. Therefore, the cause of action for the petitioners to claim compensation will have to be treated as having arisen lastly on 30th November, 2010. Merely because the petitioners demanded the amount from the respondent on 1st November, 2013, it cannot be said that the cause of action to the petitioners arose on that day. Therefore, it must be held that the tribunal has correctly decided the question of limitation raised by the respondent in two of the matters.

It is indeed strange that the same view was not taken by the tribunal in respect of other two references also. In the circumstances, it cannot be said that there is any infirmity in the view taken by the tribunal on the question of limitation.

13) This brings me to the last contention of the petitioners on the merit. Perusal of the record shows that the tribunal has correctly observed that the petitioners have failed to allege and establish the allegation that the respondent had deliberately misguided them and given wrong advice with ulterior motives. The allegations are also devoid of particulars. The tribunal has correctly disbelieved the claim of the petitioners that under the Member Client agreement or Risk Disclosure Agreement the respondent was obligated to offer investment advice to them. Under Clause 11.3 of the investment advice, the petitioners have, in clear terms, agreed and undertaken to assume full responsibility for their investment decisions and transactions. As regards the claim of the petitioners of failure on the part of the respondent in issuing demat statement, original purchase price and trading price with stop loss statement on a monthly basis, the respondent would be right in its contention that since no transactions had taken place after year 2010, there was no question of issuing bimonthly statement of trades. Thus, there is no substance in the contention on merit also.

14) Hence, for the reasons above, petitions are dismissed.

SMT.R.P. SONDURBALDOTA, J.