IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO. 672 OF 2016
AND
ARBITRATION PETITON NO. 683 OF 2016

Smt.Urmila Shahtri ...Petitioner
vs.
M/s.Guiness Securities Ltd. ...Respondent

Mr.Memino Dias for Petitioner.
Mr.Prakash Shah for Respondent.

CORAM : S.C. GUPTE, J.

7 JUNE 2017

P.C. :

Arbitration Petition No.672 of 2016 challenges an appellate arbitral award dated 5 August 2015 in a National Stock Exchange arbitration, whereas Arbitration Petition No.683 of 2016 challenges an appellate arbitration award dated 16 December 2015 between the same parties.

2 The short facts of the case may be stated thus :

The Petitioner in both these cases had a trading account with the Respondent, who is a broker of the National Stock Exchange (NSE). The agreement between the parties *inter alia* concerned provision of trade margin as per NSE hair cut norms on shares given as collaterals. On 20 May 2014 and 26 May 2014, the Respondent squared off the Petitioner's open position due to margin shortfall. According to the Petitioner, such squaring off was unilateral and without any intimation and despite the Petitioner holding sufficient margin as per NSE haircut (VAR – value at risk) norms. It was also the Petitioner's case that the Respondent did not give credit to her for both funds provided by her and dividends accrued on collateral shares and unlawfully deprived her of the corresponding additional margin accrued for trading. In August 2014, the Petitioner addressed a complaint to the Grievance Cell of NSE. The parties arrived at consent terms before the Investor Grievance Resolution Panel ('IGRP') of NSE, in terms of which the latter closed the Petitioner's complaint on 30 September 2014. According to the Petitioner, the Respondent breached the terms of this settlement and as a result, a second complaint was filed by the Petitioner with IGRP. After the closure of the second complaint by IGRP, the Petitioner filed the present arbitration proceedings, being F&O/M-0043/2014. The arbitration panel of NSE by its impugned award dated 16 March 2015, allowed the Petitioner's claim on one particular item (namely, 1000 shares of Claris), whilst rejecting the remaining claim in view of the settlement recorded by IGRP. The Petitioner's appeal from this rejection was dismissed by the appellate panel of arbitrators of NSE. Arbitration Petition No.672 of 2016 challenges this award. In the meantime, pending the reference of the Petitioner, the Respondent squared up the Petitioner's open trade positions for want of clearance of debit balance according to the settlement recorded by IGRP on 30 September 2014. This squaring off, which, according to the Petitioner, was illegal, is the subject matter of the second arbitration, on which the arbitration panel of NSE passed its award rejecting the claim. The award was confirmed in appeal by the appellate panel. This appellate award forms the subject matter of challenge in the companion arbitration petition, i.e. Arbitration Petition No.683 of 2016.

3 Both awards are passed essentially on the footing that the dispute pertaining to the squaring off of May 2014 as well as delayed

margin, delayed credit, etc., which was the subject matter of the first arbitration, was settled in terms of the settlement recorded by IGRP on 30 September 2014; that there was no breach of this settlement on the part of the Respondent; and that the Petitioner herself had not complied with the settlement terms as per IGRP directions despite being fully aware of both the ledger debit and margin shortfall.

4 No infirmity can be found with this reasoning of the arbitral tribunal. There is no dispute between the parties that the original IGRP proceedings resulted in a settlement between the parties. The original cause of action of the Petitioner, thus, does not survive; what we have to see is, if the settlement terms have, in any way, been breached by the Respondent. Under the settlement terms, there was reversal of debit of Rs.34,958.73; the trading was to be without any hold-up from the start of the trading hours; the debits created post-19 May 2014 were to be cleared in due course by option writing and no interest was to be charged for the same; and margin information was to be provided by the Respondent to the Petitioner on daily basis and if there was to be any change in the hair-cut norms, time was to be given to the Petitioner to manage the open positions till the expiry date. There is nothing on record to show that the Respondent at any time failed to provide margin information to the Petitioner after 30 September 2014 or squared up the open position of the Petitioner, which ensued as a result of any change of norms or without giving time consequent upon such change of norms. On the other hand, what emerges from the record is that despite being aware of the ledger debit with its quantum and margin shortfall, the Petitioner did not make good the shortfall as of 10 November 2014 and in the premises, the Respondent rightly squared off the Petitioner's open position on 10 November 2014.

5 The Petitioner did not dispute the margin shortfall or debit balance as of 10 November 2014. What she contended was that she was willing to make good the margin shortfall, but the quantum was not known to her. This contention was negatived by the arbitration tribunal, holding that the Petitioner was a seasoned client, well-versed in F&O trades, was fully aware of the factum of mark to market margins and losses and also the legal position that the Respondent had to fulfill its obligations to the Exchange everyday and had a right to square off the position for margin shortfall and debit balance. These are all matters of fact and based on assessment of evidence. No infirmity can be found in the same which can spell out any perversity in the findings.

6 The Petitioner's contention that the Respondent did not send any representative to her residence to collect DIS, was also rightly negatived by the arbitral tribunal by holding that it was not obligatory on the part of the Respondent to send any such representative for collection of DIS.

7 No ground for setting aside the impugned awards is, accordingly, made out within the meaning of Section 34 of the Arbitration and Conciliation Act, 1996.

8 Both petitions are, in the premises, dismissed. No order as to costs.

(S.C. Gupte, J.)