$~

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ O.M.P. 209/2010

AMIT BHARGAVA ..... Petitioner
Through: Mr R.R. Kumar and Ms Vidhushi Garg, Advocates

versus

RELIANCE SECURITIES LTD. & ANR. ..... Respondents
Through: Mr. Sudhanshu Batra, Senior Advocate with Mr Bhuvan Gugnani, Advocates.

CORAM: JUSTICE S.MURALIDHAR

ORDER
01.03.2017

1. This is a petition under Section 34 of the Arbitration and Conciliation Act, 1996 ('Act') filed by Amit Bhargava against Reliance Securities Ltd. ('RSL') challenging an Award dated 24th December, 2009 passed by the Arbitral Tribunal ('AT') constituted under Rules/Bye Laws of the National Stock Exchange of India Ltd. ('NSE')

2. The Petitioner filed before the AT a claim for a sum of Rs. 19,11,09,213.94 against RSL on 16th June, 2009. The claim consisted of Rs. 58,18,399.64 towards reversal of amount debts made in the Petitioner's account on 4th January, 2008; opportunity loss of Rs. 5,81,83,996.40 besides loss of interest in the sum of Rs. 4,16,06,817.90 and Rs. 8 crores towards compensation for mental agony and loss of reputation and expenses incurred

towards legal help etc.

3. The Petitioner states that in 2007, he entered into an agreement with RSL/ Reliance Money (RML) to open a Demat account and explore equity trading, demat mutual funds, etc. He states that investment decisions were taken on the basis of information provided by RML/RSL on their online portal i.e., www.reliancemoney.com. On 4th December, 2007, while the Petitioner was trading online, RML's portal became unusually slow and gave misleading information. He states that this continued till 9th January, 2008 and, in the meanwhile, based on the information that was received/not received through the portal of RSL, the Petitioner took some financial decisions which resulted in a huge loss to him.

4. The Petitioner states that he traded in shares in various lots using online trading of RSL on 4th January, 2008. After selling 55,231 shares, the Petitioner converted 20,600 shares before the auto squared off process. The trading system of RSL allowed the Petitioner to purchase 900 shares further after the squared off process was completed. This meant that the Petitioner's net Buy position in these shares stood at 21,500 shares i.e., 21,500.

5. The Petitioner alleged that the contract note for the trade done on 4th January, 2008 was not made available by the end of that day. The login of the contract note from RSL website was also not possible after 15:30 hours on 4th January, 2008 till evening of 6th January, 2008. The net buy position of the shares as per the contract note stood at 21,200 shares whereas 20,600 shares were converted into delivery and another 900 shares were bought for delivery trade thus totalling 21,500 shares. The net buy position was 21,200

shares; the difference of 300 shares was on account of excess quantity sold under the Auto Square off process.

6. It is further explained that on 7th January, 2008, the Acquire Today Sell Tomorrow ('ATST') status showed 21,500 shares as net buy position available for sale. At the start of trade on 9th January, 2008, only 3443 shares of Neyveli Lignite Corporation Limited ('NLCL') were delivered to the Petitioner's demat account. At 14:16 hours on that day, the shares in the Demat Account increased to 26,643 shares. In view of the said misleading information, the Petitioner claimed that he could not take the decision to trade in the shares and at the same time, the prices of NLCL's shares kept falling resulting in a financial loss to him. The Petitioner claimed to have suffered losses in dealing in mutual funds through the portal of RSL. It is stated that the Petitioner's account was unilaterally closed by RSL on 15th December, 2008.

7. In response to the claim *inter alia* it was contended by RSL that the 300 shares which were short sold were adjusted against the Petitioner's delivery purchase, which was an advantage to the seller in a declining market. It was claimed that there was no loss whatsoever to the Petitioner on this account. The Petitioner could have purchased the said shares on 7th January, 2008 when the shares were traded at a much lower price. It is pointed out that the ATST position was an additional feature and the projection under the said option was linked to the Petitioner's previous purchases.

8. As regards the factual position, the stand of RSL as noted in the impugned Award reads as under:

> "11. As regard the different quantity being reflected in two reports, the Applicant has purchased 21,000 shares on 4th January, 2008, for which the exchange settlement date was 8th January, 2008. Accordingly, on 9th January, 2008, the Applicant's D-mat account was credited with a total of 21,200 shares consisting of 3443 shares from CDSL and 17,757 shares from NSDL. The credit of 3443 shares were received from CDSL at around 5:00 AM and at this time, as part of the Beginning of the day (BOD) process were included in De-mat Allocation page and made available for trading immediately. Since the shares from NSDL appeared in the back office after the BOD process was initiated, these shares could not be included in the D-mat allocation page and were not visible to the Applicant initially. This subsequent credit was updated through a manual process and during that updating, the number of shares allocated was taken as running balance of the D-mat statement i.e. 21,200 shares."

9. It was further contended by RSL that the Petitioner was fully aware of the transactions that were taking place. It was added that even assuming that in respect of the transactions of 4th January, 2008, he received the contract note on 6th January, 2008, the opening price of these shares on the next working day i.e., on 7th January, 2008 was Rs.259.85 per share. The average price on 4th January, 2008 was Rs.268.97 per share whereas the average price on 7th January, 2009 was Rs.262.08 per share. Therefore, there was no loss to the Petitioner. As regard the net position of 21,200 shares, the same was the net position at the end of the trading session, after considering the 300 shares sold in excess. RSL, accordingly, contended that the claim of the Petitioner was based on notional loss and, therefore, had to be rejected.

10. In the impugned Award, the AT noted that at the time of opening his

trade account, the Petitioner had as part of the MCA executed a Combined Risk Disclosure Document for Capital Markets / Futures & Options Segment. Clause 1.8 of the said document reads as under:

> "1.8. Trading on NSE/BSE is in electronic mode based on satellite/leased line based communications combination of technologies and computer systems to place and route orders. Thus there exists a possibility of communication failure or system problems or slow or delayed response from system or trading halt or any such other problem/glitch whereby not being able to access to the trading system/network which may be beyond the control of an may result in delay in processing or not processing buy or sell orders either in part or in full. You are cautioned to note that although these problems may be temporary in nature, but **when you have outstanding open positions or unexecuted orders, these represent a risk because of your obligations to settle all executed transactions"** (emphasis supplied)

11. A factual finding was rendered by the AT that the issues raised by the Petitioner appear to be on account of the delay or failure of communications over which RSL had no control and, therefore, it could not be held responsible. Further, it was noticed by the AT that the documents executed between the parties included 'Confirmation of Terms and Conditions governing Securities Trading and Broking Services'. Clauses 29 and 30 of the said document read as under:

> "29...The Client agrees to hold the Stock Broker harmless from any claims and confirms that the Stock broker shall not be responsible for any loss actual or notional caused directly or indirectly as a result of the failure of the internet...or any condition beyond the control of the Stock Broker**. The client further agrees that the client**

shall not be compensated by the stock broker for any "Lost opportunity".

> 30. Neither the stock broker or any other person, including but not limited to affiliates of the Stock Broker disseminating any data / message / information through the website shall be held liable for any error, inaccuracy, omission or delay in the transmission or delivery of any such data, information or message." (emphasis supplied)

12. Further NSE's website in its note on online trading stated as under:-

> "8...Every on line trading client should understand that there could be a possibility of failure of system which could include failure at various points including net work failure, connectivity failure etc... In order to mitigate risks, arising from such failure, investor before starting trading should understand... ways and means of dealing with such failures..."

13. The AT, therefore, found that the Petitioner was fully aware of the risks involved in online trading and could not hold RSL responsible for the notional losses suffered by him.

14. On the question of price difference on the relevant dates and the inability of the Petitioner to square off his position or trade further, the AT examined the price of NLCL on the relevant dates. It noted that after the relevant trade carried out by the Petitioner himself, there remained a difference of 300 shares which was on account of excess sale in the process of auto squaring. The AT further noted that the opening price of the shares on the next trading date i.e., 7th January, 2008 was lower than that is prevailing on 4th January, 2008. Thus, any confusion as regards the number of shares available to the

Petitioner for sale was made clear by that time. The Petitioner contended that he could not further trade in the shares to square off his position and avoid any further trade loss. However, it was open to him to trade further; if he chose not to do so, any failure on the part of the Respondent could not be claimed later. In the circumstances, the Petitioner's claim on account of alleged inability to square off his position as regards the NLCL's share was rejected.

15. This Court has heard the submissions of Mr. Kumar, learned counsel appearing for the Petitioner and Mr. Sudhanshu Batra, learned Senior Counsel for the Respondent.

16. The Court enquired from the learned counsel for the Petitioner the basis on which the Petitioner had worked out the opportunity loss as Rs. 5,81,83,996.40 and Rs. 58,18,399.64 towards 'reversal of debts'. Learned counsel for the Petitioner was unable to explain the basis for this calculation. He kept repeating that the losses were 'notional'. The Court is of the view that the Petitioner's claim itself was speculative, vague and unclear. The very basis of his claim was an exaggerated sum which was unable to be established by him.

17. The position that is clear on a perusal of the impugned Award is that there was a short sale of 300 shares on account of alleged defect with respect to the online trading system between 4th January, 2007 and 7th January, 2008. As demonstrated by RSL, and accepted by the AT, there was enough opportunity for the Petitioner to have squared off his position and mitigated the losses on 7th January, 2008 when the prices of NLCL's shares were

lower than the prices on 4th January, 2008. It was incumbent upon the Petitioner to have demonstrated how on account of short sale of 300 shares there could be a huge claim for Rs. 5.81 crores as opportunity loss.

18. Further, the clauses in the documents titled 'Combined Risk Disclosure Document for Capital Markets/Futures & Options Segment' as well as 'Confirmation of Terms & Conditions governing Securities Trading and Broking Services' signed by the Petitioner immunise RSL against a possible loss that may be suffered by a party on account of online trading.

19. The Court finds that the impugned Award of the AT suffers from no infirmity. None of the grounds under Section 34 of the Act is attracted. The petition is, accordingly, dismissed with no orders as to costs.

S.MURALIDHAR, J

MARCH 01, 2017
rd