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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
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+ **O.M.P. 1171/2012**

SVARN FINANCIAL SERVICES PVT LTD ..... Petitioner
Through: Mr. Gaurav Sarin, Mr. Charul Sarin and Ms. Harnain Kaur Alag, Advocates.

versus

DR SYED SIDDIQUE HASAN ..... Respondent
Through: Mr. Muhammad Ali Khan and Mr. Omar Hoda, Advocates.

AND

6.
+ **O.M.P. 1172/2012**

SVARN FINANCIAL SERVICES PVT LTD ..... Petitioner
Through: Mr. Gaurav Sarin, Mr. Charul Sarin and Ms. Harnain Kaur Alag, Advocates.

versus

DR. HUMA MASOOD ..... Respondent
Through: Mr. Muhammad Ali Khan and Mr. Omar Hoda, Advocates.

CORAM: JUSTICE S. MURALIDHAR

O R D E R
% **16.03.2017**

1. These are two petitions under Section 34 of the Arbitration and Conciliation Act, 1996 ('Act') by Svarn Financial Services Pvt. Ltd. OMP

No. 1171 of 2012 challenges an appellate Award dated 18th September, 2012 by the Appellate Arbitrator Panel appointed by the Arbitration Department of the National Stock Exchange of India Limited ('NSEIL') in the disputes between the Petitioner and Dr. Syed Siddique Hassan whereas OMP No. 1172 of 2012 is a challenge to an appellate Award of the same date by the same Appellate Arbitrator Panel of NSEIL in the disputes between the Petitioner and Dr. Huma Masood.

2. The brief facts are that the Petitioner is a member of the National Stock Exchange and carries on business as a Share and Stock Broker in accordance with the Rules, Regulations and Byelaws of the Securities and Exchange Board of India ('SEBI'). It is stated that since January 2012, the Petitioner has surrendered its licence and is no longer in the aforesaid transactions.

3. Dr Hasan got an account opened with the Petitioner in November 2007. It is stated that between November 2007 and February 2008, Dr. Syed Siddique Hasan gave three cheques totalling Rs. 8,98,000 and three pay dues totalling Rs. 10,27,589.11. During the period of 2008 to 2010, Dr. Hasan stated to have not conducted any business. He returned in May 2010 and gave two cheques totalling Rs. 3 lakhs and took two pay dues totalling Rs. 1,92,000 till September 2010.

4. As far as Dr. Masood was concerned, she entered into a Member-Client Agreement with the Petitioner on 19th October, 2010 and signed the Combined Risk Disclosure Agreement "for trading in derivatives/Future and Option Segment" as formulated by NSE in coordination with

SEBI. Dr. Masood gave a cheque of Rs. 23.94 lakhs in October 2010 for trading in derivatives/ Future and Option Segment of the NSE. The advice for the trades was given by one Mr. V.P. Bhalla who had been authorised by Dr. Hasan. It is stated that Dr. Masood and other investors suffered heavy losses from October 2010 till August 2011 since the stock market crashed. Her account went into a negative balance of Rs. 10,16,357.50.

5. Dr. Masood filed a complaint against the Petitioner on 11th November, 2011 alleging that trades were carried out in her account without her instructions thus causing her enormous loss. She claimed return of the amount invested by her alleging it to be a loan guaranteed by fixed returns. However, the Petitioner claims that she owed it Rs. 10,16,000. Dr Hasan too filed a complaint seeking return of the sum of Rs. 25 lakhs stated to have been invested by him. According to the Petitioner, Dr. Hasan owed it Rs. 1,91,708.

6. In terms of the byelaws of NSE, the disputes raised by the two Respondents were referred to arbitration by a sole Arbitrator. The Petitioner filed its statement of claims on 18th November, 2011 claiming to recover Rs.10,16,357.50 together with interest @18% per annum till realisation.

7. In response to the claim statement filed by the Petitioner, Dr. Hasan filed a counter-claim for a sum of Rs. 22,66,880. As far as Dr. Masood

was concerned, she filed a counter-claim for a sum of Rs.23,94,000.

8. Two separate Awards were passed by the sole Arbitrator on 19th April, 2012. The sole Arbitrator rejected both, the claims and the counter-claims filed by the Petitioner as well as Dr. Hasan and Dr. Masood. The counter-claims were held to be 'bland' claims. The Respondents had failed to prove that the amounts claimed were given by them on loan to the Petitioner in order to get secured returns. There were no such signed agreement between the parties.

9. The Petitioner did not challenge the aforementioned Awards dated 19th April, 2012 of the sole Arbitrator. However, each of the Respondents filed an appeal before the Appellate Arbitrator Panel of NSEIL. By the impugned Appellate Arbitral Awards dated 18th September 2012, the corresponding Awards dated 19th April, 2012 of the sole Arbitrator rejecting the counter-claims of the Respondents were set aside. The Appellate Arbitrator Panel directed the Petitioner to pay Dr. Hasan Rs. 20,18,699.39 by 30th September, 2012 failing which Dr. Hasan would be entitled to interest @ 12% per annum with effect from 1st October, 2012 till realisation. As far as Dr. Masood's appeal was concerned, the Petitioner was directed to pay her Rs.23,94,000 by 30th September, 2012 failing which Dr. Masood was entitled to interest @ 12% per annum with effect from 1st October, 2012 till realisation.

10. This Court has heard the submissions of Mr. Gaurav Sarin, learned

counsel appearing for the Petitioner and Mr. Muhammad Ali Khan, learned counsel appearing for the Respondent.

11. Mr. Sarin pointed out that the Appellate Tribunal completely overlooked the fact that there was no evidence whatsoever produced by either of the Respondents in support of their respective counter-claims before the sole Arbitrator. In other words, there was no basis for the exorbitant amounts claimed by them against the Petitioner. No credible evidence was led either by affidavit or otherwise. On the other hand, the Appellate Tribunal had in the case of Dr Hasan merely gone by the ledger account produced by the Petitioner and purported to calculate the credit balance allegedly in his favour. As far as Dr Masood was concerned, her entire counter claim was allowed without referring to any documents. It is submitted that the exhaustive documents placed on record by the Petitioner were completely ignored by the Appellate Tribunal. Reliance is placed on the judgment of this Court in ***Prasar Bharati v. B4U Multimedia International Ltd. 187 (2012) DLT 194***.

12. Mr. Muhammad Ali Khan, learned counsel appearing for the Respondents, on the other hand, sought to support the Appellate Award by pointing out that the admitted case of the Petitioner was that there was a credit balance in the ledger account of Dr Hasan. He submitted that the Appellate Tribunal had merely gone by the said figure to award the counter-claim of Dr Hasan.

13. The above submissions have been considered. The scope of the present petitions is limited to the challenging the impugned Awards insofar as the counter-claims of each of the Respondents has been allowed. As already noticed, the Petitioner did not challenge the Awards of the sole Arbitrator to the extent that its claims against the Respondents were rejected.

14. As far as the Respondents' counter-claims were concerned, it was noted by the sole Arbitrator in the Award dated 19th April 2012 that each of the counter-claims was a 'bland claim'. Neither Respondent had shown that "the amount was paid in order to get secured, fixed return and that there was any such agreement signed between the parties."

15. This Court asked counsel for the Respondent to point out:

(i) what were the documents placed on record before the Arbitrator by each of the Respondents in support of their counter-claims?

(ii) whether any evidence was adduced by the Respondents either by filing an affidavit of evidence or otherwise?

(iii) where in the impugned Awards of the Appellate Tribunal were such documents or evidence, if any, discussed?

16. Learned counsel for the Respondent was unable to answer any of the above questions in the affirmative.

17. Indeed, it does appear that there was no document filed by the Respondents in support of their respective counter-claims which could be considered as 'credible' evidence. The Appellate Tribunal has naturally not discussed any such evidence. As far as Dr Hasan is concerned, the Appellate Tribunal merely went by the entries in the ledger account set out by the Petitioner in its claim petition.

18. Merely because the Petitioner did not choose to challenge the Award of the sole Arbitrator as regards the rejection of its claim, it could not automatically result in the counter-claim of the Respondents being allowed. Further, merely because the Petitioner was unable to satisfy the Appellate Tribunal about the manner of placing of instructions by the Respondents as to the trades, could not lead to an inference that the trading transactions in the account of each of the Respondents were not authorised by them.

19. The finding of the sole Arbitrator that there was no evidence in support of the counter-claims has not been shown to be perverse or contrary to the record. In the absence of some credible evidence, the Appellate Tribunal could not have straightaway allowed the counter-claims. As far as Dr. Hasan was concerned, the Appellate Tribunal in para 10 observed as under:

> "10. The respondent has furnished the details of debits and credits of the appellant. The total credits and debits are

> Rs.35,23,738.5 and Rs.15,05,039.11 respectively. The net credit works out to Rs.20,18,699.39. The appellant has not produced the detailed calculations in support of his claim for Rs.22,66,880.00. For reason of above discussion, the appellant is considered entitled to the amount of Rs.20,18,699.39."

20. The above manner of working out the net credit is too simplistic unconvincing. This was not the basis on which the Dr Hasan based his counter-claim. Dr. Hasan offered no explanation whatsoever for the calculation of the counter-claims at Rs. 22,66,880. As far as Dr. Masood was concerned, the Appellate Tribunal does not even make an effort to examine the basis for her claim of Rs. 23,94,000. In her case, no reference is made to a ledger account but only to the fact that the trades in her account were without her instructions.

21. The Court is satisfied that the appellate Award, to the extent it had allowed the counter-claims of each of the Respondents, is not based on any evidence whatsoever. The Awards are, therefore, perverse and opposed to the fundamental policy of Indian law within the scope of Section 34 (2) (b) (ii) of the Act.

22. The impugned Awards dated 18th September 2012 of the Appellate Arbitrator Panel to the extent they have allowed the counter-claims of the Respondents are hereby set aside.

23. The petitions are allowed in the above terms but in the

circumstances with no order as to costs.

24. It was stated by Mr. Sarin that as a result of the setting aside of the impugned Awards of the Appellate Arbitrator Panel, the security monies deposited by the Petitioner with NSEIL and which have been held back have to be refunded to the Petitioner. It will be now open to the Petitioner to seek return of such money as a result of this order.

S. MURALIDHAR, J

MARCH 16, 2017
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