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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

**ARBITRATION PETITION NO.258 OF 2015
WITH
NOTICE OF MOTION NO.2777 OF 2016
IN
ARBITRATION PETITION NO.258 OF 2015**

Motilal Oswal Securities Ltd.Petitioner
vs
Sadhana Bhatt And Anr. ...Respondents

**WITH
ARBITRATION PETITION NO.700 OF 2015
WITH
NOTICE OF MOTION NO.2792 OF 2016
IN
ARBITRATION PETITION NO.700 OF 2015**

Motilal Oswal Securities Ltd.Petitioner
vs
Bhargav Jayantilal Bhatt-HUF And 2 Ors. ...Respondents

.....
Mr. Rahul Karnik, for the Petitioner.

Mr. Trushar Bhavsar, a/w. Mr. Jayant Gaikwad, i/b. Mr. Ajay N. Khandhar, for Respondent No.1.

.....
CORAM : S.C. GUPTE, J.

DATED: 5 DECEMBER, 2018

P.C.:

Arbitration Petition No.258 of 2015

. Heard learned Counsel for the parties. This arbitration

petition challenges an award passed by the Appellate Arbitral Tribunal of National Stock Exchange in an arbitration appeal under the Rules, Bye-laws and Regulations of the National Stock Exchange of India Limited ('NSE').

2. The Petitioner herein is a trading member, whilst the first Respondent is a constituent and the second Respondent is a sub-broker of the Petitioner. The first Respondent went before the arbitral tribunal of NSE complaining *inter alia* of unauthorised trades executed on her behalf in Future and Option (F&O) segment by the Petitioner herein. She denied each and every F&O trading in her account. She accepted all delivery based (cash segment) trade entries in her ledger account filed by the Petitioner, though even those trades were claimed by her as unauthorised. The first Respondent, however, confirmed during the hearing before the arbitral tribunal that all shares were sold by the Petitioner herein, and yet there was no claim made by her on account of the value difference, if any, as between the dates of the trades and the date when she filed the present reference due to such unauthorised sale of shares in the cash segment. Accordingly, the arbitral tribunal restricted her claim to unauthorised F&O trading for adjudication and rejected her case in respect of cash segment trades. So far as F&O trades are concerned, the arbitral tribunal accepted the first Respondent's contention that those trades were unauthorised. The tribunal found that no separate ledger account of the first Respondent in NSE transactions was filed, but that only a consolidated ledger account of the first Respondent in NSE and BSE was filed. The tribunal found that even capital (cash) market segment ledger account filed by the Petitioner at

the last hearing before the tribunal did not have entries in date sequence as should normally appear if the trades had in fact been generated from its computer system. The ledger account was manually prepared by the Petitioner; the arbitrators did not accept its authenticity as beyond doubt. The tribunal also found that the Petitioner had not given details of collaterals or other securities, if any, as margin from the first Respondent to carry out F&O trades on her behalf. The tribunal was of the view that considering the huge amount of F&O trades on behalf of the first Respondent, it was mandatory on the part of the Petitioner to keep a proper record of telephonic calls/other modes, by which the first Respondent was placing orders with the Petitioner for F&O trades during the relevant period. The tribunal was of the view that the Petitioner had totally failed to prove this. The arbitral tribunal also relied on Regulation 3.2.1 of the Capital Market Regulations of NSE, which requires every trading member to keep a record of order placement from the constituent. The tribunal was of the view that the Petitioner could not produce any proof of order instructions or trade confirmations. Despite the fact that the Petitioner had pleaded that confirmations had been sent by it on e-mail through ECN on the e-mail address of the first Respondent, no material had been furnished by the Petitioner on this aspect to arrive at the conclusion that ECNs were delivered to the first Respondent. (In fact, the tribunal noted that the e-mail id on which the ECNs were purportedly sent did not belong to the constituent; even the telephone number in her KYC documents was unauthorisedly changed.) So also, no pre-trade confirmations such as call logs, order logs, etc. had been produced by the Petitioner. As regards the contention of the Petitioner that the first Respondent had taken several payouts and made

payments, all supported by ledger entries of F&O segment of the Exchange, the arbitral tribunal noted that all ledger accounts had been generated by the Petitioner's own office and the first Respondent had no control on how the Petitioner segregated the bills and cheque entries under different segments in its books of accounts. What is important is that the arbitral tribunal found that these accounts were never furnished by the Petitioner to the first Respondent. The arbitral tribunal noted that during the entire period of dealings, the first Respondent was only interacting with the sub-broker, the second Respondent in the present petition, and that such e-mail correspondence, as existed in the matter, was only between the first and the second Respondents. Considering all this material, the tribunal was of the view that all F&O transactions, purportedly carried out in the account of the first Respondent, were unauthorised, that is to say, without any authority from the constituent, and that the Petitioner, as the principal broker, was liable to compensate her for the loss caused to her on such F&O trades. The arbitral tribunal, accordingly, allowed the first Respondent's claim for loss of Rs.11,90,859.75 on account of unauthorised trades in F&O segment and directed the Petitioner and the second-Respondent to jointly and severally pay the same. The tribunal also awarded simple interest on the claim amount and rejected the Petitioner's counter-claim.

3. The matter was carried by the Petitioner herein before the appellate arbitral tribunal of NSE. The appellate tribunal found that though the impugned award of the first tribunal was challenged on various grounds, the Petitioner did not question the findings recorded by the tribunal that the telephone number of the first Respondent was

changed without her knowledge and the broker claimed to have communicated with her via e-mail on an e-mail id, which did not belong to the constituent. The appellate tribunal was of the view that if that be so, surely, the constituent should not be said to be aware of any trade in her account by the alleged communications, which were allegedly sent by the broker.

4. The entire case of the broker rested on the last trade in the F&O segment on 14 May 2010, so far as the case on limitation was concerned. The appellate tribunal held that since there was no notice or communication, the cause of action could arise for the constituent only when she came to know about the trade in her account through the sub-broker and since her case of communication through the sub-broker was not denied by the sub-broker in the hearing before the arbitrator, her case that she came to know of the unauthorised trades in her account only on 13 May 2011, was accepted by the appellate tribunal. The tribunal, accordingly, held that the revised claim made on 18 January 2014 was not barred by the law of limitation. This is a perfectly possible view of the matter, based on evidence as also on application of the law of limitation in a fair and proper manner.

5. It was next contended by the Petitioner before the appellate tribunal that since there were transactions in both segments of NSE, that is to say, the F&O and the capital markets, and since the constituent had accepted capital market transactions, it was not open to her to contend that the trades in F&O segment were not authorised. The submission was that there could not be part acceptance and part rejection of the

trades in the account. The appellate tribunal noted that the constituent had disputed all F&O trades; it was not the constituent's case that some of the F&O trades were with authority and some without. The tribunal noted that trades in capital market segment and F&O segment were two altogether different trades; the original arbitral tribunal had given adequate reasons for accepting the capital market trades and there was no reason for the appellate tribunal to defer from the findings; and that because capital market trades were accepted, there was no case for accepting the F&O segment transactions. Even as regards payouts allegedly made in F&O segment, the appellate tribunal did not accept the Petitioner's case. The tribunal noted that, admittedly, contract notes were not furnished in hard copy format but were allegedly sent in soft copy format to an e-mail id, which did not belong to the constituent; so also, the telephone number was unauthorisedly changed and none of the SMSses purportedly sent on the number could be said to have been received by the constituent. The tribunal noted that, in the circumstances, there was no merit in the Petitioner's case that these communications and documents were not considered by the original arbitral tribunal. In the premises, the appellate tribunal dismissed the appeals, confirming the award of the original tribunal.

6. The impugned appellate award exhibits a clearly possible view of the material placed before the arbitral forum. It does not disclose a view, which is either impossible or a view, which no fair or judiciously minded person would have arrived at, or a view that would shock the conscience of the Court. There is no illegality pointed out, patent or otherwise, on the face of the award, which makes the award

amenable to a challenge under Section 34 of the Arbitration and Conciliation Act, 1996.

7. In the sum, there is no merit in the arbitration petition. The petition is dismissed.

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8. It is agreed between learned Counsel for the parties that though the figures may be different, broadly the facts of the case and legal submissions of parties go along the same lines as in the case of Arbitration Petition No.258 of 2015, which is discussed and decided above. Learned Counsel do not dispute that even this petition should go by the same order that is passed in the companion petition. Accordingly, for the reasons stated above, even this petition is dismissed. No order as to costs.

9. Since the Petitioner has not succeeded in either of the petitions, the notices of motion taken out for refund of the amount deposited by the Petitioner and withdrawn by the first Respondent, do not survive. The same are infructuous and are disposed of as such.

(S.C. GUPTE, J.)