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

APPEAL NO. 293 OF 2019
IN
ARBITRATION PETITION NO. 617 OF 2014

Shaunik Infotech Pvt. Ltd. having its registered office at 4th Floor, 53, M. Kare Road, Opp. Marine Lines Station, Mumbai-400002 .. Appellant
Ori. Petitioner

Vs.

India Infoline Ltd., having its registered office at 75, Nirlon Complex, Off Western Express Highway, Goregaon (East), Mumbai-400063 .. Respondent
Ori. Respondent

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Mr. Nikhil Sakhardande a/w Shubhra Swami, Prachi Pandya, Veness Fernandes i/b Corporate Attorney for Appellant

Mr. Simil Purohit a/w Neveille Lashkari, Jyoti Ghag & Ganesh Ambekar i/b Thakore Jariwala & Associates for Respondent

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CORAM : PRADEEP NANDRAJOG, C.J. &
SMT. BHARATI DANGRE, J.

DATED : NOVEMBER 05, 2019

ORDER : [PER PRADEEP NANDRAJOG, CJ.]:

1. Heard for final disposal. Grievance of the appellant concerns interpretation of Regulation 3.10(a) of the National Stock Exchange Regulations (F&O Segment). Undisputably the Regulation requires a trading member to demand from the constituent amount due in respect of daily settlement and if the amount is not paid only thereafter to sell the shares pledged as security by the constituent.

2. Challenge in the appeal is to the order dated 6th December 2018 dismissing the objections filed by the appellant to the award passed by the Appellate Arbitral Tribunal of the National Stock Exchange of India.

3. Needless to state the appellant lost before the Fora of original jurisdiction i.e. Arbitral Tribunal, thereafter before the Appellate Arbitral Tribunal and finally before the learned Single Judge.

4. Relationship between the parties was governed by a Broker-Client Agreement dated 7th December 2007. Appellant had been dealing in both cash as well as F & O Segments of the market through the National Stock Exchange. Market crashed

from 17th January 2008 to 22nd January 2008. On the closing hours of 17th January 2008 a demand was raised upon appellant by the respondent to square up the debit balance. Appellant claimed of being informed that the debit balance was only ₹ 4 lakhs. Respondent claims that the demand raised was in a sum of ₹ 94 lakhs.

5. This is a disputed question of fact. The Arbitral Tribunal held that the demand raised was in sum of ₹ 94 lakhs which has been upheld by the Appellate Arbitral Tribunal and affirmed by the learned Single Judge. Being a finding of fact the award on said account has to be upheld.

6. Market substantially fell. Thereafter on 21st and 22nd January 2008 as per the respondent the debit balance in the Ledger Account rose to ₹ 1,17,83,079.49. Respondent squared up the appellant's balance position by sale of shares. After adjusting the amount realised debit balance stood at ₹ 46 lakhs. Concerning the sale of the shares to square up the debit balance the Arbitral Tribunal took the view that in view of the peculiar facts i.e. of sudden crash in the market the Regulation in question had to be read practically and not pedantically. It has been upheld by the learned Single Judge.

7. Whilst it may be true that the Regulation requires daily margin to be worked out and account closed and if there is a short-fall in the F & O segment to inform the constituent to square up the account, but in a situation of the kind where the shares continued to fall consecutively over 3 or 4 days strict compliance with the Regulation needs to be dispensed with for the reason this may impede trading on the stock exchange. That apart, a finding of fact has been returned by the Arbitral Tribunal that there was an evidence to establish that by 22nd January 2008 the appellant was communicated through contract notes, SMS, emails and telephone calls that the margin had fallen. A demand was raised to square up the short-fall.

8. Thus we find no merit in the appeal which is dismissed *in limine*.

SMT. BHARATI DANGRE, J. **CHIEF JUSTICE**