

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 08.10.2018

Date of decision : 11.01.2019

+ O.M.P. (COMM.) 228/2016 & IA Nos. 14981/2015 & 14982/2015 (Delay)

RANBIR KAUR

..... Petitioner

Through: Mr.Sudhir K.Makkar, Sr. Adv. with
Mr.Gaurav Singh, Ms.Saumya Gupta,
Mr.Sudhanshu Suman, Mr.Abhishek
Chaudhary, Advs.

versus

SHRIRAM INSIGHT SHARE BROKERS LTD. Respondent

Through: Mr.Raman Kapur, Sr. Adv. with
Mr.Rajinder Mathur, Mr.N.Sharma, Advs.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

1. A common judgment has been passed with the lead case being O.M.P. 418/2015 titled *Surinder Kaur vs. Shriram Insight Share Brokers Ltd.* For the reasons stated therein, the present petition and all pending applications are dismissed with no order as to cost.

2. A copy of the aforesaid order in O.M.P. 418/2015 is placed below.

NAVIN CHAWLA, J

JANUARY 11, 2019/rv/vp

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Reserved on: 08.10.2018

Date of decision : 11.01.2019

- + **O.M.P. 418/2015**
- + **O.M.P. (COMM.) 216/2016**
- + **O.M.P. (COMM.) 224/2016 & IA 15602/2015(delay)**
- + **O.M.P. (COMM.) 226/2016 & IA 15604/2015(delay)**
- + **O.M.P. (COMM.) 228/2016 & IAs 14981/2015, 14982/2015(delay)**

SURINDER KAUR Petitioner
ISHER SINGH Petitioner
KULWANT KAUR Petitioner
AMARJEET SINGH Petitioner
RANBIR KAUR Petitioner

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HON'BLE MR. JUSTICE NAVIN CHAWLA

1. These petitions have been filed under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act') praying for setting aside of separate orders/Awards dated 17.02.2015 passed by the Appellate Panel of Arbitrators appointed by the National Stock

Exchange of India Limited (NSEIL) for adjudicating the disputes that have arisen between the parties.

2. The above petitions are being disposed of by this common order as they involve identical questions of facts and law. The petitioners are all family members. For convenience, facts are being taken from OMP (COMM) 216/2016.

3. The respondent is a Trading Member of the NSEIL and the petitioner is its Constituent/client.

4. On 04.08.2009 the petitioner had opened a Trading Account with the respondent for trading in cash and derivative segment of the Stock market by executing a Member Client Agreement.

5. The respondent, claiming that it had carried out various transactions for and on behalf of the petitioner due to which as on 28.12.2010, there was an outstanding debit balance of Rs. 25,37,520.15 in the account of the petitioner maintained by the respondent, filed the claim for the said amount before the panel of Arbitrators appointed by the NSEIL.

6. The petitioner resisted the above claim of the respondent and also raised a Counter Claim *inter alia* contending that the respondent had carried out the transactions without any authorization from the petitioner.

7. The panel of Arbitrators vide Award dated 15.12.2011 held that all trades were carried out in the account of the petitioner by the respondent as per the instructions of the petitioner and that the loss was suffered by the petitioner due to judgmental error in trade and not because of unauthorized trading done by the respondent. The panel of Arbitrators, therefore, by the Award dated 15.12.2011, allowed the claim of the

respondent for a sum of Rs. 25,37,520.15 directing the petitioner to pay the said sum within thirty days from the date of the Award, failing which pay interest at the rate of 10% per annum on the amount so awarded.

8. The respondent, claiming that the payment had not been made by the petitioner on the expiry of thirty days from the date of the Award, sold the shares / securities of the petitioner in the open market on 27.01.2012.

9. The petitioner being aggrieved of the above order/Award challenged the same by way of filing of an appeal, on which NSEIL appointed an Appellate Panel of Arbitrators. The Appellate Panel of Arbitrators, vide its order dated 29.08.2012 dismissed the appeal filed by the petitioner.

10. The petitioner thereafter filed a petition under Section 34 of the Act before the Court of the District Judge, Patiala House Courts challenging the Order dated 29.08.2012 passed by the Appellate Panel of Arbitrators.

11. The above petition was, however, dismissed by the learned Additional District Judge, Patiala House Courts vide Judgment/Order dated 10.05.2013.

12. The petitioner being aggrieved of the said order, challenged the same by way of an appeal before this Court. By the order dated 15.04.2014, the appeal was disposed of as not pressed and the Award dated 15.12.2011 passed by the panel of Arbitrators of NSEIL was made final. This order is the genesis of the present petitions and the entire controversy in the present petitions revolves around the meaning and the

effect of the said order and the same is therefore, reproduced fully hereinbelow:-

“1. During the course of arguments, it is pointed out on behalf of the appellant that even assuming the appellant was liable for the alleged trades, and respondent had to be compensated for the losses suffered, losses have to be calculated in terms of Clause 3.11 of Regulation-Part A (Capital Market Segment) of National Stock Exchange of India Ltd. by selling the securities/shares of the appellant lying with the respondent not later than the fifth trading day reckoned from the date of pay-in. What is essentially argued is that the quantum of loss which the respondent can claim is restricted to the loss by selling of the securities/shares of the appellant not later than the fifth trading day of the disputed trades.

2. Counsel for the appellant contends that in the present case the respondent/broker/trading member has sold the shares/securities of the appellant around one year after the trades in question were done on behalf of the appellant and which trades according to the respondent made the appellant liable for the losses suffered in the transactions conducted by the appellant.

3. In my opinion, once the Award passed in this case against the appellant is taken as final, and such loss has to be recovered by the respondent, recovery of such loss has to be in accordance with law including Clause 3.11 of National Stock Exchange of India Ltd. Regulations-Part-A (Capital Market Segment), if applicable, and which provision is applicable as per the appellant.

4. In view of the above, while the appeal is dismissed as not pressed and consequently the Award dated 15.12.2011 is taken as final, however, whether the respondent has correctly liquidated the shares/securities of the appellant for recovery of the amounts due under the subject Award, will result in a fresh cause of action to the appellant because if the shares/securities

have been sold by the respondent in violation of law including National Stock Exchange Regulations as stated above, then in such a case while taking the Award dated 15.12.2011 to be final appellant is given liberty to invoke the arbitration proceedings for claiming the amounts from the respondent on account of alleged breach by the respondent by selling the shares/securities of the appellant not on the dates/date as required by law but at/on subsequent date(s) when the prices were said to be lesser and hence causing loss as per the appellant to the appellant.

5. *The appeal is therefore dismissed as withdrawn and liberty is granted to the appellant to invoke arbitration proceedings for recovery of loss or of the amount/value of the shares/securities which according to the appellant have been illegally sold by the respondent at a lesser value by selling appellant's shares/securities not on the date when the same were legally required to be sold but on the later date/dates when the prices of the shares/securities were as per the appellant lesser. Parties are left to bear their own costs.*

6. *Interim orders passed in this case will continue for a period of three weeks from today to enable the appellant to obtain any interim order in the fresh proceedings which the appellant proposes to initiate, however, it is made clear that this Court is not observing one way or the other, for or against either of the parties, qua the passing of the interim order in the fresh arbitration proceedings to be initiated, as to whether or not appellant is or is not entitled to an interim order, and if entitled, of what nature.*

FAO Nos. 454/2013, 455/2013, 456/2013 and 318/2013

These appeals will also stand dispose of in terms of above observations and liberty granted as mentioned in FAO 453/2013.”
(Emphasis Supplied)

13. Relying upon the liberty given by this Court in the above order, the petitioner filed a fresh claim before the panel of Arbitrators appointed by NSEIL claiming a breach of Clause 3.11 of the National Stock Exchange of India Regulations Part-A (Capital Market Segment) by the respondent and as a result, claiming Rs.29,73,246.03 as loss suffered by the petitioner as on 08.11.2010 and further *inter alia* claiming Rs.36,22,629.35 as the value of the pending stocks as on 08.11.2010 with the respondent.

14. The panel of Arbitrators by the Award dated 29.09.2014 dismissed the claim of the petitioner holding Regulation 3.11 to have no application to the facts of the present case. The relevant finding of the panel of Arbitrators is reproduced hereinunder:-

“19. By no stretch of reasoning Regulation 3.11 can be interpreted to be applicable at the time when the shares retained by the trading member are sold by the trading member for recovery of its dues from the Constituent. The representative of the applicant has not questioned the right of the trading member to sell the shares held in the name of the applicant for liquidating the outstanding debit in the ledger account of the Constituent. He has not been able to point out any Rules, Regulations or Bye-laws of the Exchange or the terms and conditions of the Member Client Agreement which bars the trading member from selling the shareholding of the Constituent in its custody for recovery of dues if the Constituent had failed to discharge the trading and financial obligations. The argument of the representative of the applicant is not that the trading member has no right to sell the shares. His contention is that though the trading member had right of sale of the applicant's shares but the trading member could not have sold it at a lower price after eight day of the trading day or at a price lower than the close-out price fixed by the Exchange in accordance with Regulation 3 .11. This argument has no merit

as Regulation 3.11 is not applicable to the liquidation transaction, i.e., on selling of shares and securities of the client in order to recover the dues against him. Regulation 3.11 is confined to the determination of the liability of the Constituent who is in default of pay-in of consideration on the purchase of the shares when the trading member has either chosen to sell the purchased shares within the prescribed period or has retained the shares with it.

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21. It appears that the applicant had great misconception about scope and import of the provision of the Regulation 3.11 that it was applicable even at the stage of selling of the shares by the trading member for recovery of the balance due against the Constituent which is not correct. The trading member has discretion to sell the shares and indeed it has to act fairly and in the interest of the Constituent and try to sell the shares at the highest price. The trading member sold the shares of the applicant after the expiry of 30 days from the date of the receipt of the award, i.e., after waiting for the expiry of the time of the filing of the appeal as per the Bye-laws of the Exchange. It has not violated any rules and Regulations of the Exchange or the terms and conditions of the Member Client Agreement in doing so. The shares were sold at the market price of that day. Before the shares were sold by the trading member the applicant could have himself sold them at a time when the prices of the scrip were equivalent to the closed-out price declared by the Exchange under Regulation 3.11 or higher than that to discharge the financial obligations. He cannot blame the trading member for selling the shares at the market price of the day.

22. The applicant has filed a calculation sheet in which he has given the loss which was incurred due to the selling of the shares by the trading member at prices which were lower than the close out price of the said scrips fixed by the Exchange under Regulation 3.11. This statement could have been helpful

for determining the claim against the trading member had our view been that Regulation 3.11 was applicable when the shares were sold by the trading member for recovery of dues on 27.1.2012 and that the shares could not have been sold by the trading member at a price lower than the close-out price declared by the Exchange under Regulation 3.11 and the trading member was liable to reimburse the difference between the close-out price of the scrip and the lower selling price which was realized by the trading member. In our considered view, Regulation 3.11 does not support the claim of the applicant. The question of granting any interest, as claimed, will also not arise.”

15. The petitioner being aggrieved of the above Award/Order challenged the same by way of an appeal. The Appellate Panel of Arbitrators constituted by the NSEIL, vide its Impugned Award/Order dated 17.02.2015 has dismissed the said appeal *inter alia* holding as under:-

“33. On bare perusal of the aforesaid Regulation 3.11, it is clear that it was not mandatory for the Respondent Company to liquidate the securities within T+2+5 days. This Regulation clearly lays down that the Trading Member (Respondent Company in this case) shall be at liberty to sell the securities received in pay-out in proportion to the amount not paid by the Constituent. In other words, this Regulation limits the liability of the Constituent (Appellant in the present case) in respect of the purchased shares to a price on a particular date in the event the Constituent fails to pay within the time specified by the NSEIL in respect of the shares purchased in his account. The pay-in time fixed by the NSEIL for capital market segment is Transaction+2 days (T +2). Therefore, it is clear that the Constituent is under obligation to pay the price of the shares purchased within T +2 days. If the Constituent fails to pay within T +2 days, the trading member is at liberty to sell the shares purchased in his account by 5th day reckoned from the date of pay-in i.e. within T +2+5 days. In case trading member

has opted to retain the shares purchased and not dispose them of within T +2+5 days, the pay-in liability of the Constituent in respect of the shares purchased in his account shall be determined by the close-out price declared by the NSEIL on 5th trading day from the date of pay-in and loss, if any, on account of the close-out shall be debited to the account of the Constituent. This Regulation has accorded discretion to the Trading Member to sell the shares purchased by the Constituent within the stipulated time, meaning thereby the Trading Member can also sell those shares after the stipulated day.

Now the question is whether the Respondent Company was justified in disposing of those shares after more than one year from the date of close-out. In this regard, it is significant to mention that the Appellant has nowhere stated that he accorded consent to the Respondent Company to liquidate the securities in his account in proportion to the amount not paid by him. In case the Appellant had communicated to the Respondent Company about his inability to pay and advised them to liquidate his securities in proportion to the amount not paid by him, the Respondent Company was certainly bound to comply with Regulation 3.11. On the other hand, it appears the Respondent Company decided not to take coercive and unilateral action against the Appellant assuming that the Appellant may keep his commitment or meet his obligations. When the Appellant failed to make payment, the Respondent Company approached the Arbitration Forum for redressal of their grievance and they decided to liquidate the securities of the Appellant on 27/01/2012 only after passing of the award dated 15/12/2011 in their favour and waiting till expiry of a period of 30 days within which appeal against the award dated 15/12/2011 was expected to be filed by the Appellant in accordance with para 6 of the SEBI Circular No.CIR/MRD/DSA/24/ 2010 dated 11/08/2010.

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35. The Appellate Arbitral Tribunal is of the opinion that an award passed by the Arbitrator on 15/12/2011 in favour of the respondent- trading member for an amount of Rs. 25,37,520.15 is final and the recovery of the said amount by the respondent and trading member is as per the Rules & Regulation & Bye laws of the NSEIL. The appellant in his appeal application filed against the Award dated 29/09/2014 of Ld. Tribunal, has failed to come up with any new findings and as such the appeal of the appellant is hereby dismissed.”

16. The present petitions have been filed challenging the above Order/Award.

17. The learned senior counsel for the petitioner submits that the Arbitral Tribunal has completely misconstrued the order dated 15.04.2014 passed by this Court in the appeals filed by the petitioner. He submits that by the order dated 15.04.2014 this Court had given liberty to the petitioner to raise the claim on whether the respondent has correctly liquidated the shares/securities of the petitioner for recovery of the amount due under the Award dated 15.12.2011. The petitioner, was, therefore, within its rights to claim that the respondent should have liquidated the shares/securities in terms of Regulation 3.11 by the fifth trading day reckoned from the date of pay-in. Such date of pay-in being two days from the date of purchase/transaction, the shares/securities should have been liquidated for recovering the loss by T+2+5 days, T being the date of purchase of the shares/securities, following which, even if the shares/securities are not sold, the accounts have to be closed on the close out price declared by the Exchange on this T+2+5th day. He submits that the Award passed is therefore, in violation of not only the

liberty granted by this Court in its order dated 15.04.2014, but also Regulation 3.11.

18. Regulation 3.11 is quoted hereinbelow:-

“3.11 CONSTITUENT IN DEFAULT

If a Constituent fails to make payment of consideration to the trading member in respect of any one or more securities purchased by him before the pay-in date notified by the Exchange from time to time, the Trading Member shall be at liberty to sell the securities received in pay-out, in proportion to the amount not received, after taking into account any amount lying to the credit of the Constituent, by selling equivalent securities at any time on the Exchange not later than the fifth trading day reckoned from the date of pay-in. If the trading member has not sold the securities for any reason whatsoever, such securities shall be deemed to have been closed out at the close out price declared by the Exchange for the fifth trading day. The loss, if any, on account of the close out shall be to the account of the Constituent.

If a Constituent fails to deliver any one or more securities to the pool account of the trading member in respect of the securities sold by him before the pay-in date notified by the Exchange from time to time, such undischarged obligation in relation to delivering any one or more securities shall be deemed to have been closed out at the auction price or close-out price, as may be debited to the Trading Member in respect of the security for the respective settlement, to the extent traceable to the Constituent who has failed to deliver; otherwise the close out price on the date of pay-out in respect of the relevant securities, declared by the Exchange. The loss, if any, on account of the close out shall be to the account of the Constituent.

Subject to what is stated above, no further claims shall lie between the Constituent and Trading Member.

Explanation: If for any reason, schedule of pay-in and pay-out is modified the above provision shall be made applicable

reckoning the actual date of pay-in and/or pay-out, as the case may be.”

19. A reading of the above Regulation would clearly show that if a Constituent fails to make payment of consideration in respect of the securities purchased by him before the pay-in date notified by the Exchange, which in the present case admittedly was two days from the date of the purchase, the Trading Member would be at liberty to sell the securities in pay-out, in proportion to the amount not received, not later than the fifth trading day reckoned from the date of pay-in. Incase the Trading Member does not sell the securities for any reason whatsoever, such securities shall be deemed to have been closed out at the close out price declared by the Exchange for the fifth trading day.

20. Though the learned senior counsel for the respondent submitted that Regulation 3.11 would have no application to a running account being maintained by the Trading Member for a Constituent, in my opinion, the said issue does not require any adjudication in the facts of the present case.

21. In the present case, the shares/securities held by the respondent were liquidated by the respondent for making recovery of the amount due to it under the Award dated 15.12.2011, which had been upheld by the order dated 29.08.2012 passed by the Appellate Panel of Arbitrators. Though the petitioner had challenged the above Order/Award by way of a petition under Section 34 of the Act, the same was also dismissed by the Court of the learned Additional District Judge vide Judgment/Order dated 10.05.2013, and the appeal filed against it was dismissed as not pressed

by this Court. Infact, this Court in its order dated 15.04.2014 clearly recorded that the Award dated 15.12.2011 shall be taken as final.

22. The Arbitral Award dated 15.12.2011 had held that the respondent would be entitled to an amount of Rs.25,37,520.15 from the petitioner. This amount had been arrived at by the panel of Arbitrators based on the account statement of the petitioner furnished by the respondent before it. The account statement contained the debit and credit entries with respect to various transactions undertaken by the respondent for and on behalf of the petitioner. The plea of the petitioner that the said transactions had been carried out by the respondent unauthorizedly had been disbelieved by the Arbitral Tribunal and the same was upheld by this Court. If the contention of the learned senior counsel for the petitioner on the interpretation of this Court's order dated 15.04.2014 is to be accepted, the Award so far as it directed the petitioner to pay the sum of Rs. 25,37,520.15 has to be considered as being set aside by this Court, while upholding the findings of the earlier Arbitral Tribunal on the transactions having been conducted with the knowledge and consent of the petitioner. The order dated 15.04.2014, on the other hand, expressly upheld the Award dated 15.12.2011 passed by the Arbitral Tribunal and only left the following question to be determined in the fresh proceedings:-

“4.....however, whether the respondent has correctly liquidated the shares/securities of the appellant for recovery of the amounts due under the subject Award, will result in a fresh cause of action to the appellant because if the shares/securities have been sold by the respondent in violation of law, including National Stock Exchange Regulations as stated above, then in such a case while taking the Award dated 15.12.2011 to be final appellant is given liberty to invoke the arbitration proceedings for claiming the

amounts from the respondent on account of alleged breach by the respondent by selling the shares/securities of the appellant not on the dates/date as required by law but at/on subsequent date(s) when the prices were said to be lesser and hence causing loss as per the appellant to the appellant.

5. The appeal is therefore dismissed as withdraw and liberty is granted to the appellant to invoke arbitration proceedings for recovery of loss or of the amount/value of the shares/securities which according to the appellant have been illegally sold by the respondent at a lesser value by selling appellant's shares/securities not on the date when the same were legally required to be sold but on the later date/dates when the prices of the shares/securities were as per the appellant lesser. ”

23. The above order has been passed on the plea raised by the petitioner in his appeal, being FAO 318/2013, to the effect that the respondent should have sold the shares in 2010 instead and in place of January, 2012. Ground A and B raised by the petitioner in its earlier appeal are reproduced hereinbelow:-

*“A. **BECAUSE** the Ld. Court below as well as the Ld. Arbitrator Tribunal failed to appreciate that when the arbitration clause was invoked by the Respondent, there was no disputes as such w.r.t. the claim with the Appellant because there was sufficient funds in the Appellant's demat account [total amounting to Rs.42,796,17/- i.e. Rs.35,29,617.60 by way of shares and Rs.7,50,000/- as margin money]. That it is pertinent to mentioned that the total alleged claim of the Respondent in the arbitration against the Appellant was of Rs.25,37,520.15 however, an amount of Rs.42,796,17/- was lying with the Respondent. That it is stated that if Respondent can sell shares of the Appellant in 2012, without Appellant's knowledge/consent, they can sell them in 2010 as well when arbitration proceedings were initiated. The copy of letter written by the Appellant objecting to the unauthorized sale of shares is annexed herewith and marked as **ANNEXURE A-17.***

B. BECAUSE the Ld. Court below as well as Appellate authority miserable failed to appreciate that the Respondent has concealed the material fact till date that Appellant was holding shares worth more than Rs.35,00,000/- and the same was sold in January 2012 by the Respondent, without the knowledge/consent and without any authority during pendency of the appeal. This fact was deliberately not disclosed before that Arbitral Tribunal or before any forum.”

24. Once the order is read in light of the assertion made by the petitioner in its earlier appeal, it would be evident that the Court left only the question of the applicability of Regulation 3.11 on the liquidation of the shares / securities of the petitioner by the respondent for recovering the amount due under the Award, to be determined through the process of fresh arbitration.

25. As noted above, the Arbitral Tribunal has held that Regulation 3.11 is not applicable at the stage of selling of the shares by the Trading Member for recovering of the balance due against the Constituent in terms of the Arbitral Award. Regulation 3.11 is confined to the determination of the liability of the Constituent who is in default of payment of consideration on the purchase of the shares when the Trading Member has either chosen to sell the purchased shares within the prescribed period or has retained the shares with it.

26. I am in agreement with the view expressed by the learned Arbitral Tribunal. The intent of the order dated 15.04.2014 passed by this Court was not to reopen the earlier proceedings as was sought to be done by the petitioner through the process of fresh arbitration. The intention only was for the determination on an appeal of the petitioner, that the shares could have been sold by the respondent in 2010 itself, when the respondent

lodged its claim in the earlier arbitration proceedings. For this purpose alone the petitioner placed reliance on Regulation 3.11. This question alone was, therefore, left open to be determined through fresh arbitration. A reading of the Regulation 3.11 clearly shows that it is not applicable at the stage of final settlement of accounts. In any case, the respondent having taken the correct remedy of having its claims adjudicated through the arbitration process, cannot be faulted for having not sold the shares/securities of the petitioner during the pendency of such arbitration proceedings.

27. The issue raised by the petitioner can also be considered through another angle. A perusal of the statement of accounts filed by the respondent in the earlier round of arbitration would show that there were various debit and credit entries with respect to sale and purchase of shares by it on behalf of the petitioner. If the plea of the petitioner is to be accepted, the entire transaction would have to be reopened and for each transaction the effect of Regulation 3.11 will have to be considered. This would make the earlier exercise resulting in the Arbitration Award dated 15.12.2011 and the appellate order dated 29.08.2012 redundant. A perusal of the statement of accounts filed by the petitioner in support of its claim in the second round of arbitration also shows that the petitioner was seeking to selectively reopen the transaction. This certainly was not permissible, as the Arbitral Award has become final.

28. The learned senior counsel for the petitioner further challenged the Award on the ground that the Appellate Tribunal consisted of persons who were on the panel of Arbitrators in the original arbitration proceedings, though in a different matter. On the basis of the chart given

below, he submits that the original Arbitrator could not have confirmed his own Award by being a member of the Appellate Panel of Arbitrators and therefore, the Award is liable to be set aside on the ground of failure to comply with the Principles of Natural Justice.

<i>S.No.</i>	<i>Party Name</i>	<i>Name of Arbitrators in claim petition</i>	<i>Name of Arbitrators in Appellate stage</i>
1.	<i>Ishar Singh</i>	(i) M.A. Khan, (ii) Naseer Ahmed (iii) Pramod Kumar Gupta	(i) Pankaj Aggarwal, (ii) Avinash Shukla (iii) Jagvinder Vir Singh
2.	<i>Amarjeet Singh</i>	(i) M.A. Khan (ii) Diwakar Dev (iii) Vijay Kumar Bhasin	(i) Pankaj Aggarwal, (ii) Avinash Shukla (iii) Jagvinder Vir Singh
3.	<i>Kulwant Kaur</i>	(i) V.S. Aggarwal (ii) M.A. Khan (iii) Pramod Kumar Gupta	(i) Jagvinder Vir Singh (ii) P.K. Banerjee (iii) Bala Subhramanium
4.	<i>Surinder Kaur</i>	(i) M.A. Khan (ii) P.K. Banerjee (iii) Bala Subhramanium	(i) Anil Aggarwal (ii) Naseer Ahmed (iii) Jagvinder Vir Singh
5.	<i>Ranveer Kaur</i>	(i) M.A. Khan (ii) R.K. Ahuja (iii) Naseer Ahmed	(i) Jagvinder Singh (ii) P.K. Banerjee (iii) Bala Subhramanium

29. On a query being raised, the learned senior counsel for the petitioner fairly admits that this plea was not taken before the Appellate Panel of Arbitrators. The petitioner was well aware of the above defect in the constitution of the Appellate Panel of Arbitrators as all the petitioners are family members and have been jointly pursuing the appeals throughout. The petitioner, therefore, is now estopped from challenging the constitution of the Appellate Tribunal. As far as NSEIL was concerned, all these appeals were separate matters and there is no allegation that when considered separately, the members of the original panel of Arbitrators have been appointed as the members of the Appellate Tribunal. I therefore, find no force in the said contention as well.

30. In view of the above, I find no merit in the present petitions and the same are accordingly dismissed, with no order as to cost.

NAVIN CHAWLA, J

JANUARY 11, 2019/rv/vp