IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **12.02.2020**

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

O.P.No.283 of 2010

M/s. Sands India Pvt. Ltd.
Plot No. 1025, Street No.44,
TVS Colony,
Anna Nagar West Extension,
Chennai-600 101.

...Petitioner

Vs.

1. M/s. Kotak Securities Ltd.,
   1st Floor, Bakhtawar,
   Nariman Point,
   Mumbai-400 021.

2. Mr. Justice S. Jagadeesan

3. Mr. V. Paul Das,

4. Mrs. P.S. Prema, Arbitrators
   National Stock Exchange of India Ltd.
   2nd Floor, Isphani Centre, Door No.123-124,
   Nungambakkam High Road,
   Nungambakkam, Chennai-600 034.
   (2 to 4 same address).

...Respondents

PRAYER: Petition is filed under Section 34 of the Arbitration and Conciliation Act, 1996 praying to

i) Set aside the Arbitral Award dated 30.11.2009, as rectified on 02.02.2010 passed by the learned Arbitrators and consequently allow the Claim Petition filed by the Petitioner.

ii) To grant the relief as prayed for in the Claim Petition

iii)award the costs of this Petition and

iv) Pass such further or other reliefs in favour of the Petitioner as this Honourable Court may deem fit and proper in the circumstances of the case.

For Petitioner : Mr. G. Suryanarayanan

For Respondent : Mr. Arun Suresh for
Mr. V.V. Sivakumar for R1

ORDER

The claimant, whose claim for damages in a sum of Rs.2,12,28,961.66 was dismissed by the Arbitral Tribunal, is the petitioner before this Court.

2. The facts in brief are as follows:

The petitioner-claimant had entered into a Member-Client agreement with the first-respondent on 28.02.2008 and had executed a Power of attorney in favour of the first-respondent as well as Kotak Mahindra Investments Ltd. In addition to this, they had also entered into a Margin funding facility agreement for Rs. 4 crores and pledge agreement with the respondent. The said agreement was entered into on 14.02.2008 and the petitioner had made an initial deposit of Rs.77,00,000/- and had transferred securities to the tune of Rs.1,26,17,845/- between 14.03.2008 and 30.04.2008. The petitioner has been trading regularly with effect from 29.02.2008. As on 10.10.2008 the stocks were valued at Rs.4,96,14,510/- which included a profit of Rs.50,000/- from their trading. The petitioner would contend that on 10.10.2008 by around 12:30 pm the officials of the respondent had called them and informed them that the value of the stocks were falling and that the stocks have to be sold for covering their margin.

3. The petitioner would submit that they had requested time till

13.10.2008 which was the next trading date and had requested the respondent to dispose of their entire stock and settle the account.

4. It is the case of the petitioner that unilaterally the respondent sold a portion of the stock on 10.10.2018 and thereafter on 20, 24 and 27th of October 2008 sold the remaining stock, as a result of which the petitioner had incurred a loss of Rs. 2, 12,28,961.66. The petitioner would contend that the respondent had sold the shares by misusing the power of attorney. It was also contended that the petitioner's loss was only on account of the mismanagement by the first-respondent of the applicant's initial investment. The petitioner had addressed several letters to the respondent company; however they had not received any satisfactory reply and therefore the petitioner was constrained to submit a complaint before the National Stock Exchange. The petitioner had claimed a total sum of Rs. 2,12,28,961.66 which represented the loss on account of sale of stocks made by the respondent without instructions of the petitioner on 10,20,24 and 27th of October, 2008, together with interest at 24 per cent per annum from

27.10.2008.

5. The respondent had filed a counter denying the allegations made by the petitioner contending that the sale of the stocks had been done only at the behest of the petitioner who had been giving instructions to the respondent. The respondent would submit that they had been periodically updating the petitioner about the transactions undertaken by them and periodic reports were being issued to the petitioner. Therefore, in these circumstances, the petitioner cannot blame the respondent for the transactions undertaken on 10,12,24 and 27th October 2008, which were the transactions in dispute before the Arbitral Tribunal.

6. A perusal of the Arbitral Award would indicate that on the very first hearing that held on 12.10.2009, the petitioners were reiterating their claim with reference to their letters dated 20.10.2008 and 05.11.2008 in which they had only sought for waiver of interest and not for the return of the shares component for wrongful trading. Ultimately the Arbitral

Tribunal observed that the letters issued by the applicant dated 20.10.2008 and 05.11.2008 would clearly indicate that the applicant was only seeking waiver of interest and for brokerage and not claiming any damages for the alleged unilateral sale that has been undertaken by the respondent. The Arbitrator therefore dismissed the claim with reference to the damages but passed an Award with reference to the waiver of brokerage for a sum of Rs.2,36,282.72/-.

7. It is challenging this Award that the claimant-petitioner is before this Court.

8. Mr. G. Suryanarayanan, appearing on behalf of the petitioner would contend that the shares have been adjusted towards the financial arrangement. He would further contend that on 10.10.2008 the petitioner had clearly directed the respondent that the sale of the shares should take place on 13.10.2018. However, it is seen that the respondent unilaterally without any written instructions of the petitioner had sold the shares not

only 10.10.2008, but also on the 20th,24th and 27th of October, 2008. These sales had resulted in a great loss to the petitioner which the respondent was bound to set-right. The learned counsel would further argue that the Tribunal has not appreciated the documents from its correct perspective. The Award therefore deserves to be set aside.

9. Heard the counsel and perused the original records of the Tribunal.

10. The original records would reveal that on 10.10.2008 the petitioner had a balance of Rs.4,96,14,510/- . On the tenth, shares had been sold for Rs.1,30,00,000/- and the said amount had been adjusted to their account. In the letter dated 20.10.2008 it is seen that the petitioner had informed the respondent that by reason of their sale on 10.10.2008, cash loss of Rs.55,71,346.78 had been incurred. The petitioner had also questioned the sale without proper notice and ultimately in the said letter the petitioner would state as follows:

"We shall be most grateful to receive the favour of continued support to enable us to carry on with the trade activity as usual

without enhancement of KMIL interest."

The letter does not demand refund of any amount towards loss on account of the shares being sold at a lower value. This is followed by another letter dated 05.11.2008, in which, after narrating about sale of the shares, the petitioner would ultimately inform the respondent that they would be glad if there was a waiver of brokerage on the sales and part of interest applied to their loan account. This letter once again does not question the sales that have been made by the respondent. Thereafter, on 12.11.2008 the petitioner had sent a letter to the respondent where they have for the first time stated that they have sustained a loss of Rs.2,13,00,000/-. The letter which has been sent immediately after the first sale on 10.10.2018 is letter dated 20.10.2018 followed by another letter dated 05.11.2008. In both these letters the claimant only seeks to have a waiver of the brokerage as well as the payment of interest. It is only in the letter dated 12.11.2008 the petitioner had claimed compensation and the same appears to be an after-thought. In the light of the letters mentioned supra, it can be presumed that the petitioner was not calling into question the sale but only seeking a waiver of brokerage and to part of interest applied to the loan account. Therefore there is no infirmity in the order passed by the Arbitral Tribunal in refusing to grant compensation of the sum of Rs.2,12,28961.66/- to the petitioner. The petitioner has not made out any case for setting aside the Arbitral Award. In the result, the Original Petition is dismissed.

12.02.2020

mrn
Index : Yes/No
Speaking order/non-speaking order

To,
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P.T.ASHA, J.,

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