

O.P.No.716 of 2009

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED: 24.09.2025**

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**CORAM**

**THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH**

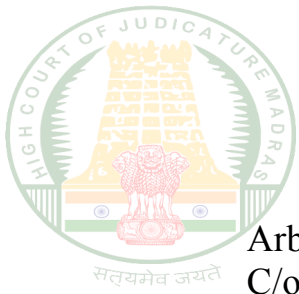
**Original Petition No.716 of 2009**

Mr.S.B.Bhuvanendra,  
Sri Nilayam,  
31, Race View Road,  
Ooty - 643 001.  
Tamil Nadu

....Petitioner

Vs.

1. M/s.India Infoline Ltd.,  
Trading Member,  
75, Nirlon Complex,  
Off. Western Express Highway,  
Goregaon (E)  
Mumbai - 400 063.
2. Mr.M.V.Badrinath  
Presiding Arbitrator's  
C/o.National Stock Exchange of India Ltd.  
2nd floor, Ispahani Centre,  
Door No.123-124,  
Nungambakkam High Road, Nungambakkam,  
Chennai - 600 034.
3. Mr.R.Subramanian,  
Arbitrator,  
C/o.National Stock Exchange of India Ltd.  
2nd floor, Ispahani Centre,  
Door No.123-124,  
Nungambakkam High Road, Nungambakkam,  
Chennai - 600 034.
4. Mr.A.V.Haridasan,



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Arbitrator,  
C/o.National Stock Exchange of India Ltd.  
2nd floor, Ispahani Centre,  
Door No.123-124,  
Nungambakkam High Road, Nungambakkam,  
Chennai - 600 034.

... Respondents

**Prayer:**

Original Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996, to set aside the award dated 28.07.2009, made under the Bye-laws, Rules and Regulations of National Stock Exchange of India Ltd., to the tune of Rs.10,00,000/- together with interest at the rate of 12% per annum from the date of the award till the date of payment, passed by respondents 2 to 4 herein, with costs and allow the petitioner's counter-claim of Rs.25,00,000/- and the holdings in the cash section (as on 22.01.2008) to be restored to the petitioner along with interest at the rate of 18% p.a.

For Petitioner : Mr. C.Mohan  
for Ms.A.Rexy Josephine Mary  
for King & Partridge

For Respondent : Ms.Gayathri.D [R1]  
R2 to R4 [Arbitrators]

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**ORDER**

This petition has been filed under Section 34 of the Arbitration and Conciliation Act, 1996 [for brevity 'the Act'] challenging the award passed by the Arbitral Tribunal dated 28.07.2009 directing the petitioner to pay to the respondent a sum of Rs.10,00,000/- with interest at the rate of 12% per annum and rejecting the counter claim made by the petitioner.

2. Heard Mr.C.Mohan, learned counsel appearing on behalf of



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the petitioner and Ms.Gayathri.D, learned counsel appearing on behalf of  
the first respondent.

3. The first respondent executed a member client agreement dated 21.11.2006 and was trading in both Cash and Futures & Options segments of National Stock Exchange [for brevity 'NSE']. After the execution of a registration form, the petitioner started placing orders for sale and purchase of shares and the first respondent executed all the transactions through online trading terminal provided by NSE in the petitioner's client code, in confirmation with the instructions of the petitioner and the digital contract notes cum bills were delivered from the petitioner time to time.

4. The ledger account that was maintained by the first respondent for NSE transactions reflected a debit balance of Rs.19,89,407.51 and for Bombay Stock Exchange transactions, reflected a credit balance of Rs.87,792.09. Therefore, there was a net outstanding amount recoverable from the petitioner to the tune of Rs.19,01,615.42.

5. The petitioner was not paying the money and the first

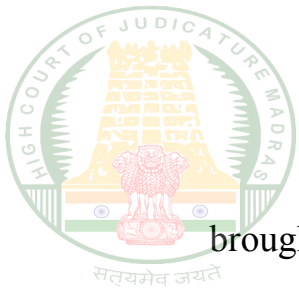


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respondent followed up the matter and the petitioner did not honour the obligations. Left with no other alternative, the first respondent invoked the arbitration clause under Regulation 5.9(a) Form I of the NSE regulation as provided in the member client agreement dated 21.11.2006.

6. A claim was made to the tune of Rs.19,01,615.42 along with interest at the rate of 18% per annum.

7. The petitioner filed a reply and also made a counter claim. The petitioner stated that he had a credit balance on his account upto 22.01.2008 and orders as per his instructions. The petitioner contested the claim made by the first respondent as unsustainable, since the petitioner had paid for all positions upto 15.01.2008 and had a comfortable margin. According to the petitioner, the first respondent, without the knowledge of the petitioner, sold the positions in RNRL at an average price of Rs.80.90, which was closed to the lowest price of the day. The petitioner has also mentioned that if the RNRL January futures had been closed on 21.01.2008, it is due to the roll over as instructed, the loss would have been lower by Rs.11,58,300/- . Having closed to the position on 22.01.2008 for margin shortfall, the first respondent, on their own, has

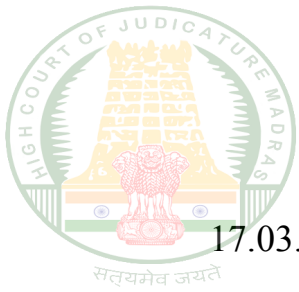


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brought the position in RNRL, GMR INFRA and PUNJ LLOYD in the petitioner's account on 23.01.2008, which were squared off on 01.02.2008 again at a loss. Thus, the petitioner made a counter claim for a sum of Rs.25 lakhs. The petitioner has also claimed that he has established that he was never a defaulter with the first respondent company and the petitioner's account was closed when the margin shortfall was only Rs.9,00,000/- as on 21.01.2008 and even as per the latest statement that was received from the first respondent, the balance payable by the petitioner to the first respondent is Nil.

8. The Tribunal, on considering the claim made by the first respondent and the defence taken by the petitioner, came to a conclusion that the first respondent has made out the claim and therefore, the petitioner was directed to pay a sum of Rs.10 lakhs with interest at the rate of 12% per annum.

9. When it came to the counter claim made by the petitioner, the Arbitral Tribunal did not even go into the issue raised by the petitioner and straight away rejected the counter claim on the ground that it is barred by limitation, since it was filed beyond six months from



17.03.2008. The petitioner aggrieved by the same filed the present original petition under Section 34 of the Act.

10. Originally, this petition was disposed of by an order dated 02.02.2017 in the following terms:

*“5. However, the very same learned Judge in the case of **A.Chandrasekaran Vs. M/s.Yoha Securities limited & Anr.**, reported in **2014(1)CTC 87** has remanded the matter to the National Stock Exchange of India with a direction to nominate an Arbitrator to resume the hearing and hear the parties on merits and pass a fresh award. The operative portion of the order reads as follows:*

*32. Section 34(4) of the Act provides that the Court can adjourn the proceedings to give the Arbitral Tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of the Arbitral Tribunal, will eliminate the grounds for setting aside the award. Therefore, I am of the view that the proceedings in this petition can be adjourned with a direction to the Arbitral Tribunal to eliminate the ground on which the award is liable to be set aside.*

*33. In view of the above, the following order is passed for the present:*

*(i) The proceedings in the main petition are adjourned by 6 months.*

*(ii) Since the second respondent who acted as the Arbitrator, is stated to be not available anymore, the National Stock Exchange of India is directed to nominate an Arbitrator, to resume the hearing and hear the parties on merits and pass an award afresh. This shall be done within 6 months.*

*(iii) Call after 6 months.*



6. *In the light of the above, this Court is of the view that the learned Arbitrator has not adjudicated into the merits of the matter and the claim petition has been thrown out only on the ground that the claim is barred by limitation. Therefore, I am inclined to follow the direction issued in the case of **A.Chandrasekaran** (supra).*

7. *Accordingly, the petition is allowed and the impugned award is set aside and the matter is remanded to the National Stock Exchange of India for constituting an Arbitral Tribunal to hear the petitioner as well as respondents and decide the claim and the counter claim afresh on merits and in accordance with law. It is made clear that this Court has not adjudicated the merits of the claim nor the learned Arbitrator done so and in the fresh arbitration proceedings, the parties are at liberty to raise all factual and legal issues.”*

11. Aggrieved by the above order passed by the learned single Judge, the first respondent filed an appeal in O.S.A.No.331 of 2017 and this appeal was disposed of on 07.12.2023 in the following terms:

*“4. The legal position involved in this appeal is as to whether the learned Single Judge in allowing the OP and remitting the matter back to the Arbitrator to consider afresh, is correct.*

*5. The learned counsel for the appellant undertakes that the appellant will not execute the award till the disposal of the Original Petition. The same is recorded.*

*6. It is clear that under the Arbitration and Conciliation Act, the award passed by the arbitrator can be set aside but it cannot be remanded back to the Arbitrator for fresh consideration.*



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*7. In view of the above, this Court is inclined to set aside the order of the learned Single Judge and remanded back to the learned Single Judge to consider the Original Petition afresh and adjudicate the same on the grounds raised in the present appeal including the point of limitation. Since the Original Petition is of the year 2009, the learned Single Judge shall dispose the Original Petition at the earliest.”*

12. Pursuant to the above order passed by the Division Bench, the matter was once again placed before this Court for considering the case on merits and to pass final orders.

13. The main contention that was put forth by the learned counsel for the petitioner is that the Arbitral Tribunal went wrong in considering the counter claim made by the petitioner and it was rejected only on the ground that it is barred by limitation. Learned counsel submitted that what was claimed by the petitioner towards counter claim was much more than the claim that was made by the first respondent. Hence, if the ground that has been put against by the petitioner for rejecting the claim is interfered by this Court, nothing will be payable on the side of the petitioner since what has been claimed by the petitioner towards counter claim is much more than what has been granted to the first respondent towards the claim.



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14. To substantiate the above submissions, the learned counsel for the petitioner relied upon the following judgments:

(a) *Biba Sethi Vs. Dyna Securities 2009(112) DRJ 512;*

(b) *Mr.A.Chandrasekaran Vs. Ms.Yoha Securities & Anr. 2014 - 1 L.W. 374;*

(c) *R.Narayanan Vs. India Info Line Securities Pvt Ltd. & Anr. 2013 (4) CTC 432; and*

(d) *Union of India & Anr. Vs. Indusind Bank Ltd., (2016) 9 SCC 720*

15. *Per contra*, Ms.Gayathri.D, learned counsel for the first respondent submitted that the Arbitral Tribunal had properly appreciated the grounds taken by the first respondent and had come to the conclusion that the petitioner is liable to pay a sum of Rs.10,00,000/- with interest at the rate of 12% per annum and the said award does not suffer from perversity or patent illegality and such award was passed based on the materials available before the Arbitral Tribunal. Hence, it does not warrant any interference by this Court in exercise of its jurisdiction under Section 34 of the Act. The learned counsel further submitted that the counter claim made by the petitioner was clearly barred by limitation,



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since the claim raised by the petitioner relates to the transactions on 22.01.2008 and the counter claim ought to have been made on or before 28.07.2008. But, however, it was only made on 08.12.2008, which is well beyond the limitation fixed as per the NSE Regulations.

16. To substantiate the submission, the learned counsel relied upon the judgment of the Apex Court in the case of ***State of Goa Vs. Praveen Enterprises*** reported in ***(2012 )12 SCC 581***.

17. The learned counsel further submitted that even if the counter claim made by the petitioner is dealt with on merits, the petitioner has not made out a case for awarding any counter claim and therefore, the counter claim made by the petitioner has to be rejected.

18. In the light of these submissions, the learned counsel sought for dismissal of this petition.

19. This Court has carefully considered the submissions made on either side and the materials available on record.

20. The following issues arise for consideration in the present case:



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(i) whether the Arbitral Tribunal was right in rejecting the counter claim made by the petitioner merely on the ground that the counter claim is barred by limitation as per the NSE regulations?

(ii) If, in case, this Court holds that the claim made by the first respondent cannot be interfered under Section 34 of the Act, whether the same can be enforced in the absence of considering the counter claim that was made by the petitioner?

21. It is an admitted case that the first respondent made a claim for a sum of Rs.19,01,615.42 with interest at the rate of 18% per annum. The petitioner, by way of filing a statement of reply, had also made a counter claim for a sum of Rs.25 lakhs. In order to substantiate the counter claim, the petitioner had raised various grounds. The Arbitral Tribunal has rejected the counter claim made by the petitioner only on the ground that it is barred by limitation.

22. Chapter XI of the bye-laws of National Stock Exchange deals with Arbitration. Clause 3 deals with limitation period for reference of claims. It provides that the claim shall be made within six months from the date on which the claim had arisen. An explanation has also been



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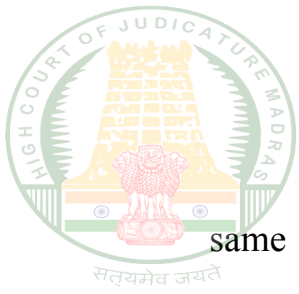
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given stating that in case, where the date of the claim is not ascertainable, it shall be deemed to have arisen on the date of expiry of six months from the date of the transaction in respect of which the claim has arisen.

23. In the light of the above regulations, the Tribunal has straight away come to the conclusion that the counter claim made by the petitioner cannot be entertained, since it is barred by limitation.

24. It is a matter of fact that subsequently, in the year 2010, an amendment was brought out through circular dated 11.08.2010, wherein it was made clear that the limitation period for filing an arbitration reference shall be governed by the law of limitation i.e., Limitation Act, 1963. This circular was issued only after the award was passed in this case on 28.07.2009. Therefore, it has to be seen as to whether the six months period that was fixed till the amendment was brought into force, is enforceable.

25. The above issue is no longer *res-integra*. Useful reference can be made to the judgment in *A.Chandrasekaran's* case (referred supra). This Court was dealing with the very same issue as against the



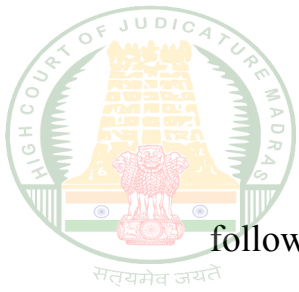
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same respondent and this Court came to a conclusion that the said bye-law 3 of Chapter XI of the NSE Regulation stipulating a period of six months is in violation of Section 28 of the Indian Contract Act. While coming to this conclusion, this Court also took into consideration the judgment of the Delhi High Court in **Beba Sethi's** case (referred supra), where the Delhi High Court had also come to a conclusion i.e., bye-law 3 is void, since it is contrary to Section 28 of the Contract Act.

26. The other issue that was gone into is with respect to the effect of pre and post amendment of Section 28 of the Indian Contract Act. Section 28 of the Indian Contract Act underwent an amendment with effect from 08.01.1997. The bye-law 3 that has held to be void, was only by considering this amendment, which came into force from 08.01.1997. Therefore, the question was as to whether such amendment will have a retrospective effect and all cases that were dealt with when the unamended provision under Section 28 of the Act was in force, can be sustained.

27. This question was put to test by the Apex Court in the case of **Union of India and Anr. Vs. Indusind Bank Limited and Anr.** reported in **(2016) 9 SCC 720** . The Apex Court, at paragraph 18, held as



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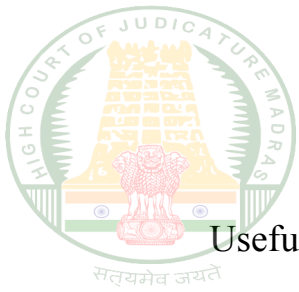
follows:

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*“18. What emerges on a reading of the Law Commission report together with the Statement of Objects and Reasons for the Amendment is that the Amendment does not purport to be either declaratory or clarificatory. It seeks to bring about a substantive change in the law by stating, for the first time, that even where an agreement extinguishes the rights or discharges the liability of any party to an agreement, so as to restrict such party from enforcing his rights on the expiry of a specific period, such agreement would become void to that extent. The amendment therefore seeks to set aside the distinction made in the case law up to date between agreements which limit the time within which remedies can be availed and agreements which do away with the right altogether in so limiting the time. These are obviously substantive changes in the law which are remedial in nature and cannot have retrospective effect.”*

28. It is clear from the above that the amendment to Section 28 of the Indian Contract Act will only have a retrospective effect from 08.01.1997. In the case in hand, admittedly, the award was passed on 28.07.2009, which came into force after the amendment to Section 28 of the Indian Contract Act.

29. In the light of the above discussions, the conclusion arrived at by the Arbitral Tribunal by rejecting the counter claim made by the petitioner to the tune of Rs.25 lakhs suffers from manifest illegality.



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Useful reference can be made to the Apex Court judgment in the case of

**OPG Power Generation Private Limited Vs. Enexio Power Cooling**

**Solutios India Private Limited & Anr.** reported in **2025 (2) SCC 417**

and specific reliance can be placed upon paragraph 73 of the judgment.

The first issue is answered accordingly.

30. In the light of the above findings rendered for the first issue, it is seen that what has been claimed by the first respondent is much less than the counter claim that has been made by the petitioner. Therefore, even if the claim that has been made by the first respondent and granted by the Tribunal, is sustained as it is, the question is whether it can be enforced as against the counter claim that has been made by the petitioner, which is much more than the award granted in favour of the first respondent.

31. The learned counsel for the first respondent submitted that the counter claim made by the petitioner is not sustainable even on merits. This Court cannot go into the merits of the counter claim made by the petitioner and adore the role of the Arbitral Tribunal. It is for the Arbitral Tribunal to go into the merits of the claim/counter claim and



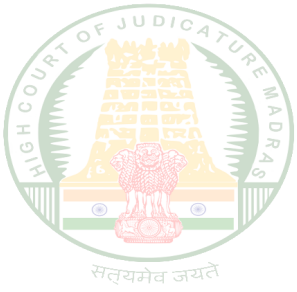
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render findings. For this to happen, the matter has to go before the Arbitral Tribunal. Therefore, the question is as to whether the matter can be remanded back to the file of the Arbitral Tribunal to once again consider the claim and counter claim afresh. This exercise undertaken earlier by an order dated 02.02.2017 was set aside by the Division Bench of this Court and the matter was sent back for hearing the petition afresh.

32. The learned counsel for the first respondent submitted that the matter can be remanded back to the Arbitral Tribunal. However, the learned counsel for the petitioner submitted that this is an issue of the year 2008, and it is too late in the day to send the parties back to the Arbitral Tribunal.

33. There is no jurisdiction for this Court to remand the matter to the Arbitral Tribunal unless both the parties consent for such an order. Useful reference can be made to the judgment in the case of ***A.Zahir Hussain Vs. Chandran and Ors.*** reported in ***2022 (2) CTC 656.***

34. Reliance can also be placed upon the judgment of the Division Bench judgment in the case of ***M/s. Transtonnelstory Ltd. Vs. M/s. Chennai Metro Rail Ltd.,*** reported in ***2023 (3) CTC 266.***



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35. If both the parties do not consent, the matter cannot be remanded to the Arbitral Tribunal and the option of remanding the matter to the Arbitral Tribunal is ruled out.

36. Considering the above position, the petitioner cannot be asked to pay the award amount to the first respondent based on the award passed by the Tribunal since the petitioner's counter claim for a sum of Rs.25 lakhs has not been dealt with by the Tribunal. This Court cannot deal with the claim made by the petitioner on merits for the first time in the petition filed under Section 34 of the Act. Hence, if, in case, the petitioner is entitled for the counter claim and if the counter claim amount is much more than what has been claimed by the first respondent and what has been awarded by the Arbitral Tribunal, it will result in injustice to ask the petitioner to satisfy the award amount. The second issue is answered accordingly.

37. This is a peculiar case where the first respondent, after having obtained an award from the Tribunal, is not able to enforce the same, since the counter claim made by the petitioner was not considered



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and the counter claim made was much more than what was claimed by the first respondent. This Court cannot pass an order on mere equity unless it is supported by law. Therefore, in equity, even if this Court wants to direct the petitioner to pay the award amount to the first respondent, the fact that the counter claim of the petitioner was not considered, comes in the way of this Court to enforce such equity in the light of the law that holds the field. Under such circumstances, this Court invokes its jurisdiction under Section 34 (2)(b)(II) and Section 34(2)(A) of the Act and the award passed by the Arbitral Tribunal dated 28.07.2009 is set aside and this Original Petition stands allowed. Considering the facts of the case, there shall be no order as to costs.

**24.09.2025**

NCC:Yes  
Index:Yes  
Speaking Order  
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**N.ANAND VENKATESH, J.**

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