

**BEFORE THE APPELLATE PANEL OF ARBITRATORS  
COMPRISING OF**

Justice S. K. Shah (Retd.)- Presiding  
Arbitrator  
Mr. G. A. Nayak - Co-Arbitrator  
Mr. Ramesh M. Joshi - Co-Arbitrator

In the matter of Arbitration under Bye-Laws, Rules  
& Regulations of National Stock Exchange of India  
Ltd. (NSE)

ARBITRATION APPEAL No. CM / M - 213 OF 2009

BETWEEN

Mrs. Pragna Rajendra Shah, )  
Having her residential address )  
at 8, Modi Kunj, Road No. 5, )  
Friends Society, JVPD Scheme, ) APPELLANT  
Vile Parle (West), ) (Original  
Mumbai 400 064 ) Applicant)  
(PAN No.AOTPS7676B)

Vs.

HDFC Securities ltd. )  
having its office at 8<sup>th</sup> Floor, )  
"I Think Building", Jolly Board )  
Campus, Opp. Crompton Greaves ) RESPONDENT  
Factory, Kanjurmarg (East), ) (Original  
Mumbai - 400 042 ) Respondent)

\*\*\*

Appearances

Appellant:-

Mr. J. J. Bhatt, and Miss Prachi Pande,  
Advocates.

Respondent:-

1. Mr. Vinay Chauhan, Advocate for the respondent.
2. Ashish Rathi, VP (Risk & Compliance-Officer)
2. Mr. Baiju Budhwani, Compliance Officer.

\*\*\*

**A W A R D**

1. The Appellant has filed this appeal against the Award dated 18-8-2010 passed by the Panel of Arbitrators, whereby the Appellant's application for recovery of sum of Rs.48,99,801/- with interest at the rate of 18% per annum, from the Respondent, was rejected.

2. The Appellant is the Constituent and the Respondent is a Trading Member. The Appellant had banking relations with HDFC Bank a sister organization of the Respondent from July 2004 onwards. The Appellant opened a trading account with the Respondent in the month of July 2008. She was allotted a Client Code No. 342889 for the purpose of transactions on NSE. The Appellant also opened demat account with the Respondent. She had also executed a Member Client Agreement with the Respondent. The trading commenced from July, 2008. The Respondent was acting through its dealer Mr. Vinod Kopar.

3. The case of the Appellant is that, during the period between 25-1-2009 and 27-4-2009 herself and her husband were heavily occupying in making religious film on Kanjimuni, a Jain Saint and during this period, they were out of Mumbai. The Appellant further alleged that during this period, the Respondent's dealer had unauthorizedly undertaken large number of transactions on the NSE in F & O Segment. Therefore, she alleged that the Respondent committed several illegal acts and caused loss to the Appellant. After this was realized by the Appellant, she along with her husband had several meetings with the Respondent's Officer, Mr. Vinod Kopar who was the dealer. These meetings were held between 6-1-2009 and September 2009. The Appellant alleged that Mr. Vinod Kopar, the Respondent's dealer had confessed about unauthorized trades in the Appellant's account,

undertaken by him during the aforesaid period. She alleged that *modus operandi* of unauthorized and fraudulent trading during the aforesaid period could be seen from the documents like contract notes of F & O Segment and Capital Market Segment of NSE, consolidated ledger account, bank account statement, demat account statement, equity securities register, monthly profit & loss statement, etc. Although several meetings were held, as aforesaid, the Appellant alleged that the Respondent did not make good the loss caused to her on account of the unauthorized trading undertaken by the Respondent's dealer, Mr. Vinod Kopar. The Respondent even did not make good the loss although the legal notice was served to it through its advocate. Therefore, she made an application to the NSE who referred the matter to the Panel of Arbitrators.

4. The Respondent had denied the claim of the Appellant on the ground that there was no instance of unauthorized trading undertaken by its dealer, Mr. Vinod Kopar. The Respondent contended that the Appellant's husband used to contact the dealer on telephone and place the orders and those orders were acted upon by its dealer. The Respondent also contended that the Appellant's husband was well conversant with the trading on the floor of the NSE, both in F & O Segment and Capital market Segment. The Respondent denied all the allegations made by the Appellant.

5. Having considered the rival contentions of the parties, the Panel of Learned Arbitrators had rejected the Appellant's claim, holding that there was no instance of unauthorized trade undertaken by the Respondent. The Panel of Arbitrators also clearly held that the Appellant's husband was having discussions with the Respondent's dealer and the dealer used to act as per the instructions given to him by the Appellant's husband.

6. It is this decision which is assailed in this appeal, mainly on the following grounds-

. That the Panel of Arbitrators did not deal with the dealer's confessions made during several meetings held between the Appellant and the Respondent; that the Learned Arbitrators failed to consider the circumstantial evidence of leaving or sacking of the dealer by the Respondent, immediately on receiving the legal notice from the Appellant ; that the Learned Arbitrators ought to have called the dealer and obtained his version in the matter, especially when his version was not even placed on record by the Respondent; the investigation report of the Respondent had no mention of dealer's explanation or confession. It is also the contention raised on behalf of the Appellant that the disputed trade between December 2008 and April 2009 was unauthorized and the Learned Arbitrators failed to take into consideration that this unauthorized trade was undertaken during the period when the Appellant and her husband were out of Mumbai; that the talks relied upon by the Respondent did not contain any upfront specific placement of orders; that the husband of the Appellant could not place the orders as he did not have required expertise, quick calculation, visualization, strategy, skill, outcome of trades etc., that are required for undertaking the trade in F & O Segment and the Capital Market Segment. The Appellant also contended that the recorded conversation between her husband and the dealer does not contain placement or order or confirmation of the orders in respect of the disputed trades executed during the disputed period. The Appellant further contended that she had not authorized her husband to approve the trade or give consent to the trades on her behalf.

7. The Respondent opposed this appeal and supported the finding recorded by the Panel of

Arbitrators. In addition to this, they contended that this Appellate Panel of Arbitrators has no jurisdiction to entertain this appeal.

8. We have heard the learned counsel representing the Appellant and also the learned counsel representing the Respondent.

9. Coming to the first point of jurisdiction raised on behalf of the Respondent, it was submitted that the Securities and Exchange Board of India (for short "SEBI") had issued a Circular dated 11-8-2010 whereby the Appellate Panel of Arbitrators was for the first time formed and prescribed before which the decisions of the Sole Arbitrator or the Panel of Arbitrators could lie. The Respondent's contention is that pursuant to the said Circular, the NSE has issued its Circular dated 31-8-2010, as directed by the SEBI in its Circular dated 11-8-2010. However, the NSE's Bye-laws were not amended, as required by the provisions of Securities Contracts (Regulation) Act, 1956, as there was no publication of such rules. We, however, do not find any merit in this submission. Under Sec. 11(1) of the Securities and Exchange Board of India Act, 1992 the SEBI has power to issue circulars, making them applicable to all the recognized stock exchanges in India. They have also powers to publish the rules under the provisions of Section 10 of the Securities Contracts (Regulation) Act, 1956. The contention raised on behalf of the Respondent is that in paragraph 11 of SEBI's Circular dated 11-8-2010, the SEBI had advised the recognized stock exchanges "to make necessary amendments to the relevant bye-laws, rules & regulations for the implementation of the above decision immediately". Much stress is laid on these wordings to vehemently submit that unless and until the NSE had made necessary amendments to its relevant bye-laws, rules & regulations, the same could not have been implemented. Consequently, it was submitted that for the formation of the Appellate Arbitral

Tribunal there should have been necessary amendments made in the bye-laws, rules & regulations of the NSE. Since the NSE had issued the Circular only on 31-8-2010, the same was neither published nor bye-laws, rules & regulations were amended. However, we do not find any merit in this submission, as by virtue of provisions of Section 11(1) of the Securities and Exchange Board of India Act, the SEBI had powers to issue circular and make it applicable without its publication. The SEBI's Circular dated 11-8-2010 in paragraph 13 clearly mentions as under-

"13. This Circular is issued in exercise of the powers conferred under Section 11(1) of the Securities and Exchange Board of India Act, 1992, read with Section 10 of the Securities Contracts (Regulation) Act, 1956 to protect the interest of investors in securities and to promote the development of, and to regulate the securities market and shall come into effect from September, 1, 2010"

By this paragraph, the SEBI had made the Circular applicable with effect from 1<sup>st</sup> September, 2010. The Securities Contracts (Regulation) Act 1956 also empowers the SEBI to dispense with the condition of previous publication. The relevant provision is as under-

"10(4) The making or the amendment or revision of any bye-laws under this section shall in all cases be subject to the condition of previous publication:

**Provided** that if the Securities and Exchange Board of India is satisfied in any case that in the interest of the trade or in the public interest any bye-laws should be made, amended or revised immediately, it may, by order in writing specifying the reasons therefor dispense with the condition of previous publication."

10. What was mentioned in paragraph 11 of the said Circular dated 11-8-2010 was only an advice to the recognized stock exchanges to make necessary amendments in their relevant bye-laws, rules and regulations for the implementation of the above decision immediately. What is mentioned in paragraph 11 of the Circular does not make the necessity of amending the bye-laws, rules and regulations by the recognized stock exchanges, the qualifying requirement for the purpose of implementation. It is clear that paragraph 13 of the SEBI's Circular had clearly given the reason for urgency, namely to protect the interest of investors in securities and to promote the development of, and to regulate the securities market. In the same paragraph it was specifically made clear that the Circular was to come into effect from 1<sup>st</sup> September, 2010. The advice given by the SEBI in paragraph 11 of its Circular was only to make the amendments in their respective bye-laws, rules and regulations and complete the formality without making it qualifying requirement for the purpose of implementation. Conjoint reading of paragraph 11 and 13 makes it clear that amendments shall be made in the NSE bye-laws but in the mean time the circular has to be given effect to from 1<sup>st</sup> September, 2010 till the bye-laws of NSE are amended without waiting for amendments. Under the circumstances, we do not find any merits in the submissions made on behalf of the Respondent.

11. As regards the grounds of appeal, it is necessary to note that the Appellant has not denied the fact of having received all the necessary documents, including contract notes, etc. with regard to the transactions undertaken by the Respondent on her behalf. These contract notes are required to be issued by the trading member to the investor/constituent immediately after trade is undertaken. It is worth noting that admittedly the Appellant did not raise any

objection to any of the transactions undertaken during the disputed period. The Respondent has produced the CD of Voice Recording System (VRS) in respect of the talk that took place between the Appellant's husband and the Respondent's dealer, Mr. Vinod Kopar on various dates, on which the transactions were undertaken by the Respondent's dealer on behalf of the Appellant. The Respondent have also produced the transcripts of the talks recorded in the CDs through VRS. None is disputed. An attempt was made on behalf of the Appellant to submit that the voice was probably not of her husband. However, subsequently the same was admitted. Even an attempt was made for the Appellant to submit that the Appellant had not authorized her husband Mr. Rajendra Shah to give instructions for undertaking trade on her behalf. In this respect, the Appellant had taken a shifting stand. Apart from this, in the legal notice issued by the Appellant's advocate on her behalf, dated 3-8-2009, there is specific admission as under-

"My client Mrs. Pragna says that she used to place orders for buying and selling shares through her husband Mr. Rajendra Shah."

12. This makes it clear that the Appellant was placing orders through her husband only. Her contention that she was illiterate lady and was not in a position to understand the intricacies of the trade practices, has no merits. If really she is a household lady and is not in a position to understand the trade practice, it is hard to believe that she herself would give instructions for undertaking the trade. At any rate, her admission in the legal notice that her husband was acting on her behalf for giving instructions for trades, rests all the confusion tried to be created by the Appellant. This admission leaves no manner of doubt that the Appellant's husband used to make all the dealings and used to give all the instructions to the Respondent's dealer for

undertaking trade for and on behalf of the Appellant.

13. Much was made on behalf of the Appellant about the Respondent's dealer, Mr. Vinod Kopar not having been called and examined before the Panel of Arbitrators. It was also vehemently submitted that during the meetings which took place among the Appellant, her husband and Mr. Vinod Kopar and other officers of the Respondent between 6-1-2009 and 17-07-2009, the dealer, Mr. Vinod Kopar had given confession of having acted unauthorisedly. This submission, however, has no merit or force. The Respondent have produced a CD, containing conversation between its dealer, Mr. Vinod Kopar and the Appellant's husband Mr. Rajendra Shah. The transcripts of the conversation dated 16-01-2009, 5-2-2009, 20-2-2009 and 2-3-2009 are produced by way of examples. Initially the Appellant tried to take stand that the voice in this CD was not of her husband. However, subsequently the same thing was admitted. The perusal of these conversations would clearly indicate that Appellant's husband at some places given clear instructions as to the trade and at some place had confirmed the trade undertaken by Mr. Vinod Kopar. The conversations also clearly indicate that the Appellant's husband had full knowledge of trade, that was undertaken for various trades in F and O segment and the Capital Market Segment. In view of this evidence, non-examination of Mr. Vinod Kopar was not an issue and as such absolutely not necessary and was rightly rejected by the Panel of Arbitrators. This conversation also negates the contention raised on behalf of the Appellant that Mr. Vinod Kopar had acted unauthorisedly. If it was a matter of fact that Mr. Vinod Kopar had acted unauthorisedly, the immediate reaction of the Appellant's husband, who was having conversation with him, would have been to question the dealings or trades undertaken by Mr. Vinod Kopar, which was informed to the Appellant's husband during the discussions. There was no such reaction of the Appellant's husband.

On the contrary, at number of places the Appellant's husband had approved and confirmed the action of Mr. Vinod Kopar. At some places the Appellants husband had given clear instructions to Mr. Vinod Kopar, as to how he should go about while dealing with transactions, on behalf of the Appellant. He also advised Mr. Vinod Kopar as to how he should act, so that there would be profit to the Appellant. In addition to this, it is undisputed fact that the contract notes were forwarded by the Respondent to the Appellant, immediately after the transactions were undertaken by the Respondent on behalf of the Appellant. Having admitted receipt of the contract notes, the contention of the Appellant is that she or her husband did not bother to look into the same. Such contention, however, would be of no help to the Appellant.

14. Moreover, as per the terms of the Agreement, which the Appellant had executed with the Respondent, also there is clear mention that if the Appellant had any objection to any act undertaken by the Respondent on behalf of the Appellant, she should react to the same immediately, but nothing of the sort was done by the Appellant. There is also no substance in the contention raised on behalf of the Appellant that during the disputed period neither she nor her husband had given instructions, as they were out of Mumbai in connection with the production of a film. This is so because the instructions used to be given on telephone or mobile and operation of mobile can be from anywhere and it was not necessary for the Appellant or her husband to be in Mumbai for that purpose. Under these circumstances, there is no merit in the contentions raised on behalf of the Appellant. Therefore, the findings recorded by the Panel of Arbitrators was just and proper. The Respondent had undertaken trade for and on behalf of the Appellant, as per the instructions given by the Appellant's husband from time to time. The

contract notes were immediately sent to the Appellant, as required by the NSE bye-laws, rules and regulations.

15. The Respondent tried to challenge the finding of the Panel of Arbitrator in respect of the point of limitation. Since on merits we are not disturbing the findings of the Panel of Arbitrators and as we have rejected the claim of the Appellant, we do not think it necessary to deal with the aspect of limitation. Under these circumstances, we do not find any merit in the appeal. The appeal deserves to be dismissed.

**AWARD**

The appeal is dismissed.

Mr. G. A. Nayak)  
(Co-Arbitrator)

(Mr. Ramesh M. Joshi)  
(Co-Arbitrator)

Justice S. K. Shah (Retd.)  
(Presiding Arbitrator)

Mumbai

Date: January 24, 2011