भारतीय गैर न्यायिक

एक सौ रुपये Rs. 100

रु. 100 ONE HUNDRED RUPEES

सत्यमेव जयते

भारत INDIA

INDIA NON JUDICIAL

महाराष्ट्र MAHARASHTRA

GV 160206

प्रधान मुद्रांक कार्यालय, मुंबई
प. मु. विक्रेता क्र. ६९४
15 FEB 2013
सक्षम अधिकारी

श्रीमती. तृ. सु. सावंत

दे. महाराष्ट्र मंत्रालय अलाइड अॅण्ड अलाइड ... को. ऑप. बँक लि., मंत्रालय, मुंबई-४०० ०३१
एल. एस. डी. क्रमांक :- ६९४
क्रमांक:- 170 दिनांक:-
उच्च न्यायालय, मुंबई.
प्रकरणी/श्री./श्रीमती
तीन न्यायालय मुद्रांक रु. ... चा
रेकला.
28 FEB 2013
BSE Ltd. P.J. Tower, 25th Floor, Fort, Dalal Street, Mumbai-400 001.
मुद्रांक विक्रेता,
नेहा बापू गायकवाड

Ref. No. 99/2012

In the matter of Arbitration under the Rules, Bye-laws and Regulations of the BSE Ltd.

Between

Fullerton Securities & Wealth Advisors Limited, ... **Applicant**
Orchid Centre, 2nd Floor
Sectore 54
Golf Course Road,
Gurgaon- 122 002.

AND

Sally Media & Entertainment Pvt. Ltd. ..... **Respondent No. 1**
14, Keshavji Naik,
Mira Bhuvan, Terrace Room,
Mumbai – 400 009.

Walton Constructions Pvt Ltd., ... **Respondent No. 2**
Walton Construction Company Pvt. Ltd.
284, Narshi Natha Street,
Bhaat Bazar,
Mumbai - 400 009.

Anita Trading Company Pvt. Ltd. ..... **Respondent No. 3**
C-504, 4, Mathura Bhawan CHS,
96, Dada Saheb Phalke Road,
Dadar (East)
Mumbai – 400 004.

Narois Impex Pvt. Ltd. ..... **Respondent No. 4**
312/3, Sarda Chamber No. 1,
31, K. N. Road,
Mumbai – 400 009

Grantview Properties Pvt. Ltd. ..... **Respondent No. 5**
201, Pallavi CHS Ltd.,
Tata Colony,
Mulund (East),
Mumbai – 400 081.

Gajpal Buildinfra Pvt. Ltd. ..... **Respondent No. 6**
312, Sarda Chamber No. 1,
3rd Floor, 31, K. N. Road,
Mumbai – 400 009.

Alish Traders Pvt. Ltd.
14, Keshavji Naik Road,
Hira Bhuvan, Terrace Room,
Mumbai - 400 009. ..... **Respondent No. 7**

Marisha Real Estate Pvt. Ltd.
14, Jasgavhu Naik Road,
Hira Bhuvan, Terrace Room,
Mumbai – 400 009. ..... **Respondent No. 8**

Before the Bench of Arbitrators:

Shri. Pankaj M. Patel
Shri. Rajendra G. Sheth.
Shri. Shailesh R. Ghedia.

This is an Arbitration application submitted to me under the Rules, Bye-laws and Regulations of BSE Ltd.

The Applicant is a Body Corporate incorporated under the Companies Act, 1956 and having its office and corporate office as mentioned in the cause title. The Applicant is a Member-Broker of the BSE Ltd., as well as the National Stock Exchange of India Ltd. The 1st Respondent is a trading client of the Applicant. The Respondents number 2 to 8 are private limited companies incorporated under the Companies Act 1956 and having registered office at their respective addresses mentioned in the cause title.

1. The hearings in the said Reference were held on 21.12.2012, 4.1.2013, 1. 2.2013, 22. 2.2013, 7. 3.2013 & 25.3.2013. M/s Dhruv Liladhar & Co., Solicitors & Advocates, appeared on behalf of the Applicant and Mr. Sandeep Karu, Advocate appeared on behalf of the Respondents

THE CASE OF THE APPLICANT:

2. It is the case of the Applicant that the 1st Respondent intended to trade in securities and, therefore, registered itself as a constituent by signing member-client agreement with them. It is the case of the Applicant that beside signing member client agreement various other documents were executed such as client agreement for broking, broking account opening form, application for depository account et cetera. The 1st Respondent commenced trade on and from 18.7.2011 and various orders was placed since then time to time till 26.08.2011 to purchase and/ or sell shares. It is the case of the Applicant that 1st Respondent traded in shares and they submitted contract notes of Rupees 15,49,09,569.13/- which is net of purchase and sales of shares. It is further the case of the applicant that during the said period 1st Respondent transferred in all Rs.13.22 crore in the Margin account over period of time. The case of the applicant that by virtue of trade executed by the 1st Respondent, it became liable to pay sum of Rupees 2,49,94,508.83/- as on 5.8.2011. The 1st Respondent despite various request and

reminder failed to either squared up the position or cleared the debit balance as on 5.8.2011 as a result whereof the Applicant sold shares worth Rupees 2.99 Cr. on 5.8.2011 & Rs. 21 Lakhs on 26.8.2013. It is the case of the Applicant that the 1st Respondent had debit balance of Rupees 2,31,42,011.10/- as on 26.8.2011, however the 1st Respondent failed and neglected to clear the said debit balance. The case of the Applicant case that they did try to not only square off the outstanding position but also collaterals however they were unable to square of the transactions as the shares owned by 1st Respondent had hit lower circuit.

3. It is the case of the Applicant that the 2nd Respondent by its letter dated 28.7.2011, assured that it shall be settling the debit/ default arising out of the trading accounts of Respond Number 1, 3, 6 & 8 and further authorised the applicant to hold the payout of the fund / securities against any debit/default arising in the trading account of the said respondents. The 2nd Respondent by its letter dated 03/09/2011 confirmed the debit balance of Rs.2,31,79,467.20/- standing in the account of 1st Respondent and further authorised the applicant to adjust/transfer the sale proceeds or credited received in their trading account with the Applicant. It is further the case of the Applicant that similarly Respondent Number 3 to 8 also by their letters assured they will be settling default arising out of the trading account with them and further confirmed the debit balance of Rs.2,31,79,467.20/- standing in the account of 1st Respondent and copies of all such letters are filed on the record along with the statement of claim.

4. It is further case of the Applicant that on 19.9.2011, 1st Respondent handed over five undated cheques of Rupees 25,00,000/- each amounting to in all Rs.1.25 crores with further instruction to the Applicant that in case they failed to provide any securities to substantially reduce and / or cover it's debit balance, than the Applicant will be at liberty to encase the cheque's and relying on the said assurance it did not square up outstanding position and or sell the securities of 1st Respondent which it was holding.

5. It is further the case of the applicant that despite repeated reminders the 1st respondent neither cleared its liability nor squared up the position. It is further the case of the applicant that several meeting did take place thereafter when all along the representative of the 1st Respondent assured and promised to clear the outstanding dues. It is the case of the Applicant that the 1st Respondent by its letter dated in 13.10.2011 admitted and acknowledged that there was debit balance of Rs.2,33,63,066.60 and promised to pay the said dues along with interest at the rate of 19%, a copy of the said letter is filed on the record. There was further correspondence between the Applicant and the 1st Respondent in the

matter however the 1st Respondent failed to make payment. It is further case of the Applicant that for the first time 1st Respondent by its advocate's notice dated 2.11. 2011 sought to falsely deny the transactions executed by them and also liability arising out of it. It is further the case of the Applicant that the five cheques of Rs.25 lakhs each were when deposited in their account the same was the not honored and came back with the remark insufficient funds. The Applicant case is that they have instituted proceedings against office bearers of the 1st Respondent under section 138 of the Negotiable Instrument Act 1888 in the Tis Hazari Court, Delhi on 20.01.2012 and the said proceedings are still pending that prayed that their claim of Rupees 2,37,65,310.86 as on 30.6.2012 together with interest at the rate of 36% from 30.6.2012 till the date of payment/realization.

THE CASE OF THE RESPONDENTS:

6. The Respondents have not filed their written statement in the matter.

SUBMISSION:

7. The applicant contended that the respondents have not contested the claim and the trade being done on the instructions of the 1st Respondent on the floor of the BSE Ltd., it must be allowed. The claim amount of Rs. 2,37,65,310.86 Ps is due and the same may be awarded with interest @ 36%.

FINDINGS :

8. Before we adjudicate the present reference and decide the claim it is also pertinent to note that matter was adjourned from time to time in order to bring about the settlement between the parties however the settlement did not come through more than reasonable opportunity was given and the minutes of the proceedings records the said facts.

9. As per the Bye law, Rules and Regulations of the BSE Ltd, the BSE did serve statement of claim of the applicant on the Respondents and called upon them to file their written statement in the matter. The Respondents have not filed the written statement disputing the claim of the Applicant. As per the Bye law, Rules and Regulations of the BSE Ltd the arbitration hearing of the matter starts only after Respondents files their written statement within the stipulated time. The Respondents have failed to avail opportunity of filing their written statement as per schedule prescribed by the BSE Ltd, under Bye Law, Rules and Regulations. The Respondent failed to appear on the first date of hearing and hence the matter was adjourned to 4.1.2013. The Respondents made request on 4.1.2013 o allow them to file written statement which request was granted in order that the Respondents can avail an opportunity of filing their say in the matter by way of

indulgence and also keeping in the minds that it is always batter that the case is decided on merit after giving reasonable opportunity to parties to put forward their case. However even after giving an opportunity to file written statement to the Respondents, the Respondents failed and neglected to file their written statement in the matter. The failure on the part of the Respondent's to file written statement disputing the claim of the Applicant means that they have no defense or in the other words they are not disputing the correctness of the claim of the Applicant. At this juncture it is worthwhile to note the letter dt. 13.10.2011 addressed by the 1st Respondent to the Applicant. The tenor of the said letter makes it amply clear that 1st Respondent are not disputing the claim of the applicant of Rs.2,33,63,066.60/- but they were asking time to schedule the payment of their dues. The 1st Respondent further in the said letter assures the Applicant herein that they will make good said payment with 19% interest per annum and set out schedule of the payment. Thus the liability to make payment is not disputed by the 1st Respondent. Beside that Respondents' number 2 to 8 have also assured the applicant that the liability will be settled by their letters addressed to the Applicant which are on the record of the present proceedings. Respondent have not filed their written statement on the record though duly served questioning the various averments made in a statement of claim by the applicant and documents relied in support thereof by the applicant, which means that all the respondent does not question the correctness of the claim. The 1st Respondent had also given post dated cheques to the Applicant which are dishonored and thus the liability to pay is there on the part of the 1st Respondent to the Applicant. The Respondents have not contested the claim and therefore the same is liable to allowed to the extent the Applicant is entitled in law. By not contesting the claim the respondents have admitted that the transactions are done as per their instructions on the floor of 'BSE' and they are not disputing the correctness of the same. Since the claim of the Applicant is not in dispute we will have to allow the claim.

10. The Applicant claim towards capital account is Rs. 1,76,77,582.69Ps. and interest component from date of the trade to 30.6.2012 is Rs. 60,87,728.17ps. and in all Rs. 2,37,65,310.86/- together with interest as on 30.6.2012. However if we grant the claim of Rs. 2,37,65,310.86/- with interest then the same will amount to interest on interest and the Counsel of the Applicant has not pointed out any provision in law which authorises us to allow the claim in such manner and hence, we will have to grant the claim of the Applicant of Rs. 1,76,77,582.69Ps., however the same will carry interest at the rate that we will determine from the pay out date of the last date of trade. From the record the last trade date is 26.8.2011 and hence the debit balance will carry interest from

29.8.2011.

11. Since the Respondents No. 2 to 8 has no arbitration agreement with the Applicant for the dispute qua the Respondent No.1, we can't pass any award as against them. We make it clear that what is rejected is the Reference and not claim of the Applicant qua Respondent No. 2 to 8 that they may have in law.

12. The applicant has claimed interest at the rate of 36% per anum which we consider on higher side. The Applicant is entitled to interest at the rate of 19% per anum which is the rate 1st Respondent agreed to pay to the Applicant and the said interest will be payable by the 1st Respondent to the applicant from 29.8.2011. The applicant thus succeeds partly and the award is as below.

AWARD

a) The 1st Respondent is directed to pay to the applicant Rs. 1,76,77,582.69 Ps. together with interest at the rate of 19% per anum from 29.8.2011.

b) The Reference qua Respondent No. 2 to 8 is rejected and not the claim of the Applicant.

c) There shall be no order as to costs.

Mumbai: dated this 26th day of April, 2013.

Arbitrators:

Shri. Pankaj M. Patel

Shri. Rajendra G. Sheth.

Shri. S. R. Ghedia.