

RS.100 - 100/1000

Authorized Signatory
Bandra (E) Branch

The North Maharashtra S.S.B. Co-op.
Bank Ltd., Bandra Branch, Zapurza,
Sahitya Sahawas, Katanagar,
Mumbai-400 051.
D-3/5TP (V.C.R. 1642/05/1300 to
1303



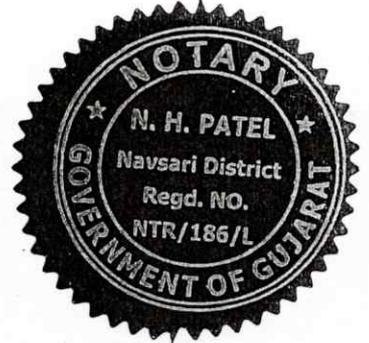
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SR. No. 8413/25
DATE. 12 DEC 2023



BEFORE THE SOLE ARBITRAL TRIBUNAL
COMPRISING OF

Justice S. K. Shah (Retd.) - Sole Arbitrator

IN THE MATTER OF ARBITRATION

BETWEEN

Navsari Peoples' Co-operative Bank,
Ltd., A Co-Op. Bank, incorporated)
under the Gujarat State Cooperative)
Societies Act, 1961 (in liquidation))
through the Official Liquidator,)
having its registered and)
Administrative office at "Din Dayal)
Bhavan", Din Dayal Chowk, Opp.)
Gayan Shala, near Tower,)
Navsari - 396 445)

... CLAIMANT

Vs.

M/s. Home Trade Limited,)
A Company incorporated under the)
provisions of the Companies Act,)
1956, having their registered office)
at Tower 4, 5th Floor, International)
Infotech Park, Navi Mumbai 400 203)

... RESPONDENTS





Appearances

Miss. Shweta Doshi Advocate for the Claimant.
None for the Respondent.

A W A R D

1. The Claimant is a Cooperative Bank, incorporated under the Gujarat State Co-Operative Societies Act, 1961. Respondent is a company, incorporated under the provisions of the Companies Act, 1956. Respondent has registered office at Pune and the Administrative Office at New Mumbai. Respondent is a share and stock broker. It is registered as a member of the National Stock Exchange of India Ltd. having Membership Code 06246. It is also registered member of SEBI with SEBI registration No. INB 230624638.

2. Under the Banking Regulation Act, 1949 the Claimants was required to invest upto 25% of the net time and demand liability (government securities to fulfil the requirements of Statutory Liquidity Ratio (SLR). From 1997 Claimants started placing orders for purchase of government securities through one Mr. Ketan Sheth of M/s. Ketan Sheth & Company and M/s. Giltedge Management Services Ltd. Through Mr. Ketan Sheth, Claimants started placing orders with M/s. Euro Asian Securities Ltd. Mr. Ketan Sheth had fulfilled his contractual obligations right from 1997 with regard to purchase of government securities by the Claimants upto January 2001.



3. In January 2000 Mr. Ketan Sheth along with Mr. Sanjay Agarwal and Mr. N. S. Trivedi represented to the Claimants that broking firm M/s. Euro Asian Securities Ltd. had become M/s. Home Trade Ltd. (Respondent) and that Mr. Sanjay Agarwal was the Chairman and CEO of the Respondent with Mr. Ketan Sheth and Mr. Trivedi and other professionals as Directors and Executors of the Respondent.

4. Having come to know from some sources that Cooperative Bank could also dispose of government securities in the open market and can purchase other government securities to fulfill their SLR requirement, Claimants took a commercial decision to sell some of their old government securities, as and when opportunity exists to maximize the profit of the Bank and also to comply with SLR requirements.

5. During the Financial year 2001-2002 RBI issued a circular dated 19th April, 2001, advising Urban Cooperative Banks to increase investment in Government Securities instead of investing in District/State Cooperative Banks' Term Deposit for complying with SLR requirement. Said Circular was bearing No. BR/Cir/42/16.28.00/2000-01. Claimants in order to avail opportunity of enhancing earning of the bank, decided to dispose of some of the old government securities purchased by them earlier. As a result, Claimants enhanced earning of the bank and also fulfilled SLR requirements. Claimants, accordingly, in order to comply with SLR requirement started placing orders for purchasing the government securities with the Respondent, and also for



started selling old government securities, already purchased by them for fulfilling the purpose of enhancing their earnings and to comply with SLR requirements. In such transactions, the consequent difference in the purchase and sell price used to be payable by the Respondents to the Claimants or vice-a-versa. Purchase transactions were undertaken during the year February 2000 to March 2001. During this period, Respondents had timely issued contract notes as a member of NSE confirming the transactions and both the parties had discharged their respective obligations under the contract.

6. Claimants allege that in the month of March 2002, the delivery of four securities viz. - 10,50% GOI 2014 of face value Rs.5 Crores; 9.39% GOI 2011 of face value Rs. 7 Crores; 11.50% GOI 2011 GOI of face value Rs. 3 Crores; 11.50% GOI 2015 of face value Rs. 5 Crores, total consideration was being Rs. 24,82,12,344.44 Ps. was pending. Claimants allege that for reasons best known to the Respondents, they failed to give delivery of the above securities which were lying with the Respondents. The Respondents represented to the Claimants that they were not getting the supply and delivery of the above securities from counter parties, on account of the revision of their interest rates. Therefore, the Respondents advised Claimants to dispose of the above government securities as it would yield high returns and purchase new government securities for which Respondents assured immediate delivery. Claimants allege that they acted on this advice of the Respondents and decided to dispose of the aforesaid

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securities. Respondents executed the sale transactions of the above securities and issued sale contract Note Nos. 7395, 7397, 7405 & 7411 total consideration being Rs 24,82,12,344.44 Ps.- to the Claimants. Claimants further allege that at the same time, in order to fulfill SLR requirements, instructed Respondents to purchase new Government Securities, namely four 8.07% GOI 2017 and one 9.81% GOI 2013. Total face value of which was Rs. 23.60 Crores which were purchased for and total consideration of Rs.24,76,52,925/-. Accordingly, Respondents had issued the purchase contract-notes for the same, confirming purchase of these securities. Accordingly, a sum of Rs. 24,76,52,925/- was payable to the Respondents, in view of the securities purchased by them through Respondents. Accordingly, Claimants discharged their obligation by directing Respondents to appropriate consideration of Rs. 24,76,52,952/- from sale proceeds of Rs.24,82,12,344.44 Ps. received by the Respondents on account of the sell of the Claimants' securities. Claimants further allege that difference amount of Rs.5,59,419.44 Ps. was paid by the Respondent. Claimants allege that, however, the obligation to deliver the securities purchased by them for Claimants under Contract Note Nos. 7453, 7413, 7455, 7501 and 7399 remained to be fulfilled by the Respondents. These were - four 8.07% GOI 2017 and 9.81% GOI 2013 under the aforesaid Contract Notes.

7. Since Respondents failed to deliver the securities, Claimants followed up the matter with Respondents for the purpose of delivery of these government securities but the



Respondents did not deliver the same. Lastly, Claimants sent a FAX dated 16th April 2012 requesting Respondents to arrange delivery of these government securities for which Claimants had paid consideration, as aforesaid. In spite of receiving the FAX, Respondents failed to deliver aforesaid government securities. Claimants repeated their demand for delivery of the government securities telephonically as well as written communications and personal follow up, but Respondents failed to deliver the securities.

8. Claimants further allege that on 29th April 2012 the Directors & Officers of the Claimants visited office of the Respondent for the purpose of getting the physical and actual possession of the Government Securities, but they were shocked to see the queue of other investors who were searching for the Directors and officers of the Respondent Company for the purpose of getting their outstanding deliveries and outstanding amounts, Having thus, learnt that Respondents had defrauded them the , Claimants filed a complaint dated 30th April, 2002 with NSE and sent copy thereof to SEBI on 1st May, 2002 requesting the NSE to initiate necessary action against the Respondents, to safeguard Claimants' interest. Claimants also lodged complaint dated 2nd May 2002 with the Economic Offence Branch, Crime Branch - CID Mumbai Police. However, all the aforesaid efforts were futile. In the mean time, Claimants came across news reports about bigger fraud generated by the Respondents and their officers & Directors and that officers & directors were absconding.

9. As such, Claimants invoked arbitration clause

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mentioned in the contract notes issued by the Respondents and moved NSE for making reference of the arbitral dispute that has arisen between Claimants & Respondents for Arbitration. However, NSE refused to accept the same on the ground that Respondents were not enabled on the Wholesale Debt Market segment of their Exchange and as such no transactions were executed by the Respondents on the said segment. Authorized Representative of the Claimants visited arbitration department of NSE on 29th May 2002, 18th June 2002, 2nd July 2002, 16th July 2002 and 8th August 2002. Claimants representative also deposited requisite fee in making a reference of their complaint to the arbitration under the NSE. However, NSE on 16th August, 2002 returned the claimants' application, mentioning that the dispute did not arise out of the transactions executed on the Exchange, and therefore, they were unable to process arbitration application. Even then, thereafter Claimants again ensued correspondence with NSE for entertaining their arbitration application, but the same was refused by the NSE. Ultimately, on 27th September 2002 Claimants sent a memorandum of appeal to the Hon'ble Finance Minister and the Chairman of the SEBI requesting them to direct the arbitration department of NSE to register their arbitration application. They also sent a letter dated 3rd October 2002 to the Directors of NSE making the same request. All such efforts, however, were in vain and Claimants' arbitration application was not registered by the NSE. As such, Claimants filed Writ Petition in the Hon'ble High Court being Writ Petition No. 3139 of 2002 against the NSE seeking direction against NSE to accept and



register Claimants' arbitration application against the Respondents and commence arbitral proceedings. Said writ petition came up before the Division Bench of the Hon'ble High Court on 25th March 2010 wherein observations were made that the Petitioners had efficacious remedy under the Arbitration and Conciliation Act, 1996 and thus declined to exercise extraordinary jurisdiction in the said writ petition. Accordingly, Claimants filed arbitration application, being Arbitration Application No. 19 of 2011 under Section 11 of the Arbitration & Conciliation Act, 1996 against Respondents. In the said Application, as per the order passed by the Hon'ble High Court, on 12th August 2011 I was appointed as Sole Arbitrator to decide the dispute between the parties.

10. Having received said order of appointment, I addressed a letter to the Claimants & Respondents dated 6th September 2011, fixing the preliminary meeting for direction on 14th September 2011. Said letter was served on the Claimants. However, letter sent to the Respondents on the address given by the Claimants was returned with an endorsement "left". A preliminary meeting, accordingly, was held on 14th September 2011 with the Claimants & their advocate, but in the absence of the Respondents, as no one appeared for the Respondents, requisite directions were given requiring Claimants to file Statement of Claim, Respondents to file written-statement, documents, etc.

11. These directions were also tried to be served on the Respondent but of no avail. As such, Claimants sought direction

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to make service on the Respondents by substituted service i.e. by publishing a notice in local newspaper. Accordingly, the substituted service was made on the respondents by issuing the advertisements/public notice in daily newspaper "Free Press Journal" and daily newspaper of the local language i.e. Marathi "Navshakti", which had circulation in the locality in which the Respondents were having last known address. The newspapers are produced on record. Claimants' Official Liquidator Mr. R. J. Tadvi has also filed affidavit of making substituted service on the Respondents. Respondents, however, did not appear. Arbitration Proceedings, therefore, continued *ex parte* against the Respondents.

12. I have learned Advocate for the Claimants.

13. Besides filing the documentary evidence, Claimants have filed the affidavit of evidence of Mr. Arvind Soni, the Manager of the Claimants. In this affidavit, he has affirmed all the facts, as narrated above. Claimants have produced all the relevant original documents. At Item No. 1 of compilation of documents, there is a copy of the circular dated 12th May 2001 issued by RBI requiring the Urban Cooperative Banks to maintain the SLR 25% by holding government and approved securities, as percentage of NDTL i.e. 25% in case of the Claimants. Claimants have also produced the original contract notes bearing Nos. 7395, 7397, 7405 and 7411. At item No. 2 of the compilation of documents filed by the Claimants, they are all sale contract notes under which the Claimant's government securities were sold for a total

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consideration of Rs. 24,82,12,344.44 Ps. At Item No. 3 of compilation of documents, Claimants have produced 5 contract notes bearing Nos. 7453, 7413, 7455, 7401 and 7399 under which Respondents had purchased for Claimants various securities for a total consideration of Rs. 24,76, 52,925/-. The difference of consideration was Rs.5,59,419.44 Ps. this amount was payable by the Respondents to the Claimants, as the sale-proceeds of the government securities belonging to the Claimants was more than the value of the government securities, purchased by Respondents for Claimants. Accordingly, Respondent had issued an adjustment letter dated 19th March, 2002 , which is produced at Item No. 4 of compilation of documents, under the signatures of the authorized signatory of the Respondents. This letter clearly mentions that the net payable amount by the Respondents to the Claimants. By Cheque No. 984100 dated 19th March 2002 drawn on HDFC Bank Ltd. the same was paid by the Respondent to Claimants and the said cheque was accordingly realized by the Claimants.

14. Claimants' witness further states that, however, Respondents did not fulfill their obligation to make delivery of the government securities, purchased by Respondents for them under Contract Note Nos. 7453, 7413, 7455, 7401 and 7399 being the four government securities 8.07% GOI 2017 and one government security 9.81% GOI 2013 which were purchased by Respondents for Claimants for a consideration of Rs. 24,76,52,925/-. Respondents had confirmed by way of letter dated 19th March 2002 about adjustment of this consideration against sale-proceeds of the

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Claimants' securities. Claimants' witness has further stated that despite lot of persuasions, correspondence, personal visits to the Respondents' office, these securities were not delivered by the Respondents to the Claimants. In this regard, Claimants have produced at Item No. 5 of compilation of documents, a letter dated 16th April 2002. Witness also further states that when the Directors & Officers of the Claimants personally visited Respondents' office on 29th April 2012 for the purpose of physical and actual possession of the government securities, they had seen queue of visitors who were searching for the Officers & Directors of the Respondents for getting their outstanding deliveries.

15. Witness further states that since Respondents had defaulted to make delivery of government securities purchased by them for Claimants, Claimants pursued the matter with NSE and SEBI and also to CBI and the relevant letters are produced at Item No. 6 of compilation of documents, letter dated 30-4-2002 addressed to NSE. At Item No. 7 of compilation of documents, letter dated 16-5-2002 addressed to SEBI and at Item No. 8 of compilation of documents, letter dated 2-5-2002 addressed to CBI. From Item Nos. 9 to 21 of compilation of documents, there are various letters between 8-7-2002 and 13-11-2002 addressed to NSE and SEBI for pursuing them to accept their arbitration application against Respondents at NSE. As stated by Claimants' witness, the entire effort was fruitless. Witness further states that therefore, Claimants filed Writ Petition No. 3139 of 2002 in the Hon'ble High Court in 2002. In this petition, the Hon'ble High

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Court passed order on 25th March 2010 stating therein that efficacious remedy under the Arbitration & Conciliation Act, 1996 was available and thus, the Hon'ble High Court declined to exercise their extraordinary jurisdiction to direct the NSE to entertain Claimants' arbitration application. Said order is produced by the Claimants at Item No. 22 of compilation of documents. Accordingly, Claimants filed Arbitration Application No. 19 of 2011 wherein the Hon'ble High Court passed order on 12th August 2011 appointing the arbitrator; said order is produced at Item No. 23 of compilation of documents.

16. All this evidence, therefore, clearly show that Respondents had failed to deliver government securities purchased by them for the Claimants under Contract Note Nos. 7453, 7413, 7455, 7401 and 7399 produced at Item No. 3 of compilation of documents, totally valuing at Rs. 24,76,52,925/-. It is also established by the Claimants that Respondents had sold Claimants' securities under the Contract Note Nos. 7395, 7397, 7405 and 7411, produced at Item No. 2 for a total consideration of Rs.24,82,12,344.44 Ps., a such, after adjusting the purchase value of government securities purchased, being Rs.24,76,52,925/- against sale-proceeds Rs.24,82,12,344.44 Ps. as per adjustment letter issued by Respondents produced at Item No. 4, the amount of Rs.5,59,419.44 Ps. was due from Respondents to the Claimants' as indicated in the adjustment letter. Claimants have received this amount from the Respondents by way of cheque dated 19th March 2002 . However, Respondents failed to make delivery of



government securities purchased by them for the Claimants under Contract Note No. 7453, 7413, 7455, 7401 and 7399 produced at Item No. 3. Claimants are, therefore, entitled to receive from the Respondents these securities or in the alternative value thereof along with interest @ 18% per annum as claimed by the Claimants. Hence, award.

AWARD

- (I) Respondents are hereby directed to deliver to the Claimants four government securities being 8.07% GOI 2017; and 9.81% GOI 2013, purchased under Contract Note Nos. 7453, 7413, 7455, 7401 and 7399 totaling valuing at Rs.24,76,52,925/- with interest @ 18% per annum thereon from 20th March, 2002 till filing of the Statement of Claim on 6th December 2011, totaling Rs. 43,43,40,113.83 Ps. with future interest @ 18% per annum from 6th December 2011 till realization of the full amount.

IN THE ALTERNATIVE

Respondents shall pay to the Claimants Rs.24,76,52,925/- (value of the undelivered securities) with accrued interest thereon of Rs. 43,34,40,113.83 Ps. with future interest @ 18% per annum ^{on principal sum} from 6-12-2011 till full payment.

- (II) Respondent shall pay to the Claimants costs of arbitration, quantified at Rs. 2,00,000/-/(Rupees Two lakhs only).

