

Arbitration  
Judgment

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**JUSTICE S. K. SHAH**  
Former Judge, Bombay High Court

Resi : 301, Siddhant CHS Ltd.,  
Madhusudan Kalekar Marg,  
Kala Nagar, Bandra (East),  
Mumbai - 400 051.  
Mobile : 9920782583  
Tel : 022 - 26573950

Date : 8<sup>th</sup> April, 2013.

To

1) Seth Bhagwandas Brijbhukhandas,  
Shroff Bulsar People's Co-operative  
Bank Ltd. a Co-operative Bank  
incorporated under the Gujarat  
State Co-operative Societies  
Act, 1961 its registered and  
Administrative office at  
"Samruddhi", Post Box No. 8,  
Mota Bazar,  
Valsad - 396 001, (Gujarat)

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

Re : IN THE MATTER OF ARBITRATION

BETWEEN

Seth Bhagwandas Brijbhukhandas,  
Shroff Bulsar People's Co-operative  
Bank Ltd. ... CLAIMANTS

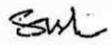
AND

M/s. Home Trade Limited, RESPONDENTS

Sir,

Please find herewith the Arbitration Award in the above matter.

Yours sincerely,

  
[Mr. Justice S. K. Shah (Retd.)]  
Sole Arbitrator

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Rs.100 - (Rupees One Hundred Only)

*[Signature]*  
Authorised Signatory  
Bandra (E) Branch

The North Kanara Co-Op. Bank Ltd. Bandra Branch, Zaporita,  
Santya Sarakya, Katanagar,  
Mumbai-400 051.  
D-5/STP(V)/C.P. 1042/02/05/1000 to  
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BEFORE THE SOLE ARBITRAL TRIBUNAL  
COMPRISING OF

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

IN THE MATTER OF ARBITRATION

BETWEEN

Seth Bhagwandas Brijbhukhandas, )  
Shroff Bulsar People's Co-operative )  
Bank Ltd. a Co-operative Bank )  
incorporated under the Gujarat )  
State Co-operative Societies )  
Act, 1961 (in liquidation having )  
its registered and Administrative )  
office at "Samruddhi", )  
Post Box No. 8, Mota Bazar, )  
Valsad - 396 001, (Gujarat)

... CLAIMANTS

AND

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

... RESPONDENTS

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Appearances

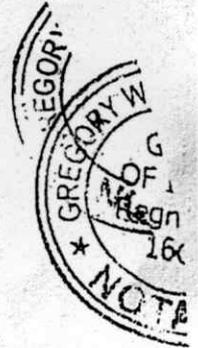
Miss. Shweta Doshi Advocate for the Claimant.

None for the Respondent.

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## 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 1996 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 1996 with regard to purchase of government securities by the Claimants upto March 2002.





3. In January 1999 Mr. Ketan Sheth along with 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 19<sup>th</sup> 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 for selling old government securities, already purchased by them for

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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 2001-2002. 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. The Claimants allege that between March 2001 and March 2002 they started purchasing and selling the government securities through respondent to comply with SLR requirement. The Respondents accordingly completed their part of the obligation by making delivery of government securities after collecting payment from the Claimants.

7. The Claimants allege that during the financial year 2001-2002 the interest rate in the capital market had reduced and at the same time government had also started issuing new securities with a reduced rate of interest, which in turn resulted in increasing the market price of old government securities. In order to avail the said opportunity and to enhance the earning of their bank for the benefit of their shareholders and depositories, the Claimants decided to dispose of government securities, purchased by them earlier. This resulted in additional income generation of the Claimants. The Claimants also purchased new government securities to comply with SLR requirement. The Claimants also allege that majority of transactions executed between the



Claimants and the Respondent were by way of sell of old government securities and in lieu thereof purchase of new government securities through the Respondents. This resulted into difference amount payable or receivable to and by the Respondent respectively.

8. The Claimants allege that the dispute arose in the month of January 2002. In January 2002 they placed orders with the Respondent for purchasing government securities, viz. 9.85% GOI 2015 having face value of Rs. 12,50,00,000/- and total consideration of Rs. 13,19,85,937.50 Ps. They had also placed orders with the Respondent for purchase of government security being 8.07% GOI 2017 having face value of Rs. 9 Crores and total consideration of Rs.9,06,17,625/-. Accordingly, Respondent issued purchase Contract Note No. 6855 and 7165 respectively. As such, the total sum of Rs.22,26,03,562.55 Ps. was payable to the Respondents. The Claimants allege that for making payment for the purchase of 9.85% GOI 2015, total consideration of Rs.13,19,85,937.50 Ps., they directed the Respondents to sell certain securities of the Claimants of corresponding value under Contract Note No. 6849, 6847, 6851, 6853 and accordingly adjust an appropriate consideration. Similarly, for making payment for purchase of government security 8.07% GOI 2017 having total consideration of Rs.9,06,17,625/- they directed the respondents to sell their certain securities vide Contract Nos. 7155, 7157, 7163, 7161, 7151 and 7159 and adjust an appropriate consideration.

9. Claimants further allege that thereafter they decided to

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dispose of 9.85% GOI 2015 of the face value of Rs.12.50 Crores which were purchased under Contract Note No. 6855 for total consideration of Rs. 13,19,85,937.50 Ps. along with another security viz. 9.81% GOI 2013 having face value of Rs. 3 Crores, the total consideration of Rs. 3,68,91,075/- which were purchased by them earlier. Accordingly, the Respondents executed the sale transactions for these 2 securities and issued sale Contract Note No. 7439 for 9.85% GOI 2015, total consideration of Rs.16,02,32,812.50 Ps. and Contract Note No. 7441 for 9.81% GOI 2013, total consideration Rs. 3,68,91,075/- totaling Rs.19,71,23,687.50 Ps.

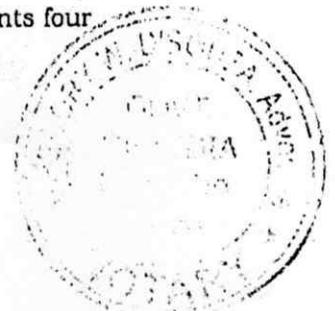
10. Claimants allege that delivery of government security 8.07% GOI 2017 purchased under Contract Note No. 7165 was pending. Claimants allege that in the meanwhile in order to fulfill SLR requirement they instructed the Respondents to purchase the security viz. 8.07% GOI 2017 having face value of Rs.18.50 Crores total consideration of Rs. 19,69,04,133.33 Ps. Accordingly, the Respondents executed purchase Contract Note No. 7443. In order to discharge their obligation of making payment of total consideration of Rs.19,69,04,133.33 Ps. for purchase of 8.07% GOI 2017, they directed the Respondents to adjust and appropriate the same against the sale-proceeds of the government securities under Contract Note 7439 and 7441, as stated above. Claimants allege that the sale consideration of the two government securities under Contract Note 7439 and 7441 was Rs.19,71,23,687.50 Ps. Value of the purchased government security under Contract Note No.

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7443 was Rs.19,69,04,133.33 Ps. As such, the sale-proceeds were more than value of the purchase by Rs.2,19,754.17 Ps. payable by the Respondents to the Claimants. Respondents had accordingly paid the said amount and the same was credited in the bank account of the Claimant. This was confirmed by the Respondent by way of adjustment letter dated 18<sup>th</sup> March, 2002.

11. Claimants allege that the Respondents, however, failed to deliver the government securities, viz. 8.07% GOI 2017, purchased vide Contract Note No. 7165 for consideration of Rs.9,06,17,625 (face value Rs.9 Crores) and the government security viz. 8.07 GOI 2017 purchased under Contract Note No. 7443 for a consideration of Rs.19,69,04,133.33 Ps. (face value Rs.18.50 Crores). Respondents, therefore, defaulted to fulfill their contractual obligation of making delivery of these two securities. Claimants allege that since the Respondents were not delivering these government securities, they followed up with the Respondents. On 16<sup>th</sup> March 2002 Mrs. Kannan Mewalal, Mr. Ketan Sheth and Mr. N. S. Trivedi visited Claimants' office and advised Claimants to dispose of the aforesaid 2 undelivered securities, as according to them, deliveries were not available. Respondents further suggested Claimants to purchase new government securities which they assured to deliver in the SGL account by four installments viz. on 26<sup>th</sup> May, 2002, 3<sup>rd</sup> May 2002, 8<sup>th</sup> May 2002 and 10<sup>th</sup> May 2002. Respondents also further assured that they would resolve the issue on or before 10<sup>th</sup> May 2002. Respondents accordingly handed over to the Claimants four



post dated cheques, viz.

<u>Cheque Date</u>	<u>Cheque No.</u>	<u>Amount</u>
27/04/2002	984087	5,36,43,250.00
04/05/2002	984086	5,37,21,708.33
08/05/2002	984085	7,52,73,158.33
10/05/2002	984084	11,29,80,350.00

12. Claimants allege that Respondents failed to deliver the aforesaid securities in spite of their repeated telephonic follow-ups, and also letters sent to them on 23<sup>rd</sup> April 2002, 26<sup>th</sup> April 2002 and 29<sup>th</sup> April 2002. Therefore, they deposited 2 cheques out of 4, viz. cheque dated 27-4-2002 of Rs. 5,36,432.50 Ps., and another cheque dated 4<sup>th</sup> May 2002 of Rs. 5,27,21,708.33 Ps. However, both the cheques were dishonoured and returned by the bank unpaid, for the reasons of "insufficiency of funds" in the bank account of the Respondent. As such, Claimants had issued notice to the Respondents for taking action under section 138 of the Negotiable Instruments Act.

13. Claimants' Directors and Officers finally visited office of Respondent on 29<sup>th</sup> April 2002 and were stunned to know that all the Directors and Senior Officers of the Respondents were not available in the office and seem to be absconding.

14. Claimants allege that as per the foot-note of the Contract Notes, the Contract Notes were governed by the rules, bye-laws and regulations of National Stock Exchange of India, and the dispute arising between the parties on the basis of Contract



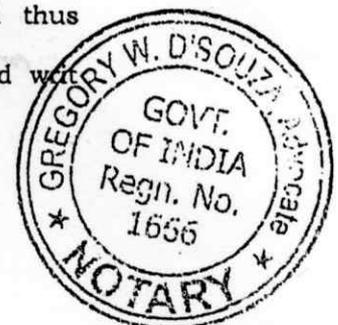
Notes were referable to arbitration at the NSE.

15. Claimants further allege that on 29<sup>th</sup> 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 with NSE and sent copy thereof to SEBI requesting the NSE to initiate necessary action against the Respondents, to safeguard Claimants' interest. Claimants also lodged complaint 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.

16. As such, Claimants invoked arbitration clause mentioned in the contract notes issued by the Respondents and moved NSE for making reference of the arbitral dispute that had 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 29<sup>th</sup> May 2002, 18<sup>th</sup> June 2002, 2<sup>nd</sup> July 2002, 16<sup>th</sup> July 2002 and 8<sup>th</sup> August 2002. Claimants representative also deposited requisite fee in making a reference of their complaint to the arbitration under the NSE. However, NSE on 16<sup>th</sup> 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 27<sup>th</sup> 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 (3<sup>rd</sup> 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. Similar was the case of Navsari People Cooperative Bank who 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 25<sup>th</sup> March 2011 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



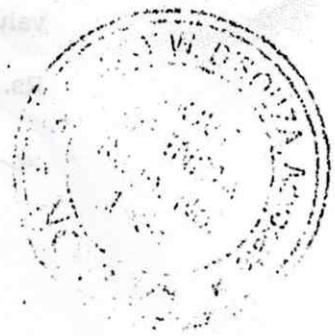


petition. Accordingly, Claimants filed arbitration application, being Arbitration Application No. 20 of 2011 under Section 11 of the Arbitration & Conciliation Act, 1996 against Respondents. In the said Application, as per the order passed by the Hon'ble High Court, on 12<sup>th</sup> August 2011 I was appointed as Sole Arbitrator to decide the dispute between the parties.

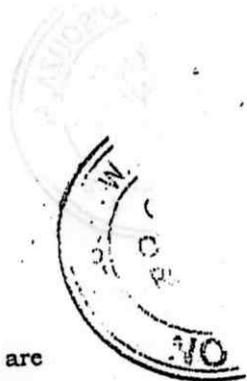
17. Having received said order of appointment, I addressed a letter to the Claimants & Respondents dated 6<sup>th</sup> September 2011, fixing the preliminary meeting for direction on 14<sup>th</sup> September 2011. Said letter was served on the Claimants. However, letter sent to the Respondents on the address given by the Claimants was returned with an endorsement "left". A preliminary meeting, accordingly, was held on 14<sup>th</sup> 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.

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

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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.

19. I have learned Advocate for the Claimants.

20. Besides filing the documentary evidence, Claimants have filed the affidavit of evidence of Mr. Chetan Desai, who was the Manager of the Claimants Bank during 1988 and 2005. In this affidavit, he has affirmed all the facts, as narrated above. Claimants have produced all the relevant original documents along with compilation of documents. At Item No. 1 of compilation of documents, there are original contract notes bearing Nos. 6849, 6847, 6851, 6853, 7155, 7157, 7163, 7161, 7151, 7159, 7165, 7439, 7441 and 7443. At item No. 2 of the compilation of documents filed by the Claimants, there is original adjustment letter dated 18<sup>th</sup> March 2002 whereby the Respondents adjusted the sale-proceeds of government securities viz. 9.85% GOI 2015 (face value Rs. 12.50 Crores) and 9.81% GOI 2013 (face value Rs. 3 Crores) under Contract Notes No. 7439 and 7441 respectively, total sale-proceeds being Rs.19,71,23,887.50 Ps. The letter indicates that under Contract Note No. 7443, the Respondents had purchased for Claimants securities, viz. 8.07% GOI 2017 (face value Rs.18.50 Crores) for total consideration of Rs.19,69,04,133.33 Ps. This adjustment letter, adjusted the

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2011, passed in Writ Petition No. 3139 of 2002. Item No. 19 is the copy of the order dated 12<sup>th</sup> August 2011 whereby I was appointed as Arbitrator.

21. Claimants' witness states that, Respondents had defaulted to deliver the government security viz. 8.07% GOI 2017 purchased vide Contract Note No. 7165 for total consideration of Rs. 9,06,17,625/- and the government securities viz. 8.07% GOI 2017 purchased under Contract Note No. 7443 for total consideration of Rs. 190,69,04,133.33 Ps., total consideration being Rs.28,75,21,758.33 Ps. This has been fully established from the evidence of this witness and documentary evidence, as discussed above. Hence, Claimants are entitled to the relief prayed and the alternate prayer. Hence, the award.

AWARD

(I) Respondents are hereby directed to deliver to the Claimants government security being 8.07% GOI 2017 purchased under Contract Note No. 7165, totally valuing Rs.9,06,17,625/-; and government security 8.07% GOI 2017, purchased under Contract Note No. 7443 for consideration of Rs.19,69,04,133.33 Ps. i.e. totally valuing at Rs.28,75,21,758.33 Ps. with interest @ 18% per annum thereon from the date of respective transaction till filing of the Statement of Claim, totaling Rs. 50,53,63,250/- with future interest @ 18% per annum from the date of filing the Statement of Claim, viz. 3<sup>rd</sup> December 2011 till realization of





full amount.

IN THE ALTERNATIVE

Respondents shall pay to the Claimants Rs.28,75,21,758.33 Ps. (value of the undelivered securities) with accrued interest thereon @ 18% per annum from the date of respective transaction till the date of filing the Statement of Claim being Rs. 50,53,63,250/- with future interest @ 18% per annum on principal sum from the date of filing the Statement of Claim, viz. 3-12-2011 till full payment.

- (II) Respondent shall pay to the Claimants costs of arbitration, quantified at Rs. 2,00,000/--(Rupees Two lakhs only).
- (III) Award is drawn on Rs. 100/- stamp in two copies one each, to be delivered to Claimants and the Respondents, and one copy to be retained by the Arbitrator.

Date : 3<sup>rd</sup> April, 2013  
PLACE : MUMBAI

[JUSTICE S. K. SHAH (RETD.)  
[SOLE ARBITRATOR]

*S.K. Shah*

*S. K. Shah*  
Dist. Registrar

20 APR 2013

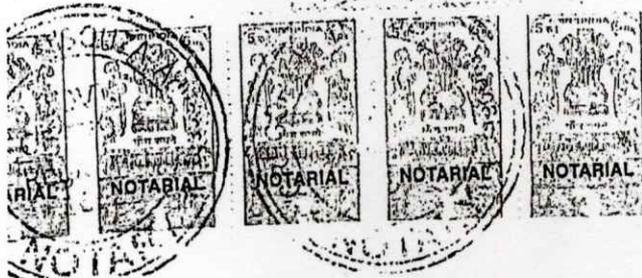
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CERTIFIED TRUE COPY  
*[Signature]*  
GREGORY W. D'SOUZA  
ADVOCATE & NOTARY  
Kalpak Estate, Bldg. No. B-11  
Shop No. 40, Antop Hill  
MUMBAI-400 037.

3 MAY 2013

CERTIFIED TRUE COPY  
*[Signature]*  
GREGORY W. D'SOUZA  
ADVOCATE & NOTARY  
Kalpak Estate, Bldg. No. B-11  
Shop No. 40, Antop Hill  
MUMBAI-400 037



Dist. Registrar