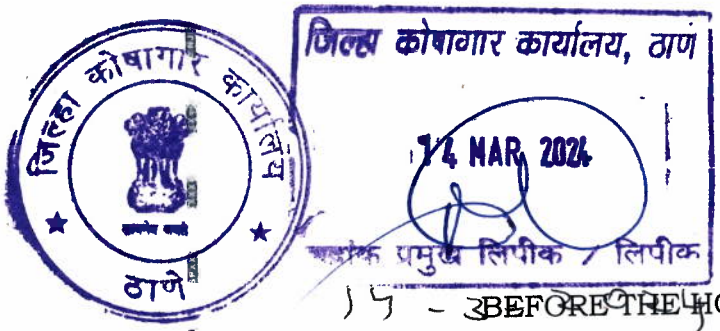

महाराष्ट्र MAHARASHTRA ◐ 2023 ◐ CK 400400




BEFORE THE HON'BLE ARBITRAL TRIBUNAL

COMPRISING Of

PRESIDING ARBITRATOR MR. KERSI LIMATHWALLA,

CO-ARBITRATORS MR. ASHWIN ANKHAD AND MR. ANIL SHAH

CDSL ARBITRATION NO. 9 OF 2023

IN THE MATTER OF:

Mr. Samir Shah ]
an Adult, Indian Inhabitant, residing at ]
3B, Suvas Apartment, 68/F, Rungta Lane,]
Off Nepeansea Road, Malabar hill, ]
Mumbai- 400006. ]

...Claimant

VERSUS

Central Depository Services (India) Ltd. ]
a Company incorporated under the ]

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Companies Act, 1956, recognized and ]
Registered as a depository under the ]
Depositories Act, 1996, having its ]
registered office at : Unit No. A-2501, ]
Marathon Futurex, Mafatlal Mills ]
Compound, N. M. Joshi Marg, Lower ]
Parel (E), Mumbai 400 013 ] ...Respondent

Appearance:
For Claimants:
Mr. Ravi Hegde, Advocate
Mr. Ashish Venugopal, Advocate
Ms. Parinaz Bharucha, Advocate;
Mr. Kandarp Trivedi, Associate

For Respondent:
Counsel Mr. Kunal Dwarkadas
Ms. Binjal, Junior Advocate
a/w Veritas legal, Advocates & Solicitors
Ms. Rohini Jaiswal, Principal Associate
Ms. Sanaya Contractor, Senior Associate
Mr. Rahil Shah, Associate
Ms. Anushka Singh, Associate
a/w CDSL representatives:-
Ms. Nayana Ovalekar, Chief Regulatory Officer
Mr. Nilay Rejendra Shah, Company Secretary and Head Legal
Ms. Mayuri Kale, Deputy Manager- Legal
Mr. Akshay Mehta, Assistant Manager – Legal
Ms. Preksha Jain, Officer – Legal

**FINAL ORDER DISPOSING THE ARBITRATION**

Hearings in the matter were held on 12th February 2024 and 20th March 2024.

1. The Arbitral Tribunal ("Tribunal") had heard the parties at length and final hearing was fixed on 20th March 2024 to seek "Post Hearing

Clarifications" following the detailed arguments advanced by both the Claimant and the Respondent.

2. During the final arguments, the Respondent had applied for amendment to its pleadings to the effect that "pledge" was not a part of the transaction as earlier stated by the Respondent. This application was granted, and the pleadings were amended by the Respondent during the course of final hearing.

3. Subsequently at the hearing held on 20th March 2024, the Claimant also sought amendment to their main prayers in the Statement of Claim on various grounds including that they desired to have detailed review and audit of the trade data of NSE and BSE, Holding Statements, Contract Notes etc. and wanted to do a forensic audit by a Chartered Accountant. Therefore, the Claimant sought further time to amend his pleadings including the prayers in the Statement of Claim.

4. At the hearing on 20th March 2024, which was for Post Hearing Clarifications, the Tribunal came to the conclusion that in view of the timeline for passing the Award which was expiring in May 2024, it was not possible at this belated stage to accept the amendments in the main prayers of SOC and therefore the Tribunal gave a liberty to the Claimant to withdraw the claim and to file a written application for withdrawal.

5. Following the above, on 21st March 2024 (dated, submitted and received on 28th May 2024) the Claimant filed the application to withdraw captioned arbitration proceeding, seeking liberty from the Tribunal to file a fresh claim.

6. The above Application was objected by the Respondent on various grounds including that the Tribunal had no powers to grant such liberty, no grounds were made out under Order 23 Rule 1 of CPC, no special circumstances were shown and grave prejudice would be caused to the Respondent if Claimant were to be given liberty to withdraw the Claim and file fresh claim as the final arguments have already been advanced in the matter.

7. We have carefully considered the Withdrawal Application and the objections made thereagainst. We are of the opinion that in view of the massive fraud committed by Anugrah and to ascertain the exact amount of securities lost by the Claimant it would be fair to allow the Claimant to withdraw the captioned arbitration application with a liberty to file fresh proceeding subject to Respondent's contentions about Limitation and Res Judicata etc. are open for consideration, if and when such fresh Claim is filed.

8. Additionally, we draw inference from Section 19 of the Arbitration and Conciliation Act 1996 which states as follows: -

"***19. Determination of rules of procedure.*** *— (1) The arbitral tribunal shall not be bound by the Code of Civil Procedure, 1908 (V of 1908) or the Indian Evidence Act, 1872 (1 of 1872).*

*(2) Subject to this Part, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting its proceedings.*

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*(3) Failing any agreement referred to in sub-section (2), the arbitral tribunal may, subject to this Part, conduct the proceedings in the manner it considers appropriate.*

*(4) The power of the arbitral tribunal under sub-section (3) includes the power to determine the admissibility, relevance, materiality and weight of any evidence."*

In lieu of the afore-stated statute, necessary powers have been conferred upon this Arbitral Tribunal to conduct the proceedings in the manner it considers appropriate. Therefore, considering the facts and circumstances of the present case, it is appropriate to grant liberty to the Claimant to file a fresh claim if and when the Claimant decides to do so.

## ORDER

Accordingly, we pass the following final order in the above arbitration proceeding:

A. The arbitration Case No. 9 of 2023 filed by Mr. Samir Shah stands dismissed as withdrawn with a liberty to him to file fresh proceedings, if and when the Claimant so decides. The Claimant shall have to give a fresh Notice of invocation of arbitration.

B. Respondent would be at liberty to reagitate its contentions about Limitation, Jurisdiction, Res Judicata etc. These issues are kept open.

C. No order as to costs.

D. The captioned arbitration stands disposed off as withdrawn.

Mumbai dated this ..18th.... day of April 2024.

| KERSI LIMATHWALLA | ASHWIN ANKHAD | ANIL SHAH |
|---|---|---|
| Presiding Arbitrator | Co-Arbitrator | Co-Arbitrator |