2026:BHC-OS:15764

Case Citation: (2026) ibclaw.in 3914 HC

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION

COMMERCIAL ARBITRATION PETITION NO. 215 OF 2022
WITH
INTERIM APPLICATION NO. 3201 OF 2022
IN
COMMERCIAL ARBITRATION PETITION NO. 215 OF 2022

Shah Atul P. HUF
A Hindu Undivided Family of Atul P. Shah, residing at Building No. 2-A, Flat No. 44, Kalpataru Aura, 4th Floor, LBS Marg, Mumbai-400086 ... Petitioner.

Versus

M/s. Anand Rathi Share & Stock Brokers Ltd.
A company incorporated under the Companies Act, 1956 has its registered office at 'A' Wing 10th Floor, Western Express Highway, Diagonally Opp. Oberoi Mall, Goregaon (East), Mumbai – 400 063. ... Respondent.

Mr. Sandeep Parikh a/w. Mr. Viraj Parikh and Mr. Sushil K. Chaurasia i/by SKC Legal Advocate the Petitioner.
Mr. Simil Purohit, Senior Advocate a/w. Chirag Shah, Mr. Nishant Chothani and Ms. Shweta Nisar i/by Sonal Doshi & Co. for Respondent.

Coram : Sharmila U. Deshmukh, J.
Reserved on : July 10, 2026
Pronounced on : July 16, 2026

JUDGMENT:

1. **Rule**. Rule made returnable forthwith with consent and taken up for final hearing.

2. By the present petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 (for short, "**Arbitration**

Act"), the challenge is to the impugned Award dated 6th January, 2022 passed by the Arbitral Tribunal of NCDEX in remanded Arbitration Reference No. NCDEX/REM/ARB/018/2021-2022, by which the Arbitral Tribunal revived the arbitration Award dated 20th November, 2020 and directed the Petitioner to pay a sum of Rs.4,93,54,947.40 (Rupees Four Crores Ninety-Three Lakhs Fifty-Four Thousand Nine hundred Forty-Seven and Forty paise Only) along with interest to the Respondent.

3. For purpose of this petition, it is not necessary to give details of the claim raised by the Respondent. The Petitioner had executed a member client agreement and other documents during April 2013 and appointed the Respondent as a commodity broker and the contractual agreement provided that in event of any dispute the matter shall be referred to the arbitration following the bye-laws and regulations of the Exchange.

4. It is pleaded that based on certain illegal transactions, the Respondent filed an arbitration reference. The Petitioner applied for extension of time to file Statement of Defence (SOD) on the ground of old age and COVID-19 pandemic. Vide Award of 20th November, 2020, the Arbitral Tribunal allowed the claim of the Respondent and directed the Petitioner to pay to the Respondent a sum of Rs.4,93,54,947.40. Being aggrieved, the Petitioner preferred an appeal before the Appellate Bench being Appeal No. NCDEX/REM/ARB/018/2021-2022. The Appellate Tribunal by Award dated 30th July, 2021, directed that subject to the Petitioner's undertaking to submit SOD within two weeks as also his depositing with NCDEX Rs.1,00,000/- within one week of the receipt of the award, the appeal is partly allowed and the matter shall stand remanded back to the Arbitral Tribunal as may be constituted by NCDEX. Upon remand, the Arbitral Tribunal passed the impugned Award dated 6th January, 2022, which is challenged in the present proceedings.

5. Mr. Sandeep Parikh, learned counsel appearing for the Petitioner has taken this Court in detail through the findings of Appellate Tribunal. He points out that the Appellate Tribunal noted that time was being sought by the Petitioner due to pandemic situation, and the Hon'ble Apex Court had extended the period of limitation due to nationwide lock-down owing to pandemic. He points out that Appellate Tribunal rightly noted that the Arbitral Tribunal ought to have granted time for filing SOD and in order to meet the ends of justice and considering the stakes involved in the matter, felt it appropriate that a fair and reasonable opportunity ought to be been given to both the parties and remanded the Award for a fresh hearing. He submits that after remand, the Petitioner filed his counter claim to the claim lodged by the Respondent.

6. He points out that the matter was heard after remand on 17th December, 2021 and points out that on 6th January, 2022, the impugned Award came to be passed, which upholds the non-existing original Award dated 20th November, 2020, which was set aside by the Appellate Bench by the Award of 30th July, 2021. He has taken this Court through the findings in the impugned Award and would submit that the Arbitral Tribunal has arrived at a finding of perversity and illegality in the Award of the Appellate Tribunal. He submits that the Arbitral Tribunal has disagreed with the findings of the Appellate Tribunal which is contrary to the well-established principles of law. He would submit that under the bye-laws of the NCEDX, the Arbitral Tribunal is subordinate to the Appellate Bench and has no power to decide the validity of the order passed by the Appellate Bench. In support, he relies upon the following decisions:

> ***(i) The Bhopal Sugar Industries Ltd. v. Income-tax Officer, Bhopal (supra)*** [1]

1 1960 SCC OnLine SC 133

(ii) ***Union of India and Ors. v. Kamlakshi Finance Corporation Ltd.***[2]

(iii) ***Kunhayammed and Ors. vs. State of Kerala and Anr.***[3]

7. *Per contra*, Mr. Purohit, learned Senior Advocate appearing for the Respondent would submit that the remand by the Appellate Tribunal was subject to the condition of submitting the SOD within two weeks and depositing with NCEDX Rs.1,00,000/- within one week from receipt of the Award. He submits that the conditions were not satisfied as the SOD was submitted beyond the period of two weeks. He submits that in view thereof, the earlier Award stood revived and there is no perversity demonstrated.

8. I have considered the submissions and perused the record.

9. Against the Award of the Arbitral Tribunal dated 20th November, 2020, the Appeal came to be filed before the Appellate Tribunal in accordance with the Bye-laws, Rules and Regulations of the Exchange which is undisputed. The Appellate Tribunal considered the solitary issue as to whether the remand is warranted, as the Petitioner could not file his SOD and the hearing was conducted during COVID-19 pandemic. The Appellate Tribunal deemed it fit, in the facts of the case, to remand the matter to the Arbitral Tribunal subject to the Petitioner's undertaking to submit

2 1992 Supp (1) SCC 443
3 (2000) 6 SCC 359

SOD within two weeks and depositing with NCDEX Rs.1,00,000/- within one week of receipt of the Award. There was no challenge by the Respondent and both parties accepted the Award and the matter was thereafter remanded to the Arbitral Tribunal. Though it is contended by Mr. Purohit that there was non-compliance of the conditions of remand, the impugned Award of Arbitral Tribunal is not based on the finding of non-compliance by the Petitioner.

10. The Arbitral Tribunal by the impugned Award of 6th January, 2022 holds as under:

> "1. The impugned Appellate Award dated 30th July 2021 of the Appellate Tribunal cannot be sustained for the reasons set out above;
>
> 2. The Arbitration Award No. NCDEX/ARB/008/2019-20 dated 20th November 2020 is upheld;
>
> 3. The Respondent Shah Atul P (HUF) is ordered to pay to the Applicants Anand Rathi Share and Stock Brokers Ltd., sum of Rs.4,93,54,947.40 (Rupees Four Crores Ninety-Three Lakhs Fifty-Four Thousand Nine Hundred Forty-Seven and forty paise only) alongwith simple interest @ 9% p.a. from 3rd October 2019 till date of Award and further interest @ 12% p.a. from the date of Award till realisation;"

11. The Arbitral Tribunal did not adjudicate the claim on merits and instead sat in appeal over the Award of the Appellate Tribunal dated 30th July, 2021 and upheld its own Award, which was already set aside by the Appellate Tribunal. The Arbitral Tribunal noted the arguments of the Respondent that there is no provision of remanding the matter in SEBI Arbitration mechanism and NCDEX bye-laws, so also in the Arbitration and Conciliation Act, 1996. The Arbitral Tribunal proceeded to adjudicate the said objection and after noting various judicial pronouncements on the subject that the Court while deciding Section 34 petition has no jurisdiction to remand the matter to the Arbitrator, held in paragraph 15, as under:

> "15. Thus, we note that jurisprudence on this subject is quite rich. It leaves no doubt in minds that there is an apparent perversity and illegality in the impugned Appellate Award. We find reasons to disagree with the findings of the Appellate Tribunal and find ourselves unable to concur therewith. In view of the aforesaid sacrosanct citations of the Apex Court and the various High Courts in India, we are of the opinion that the Appellate Tribunal erred whilst, on the one hand allowing (partly) the Appeal and on the other hand remanding the matter back to the Arbitral Tribunal to consider it afresh. We are appalled by the fact that the Appellate Tribunal who passed the Award in 2021 after taking about 11 months to decide it, overlooked these very Important judgments passed in 2016, 2018 which were very relevant to the issue before it. We are also appalled by the observation that principles of natural

justice were not followed by the original Tribunal though innumerable opportunities were given to the Respondent to file his SOD. Being fully conscious of Section 25 of the Arbitration and Conciliation Act, 1996 the original Tribunal had considered the 11 pages' letter of 11th March 2020 written by Advocate Ms. Gyanika Kochar from the Legal Firm of Advocates Y & A Legal, so also two more letters written by the Respondent himself. All this together was nothing but submissions on merits though the nomenclature, "Statement of Defense" was not there. After all nomenclature is not important but the contents are. To say that principles of natural justice were not followed would make Section 25 of the Arbitration and Conciliation Act otiose/defunct /irrelevant. Actually, contentions of both the sides were considered and what was available on record was all considered, strictly in the spirit of Section 25."

12. Upon examining the validity of the remand order, the Arbitral Tribunal returned a finding that the Appellate Tribunal had erred in remanding the matter to the Arbitral Tribunal. The Arbitral Tribunal recorded strong reservations on the findings that principles of natural justice were not followed by Arbitral Tribunal. The Arbitral Tribunal ignored the fact that against the order of the Appellate Tribunal, the remedy was available to the Respondent to file Section 34 petition raising objection to the order of remand. Instead, the objection was raised before the Arbitral Tribunal, which the Arbitral Tribunal thereafter proceeded to consider ignoring the well-settled principle of law that the order of Appellate Tribunal was not open to be reviewed by the Arbitral Tribunal. The Arbitral Tribunal went as far as to hold that the Appellate Award of 30th July, 2021 of the Appellate Tribunal cannot be sustained and upheld its own Award of 20th November, 2020 despite the Award having being merged in the order of Arbitral Tribunal. The Arbitral Tribunal being subordinate to the Appellate Tribunal could not have examined the validity of the appellate award and opine about the sustainability of the appellate Award. The impugned Award is contrary to the fundamental policy of Indian law and constitutes a ground for setting aside the Award under Section 34 (2)(b)(ii) of the Arbitration Act.

13. In the case of ***Ssangyong Engineering and Construction Co. Ltd. v. National Highways Authority of India (NHAI),***[4] the Hon'ble Apex Court considered the pre and post 2015 amendment position of the Arbitration and Conciliation Act, 1996. It held that the expression "public policy of India" contained in Section 34 would now mean the fundamental policy of Indian law, as explained in paragraphs 18 and 27 of ***Associate Builders v. Delhi Development***

4 (2019) 15 SCC 131

Authority,[5] which would be relegated to the understanding of that expression in ***Renusagar Power Co. Ltd. v. General Electric Co.***[6]. It was held that the ground of most basic notions of justice can only be attracted in very exceptional circumstances when the conscience of the Court is shocked by infraction of fundamental notions of principle of administration of justice.

14. In ***The Bhopal Sugar Industries Ltd. v. Income-tax Officer, Bhopal*** (supra), the Hon'ble Apex Court was considering the issue whether the Judicial Commissioner of Bhopal was right in dismissing the petition praying for direction to compel the Income Tax Officer, Bhopal to carry out the certain directions given by the Income Tax Appellate Tribunal. The Hon'ble Apex Court noted that the Respondent had virtually refused to carry out the directions given by the superior Tribunal in exercise of the appellate powers and is destructive of one of the basic principles in the administration of justice based as it is in this country on the hierarchy of courts. It held that if the subordinate Tribunal refuses to carry out the directions given to it by a superior Tribunal in the exercise of its appellate powers, the result would be chaos in the administration of justice.

5 (2015) 3 SCC 49
6 1994 Supp (1) SCC 644

15. In ***Union of India & Ors. v. Kamlakshi Finance Corporation Ltd.*** (supra), the Hon'ble Court noted that the Revenue Officers are bound by the decision of the Appellate Authority and principles of judicial discipline required that the order of the higher appellate authority should be followed unreservedly by the subordinate authority. It held that the mere fact that the order of the Appellate Authority is not "acceptable" to the department in itself is an objectionable phrase and is the subject matter of appeal can furnish no ground for not following it, unless its operation has been suspended by a competent Court.

16. The principle enunciated by the decisions of the Hon'ble Apex Court underscore the importance of maintaining judicial discipline based on the hierarchy of Courts. It is not open for the subordinate Tribunal to sit in appeal over the order of Appellate Tribunal, which would result in chaos in administration of justice. In my view, this is one of the exceptional cases which shocks the conscience of the Court when the validity of the award of the Appellate Tribunal is examined by the Arbitral Tribunal and set aside by the Arbitral Tribunal, using unwarranted expressions whilst doing so. It is the fundamental policy of Indian Law and bedrock of our judicial system that the orders of the Appellate Court are required to be respected and accepted by the subordinate Court, following the principle of hierarchy of the Courts, which cannot be compromised. The impugned Award being contrary to the fundamental policy of Indian Law is clearly unsustainable and is hereby quashed and set aside under Section 34(2)(b)(ii) of the Arbitration Act.

17. Resultantly, the impugned Award dated 6th January, 2022 is quashed and set aside. Arbitration Petition succeeds. Rule is made absolute.

18. Interim application does not survive for consideration and same stands disposed of.

[Sharmila U. Deshmukh, J.]