



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION  
ARBITRATION PETITION NO.1634 OF 2014**

**MPD Associates Pvt. Ltd.,**

A company incorporated under the provisions of the Companies Act, 1956, having its offices at 23, LSE, Pushp Vihar, New Delhi-110065

Through Managing Director-  
Dr. (Col.) M.P. Dhir

**...Petitioner**

*Versus*

**1. Angel Broking Ltd.,**

A company incorporated under the provisions of Companies Act, 1956, Having its offices at G-1, Akruti Trade Centre, Road No.7, MIDC, Andheri (E) Mumbai-400093, and having its Delhi Office at Upper Ground Floor 4, Kanchanjungha Building, 18, Barakhamba Road, New Delhi, New Delhi- 110001, Having Trading Member No.612, with Bombay Stock Exchange Ltd.

**2. Arbitral Tribunal of Bombay Stock Exchange,** consisting of Arbitrators:

- (i) Shri Suresh Thakur Desai,
- (ii) Shri Pradeep Nagori &
- (iii) Shri Pankaj Patel

Registered Office at Floor 25, PJ Towers, Dalal Street, Mumbai-400 001.

**...Respondents**

**Mr. Jash J. Dalia, Kabir Harpalani, for the Petitioner.**

**Mr. Shyam Kapadia, with Durgesh Khanapurkar, Kanishk Varma i/by Desai & Diwanji, for the Respondents.**

CORAM DR. NEELA GOKHALE, J.  
RESERVED ON: 28<sup>th</sup> NOVEMBER 2025  
PRONOUNCED ON: 2<sup>nd</sup> DECEMBER 2025

**JUDGMENT:**

1. The Petitioner has assailed the arbitral award dated 27<sup>th</sup> March 2008 passed by a panel of three arbitrators, by way of the present Arbitration Petition filed under Section 34 of the Arbitration & Conciliation Act, 1996 ('the Act').

2. The facts of the case, in brief, are as under:-

2.1 A reference was made to the Arbitral Tribunal under the Rules, Bye - laws and Regulations of the Bombay Stock Exchange Limited ('BSE').

2.2 The Petitioner herein is a company incorporated under the Companies Act, 1956, stated to be engaged in social and charitable activities in the areas of public and rural healthcare. The Respondent is a corporate member-broker of BSE since 1997, registered with the Security Exchange Board of India ('SEBI'). The Petitioner had opened a trading account

with the Respondent and was allotted Client Code Number-6299.

**2.3** It is the case of the Petitioner that one, Mr. Gurpreet Sarin, representing himself to be the manager of Angel Group of Companies, lured the Petitioner into doing business with the Delhi office of the Angel Group of Companies. It was represented to the Petitioner that the Petitioner would be dealing with various group of companies of the Angel Group including M/s. Angel Broking Limited - a Member of the BSE and Angel Capital and Debt Market Limited - a Member of the National Stock Exchange Limited ('NSE').

**2.4** The Petitioner opened a trading account with the Respondent No.1 and with Angel Capital and Debt Market Limited. It is the Petitioner's case that after 13<sup>th</sup> January 2006, it made several transactions through the Respondent No.1, however, on 26<sup>th</sup> April 2006, a review of its account revealed certain amounts due and payable by the Petitioner to it and hence, forwarded the account statement to the Petitioner

requesting it to make the payment. The Petitioner made only a part payment.

**2.5** Another review on 30<sup>th</sup> September 2006 revealed that the Petitioner was liable to pay the Respondent No.1 an amount of Rs.30,28,565.61. A demand letter dated 10<sup>th</sup> October 2006 was issued by the Respondent No.1 to the Petitioner, calling upon it to make the payment within 7 days. However, despite signifying its willingness to discuss the matter, no payment was made by the Petitioner. Hence, the Respondent No.1 claimed an amount of Rs.30,28,565.61 by making a reference to arbitration on 20<sup>th</sup> October 2006.

**2.6** The Petitioner failed to file a written statement but filed a letter raising disputes. The reference was thus, closed for passing of award. However, on a request of the Petitioner to re-open the case to file its written statement, the Tribunal permitted the request subject to cost of Rs.25,000/- payable to the Respondent No.1.

2.7 Undated written statement was filed to the Statement of Claim of the Respondent No.1. The Petitioner also made a counterclaim of Rs.46,06,547.25 against the Respondent No.1 in the written statement. A rejoinder, also undated, was filed by the Respondent No.1 to the counterclaim. The Arbitral Tribunal passed its award on 27<sup>th</sup> March 2008, which is the subject matter of the present Petition.

3. Mr. Jash Dalia, learned counsel, appeared for the Petitioner and Mr. Shyam Kapadia, learned counsel, appeared for the Respondent No.1.

4. Submissions of Mr. Dalia, on behalf of the Petitioner:

(i) The arbitral proceedings at Mumbai under the BSE Rules was without prior notice on consultation with the Petitioner. The Tribunal was initially constituted *ex-parte* without joint nomination of the Arbitrators.

(ii) Principles of natural justice were violated as there was no timely notice of the proceedings; the Petitioner was deprived of an opportunity to nominate an arbitrator; adequate opportunity was not given to present documents, evidence and examine witnesses and information regarding the dates and documents filed by the Respondent No.1 as well as an opportunity to lead evidence were denied to the Petitioner.

(iii) The procedural unfairness fatally undermines the validity of the award.

(iv) There was suppression and misrepresentation of material facts before the arbitrators relating to transactions booked by the Petitioner through the Respondent No.1's associate company namely, Angel Capital and Debt Market Limited on NSEL.

(v) The Tribunal erred in treating the common dealings with the Respondent No.1 and its associate company as

unrelated and stand-alone claims. The Tribunal ought to have pierced the corporate veil of the Respondent No.1 to ascertain the true nature of the transactions with it and its associate companies.

(vi) The Tribunal exceeded its jurisdiction by granting the monetary claim, without any proof, to the Respondent No.1. The Petitioner's counterclaim was ignored.

Hence, Mr. Dalia prayed for setting aside of the award.

**5. Submissions of Mr. Kapadia, on behalf of the Respondent No.1:**

(i) The Petition is not maintainable as Regulation No.15.23 (III) of the BSE Regulations, dealing with appeals against arbitral awards, provides for a period of limitation of 15 days to file an appeal memo with the Arbitration Secretary, which the Petitioner has failed to do. The Petitioner has never objected to the award being subject to appeal as per the rules

and regulations of the BSE and hence, the appeal ought to have been preferred under Regulation 15.23 (III) of the BSE.

(ii) Since the principal ground of objection to the award is to the constitution of the Arbitral Tribunal, the Petitioner ought to have filed an application under Section 16 of the Act challenging the constitution of the Tribunal. Having failed to do so, the Petitioner cannot take advantage of its own wrong and challenge the award on that ground under Section 34 of the Act. Admittedly, the Petitioner had never objected to the constitution of the Tribunal during the arbitral proceedings.

(iii) Interference of the Courts in arbitral proceedings is limited to any patent illegality in the award. There is no patent illegality in the present award and none of the grounds available under Section 34 of the Act exist to justify entertaining the present Petition.

(iv) On facts, Mr. Kapadia pointed to the entire correspondence between the parties as well as of the



Petitioner with the Arbitral Tribunal, which clearly demonstrates every opportunity of hearing given to the Petitioner.

(v) Mr. Kapadia also submits that the arbitral award is based on the merits of the matter and there is no infirmity in the same, justifying any interference by this Court.

(vi) Mr. Kapadia placed reliance on two decisions of the Supreme Court in the matter of *Gayatri Project Ltd. v. Madhya Pradesh Road Development Corporation Ltd.*<sup>1</sup> and *A.C.Choksy Share Broker Private Limited v. Jatin Pratap Desai & Anr.*<sup>2</sup>.

He thus, prayed the Petition be rejected.

6. From the submissions made by the parties and the findings of the Tribunal, there are two issues that arise for consideration in the present Petition.

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**1** 2025 SCC OnLine SC 1136

**2** 2025 SCC OnLine SC 281

(i) Whether a plea of lack of jurisdiction be raised for the first time under Section 34 of the Act, if no such objection was taken before the Arbitral Tribunal?

(ii) Whether the award suffers from patent illegality and/or incorrect interpretation to warrant interference under Section 34 of the Act?

7. I have heard the learned counsel for the respective parties and perused the record with their assistance.

**ANALYSIS:**

8. At the outset, the objection to the award on the ground of its constitution is taken only during the arguments of the present Petition. A plain reading of the Petition reveals no such ground. Be that as it may, I have perused the documents annexed to the Petition, which are also considered and dealt with by the Tribunal.

9. The existence of the reference to arbitration agreement is not disputed by the parties. Under the Rules, Regulations and Bye - laws of the BSE, the appointment of arbitrators is to be made under Bye - law 249. The Respondent No.1 filed its Statement of Claim on 20<sup>th</sup> October 2006. By letter dated 11<sup>th</sup> December 2006, the Respondent No.1 was informed by the Secretary of BSE that the Petitioner has failed to nominate and appoint an arbitrator in terms of Rules, Regulations and Bye - laws of the BSE and sought permission to proceed in the matter by appointing an arbitrator. A letter dated 22<sup>nd</sup> December 2006 was addressed by the Arbitration Assistant to both the parties, conveying that since the Petitioner had failed to appoint his arbitrator, the authority concerned of the BSE had appointed an Arbitral Tribunal to adjudicate the claims of the Respondent No.1. By letter dated 5<sup>th</sup> February 2007, the Respondent No.1 addressed the Petitioner signifying its willingness to restore the relationship between the parties and failing any response from the Petitioner, would be constrained to proceed with the arbitration hearing on the next date as

fixed by the arbitrator. This letter is admittedly received by the Petitioner, confirming that the Petitioner is aware of the proceedings before the Tribunal.

10. By order dated 22<sup>nd</sup> January 2007, the Tribunal directed the Respondent No.1 to directly serve the Petitioner, documents pertaining to and supporting its claim. The Petitioner was also informed that if they failed to remain present before the Tribunal and failed to file their statement in defence, the matter will proceed *ex-parte*. By letter dated 10<sup>th</sup> February 2007, the Petitioner communicated to the Arbitration Secretary, BSE that reference to arbitration smacked of unfairness and indicated a nexus between the Respondent No.1 and the concerned department of the BSE. Thus, instead of filing its reply to the Statement of Claim of the Respondent No.1 before the Tribunal, the Petitioner chose to address its dismay to the Arbitration Secretary of the BSE. The letter also ends with an intent to settle the matter

amicably and implored the Secretary to withdraw the arbitral proceedings.

**11.** Once again, instead of replying to the claim before the Tribunal, the Director of the Petitioner, by its letter dated 15<sup>th</sup> March 2007 wrote to the Manager, BSE making various complaints against the Respondent No.1. This letter was followed by a similar letter dated 29<sup>th</sup> March 2007, once again urging the Manager, BSE to take steps to sort out the matter.

**12.** Another letter dated 14<sup>th</sup> April 2007 followed, addressed to the Officer-in-Charge of the Arbitration Department, BSE, berating him for not trying to settle the so-called dispute and demanding reply to its very many queries raised in the said letter. Finally, the Petitioner by its letter dated 1<sup>st</sup> May 2007 addressed to the Advocate of the Respondent No.1, sought details of transactions for the purpose of verification. The Advocate, by his reply dated 7<sup>th</sup> May 2007, pointed out that on two separate occasions, his client, i.e., the Respondent No.1 had forwarded all statements and details to the

Petitioner with copies to the arbitrators. The Advocate also pointed out that this fact was informed to the Petitioner even during the course of hearing before the Tribunal on 23<sup>rd</sup> April 2007.

**13.** Finally, the Petitioner filed a written statement before the Tribunal with a counterclaim of Rs.46,06,547.25. It is pertinent to note that nowhere in the claim has the Petitioner raised any challenge to the constitution of the Tribunal nor is there any statement made regarding the deprivation of an opportunity of fair hearing before the Tribunal. The Respondent No.1 filed its rejoinder and after hearing the parties, the award was passed. Even after passing of the award, the Petitioner, by its letter dated 19<sup>th</sup> July 2007 addressed to the Officer-in-Charge of the Arbitration Department of the BSE, complained against the Respondent No.1 and sought setting aside of the proceedings and referring the matter to Civil Court. There are several other complaints made against the Respondent No.1 to other Authorities. What

is absent here is any application or objection in respect of constitution of the Arbitral Tribunal or any assertion or averment that the Petitioner was not afforded any opportunity of fair hearing before the Tribunal. It is for the very first time that this argument is made before this Court, in this Petition under Section 34 of the Act.

14. In *Union of India v. Pam Development (P) Ltd.*<sup>3</sup>, the Supreme Court held that where a party does not raise a plea of jurisdiction before the Arbitral Tribunal, then such plea is deemed to have been waived in view of the provisions contained in Section 4 of the Act read with Section 16 of the Act, and in consequence, cannot be raised for the first time in the proceedings under Section 34 of the Act. The relevant observations read as under:

*“16. As noticed above, the appellant not only filed the statement of defence but also raised a counterclaim against the respondent. Since the appellant has not raised the objection with regard to the competence/jurisdiction of the Arbitral Tribunal before the learned arbitrator, the*

3 (2014) 11 SCC 366

same is deemed to have been waived in view of the provisions contained in Section 4 read with Section 16 of the Arbitration Act, 1996.

17. Section 16 of the Arbitration Act, 1996 provides that the Arbitral Tribunal may rule on its own jurisdiction. Section 16 clearly recognises the principle of kompetenz-kompetenz. Section 16(2) mandates that a plea that the Arbitral Tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence. Section 4 provides that a party who knows that any requirement under the arbitration agreement has not been complied with and yet proceeds with the arbitration without stating his objection to such non-compliance without undue delay shall be deemed to have waived his right to so object.

8. In our opinion, the High Court has correctly come to the conclusion that the appellant having failed to raise the plea of jurisdiction before the Arbitral Tribunal cannot be permitted to raise for the first time in the Court. [...]

*(Emphasis supplied)”*

15. In ***Gas Authority of India Ltd. v. Ketu Constructions (I) Ltd.***<sup>4</sup>, the Apex Court held that where a party does not raise a plea of lack of jurisdiction before the Arbitral Tribunal, he

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4 (2007) 5 SCC 38



must make out a strong case why he did not do so if he chooses to move a petition for setting aside the award under Section 34 of the Act. The relevant observations read as under:

*“25. Where a party has received notice and he does not raise a plea of lack of jurisdiction before the Arbitral Tribunal, he must make out strong case why he did not do so if he chooses to move a petition for setting aside the award under Section 34(2)(a)(v) of the Act on the ground that the composition of the Arbitral Tribunal was not accordance with the agreement of the parties. If plea of jurisdiction not taken before the arbitrator as provided in Section 16 of the Act such a plea cannot be permitted to be raised in proceedings und Section 34 of the Act for setting aside the award, unless good reason are shown.*

*(Emphasis supplied)”*

16. The Supreme Court in its decision in ***Gayatri Projects (Supra at Ft.Nt.1)*** as relied upon by Mr. Kapadia, has upheld the decisions in ***Pam (Supra at Ft.Nt.3)*** and ***GAIL (Supra Ft.Nt.4)*** in the aforesaid cases. The facts in this case, as detailed herein above, clearly reveal that the Petitioner,

despite writing innumerable letters to the authorities of the BSE, did not even once object to the jurisdiction of the Arbitral Tribunal. In fact, the record shows that the Petitioner fully participated in the arbitral proceedings by filing its written statement and raising its counterclaim. Even the averments and pleadings in the written statement are *dehors* any objection to the constitution or jurisdiction of the Tribunal. Considering the facts and the settled law, this Court cannot entertain any challenge to the constitution or jurisdiction of the Tribunal in the Petition under Section 34 of the Act. Hence, the first issue is answered accordingly.

17. An argument was advanced by Mr. Dalia, that the Tribunal erroneously found that the Petitioner had not questioned nor disputed the ledger account produced by the Respondent No.1 but had only disputed that the common ledger account of the Respondent No.1 and its group associates namely, Angel Capital and Debt Market Ltd., must be looked into to arrive at the net position. Further, the

Tribunal erroneously rejected its counterclaim. Mr. Dalia thus, raises an apprehension of bias and partiality on the part of the Tribunal as sufficient to invalidate the award. His further objection included not receiving timely notice of the proceedings or any opportunity to present its evidence.

18. I have perused the written statement filed by the Petitioner carefully. Paragraph 3 clearly avers that the Petitioner opened separate trading accounts; one with the Respondent No.1, to conduct its trades on the BSE and the other with Angel Capital and Debt Market Ltd., to conduct trade on the NSE. Further, in Paragraph 12, the Petitioner urges the Tribunal to believe that the intention of the Angel Group of Companies was always to cheat it and hence, requested the Tribunal to view the statement of both the companies collectively and thereby pierce the corporate veil of the Respondent No.1. Thus, the said contention was raised before the Arbitral Tribunal by the Petitioner, which demonstrates that it had exercised its right of hearing before

the Tribunal by placing before it, its case and contentions. The Tribunal in Paragraphs 8 to 11 of its findings has dealt with the Petitioner's submissions and has found that the contract note was issued by the respective members of the BSE or NSEL concerned. The Tribunal found that the counterclaim could not be entertained simply on the basis that it pertained to transactions on the NSEL, which dispute was outside the scope and ambit of the BSE. In fact, the Tribunal gave liberty to raise the said dispute regarding its counterclaim before the appropriate forum. I am told that till date, no such reference is made, nor any action is taken by the Petitioner before the forum of competent jurisdiction. The further contention of the Petitioner regarding absence of timely notice, etc. is not factual as the award records submissions made on its behalf. There is also no material placed on record of these proceedings relating to any letter or application made to the Tribunal by the Petitioner alleging lack of timely notice or deprivation of any opportunity to file documents or lead

evidence. In fact, these objections do not find place even in the averments of the present Petition.

**19.** Considering the aforesaid discussion, I do not find any patent illegality nor procedural infirmity in the award impugned herein. The second issue is thus, answered accordingly.

**20.** In view of the aforesaid discussion, the following circumstances emerge from the facts on record. Firstly, the Petitioner never objected to the invocation of arbitration under the Act during the arbitral proceedings. Secondly, the Petitioner never raised any objection to the Arbitral Tribunal's lack of jurisdiction, during the proceedings, either in its written statement nor by way of any application under Section 16 of the Act. It is settled law that once, the award is passed, and no objection as to the jurisdiction is taken at the relevant stage, the award cannot be set aside only on the ground of lack of jurisdiction. Further, the Arbitral Tribunal has dealt with all the contentions raised by the Petitioner in its

counterclaim, which negates the Petitioner's argument pertaining to patent illegality and procedural infirmity in the award. The Petition is thus, dismissed.

(DR. NEELA GOKHALE, J)

21. After the judgment was pronounced, Mr. Harshad Modekar, learned counsel appearing for the Petitioner, seeks stay of 4 weeks on the execution of the award.

22. The award assailed herein, is dated 27<sup>th</sup> March 2008 and as many as 17 years have elapsed since passing of the award. In these circumstances, I am not inclined to stay the award. Prayer for stay of the execution of the impugned award is rejected.

(DR. NEELA GOKHALE, J)

Digitally  
signed by  
SHAMBHAVI  
NILESH  
SHIVGAN  
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