

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **FAO No. 36/2014**

% **29th January, 2014**
M/S ANGEL BROKING LTD. Appellant

Through: Mr. Vikas Tomar, Advocate.

VERSUS

MOHIT MITTAL Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

CM No.1849/2014(Exemption)

Exemption allowed subject to just exceptions.

CM stands disposed of.

FAO 36/2014

1. This first appeal is filed under Section 37 of the Arbitration and Conciliation Act, 1996 (in short 'the Act') challenging the impugned order of the court below dated 24.9.2013 which has dismissed the objections filed by the appellant under Section 34 of the Act.

2. The facts of the case are that the respondent herein was the customer of the appellant who is a trading member not only for the Commodities

Exchange (MCX) but also for the National Stock Exchange (NSE). Respondent filed a claim in the arbitration that on 3.1.2012, appellant did unauthorized/illegal trading in NSE cash market segment by selling shares of the respondent which were 2000 in number of EXIDEIND Eq and 576 holdings of LOVABLE LINGERIE LTD., and which was said to have been done without any instructions from the respondent herein. The case of the appellant was that it had a right to square off the outstanding debit in the commodities segment MCX with the dues of the respondent herein in the NSE segment. It was the case of appellant that since the respondent failed to clear his outstanding balance, and did not meet his obligation, therefore the appellant herein was constrained to sell his shares on 3.1.2012 to recover the dues.

3. The court below has dealt with the respective contentions of the parties in this regard in para-6 of the impugned judgment and which reads as under:-

“Perusal of the record shows that arbitration proceedings were conducted by the Arbitrator in the presence of both the parties. It was the case of the respondent No.1 that he wanted to do online trading from 11.11.2011 which was denied by petitioner. On 16.11.2011, the respondent No.1 was informed about his margin shortfall in his account but petitioner refused to accept payment in this regard. It was also informed that no payment through cheque or cash would be accepted and due to market volatility, they were constrained to liquidate the position open in Crude Oil. It has been shown that the

act of petitioner was unjustified for the reasons that if was not ready to accept the payment through cash or cheque but was adamant to get the payment through net banking only. It has also been shown that the shares and holdings of the respondent No.1 were sold by petitioner without intimation or seeking prior permission of the respondent No.1. Though it is apparent that the petitioner was having lien over the shares of the respondent No.1 but it was entirely unethical to dispose of his shares without informing the respondent No.1.”

(underlining added)

4. In the impugned Award dated 21.6.2013, the Arbitrator has given the following conclusions for awarding a sum of Rs.6,20,000/- to the respondent herein:

“10. On closer perusal and examination of the submissions of the parties, it is revealed that:

it is a case of mixing the matters of multiple systems, and deriving benefit out of such an exercise; debits/credits of NSE cash, F&O and commodities have been put together, and the respondent have, under the provisions of MCA, recovered their dues by disposing off the shares of the applicant without even informing them beforehand and seeking their instructions;

it is surprising that they were not ready to accept replenishment of margin requirement in cash nor through cheques, leaving no alternative to the applicant for replenishing it; clamping a requirement of online payment without having an online trading facility appears illogical and also irrational; there is generally a provision for multiple modes of payment, including under the banking system; choking the applicant to be faced with squaring off his positions/shares, and that too, without alerting him beforehand, is irregular, and also unethical; it cuts at the root of investment by the members of the general populace;

in specific terms, he did not have debit in the NSE account; a small debit of Rs.6,760.07/- in the said account should have been offset by credits in the said account; debit actually lay in the commodities segment, for which not only his

open positions were squared off, but also some of his shares were disposed of in the NSE account. As a simple trading practice, without any prejudice to the provision of the MCA, it would be proper to keep the affairs and transactions of the different segments separate;

- it different segments are clubbed, and credits and debits of all these segments are jumbled up, the investor will always be in a blind alley, not knowing what to do and where to go;

- as a fair play, the award of the Hon'ble Commodity Exchange Arbitral Tribunal should have been awaited, instead of precipitating the application of the provisions of the MCA, and squaring off the positions/shares of the applicant, without giving him an opportunity to address his liabilities in an appropriate alternative manner;

- hypothesizing on the outcome of the Commodity Exchange Arbitral Tribunal is unwarranted, and, to proceed on that hypothesis is unfair; and,

- incidentally, the respondent have taken their action for their sister concern and, not for themselves. This, again, is a matter of concern.”

5. I repeatedly put to counsel for the appellant to show that where is the contractual provision favouring the appellant that two separate trading accounts, one in the MCX segment and another in the NSE segment, can be urged for squaring off, and to which counsel for the appellant showed to me clauses of the agreement which entitled the appellant to sell the securities of the respondent, however, no specific clause has been pointed out to me that two separate accounts of dealing with the shares and commodities of two separate exchanges can be merged and squared off as claimed by the appellant. Not only that, in law, before the securities have to be sold, a

specific notice will have to be issued asking the respondent to liquidate the outstanding debit and only failing which securities can be sold and in this regard it is admitted that no written notice was sent. On this aspect, the Arbitrator has noted that respondent was ready to pay the amount even by cash, but the appellant refused to accept cash to square off all the outstanding debit in the NSE segment, and that there was no contract that the appellant will not accept cash for the respondent to liquidate his dues.

6. In view of the above, I do not find any error in the impugned judgment. The scope of hearing of objections under Section 34 of the Arbitration and Conciliation Act are limited and object of a Court hearing objections is not to sit as an Appellate Court to re-appraise all the findings and conclusions of the Arbitrator. If the scope of hearing of objections is limited, then the scope of hearing in an appeal against the judgment which has dismissed the objections is still further limited. This present appeal therefore is misconceived and not maintainable and the same is therefore dismissed, with costs of Rs.10,000/- which shall be deposited in the Delhi High Court Legal Aid Services Committee within a period of six weeks from today.

7. List before the Registrar General on 25th February, 2014 to ensure that costs are deposited, failing which, costs can be recovered from the appellant-Broking Company as arrears of land revenue.

JANUARY 29, 2014
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VALMIKI J. MEHTA, J.