

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.317 OF 2015

IN

ARBITRATION PETITION NO.195 OF 2015

Bonanza Commodities Brokers Pvt. Ltd.	)	
a company incorporated under the provisions	)	
of Companies Act 1956, having its office at	)	
Bonanza House, Plot No. M-2, Cama	)	
Industrial Estate, Walbhat Road, Behind	)	
'The Hub', Goregaon East, Mumbai 400 063.	)...Appellant	
	/Original Petitioner	

Versus

Mrs. Roshanara Bhinder	)	
An Indian Inhabitant of Mumbai,	)	
Residing at 2-C, Flat No.93, Windermere,	)	
Opp. Shantivan Mahada Oshiwara, Andheri	)	
Link Road, Andheri (West), Mumbai 400 053	)...Respondent	
	/Original Respondent	

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Mr. Rajiv Narula, i/b. Jhangiani Narula & Associates, for the Appellant.

Mr. Akash Rebello, i/b. Rahul Karnik, for the Respondent.

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**CORAM : ANOOP V. MOHTA &
S.C.GUPTE, JJ.**

RESERVED ON: MARCH 15, 2016

PRONOUNCED ON: APRIL 26, 2016

Judgment (Per S.C. Gupta, J.) :

. This appeal, under Section 37 of the Arbitration and Conciliation Act, 1996, challenges an order passed by a learned Single

Judge under Section 34 of that Act dismissing an arbitration petition challenging an arbitral award.

2. The Appellant is a trading member of Multi Commodity Exchange of India Ltd. ('MCX'), carrying on business as a commodity broker. The Respondent is a constituent of the Appellant, carrying on business of sale and purchase of commodities, under a Member Client Agreement ("MCA") with the Appellant. The Respondent executed transactions on the Exchange by using internet trading facility provided by the Appellant. The disputes between the parties arose on account of margin shortfall and failure of the Respondent to replenish MTM (Mark to Market) losses on real time basis. When the market opened on 30 March 2013, the price of silver, in which the Respondent had an open position (110 lots of the lot size of 30 kg. each) of the value of about Rs.17.67 crores, crashed by a substantial margin, resulting into a loss, showing the Respondent's account in a huge debit. The Respondent had a net debit of over Rs.33 lacs. It is the Appellant's case that it had intimated the Respondent for replenishing the losses by sending an SMS, but since no payment was forthcoming, in exercise of its rights under the MCA, the Appellant closed the open position of the Respondent in 110 lots of silver, which resulted into a loss of over Rs.69.33 lacs in the account of the Respondent. The Appellant claims to have sent electronic contract note for the debit of this amount. The Respondent contested the closure transaction. Her case was that the action of squaring up her account without any intimation to her was illegal and arbitrary; that she should have been given T+1 day to make the payment. The Arbitral Tribunal found that the open positions are marked to market based on the closing

price; if the closing price goes against the client, he has to deposit the amount of notional loss generally before the commencement of trading the next day. The Arbitral Tribunal held that the Appellant could not have squared off the Respondent's open position due to mark to market loss the same day (in any case before demanding additional funds). The Tribunal accordingly, rejected the Appellant's claim.

3. The learned Single Judge, in his impugned order, found the finding of the Arbitral Tribunal to be in consonance with the provisions and bye-laws of MCX and the MCA. The learned Judge held that no case for interference with the award under Section 34 was made out.

4. The main contention of the Appellant in this appeal is that the MCX Rules and Bye-laws require a trading member to collect from his constituents margins specified from time to time, against open positions. It is submitted that for the purpose of such collection the Bye-laws permit the trading member to close out an open position of a client when the call for further margin or other dues is not complied with by the client. It is submitted that the statement of account duly forwarded showing the debit balance and margin deficit of the client, amounts to a demand to replenish the deficit of margin money. It is submitted that after all, there can be no reason for sending such statement except to require the client to pay the deficit in accordance with the Rules and Bye-laws of the Exchange and the MCA. Learned Counsel relies upon the judgment of this Court in **Pankaj Goshar vs. Fortune Equity Brokers (I) Ltd.**¹ in this behalf.

1 Arbp368-03, dated 28 March 2005, Cora: D.K. Deshmukh, J.

5. Whether there was a demand for payment on account of margin shortfall and whether such demand was met, are pure questions of fact. The last transaction in the Respondent's account before 30 March 2013 was the admitted payment of Rs.20 lacs by the Respondent. On 28 March 2013, the Respondent admittedly had a ledger credit of Rs.35,53,150=63. Admittedly, no call was made on the Respondent on 28 March 2013. The next day, i.e. 29 March 2013, was a holiday and thus, a no trading day. On the following day, i.e. 30 March 2013, when the market opened, there was a sudden downfall in the price of silver, in which the Respondent had an open position. There is no record to show that the margin shortfall in the Respondent's account due to this downfall in the price was actually communicated to the Respondent before squaring off his open position on 30 March 2013 itself. The finding of fact of the arbitral tribunal that there was no such communication, though the Appellant claims to have sent such communication by SMS, cannot be faulted as perverse. Besides, under the applicable provisions, the open positions are marked to market based on the closing price on that day and if the movement of the closing price results into any margin shortfall, it has to be paid by the client generally before commencement of trading on the next day (see, Risk Disclosure Document forming part of MCA, Cl. 2 b). That means the (notional) loss as a result of price movement on the trading day of 30 March 2013 could have been marked to market only at the closing of the market on that day, based on the closing price, and thereafter the constituent would have to be put to notice of such (notional) loss and allowed to pay the margin deficit before the commencement of trading the next day. In the present case, admittedly during the day of trading itself, i.e. on 30 March 2013, the open position of the Respondent was squared

up. The debit balance of Rs.33,80,103=86 arose on that day as a result of such squaring up, the Respondent suffering in the process a loss of Rs.69,33,254=99. In the premises, the squaring up was clearly unauthorized and contrary to the MCA. The Appellant has no case to recover any dues from the Respondent.

6. The case of **Pankaj Ghoshar** (supra) was on a totally different footing. There, the statement of account showing the constituent's debit balance was admittedly forwarded along with a covering letter. What was argued there was that there was no formal demand for payment of margin money. The Court held that there could be no other reason for sending the statement of account except to call for margin payment. These facts and the conclusion of the Court based thereon have no bearing on the facts of our case. In our case, the margin requirement itself is improperly assessed and there is admittedly no record of demand for margin payment or even furnishing of a statement of account.

7. Thus, there is no merit in the challenge to the arbitral award. The impugned order of the learned Single Judge inasmuch as it rejects the challenge does not suffer from any infirmity.

8. The appeal is, accordingly, dismissed. No order as to costs.

(S.C. Gupte, J.)

(Anoop V. Mohta, J.)