IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.10.2017

CORAM

THE HON'BLE MR.JUSTICE **M.M.SUNDRESH**

O.P.No.33 of 2010

M/s. India Infoline Ltd.,
No.75, Nirlon Complex
Off Western Express Highway
Geeoregaon (E), Mumbai - 400 063.
Rep. by its Associate Vice President
S.Hariharan
Office at No.393/280, Anna Salai,
Teynampet, Chennai - 600 018. .. Petitioner

.. Vs ..

1. Mr.R.Ragaventhiran
2. Mr.M.V.Badrinath,
   Sole Arbitrator,
   C/o. National Stock Exchange
   of India Limited
   Nos.123 & 124, 2nd Floor,
   Ispahani Centre,
   Nungambakkam High Road,
   Chennai - 600 034. .. Respondents

Prayer:- Original Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996, praying to set aside the award dated 20.03.2009 passed by the second respondent in A.M.No.CM/C-0091/2008.

For Petitioner : Mr.G.Suryanarayanan

For R-1 : No Appearance

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ORDER

This Original Petition has been filed by the petitioner-Company seeking to set aside the award dated 20.03.2009 passed by the second respondent in A.M.No.CM/C-0091/2008.

2. Heard the learned counsel appearing for the petitioner-Company. None appears for the first respondent, despite notice is being served.

3. The petitioner-Company is a Trading Member of National Stock Exchange of India Ltd., (NSE) and Bombay Stock Exchange Ltd., (BSE). The first respondent herein opened a Trading and Demat Account with the petitioner-Company with an intention to trade in Cash and Derivatives. The transaction entered into by the first respondent was shown in the account of the petitioner-Company as debit balance. As the first respondent has failed to deposit the amount for the purpose of sale, the petitioner-Company exercised it

lien and sold the shares to recover the same. The first respondent approached the National Stock Exchange of India Limited inter alia alleging that the cheques issued by him have not been given credit. Consequently, the sale effected by the petitioner-Company was not correct. The petitioner-Company filed a counter affidavit denying the claim petition filed.

4. In the reply affidavit, the following statements have been made.

"7. In regard to contention raised in Para No.4 about Funds Pay Out, the respondent would hereby like to draw the attention of this Hon'ble Forum to the following tabular representation. The said records are retrieved from the Internal Electronic Information System of the respondent Company.

Pay Out details for RAGAVR36:

Request Date	*Time*	*Required Amount*	*Payout Amount*	*Pay Mode*	*Instrument*	*Pay Loc*
21.11.2007	05:19:50 PM	48,000	48,000	TRF	Pay Order	N
03.12.2007	05:10:37 PM	15,000	15,000	TRF	Pay Order	N
03.01.2008	04:32:04 PM	13,500	13,500	TRF	Pay Order	N

It could be observed from the above tabular representation that the applicant actually never gave payout request for the amount of Rs.1,00,000/- from his trading account RAGAVR36. In this regard the Hon'ble Forum is further requested to note that all the requests of the applicant in relation to funds pay outs have been complied with. Hence, the allegation of the applicant that he had made a payout request is completely false and baseless.

8 to 10. ....

11. With reference to the wrong CMS entry, the respondent states and submits as follows; we explain as follows.

The applicant had submitted a cheque of Rs.50,000/- on October 04, 2007 and the credit for the same was given on October 06, 2007 in the ledger statement. The respondent clarifies that inspite of incorrect CMS entry the applicant was given due credit for the amount in his account and that the applicant's account was not affected due to incorrect CMS entry in his account. In view of the above, it could be further observed in the ledger statement that in spite of taking into consideration the credit of Rs.50,000/-, the applicant's account was still short of sufficient margin.

12. On October 04, 2007, the applicant's ledger was having a debit balance of Rs.48,710.66/-. The respondent had intimated the applicant regarding the same and requested him to make the payment of required amount. The applicant deposited Rs.50,000/- towards his trading account RAGAVR36 which resulted in net ledger credit balance of Rs.1,289.34/- as on October 06, 2007.

The respondent states that due the transactions carried by the applicant in his account, on October 08, 2007, the applicant's ledger account was having a debit of Rs.1,66,650.44/-. As mentioned above, the applicant was intimated about the status and transactions in his account from time to time through SMS confirmations. Further the email providing the details of the transaction was also sent to him to make him. In spite of being aware of the status of the account the applicant did not to make further payment in this regard. Hence in order to recover amount due to us, some of the shares pertaining to his account were sold by the Risk Department of the respondent company. Hence it is evident from the ledger statement that even after considering the disputed amount of

Rs.50,000/- the applicant was falling short of the required limit to be maintained."

5. Accordingly, the petitioner-Company has contended that the first respondent never gave payment request for the amount of Rs.1,00,000/- from his trading account. Consequently, it was stated that the cheque of Rs.50,000/- submitted by the first respondent was given credit on 06.10.2007 in the ledger statement. The petitioner-Company has intimated the first respondent that the debit balance is Rs.48,710.66/- and thereafter, the first respondent deposited a further sum of Rs.50,000/- resulting in the net ledger credit balance of Rs.1,289.34/- as on 06.10.2007. Due transactions was carried by the first respondent in his account on 08.10.2007 which resulted in the ledger account having a debit of Rs.1,66,650.44/-. All these factors were informed to the first respondent accordingly. Thus, even considering the disputed amount of Rs.50,000/-, as per the ledger statement, the first respondent was falling short of required limit to be maintained.

6. The learned Arbitrator going by the claim made by the first respondent, ordered compensation on the following heads:-

Sl. No.	*Transaction*	*Rs. Amount Claimed*	*Rs. Amount allowed*
1.	Sale of shares unauthorizedly	86,000	50,000 *
2.	Delay payment charges for Oc. 07	421	421
3.	Interest on appreciated value of shares	10,000	---
4.	Payout not received, intraday loss	74,000	25,000 *
5.	Non-transfer of share - relief	10,000	10,000
6.	47 days intraday profit on uncleared cheque of Rs.50,000	1,00,000	50,000 *
			1,35,421

7. Learned counsel appearing for the petitioner-Company would submit that none of the facts aforesaid have been taken into consideration. It is the case of compensation having been fixed contrary to the records. The learned Arbitrator has not applied his mind and acted contrary to law. He is supposed to give his award by considering the materials available on record, which has not been done. There is no contra materials produced by the claimants as against the reply statement made by the petitioner-Company. Hence, the award passed by the learned Arbitrator will have to be set aside.

8. Merely because the petitioner-Company has stated that it was ready to pay the differential amount of Rs.4,850/- for the transaction on 19.10.2007 for the alleged loss by the first respondent, the claim made on wrong facts ought not to have been accepted by granting compensation. The first respondent did not dispute the statement made by the petitioner-Company. Therefore, it cannot be stated that the sale of shares was made unauthorizedly. Even otherwise, this Court finds that a sum of Rs.50,000/- each has been awarded twice both under the first and sixth heads viz., Sale of shares unauthorizedly and 47 days intraday profit on uncleared cheque of Rs.50,000/-. Similarly, insofar as awarding of Rs.10,000/- towards non-transfer of share is concerned, not even a request made in the prescribed form by the first respondent. When once the contention of the petitioner-Company is accepted, then there is no question of amount payable for payment not received.

9. In such view of the matter, this Court is of the view that it is a fit case where the rigor of Section 34 will have to be pressed into service against the first respondent and in favour of the petitioner-

Company. Accordingly, this Original Petition is ordered and the award dated 20.03.2009 passed by the second respondent in A.M.No.CM/C-0091/2008, is set aside. No costs.

09.10.2017

Index : Yes/No
Internet : Yes
Jrl

M.M.SUNDRESH, J.

Jrl

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