

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

+ **FAO No.307/2017**

% **24th July, 2017**

SATISH SHARMA Appellant

Through: Mr. P.S. Rana, Advocate.

versus

INDIA INFOLINE LIMITED Respondent

CORAM:
HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

C.M. No.25831/2017 (exemption)

1. Exemption allowed subject to just exceptions.

C.M. stands disposed of.

C.M. No.25830/2017 (for condonation of delay)

2. For the reasons stated in the application, delay of 25 days
in re-filing the appeal is condoned.

C.M. stands disposed of.

FAO No.307/2017

3. This first appeal under Section 37 of the Arbitration &
Conciliation Act, 1996 (hereinafter referred to as 'the Act') impugns

the judgment of the court below dated 7.3.2017 which has dismissed the objections filed by the appellant. The respondent/trading member filed arbitration claim in the arbitration proceedings against the appellant/constituent/client with respect to the debit balance of Rs.3,57,227/- as on 3.1.2009 in the account of the appellant/objector. This debit balance was on account of squaring off transactions on account of short-fall in the margin in the account of the appellant/client in the morning of 21.1.2008. The case of the appellant in the arbitration proceedings was that he had made a number of calls to the Relationship manager and the Branch manager of the respondent and he was not getting a clear status report and thus he was prevented from voluntarily squaring off his positions. In this regard, the Arbitrator has rejected the defence of the appellant/objector noting that the appellant/objector was an online member and he does not dispute that there did exist a shortfall in his margin. Arbitrator accordingly held that once there was a shortfall in the margin, hence the respondent/trading member was justified in squaring off the position by selling the holding of the appellant/objector, and which

resulted in the debit balance which was claimed in the arbitration proceedings.

4. Since the Award is a short Award, I reproduce the same as under:-

“1. The present application for Arbitration has been filed by India Infoline Ltd., a Trading Member, against the respondent-constituent, making a claim of Rs.5,24,233/-. The claim has been denied by the respondent. The matter was fixed for oral hearing on two different dates on which both parties were present/represented and made detailed submission. Supporting details were also filed by both sides. The Award that follows has been made after a consideration of the submissions so made and the supporting material filed.

2. The case of the applicant, as it emerges from the Statement of case and from submissions made, is that the respondent joined as a client in September, 2006 and started regular trading in his account. As a result of such trading, there was a debit balance in his account which stood at Rs.3,57,227/- as on 03-01-2009. It is submitted that this amount has remained un-paid, despite the issue of several reminders and even a legal notice issued in December, 2010. It is this amount, together with interest on this amounting to Rs.1,67,006/-, making a total of Rs.5,24,233/- which is the subject matter of the present application. In support of its case, the applicant has filed copies of the Member-client Agreement, SMS log, e-log and a copy of the ledger account, together with a copy of the legal notice issued in December, 2010. A copy of the Activity Log in respect of the respondent was also filed to show that the respondent had been accessing his account on the material dates.

3. The respondent has strongly disputed the claim. His case, as made out in oral submissions and in the written reply, is that though there was a margin shortfall in his account a-on the morning of 21-01-2008, he offered to issue a cheque for the requisite amount, but this offer was not accepted by the Relationship manager. His query on whether he could square off some of his position himself also did not elicit a clear answer and though he made a number of calls to the Relationship manager and the Branch manager, he was not given a clear status report and thus he was prevented from voluntarily squaring off some of his positions. It is further submitted that if the Risk Management team of the applicant Trading Member had not delayed the squaring off of some of the open positions, the loss could have been contained. He has given, in support of his submissions, detailed calculations of his holdings and the available margin.

4. I have very carefully examined the rival submissions and have gone through the material brought on record. The fact that a debit exists in the account which has remained outstanding is not disputed. What is to be examined is whether the loss which arose on 22nd/23rd January, 2008 on liquidation of the respondent's open positions can constitute a valid debit in the account or not. Now it is seen that even the respondent admits that there was a margin short fall in the account on the morning of 21st January, 2008. It is not the case of the respondent that any payment was made to replenish the margin. As regards the contention of the respondent that he was in constant touch with the officials of the Trading Member but was not given a clear-cut answer as to whether the Trading Member would square off the positions or whether he should proceed to do so, I find the same to be without merit. The reason is that the respondent was an on-line client, and the Activity log of the relevant dates shows that he was continuously accessing his account. There was nothing to prevent him from squaring off his open positions to bring the available margin to the required level. The plea of vague or evasive response from the Relationship manager/Branch manger cannot be an adequate defence, for the simple reason that the onus of keeping a watch on the margin requirement and of replenishing it whenever there is a short fall is on the constituent, and not on the officials of the Trading Member.

5. In the light of what is stated above, I find the claim of the applicant to be in order. It is, however, noticed that the interest on the outstanding amount has been calculated by the applicant @ 24%. This is excessive and needs to be pegged at 12%, thus reducing the admissible amount to Rs.4,40,730/- against Rs.5,24,233/- as claimed. Accordingly, I make the following Award, viz. that the respondent will pay to the applicant a sum of Rs.4,40,730/-. Delay in payment will involve interest @ 12% on the amount till the date of actual payment.” (underlining added)

5. (i) The court below has dismissed the objections under Section 34 of the Act filed by the appellant by observing that once the Arbitrator gives reasons for his Award as per para 4 of the Award, then, a court hearing objections under Section 34 of the Act cannot sit as an appellate court. It is only an appellate court which can re-assess the evidence and re-apprise the findings of facts and conclusions

arrived at by the Arbitrator provided the same are not illegal or perverse or violative of the ingredients contained in Section 34 of the Act.

(ii) I completely agree. Once the Award is passed on valid reasoning, and the fact is not in dispute that the appellant/objector was an online member, hence there was no merit in the objections under Section 34 of the Act filed by the appellant and which have therefore been rightly dismissed by the impugned order dated 7.3.2017.

6. Dismissed.

JULY 24, 2017

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VALMIKI J. MEHTA, J