

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION**

**ARBITRATION PETITION NO.1342 OF 2013**

M/s Alpha Commodity Private Limited      ...      Petitioner  
Versus  
Aniruddhsinh Zala      ...      Respondent

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Mr.Mr. Anoshak Daver a/w Mr. Sumit Raghani, Mr. Darshil Thakker i/b  
PDS & Associates for the Petitioner.

Mr. Mangal Bhandari a/w Ms. Khushbu Prabhu i/b Mr. Raju M. Jain for the  
Respondent.

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**CORAM : S.C.GUPTE, J.**

**DATE : 17 DECEMBER 2018**

**P. C. :**

.      Heard learned Counsel for the parties.

2      This arbitration petition challenges an award passed by an arbitral tribunal of three arbitrators in the matter of arbitration conducted as per the bye laws and business rules of a commodity exchange known as “MCX”. By the impugned award, the learned arbitrators rejected the claim of the Petitioner, who was the trading member of the exchange, against the Respondent, who was its constituent.

3      The case of the Petitioner herein (applicant-member) before the arbitral tribunal was that the Respondent had opened a trading account with the applicant. Several trades were executed in that account. These trades were executed by the Respondent himself, who had access to the

terminal and was in a position to execute trades thereon. The electronic contract notes (ECNs) as well as trade confirmations through SMS were regularly sent on the designated e-mail ID and registered mobile number of the Respondent. As a result of these online transactions and losses suffered due to market crash in the second half of September 2012, the Respondent's debit balance increased to Rs.99,97,981/- (inclusive of interest and penalty charges as per member-client agreement). In view of the Respondent's failure to pay this debit balance, the Petitioner initiated arbitration proceedings under the bye laws of MCX. The arbitral tribunal by its award dated 16 July 2013 rejected the Petitioner's claim. That award has been challenged in the present petition.

4 It is submitted by learned Counsel for the Petitioner that as of 14 September 2012, the Respondent had credit balance in his account. As a result of trades conducted on 15 September 2015, the account fell in debit. It is submitted that despite the Respondent being put to the notice of the debit balance, he did not pay the same. It is submitted that due to a major market crash on consecutive dates thereafter, the debit balance increased and as a result, a large amount was owed by the Respondent to the Petitioner. It is submitted that the increase in the debit balance occurred not as a result of fresh transactions in the account but due to the crash in the commodity market. It is submitted that intra-day transactions of 18 September 2012, which were a solitary instance of trading in the account by purchase, were carried out by the Respondent himself, who had online trading account, having access to the terminal and being in a position to carry out the trades himself. Learned Counsel submitted that adequate material was produced before the arbitral tribunal, which clearly

indicated that the trades were carried out by the client himself and not by any authorised person servicing the client on behalf of the member. Learned Counsel submits that these aspects were completely lost sight of by the arbitral tribunal in its impugned award.

5 It is apparent from the Respondent's own statement of reply before the arbitral tribunal that it was not his case that any trades were unauthorizedly carried out on his behalf by the Petitioner. His case, in terms, was that he had asked the Petitioner to square off his position of 15 September 2012, at which time, his loss was at Rs.6,98,913.81. What was submitted before the arbitral tribunal was that had this position been squared off at the time, and not carried upto 20 September 2012, the Respondent would not have ended up in debit balance of Rs.91,55,541.94, which obtained on 20 September 2012. (Adding a penalty of Rs.6,98,913.81 to this debit balance, the total claim of the Petitioner in the sum of Rs.99,97,981.05 has been worked out.) Even the learned arbitrators do not appear to have proceeded on the footing that the debit balance as of 20 September 2012 was on account of fresh trades conducted during 17 September 2012 to 20 September 2012. The narration of the arbitral award in this behalf is quoted below :-

“On 14 September 2012 the Respondent had a credit balance of Rs.59,690.79 which was wiped out by his trade on 15 September 2012 of Rs.7,72,073.44 and his debit balance became Rs.7,12,382.65. On 17 September 2012 he got credit of Rs.38,000/- reducing his debit balance to Rs.6,74,382.65 to which penalty amount of Rs.24,531.16 was added by the Applicant to increase his total dues to Rs.6,98,913.81, on 17

September 2012. Since 17 September 2012 the Respondent did not earn any profit or did not deposit any amount to reduce his dues, from 17 September 2012 the misfortune of the Respondent is reflected in this Statement every day by the following debit amounts :

|                                                                                             |                 |
|---------------------------------------------------------------------------------------------|-----------------|
| 18 September 2012                                                                           | Rs.11,40,000.00 |
| 19 September 2012                                                                           | Rs.30,28,172.00 |
| 20 September 2012                                                                           | Rs.37,43,000.00 |
| 21 September 2012                                                                           | Rs. 5,45,455.71 |
|                                                                                             | -----           |
|                                                                                             | Rs.84,56,627.71 |
| Add penalty for late payment<br>on 1 October 2012 and                                       | + 61,143.73     |
| 15 October 2012                                                                             | + 63,602.85     |
|                                                                                             | -----           |
| Due as on 15 October<br>2012                                                                | 85,81,373.58    |
| Add dues of 17 September<br>2012                                                            | 6,98,913.81     |
|                                                                                             | -----           |
| Grand Total of debit<br>balance - claim from<br>17 September 2012 till<br>15 October 2012.” | = 92,80,287.39  |

Reading the above observations in the light of the Respondent's own reply clearly indicates that the debit balance of Rs.20 September 2012 arose not as a result of any unauthorized trades actually carried out in the account, but because of the position of 15 September 2012 being carried to 20 September 2012 without squaring off the same, though there is one solitary reference in the award to “*the case of the Applicant that he had allowed the Respondent to trade even with such huge debit balance*”.

6 The learned arbitrators appears to have applied Business Rule 27(r) of MCX as also MCX circular dated 10 January 2006 to hold that trades having been allowed on the exchange without appropriate margin money to back the same, the trading member cannot recover the debit balance in the account from the constituent. Though the learned arbitrators have not referred to any particular precedent in this behalf, learned Counsel for the Respondents relies on the cases of **Bonanza Commodities Brokers Pvt Ltd. Vs. Roshanara Bhinder**<sup>1</sup> and **Kaberi Mondal Vs. BMA Commodities Private Limited**<sup>2</sup>. In these two cases, a learned Single Judge of our court dealt with Bye laws 8.2.2 and 8.6.6 of MCX. These bye laws *inter alia* provide that every member of the exchange executing transactions on behalf of a client shall collect from the client margins as may be specified from time to time against his open positions within such time as may be prescribed by the relevant authority. (Any failure to recover such variation margin may lead to the exchange member being deactivated/suspended and declared as a defaulter by the exchange.) The bye laws also require that no trading member shall directly or indirectly enter into any arrangement or adopt any procedure for the purpose of evading or assisting in the evasion of the margin requirements prescribed; and the trading member shall be permitted to close out any open position of a constituent member when the call for further margin or any other payment due is not complied with by the client. The learned Judge in these cases came to a conclusion that the shortfall in margin money in large sums in respect of open positions had continued for quite a few days and since the offending transactions had been carried out during this period without demanding any margin money and without any instructions from the

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1 A.P. No.195-2015 dated 16 April 2015

2 A.P. No.420-13 dated 9 June 2015

constituent and in the face of such debit balance, the monies owed on account of such transactions were not payable by the constituents.

7 The law cited in these two cases really has no bearing on the transactions with which we are concerned in the present case for more than one reasons. In the first place, it was the express case of the applicant-member herein before the arbitral tribunal that the constituent had an online access and capacity to transact trades on the terminal directly and the trades were accordingly executed directly by the constituent. Secondly, there was nothing whatsoever to indicate that there were unauthorized trades infact carried out in the account after 15 September 2012 and till 20 September 2012 (save and except the intra-date of trades of purchase and sale of 18 September 2012), which infact brought about the debit balance in the Respondent's account. It was the Respondent's own case, and which appears to have been accepted by the learned arbitrators, as indicated more particularly above, that the debit balance in his account arose as a result of carrying his open position as of 15 September 2012 till 20 September 2012 instead of squaring off the same on his instructions issued on 15 September 2012. This being the position, the learned arbitrators' reliance on the invalidity of trades as being uauthorized is completely out of place and the conclusion that the learned arbitrators have come to is infact an impossible conclusion. It is a conclusion which no fair and judiciously minded person could, or, at any rate, should, have arrived at. Besides, such conclusion is based on no evidence. There is nothing in the record to indicate any case that the constituent had given any instructions on 15 September 2012 to square off his position.

8 As I have indicated above, there is one more reason why the award needs to be set aside. The Petitioner's case before the learned arbitrators was that it was the Respondent himself, who had traded on 18 September 2012 by using his online trading account. The Petitioner had referred to all log details of the usage of this account by the Respondent. The details were produced before the learned arbitrators. Relying on these details, it was explained to the learned arbitrators that the relevant entries/remarks in the appropriate column of usage made it clear that the trading was done by the client himself and not by any authorized person servicing him on behalf of the trading member. This contention has two sequators. Firstly, it implies that the trades themselves cannot be termed as unauthorized, that is to say, without any instruction or authority from the constituent, and secondly, it undermines the Respondent's claim that he had infact asked the trading member to square off his position on 15 September 2012 and not carry the same any further. There is absolutely no discussion in the arbitral award about this particular aspect of the matter. The learned arbitrators appear to have summarily brushed aside this contention by observing that *"they are not at all satisfied with the so called trades reflected in the said table were lawfully entered in by the Respondent himself."* Apart from this being a conclusion against the record itself, it clearly shows a complete want of reasons for deciding an important aspect of the controversy. There is nothing to indicate what triggered the satisfaction of the learned arbitrators referred to above. Want of reasons implies contravention with the Arbitration and Conciliation Act, 1996 itself. It renders the award amenable to a challenge under Sub-section 2(b)(ii) as well as sub-section (2-A) of Section 36 on account of a patent illegality.

9 In the premises, the impugned award cannot be sustained. The Arbitration Petition is, accordingly, allowed by setting aside the impugned award.

**(S.C. GUPTE, J.)**