

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.07.2019

CORAM :

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

O.P.Nos.176 to 178 of 2011

M/s.Karvy Stock Broking Ltd.,
Represented by its Director,
Karvy Centre, 8-2-609/K,
Avenue 4, Street No.1,
Banjara Hills,
Hyderabad – 500 034.

... Petitioner
in all petitions

Vs.

1.V.Arumugam

2.V.Natarajan

C/o. Arbitration Department,
National Stock Exchange of India Ltd.,
2nd Floor, Ispahani Centre Door No.123-124,
Nungambakkam High Road,
Nungambakkam,
Chennai – 600 034.

... Respondents
in O.P.No.176 of 2011

1.C.Indra

2.V.Natarajan

C/o. Arbitration Department,
National Stock Exchange of India Ltd.,
2nd Floor, Ispahani Centre Door No.123-124,
Nungambakkam High Road,
Nungambakkam,
Chennai – 600 034.

... Respondents
in O.P.No.177 of 2011

1.Chidambaram

2.V.Natarajan

C/o. Arbitration Department,
National Stock Exchange of India Ltd.,
2nd Floor, Ispahani Centre Door No.123-124,
Nungambakkam High Road,
Nungambakkam,
Chennai – 600 034.

... Respondents
in O.P.No.178 of 2011

Original Petitions in O.P.Nos.176 to 178 of 2011 filed under Section 34 of the Arbitration and Conciliation Act, 1996, to set aside the impugned Award dated 22.01.2009, passed by sole Arbitrator in Arbitration matters in No.F&O/C-0195/2008, No.F&O/C-0194/2008 and No.F&O/C-0196/2008, respectively.

For Petitioner : Mr.Surya Senthil
in all petitions

For R1 : Mr.V.Iyyadurai, Senior Counsel
for Mr.A.Suresh Sakthi Murugan
in all petitions

COMMON ORDER

These three original petitions have been filed under Section 34 of the Arbitration and Conciliation Act, 1996, assailing the arbitral proceedings, preferred by the 1st respondent in these petitions.

2. For the sake of convenience, the petitioner and the 1st respondent in all these three petitions will be referred to as 'stock broker' and 'clients', respectively.

3. The clients entered into a business agreement with the stock broker. The business dealings between the parties were smooth and regular until 21.01.2008. On 22.01.2008, when the stock market was bearish, resulting in a heavy fall, the stock broker requested the clients to deposit margin shortfall, in response to which, the clients issued respective cheques on the same day to meet the shortfall. However, the stock broker sold a part of open positions held by the clients, without their knowledge, which has culminated into arbitration proceedings between the parties.

4. The matter was arbitrated before an Arbitral Tribunal constituted by a sole Arbitrator, the 2nd respondent herein. The learned Arbitrator considered the factual aspects and found that, despite receipt of respective cheques dated 21.01.2008, issued by the clients to meet the margin short fall, the stock broker had closed the open positions of the clients, which is wrong and held the stock broker responsible for the loss incurred due to closure of open positions and passed awards as under.

<i>Arbitration Proceedings</i>	<i>Award amount payable by the stock broker/petitioner to the client (1st respondent)</i>	<i>Challenged in</i>
No.F&O/C-0195/2008	Rs.1,87,293/- with simple interest @ 12% p.a. from the date of arbitration application.	O.P.No.176 of 2011
No.F&O/C-0194/2008	Rs.59,100/- with simple interest @ 12% p.a. from the date of arbitration application.	O.P.No.177 of 2011
No.F&O/C-0196/2008	Rs.4,76,925/- with simple interest @ 12% p.a. from the date of arbitration application.	O.P.No.178 of 2011

The learned Arbitrator, in fact, arrived at such a conclusion based on the factual matrix, which is put under challenge before this Court, by the stock broker, by way of these three original petitions.

5.The main contention of the learned counsel appearing for the petitioner/stock broker is that, the terms of the agreement stipulate that, when there is a margin shortfall, the stock broker is entitled to sell the shares, even without notice to its clients, especially, when the margin has gone below 40%. This has been made clear in clauses 4 and 5 of the agreement, however, the learned Arbitrator has not considered the same. Hence, the learned counsel contended that the award is entirely beyond the agreement. He also submitted that the cheques issued by the clients were realised only after the shares were sold. Further, the learned counsel relied upon the judgments in **Union of India v. Premchand Satram Das and another [1951 AIR (Patna) 201]** and **Grid**

Corporation of Orissa Ltd. and others v. Balasore Technical School [AIR 1999 SC 2262].

6.Per contra, learned Senior Counsel appearing on behalf of the 1st respondent/client would submit that, there was a demand by the stock broker, when there was a margin shortfall on 22.01.2008 and admittedly, respective cheques have been issued by the clients on the same day, i.e., on 22.01.2008. Despite receipt of the cheques, the clients' shares have been sold by the stock broker. This fact has been admitted by the stock broker. He further submitted that, considering all these facts, the learned Arbitrator has factually found that the act of the stock broker in closing the clients' positions, despite issuance of cheque by the clients, is wrong and as a result, has passed the award, which, according to him, cannot be interfered with and prayed for dismissal of the petitions.

7.Heard the rival submissions and perused the materials on record.

8.It would be relevant to extract Clauses 4 and 5 of the agreement, which reads thus :

"4.The client agrees to abide by the exposure limits, set by the stock broker or by the Exchange or Clearing Corporation or SEBI from time to time. The client also authorizes the stock

broker to retain the shares upon the receipt of the same in the pay out from the stock exchange, till the amount due in respect of the said transaction including the dues to the stock broker is paid in full by the client and also for enhancement of exposure limits. In case the client requests for transfer of shares in writing and received by the stock broker to its his/her beneficiary account, the exposure limit will be reduced accordingly.

The client agrees and authorizes the stock broker to determine the market value of securities placed as margin after applying a haircut that the stock broker deems appropriate. The clients securities will be valued preferably at the latest market price available and marked to market on a continuous basis by the stock broker. The client undertakes to monitor the adequacy of the collateral and the market value of such securities on a continuous basis. If due to price fluctuations, there is erosion in the value of margins the client agrees to replenish any shortfall in the value of margins immediately, whether or not the stock broker intimates such shortfall.

The accounts of the clients (funds as well as securities) will be settled on a settlement to settlement basis. However, if the client wishes to maintain running account for funds and securities with stock broker for both segments, i.e. capital market and F&O segments and if the client do not want the account so maintained to be settled on each settlement, then the client will intimate so in writing and the amount payable or receivable shall remain in the client's account subject to fulfilment of margin stipulations as envisaged in the agreement. No interest shall be payable by the stock broker on such funds

so retained. Further the type of securities that can be given by the client to the stock broker (as margin) shall be solely decided by the stock broker.

5. Without prejudice to the stock broker's other rights (including the right to refer a matter to arbitration), the stock broker shall be entitled to liquidate/close out all or any of the client's positions for non-payment of margins or other amounts, outstanding debts, etc. and adjust the proceeds of such liquidation/close out, if any, against the client's liabilities/obligations. Any and all losses and financial charges on account of such liquidation/closing-out shall be charged to and borne by the client. No notice will be given to the client in such liquidation/close outs since the market conditions existing at that point to time might not allow the broker to give such notice.

The client shall maintain such quantity of securities and such amount of cash credit balances (hereinafter referred to as the 'Margin') as required by the applicable statutes, rules, regulations, procedures or as deemed necessary or advisable by the stock broker provided that the margin shall not, at any time, be less than (40%) of the value of the admitted securities proposed to be purchased or sold within the overall exposure sanctioned by the broker. The client agrees that no interest shall be payable on the margin as maintained with the stock broker. The client shall be permitted to trade up to a pre-determined number of times of the margin and the quantum of such multiple shall be determined at the sole discretion of the stock broker.

The margin requirement and squaring process for Ebroking and online trading is different. The margin in online account will not be considered in the Ebroking account and vice-versa unless specifically directed by the client . The account process for both accounts is different and is independent of each other. In case there is any change in policy relating to Risk Management pertaining to margin requirement and squaring up process the same would be intimated at the terminals of dealing office of the stock broker and the onus is on the client to keep check, understand and agree with the Risk Management policy pertaining to margin requirement and squaring up process from time to time.

The client shall also remain in touch with the stock broker to keep a regular check on his account and margin requirements and other dues, for maintaining sufficient margin with the stock broker to undertake any transaction in his/her/its account in Ebroking and online trading. If the stock broker considers it necessary for its own protection, it may require the client to immediately, on demand deposit cash or securities to their account prior to any applicable settlement date in order to assure due performance of their open contractual commitments to the respective Exchange. If client does not provide such additional cash or securities, the client hereby grants to the stock broker the right to sell any or all securities to the extent in their account, buy any of all relevant securities which may be short in their account, cancel any or all open orders and/or close any or all outstanding contracts. The client agrees and made aware that in case intra day loss is such that margin position

goes down, stock broker can sell any or all securities in the account without giving notice to the client as it he/she is also required to keep track on its/his/her margin position stock broker may do the square off/selling at any time during he day in account.

In addition, client acknowledges and agrees that the stock broker may exercise any or all of the above rights, prior to or without any demand for additional cash or securities, or notice of sale or purchase, or other notice or intimation. Any such sales of purchases may be made at any time at the sole discretion of the stock broker on any market where such business is usually transacted. The making/giving of any prior demand or call or notice of the time and place of such sale or purchase shall not be considered as a waiver of any rights of the stock broker to sell or buy without such demand, call or notice, at that time or any time subsequently.

The client agrees that it will not make any third party payments from any account (other than what is specified in the client agreement/KYC). In case of such payments being made, the client agrees to intimate the broker, in writing of the same. The client also agrees that the broker may accept or reject such third party cheques/payments and the client will not hold the broker responsible for any loss incurred in such cases.

The client agrees that it will not transfer any securities from any demat acct (other than what is specified in the client agreement/KYC). In case of such transfers are being made the client agrees to intimate the broker in writing of the same. The client also agrees that the broker may accept or reject such third

party transfers and the client will not hold the broker responsibility for any loss incurred in such cases.

The client agrees that it will not indulge in manipulative trades or indulge in any sort of activity related to the trading in securities, which are prohibited under law.

In addition to the above, if the client does not credit instantaneously its cash or securities account as maintained with the stock broker to make up any shortfall in the margin , to increase the Margin in client's account, the position of the client may be squared off by the stock broker, without any further reference to the client and without prior notification. Any resultant or associated losses that may occur due to such squaring off shall be borne by the client.

In case where the payments by the client towards the margin is made through a cheque issued, in favour of the stock broker, any trade would be executed by the stock broker only upon the realisation of the funds of the said cheque.

The stock broker can force the sale of the client's securities or other asses (FDR's) in the client account(s). If the securities in client account fall below the margin requirements, the stock broker can sell the securities held with it to cover the margin deficiency. The client will be responsible for the shortfall, if any, in the account ever after such sale.

The stock broker can sell client's securities or other security without contacting him/her/it. Some clients mistakenly believe that the stock broker must contact them for margin call to be valid, and that the stock broker cannot liquidate the securities or other assets in their accounts to meet the call

unless the stock broker has contracted them first. This is not the case. The Stock broker will attempt to notify the clients or margin calls, but it is not required to do so. However even if stock broker has contacted the client and provided a specific date by which the client should meet a margin call, the stock broker can still take necessary steps to protect its financial aspects and its commitment to the Exchange, including immediately selling the securities without notice to the client.

The client is not entitled to choose which securities or other assets in his/her/its's accounts are liquidated or sold to meet a margin call/or the broker's commitment to the exchange and the stock broker has the right to decide which securities to sell in order to protect its interests and meets its commitment to the exchange.

The stock broker can increase its margin requirements at any time and is not required to provide the client with advance written notice. These changes in stock broker's policy often take effect immediately and may result in issuance of margin call. Client's failure to satisfy the call may cause the stock broker to liquidate or sell securities in client's account(s).

The client is not entitled to an extension of time on a margin call. While an extension of time to meet margin requirements may be available to clients under certain conditions, a client does not have a right to the extension . Margins in Derivatives trading . In the derivatives segment, the client is liable to pay an initial margin up-front on or before creating a position. Such margin shall be decided upon by the stock broker or the exchange from time to time.

Furthermore, the client is liable to pay (or receive) daily margins depending on whether the price of the derivatives contract moves for or against the position undertaken. The client may also be liable to pay with holding margins, special margins or such margins as considered necessary by the stock broker or the exchange from time to time. The stock broker is permitted in its sole and absolute discretion to collect additional margins (even though not imposed by the derivatives segment, the clearing house or SEBI) and the client shall be obliged to pay such margins.

A. DEFINITIONS & INTERPRETATIONS

For the purpose of this clause :

- i. "Initial Margin" means the minimum amount, calculated as a percentage of the transaction value to be placed by the client, with the stock broker before the actual purchase.*
- ii. "Maintenance margin" means the minimum amount, calculated as a percentage of the market value of the securities, calculated with respect to the last trading day's closing price, to be maintained by the client with the stock broker.*
- iii. "Mark to Market Loss" or "MTM Loss" means the difference between the purchase value of the shares and the mark to market value of these shares.*
- iv. "Mark to Market value of share" or "MTM value of shares" means the value of shares calculated with reference to the previous day's closing price on the stock exchange.*
- v. "Stock Exchange" means the stock exchange on which*

the shares have been purchased.

vi. Unless the context otherwise requires the expression month and year shall be the calender month or calender year and reference to date or dates which do not fall on a working day, shall be construed as reference to the day or date falling on the immediately subsequent working day.

9.The above clauses make it clear that the client may abide by the exposure limits and the stock broker is entitled to sell the shares. Clause 5 also makes it clear that, whenever the stock broker considers it necessary for its own protection, it may require the client to immediately, on demand, deposit cash or securities; the obligation is also placed on the stock broker to intimate, whenever there is a shortfall. A careful perusal of the agreement makes it clear that, when there is an erosion in the value of margins due to price fluctuations, the client has to replenish any shortfall in the value of margins immediately, whether or not the stock broker intimates such shortfall.

10.The main ground raised by the learned counsel for the petitioner/stock broker is that, whenever the margin has fallen below 40%, the stock broker is entitled to sell the shares, however, the same will not exclude the stock broker from intimating the shortfall then and there. It is admitted that, respective cheques have been issued by the clients on 22.01.2008, which has been factually found by the learned Arbitrator, but in fact, the cheques have

been encashed only on 25.01.2008. All these facts had been clearly considered and the learned Arbitrator had finally arrived at a conclusion that the sale of the shares by the stock broker is wrong, which in fact, led to the loss of the clients. The learned Arbitrator has arrived at such a finding based on the facts. This Court, as an Appellate Court, cannot interfere with the factual findings of the learned Arbitrator in view of the judgment relied upon by the learned counsel for the petitioner, wherein, it is stated that, when reference is made specifically and a dispute relating either to fact or to law is submitted to the learned Arbitrator for his decision, his award cannot be challenged, even if there be an error of fact or law or both apparent on the face of the award. The fact remains that, in this case, learned Arbitrator has factually found that the sale of the shares, despite receipt of the cheques by the stock broker, is wrong and concluded that the loss sustained by the clients has to be borne by the stock broker.

11. In such view of the matter, I am of the opinion that factual finding made by the learned Arbitrator based on admitted facts of the case, cannot be interfered with. Further, no specific ground is made out to interfere with the award, passed by the sole Arbitrator, under Section 34 of the Arbitration and Conciliation Act, 1996.

Therefore, these Original Petitions are dismissed. No costs.

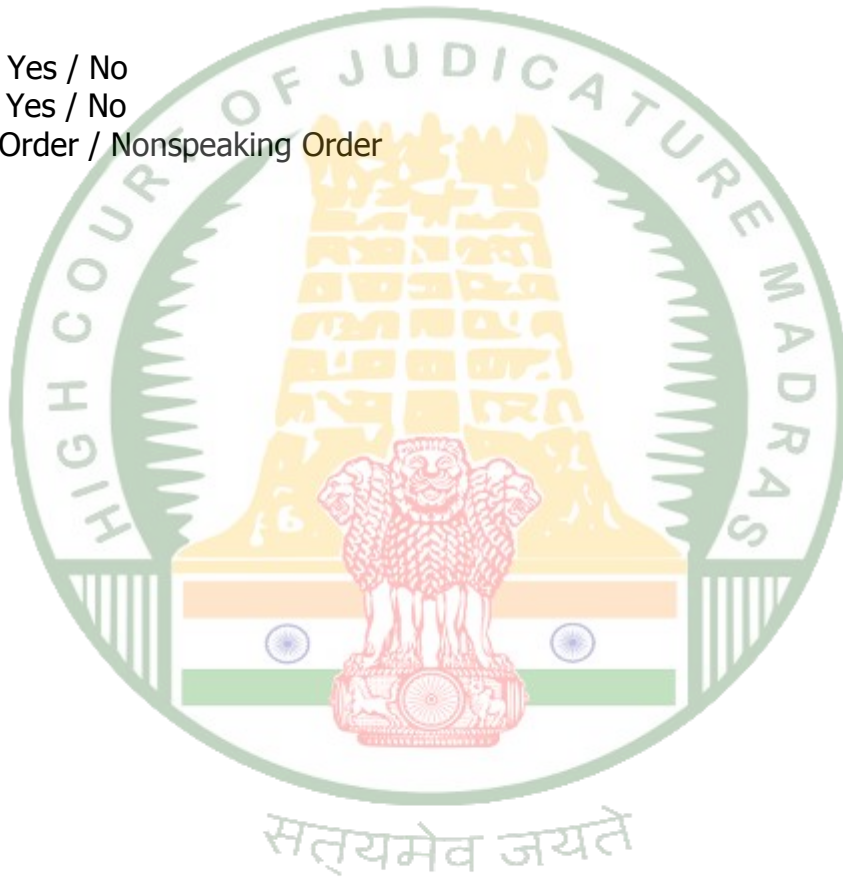
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Speaking Order / Nonspeaking Order



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