



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

TUESDAY, THE 13TH DAY OF JULY 2021

THE HON'BLE MR. JUSTICE N.SATHISH KUMAR

O.P. No.317 of 2021

and

A. No.1627 of 2021

In the matter of section 34 of  
Arbitration and Conciliation Act,  
1996

and

In the matter of dispute arising out  
of The Agreement dated 04.03.2020  
and In the matter of award dated  
31.12.2020

between

Mr.Ganesh Subramaniam, and  
M/s. Goodwill Wealth Management  
Pvt. Ltd.,

M/s. Goodwill Wealth Management Pvt. Ltd.,  
Rep.by its Legal Head – Mr.M.Sheik Sadique  
2<sup>nd</sup> Floor, Mashallah Building  
Bheema Sena Garden Street,  
Mylapore, Chennai 600 004.

... Petitioner/Applicant

-Versus-

1. Mr.Ganesh Subramaniam  
APT 3 D B-2, Magnolia Park  
No.2, Five Furlong Avenue  
Guindy, Chennai 600 032.

2. National Stock Exchange  
Exchange Plaza, C-1, Block G  
Bandra Kurla Complex,  
Bandra (E) Mumbai 400 051.

... Respondents/Respondents



O.P. No.317 of 2021:-

Original Petition praying that this Hon'ble Court be pleased to set aside the Award dated 31.12.2020 passed by the Learned Sole Arbitrator.

A. No.1627 of 2021:-

Application praying that this Hon'ble Court be pleased to stay the operation of the Award dated 31.12.2020 passed by the Learned Sole Arbitrator until the disposal of the petition filed by the Applicant/Petitioner.

This Original Petition along with the Application coming on this day before this Court for hearing in the presence of Mr.P.V.Balasubramanian for M/s. BFS Legal, Advocates for the petitioner in O.P. No.317 of 2021 and for the Applicant in A. No.1627 of 2021 and Mr.S.R.Sundar, Advocate for the 1st respondent in O.P.No.317 of 2021 and A.No.1627 of 2021, and upon reading the petition filed in O.P.No.317 of 2021 and the Judge's Summons and the affidavit of M.Sheik Sadique filed in A.No. 1627 of 2021 and this Court having observed that any decision made in an adjudicatory process should be a result of proper discussion of pleadings, evidence and documents, any order or decision made without such exercise in adjudicatory process, merely on the basis of the opinion of the Arbitrator, will definitely violate the very fundamental policy of India in such view of the matter, the award passed by the Arbitrator cannot be sustained in the eye of law and it is stated that the pursuant to the award, the



amount has been paid to the respondent and he appears to have given indemnity, in the event of the award being set aside, he will redeposit the amount with the Exchange, it is ordered as follows:-

That the award dated 31.12.2020 passed by the learned sole arbitrator, be and is hereby set aside.

2. That Mr. Harishankar Mani, Advocate High Court, Madras residing at A1, Ceebros Vriddhi, 45, R.A.Puram, I Main Road, Chennai 600028, Mobile No.9841093321, be and is hereby appointed as Arbitrator to resolve the dispute between the parties hereto.

3. That the learned Arbitrator appointed herein, shall after issuing notice to the parties and upon hearing them, pass an award as expeditiously as possible, preferably within a period of six months from the date of receipt of the Order.

4. That the learned Sole Arbitrator appointed herein, shall be paid fees and incidental charges fixed by him and the same shall be borne by the parties equally.

5. That the respondent herein, be and is hereby directed to redeposit the amount to the NSE.



6 That the A.No. 1627 of 2021, do stand closed.

7. That there shall be no costs of this Petition.

WITNESS THE HON'BLE MR. JUSTICE SANJIB BANERJEE,  
CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE  
13<sup>th</sup> DAY OF JULY 2021.

Sd/-

ASSISTANT REGISTRAR (O.S.II)

//Certified to be true copy//

Dated at Madras this the      day of      2021.

COURT OFFICER(O.S.)

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01.09.2021

O.P. No.317 of 2021  
and  
A. No.1627 of 2021

ORDER :-

DATED: 13.07.2021

THE HON'BLE MR. JUSTICE  
N.SATHISHKUMAR

FOR APPROVAL: 01/09/2021

APPROVED ON : 02/09/2021

Copy to:-

Mr.Harishankar Mani,  
Advocate of  
High Court, Madras.  
Arbitrator  
No.A1, Ceebros Vridhhi,  
45, R.A.Puram,  
I Main Road,  
Chennai 600028,  
Mobile No.9841093321.

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

Date 13.07.2021

CORAM:

**THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR**  
**O.P.No.317 of 2021****and Application No.1627 of 2021**

M/s.Goodwill Wealth Management Pvt.Ltd  
Rep. By its Legal Head-Mr.M.Sheik Sadique,  
2<sup>nd</sup> Floor, Mashallah Building  
Bheema Sena Garden Street  
Mylapore, Chennai – 600 004  
Petitioner

...

Versus

1.Mr.Ganesh Subramaniam  
APT 3D B-2, Magnolia Park  
No.2, Five Furlong Avenue  
Guindy, Chennai – 600 032.

2. National Stock Exchange,  
Exchange Plaza, C-1, Block G,  
Bandra Kurla Complex,  
Bandra (E)  
Mumbai – 400 051  
Respondent

...

**PRAYER :** Petition filed under Section 34(2) of Arbitration and Conciliation Act, 1996 to set aside the award dated 31.12.2020 passed by the learned Sole Arbitrator.

For petitioner :  
Mr.P.V.Balasubramaniam

For respondent : Mr.S.R.Sundar



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**ORDER**

This original petition has been filed to set aside the award dated 31.12.2020 passed by the learned Sole Arbitrator.

2. The respondent herein had raised a dispute against the applicant herein for unauthorised trading. Admittedly, the respondent is the constituent and the applicant is the stock broker. The entire allegation is that the petitioner herein has unauthorisedly traded the shares which resulted in loss to the tune of Rs.10,00,000/- to the respondent. Therefore, the dispute has been referred to the Arbitrator as per the By-law of NSE.

3. The learned Arbitrator has passed the award as follows:

“I am of the opinion that there is considerable merit in the applicants argument.

Regarding the first claim of the applicant the respondent is directed to refund the loss of Rs.1089756/- to the applicant and this issue is decided in favour of the applicant.

Regarding second claim this issue is decided in favour of the applicant and the respondent is directed to pay a sum of Rs.515475/-

Regarding the third claim relating to brokerage this issue is decided in favour of the respondent.



Regarding the fourth claim for compensation for opportunity loss the claim of the applicant is negated and the issue is decided in favour of the respondent.

To summarize the respondent is directed to pay the applicant a sum of Rs.(1089756+515475) Rs.1605231/- to the applicant.”

4. Challenging the same, this original petition is filed.

5. Admittedly, the award did not contain any reason for reaching such conclusion. It is well settled that in any adjudicatory process, the reasoning is *sine qua non*. The Arbitrator has not applied his mind and not even discussed the respective pleadings and has merely passed the award on his own opinion. Such award cannot be sustained in the eye of law. In fact, it violates the very provisions of Section 31(3) of the Arbitration and Conciliation Act. It is not the case of the parties herein that the parties have agreed that the award can be passed without any reason. Both sides have raised serious allegations against other, leading to serious dispute between the parties. While so, the learned Arbitrator, who is an adjudicator, ought to have framed the necessary issues and decided the same on the basis of the



single document, the award has been just passed on the basis of framing of his own opinion. There is no whisper whatsoever made with regard to the reasons for reaching such a conclusion, and moreover, such an opinion has been formed without even looking into the documents and pleadings.

6. In such view of the matter, this Court is of the view that the nature of the award passed by the so called Arbitrator nominated by the NSE is absolutely nothing but perverse and it goes to the root of the matter. It is also to be noted that when the Arbitrators are to be nominated, NSE is to take note of the guidelines and regulations with regard to the qualification of the Arbitrator to be nominated. If the Arbitrator like present Arbitrator who authored the award which is the subject matter of this original petition is nominated regularly, then the purpose of the NSE and SEBI Acts, which are said to be client's friendly, would be defeated.

7. This Court is of the view that any decision made in an adjudicatory process should be a result of proper discussion of pleadings, evidence and documents. Any order or decision made without such exercise in adjudicatory process, merely on the basis of the opinion of the Arbitrator, will definitely violate the very fundamental policy of India.



**Arbitrator cannot be sustained in the eye of law. Accordingly, the same is set aside.**

9. Both sides agreed to go for a fresh arbitration and consented to appoint Mr.Harishankar Mani, Advocate as an Arbitrator.

10. Accordingly, this Court passes the following order:

i] Mr.Harishankar Mani, Advocate  
of this Court residing at A1, Ceebros  
Vriddhi, 45, R.A.Puram, I Main  
Road, Chennai 600028, Mobile  
No.9841093321, as Arbitrator to resolve the dispute  
between the parties.

ii] That the learned Arbitrator appointed  
herein, shall after issuing notice to the parties and upon  
hearing them, pass an award as expeditiously as  
possible, preferably within a period of six months from  
the date of receipt of the Order.

iii] That the learned Sole Arbitrator  
appointed herein shall be paid fees and incidental  
charges fixed by him and the same shall be borne by



the parties equally.

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10. It is stated that, pursuant to the award, the amount has been paid to the respondent and he appears to have given indemnity, in the event of the award being set aside, he will redeposit the amount with the Exchange. In such view of the matter, the respondent herein is directed to redeposit the amount to the NSE.

11. In the result, this original petition is allowed accordingly. No costs. Consequently, connected application is closed.

Sd./-N.S.K.J.

13/07/2021

//Certified to be true copy//

Dated at Madras this the      day of      2021.

COURT OFFICER(O.S.)

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