IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 06.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE **N. SATHISH KUMAR**

O.P.No.458 of 2017

M/s.Geojit Financial Service Limited
(formerly known as Geojit BNP Paribas Financial Services Ltd)
Rep by its Authorised Signatory
34/659-P, Civil Line Road,
Padivottam,
Kochi 682 024. . . . Petitioner

Versus

Ranjith Kumar.T
S/o Thangavel,
No.11, Kambar Nagar, 1st Street,
Sethirapalayapuram,
Kuttalam Taluk,
Nagapattinam 609806. . . . Respondent

PRAYER : Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 to set aside the award dated 21.02.2017 made in Appeal Arbitration Matter: (A.M.) No.CM/C-0013/2016 and direct the respondent to pay costs.

For Petitioner	:	Mr.T.L.Thirumalaisamy
For Respondent	:	Mr.T.Ranjith Kumar Party-in-Person

ORDER

This original petition has been filed to set aside the award dated 21.02.2017 made in Appeal Arbitration Matter: (A.M.) No.CM/C-0013/2016.

2. The award has been put into challenge mainly on the ground that the Arbitral Tribunal has not gone into the terms and conditions agreed between the parties. It is the main contention of the petitioner that at the time of steep fall in the shares, the respondent had agreed to reduce the position and when he did not maintain the minimum balance or 10% of the margin in the account as per the rules and procedure, the petitioner, left with no other option, had to square off the position.

3. Originally, the claim has been preferred by the respondent herein on the ground that the petitioner herein mishandled the shares and created heavy loss to the tune of Rs.62,518/- and proceeded to square off without his permission and in fact was selling of BTST shares, thus creating a loss to the tune of Rs.62,518/-.

4. The petitioner herein denied the above claim particularly mishandling. It is their contention that there is no unauthorised trade transaction made in the account of the petitioner herein. The respondent herein is the online client and he himself purchased the disputed shares through online on 29.03.2016 under BTST scheme. (Buy today and sell tomorrow). He was aware of the position and that he did not have sufficient balance in the loan account to carry forward the account. The debit mail was sent to the respondent at 10 a.m. intimating the margin violation. Despite such intimation, no positive steps have been taken on his part to replenish the margin short fall. Hence, the petitioner disputed the liability.

5. The learned sole Arbitrator, considering the rival facts and submissions, passed the award in favour of the respondent herein for a sum of Rs.62,518/- together with interest from 29.03.2016. As against the award of the Sole Arbitrator, an appeal was filed before the Three Member Tribunal, as per the By-Laws, Rules and Regulations of Bombay Stock Exchange of India Limited. The Three member Arbitral Tribunal considered the rival contentions

and finally found that the award passed by the learned Arbitrator did not suffer any infirmities and upheld the same. Aggrieved by that, the above Original Petition has been filed under Section 34 of the Arbitration and Conciliation Act.

6. The main contention of the learned counsel for the petitioner herein is that the respondent herein is also aware of the entire proceedings and he is bound to maintain the minimum margin, which he has not done so. Despite the intimation given by the petitioner herein, and when there is specific covenant between the parties, the petitioner herein alone cannot be blamed for squaring off. The contract itself indicates that the petitioner herein has a right to square off the shares. The decision to square off was taken only when there was margin violation by 90% and that has not been taken note by the learned Appellate Tribunal. Hence, the learned counsel submitted that the award cannot be sustained in the eye of law.

7. Heard the respondent who appeared as party in person through video conferencing.

8. The learned sole Arbitrator has considered Clauses 12 and 13 of the contract and allowed the claim.

9. On appeal, the learned Three Member Tribunal found that the contract is binding on the parties. This Court cannot re-appreciate the same and this Court finds no reason to interfere with the award passed by the Arbitral Tribunal. The Tribunal has considered all the relevant clauses binding on the parties and found that the petitioner herein is liable to pay the loss caused to the respondent herein. This Court cannot re-appreciate the entire evidence in a proceedings under Section 34 for the reason that some other interpretation is also possible by going through the contract.

10. In such view of the matter, this Court does not find any of the grounds set out under Section 34 of the Arbitration and Conciliation Act to interfere the well reasoned award and the appellate order. Accordingly, the above original position is dismissed. It is also stated by both sides that Rs.13,247/- alone is to be paid, which is not disputed by the respondent herein. It is made clear that the remaining amount shall be paid.

11. This Court did not find any merit in the original petition. Accordingly, the original petition is dismissed.

06.07.2021

(½)

msv

N. SATHISH KUMAR,J.

msv

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