IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **23.11.2022**

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THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

Arb.O.P.(Comm.Div.) No.288 of 2021

M/s.Alice Blue Financial Services Private Limited,
No.153/2, 3rd Floor, MRB Arcade,
Bengalur Main Road, Dwaraka Nagar,
Yelahanka, Bengaluru-560 063. ... Petitioner

vs.

Shri.Jeeva Ratnam Vangari ... Respondent

PRAYER: Arbitration Original Petition filed under Section 34(1)(2)(2A)(3) of the Arbitration and Conciliation Act, 1996 pleased (a) to set aside the Award dated 16.01.2021 and correction dated 25.01.2021 in Arbitration Matter No.MCX/ARB/5239A/20 in entirety and allow the arbitration application of the petitioner company as prayed for; ((b) to direct the respondent to pay costs and (c) to grant such further reliefs as this Hon'ble Court may deem fit under the circumstances of the case.

For Petitioner : Mr.P.Arumugarajan

For Respondent : Ms.K.Jamuna
Ms.Renuka Devi

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ORDER

The petitioner assails an arbitral award dated 16.01.2021 (the Award). The petitioner is a trading member of the Multi Commodity Exchange of India Limited (MCX). The respondent is a client of the petitioner. The respondent became a client of the petitioner in the year 2019 by executing a client registration form.

2. The dispute relates to trades in crude oil derivatives on 20.02.2020. The respondent had traded in 850 lots of crude oil derivatives on intraday basis on the said date. Out of the 850 lots, 650 lots were squared off before 7.25 p.m. on the said date. The remaining 200 lots could not be squared off on the same day and were squared off on the following day. This resulted in an alleged loss of Rs.18,35,000/- to the respondent. Therefore, the respondent lodged a complaint with the Grievance Redressal Committee

(GRC) of the MCX. By order dated 20.03.2020, the GRC concluded that the trading member should have squared off the position on 20.02.2020 if the client had failed to square off the position. On that basis, the trading member was directed to pay a sum of Rs.18,35,000/- to the complainant/respondent herein.

3. The matter was carried to the sole arbitrator appointed as per the byelaws of the MCX. By the Award, the arbitral tribunal affirmed the decision of the GRC and directed the petitioner to pay a sum of Rs.18,35,000/-. The Award is impugned herein.

4. Learned counsel for the petitioner invited my attention to the client registration form. In particular, he pointed out that the client acknowledged and declared that he had received and accepted the contents of the rights and obligations document, risk disclosure document, the policies and procedures document, RMS policy, etc. By drawing reference to the risk disclosure document, he pointed out that the client had accepted that trading over the Internet involves uncertain factors and that no

representation or warranty was provided that the Internet Based Trading (IBT) service would be available at all times without interruption. As per the Risk Management Policy of the petitioner/broker, he pointed out that any open intraday position, which could not be squared off on the same day on account of technical glitches, could be squared off on the next trading day. According to learned counsel, this clause from the policy was placed before the arbitral tribunal and is referred to in the arbitration application of the petitioner, but was completely disregarded by the arbitral tribunal.

5. Learned counsel also points out that the petitioner had sent communications to the respondent on 20.02.2020 and called upon the respondent to infuse funds so as to ensure that the requisite margin was maintained. The squaring-off obligation was triggered because the respondent did not infuse sufficient funds to maintain the margin.

6. Learned counsel for the respondent refuted these contentions. She submitted that the respondent became a client of the petitioner in the year 2019. At that point of time, the risk management policy and, in specific, the

provision relating to squaring-off on the following trading day was not included in the risk management policy. The policy relied upon by the petitioner now was not provided to the respondent.

7. Learned counsel further pointed out that the GRC took into account the fact that the trading member was under an obligation to square- off all open positions on the same day. The arbitral tribunal also took into consideration the failure of the trading member to square-off the open position before close of trading hours on 20.02.2022. Consequently, it is submitted that the Award does not call for interference.

8. After the order was dictated in Court on 16.11.2022 but before the order was finalized and signed, learned counsel for the respondent mentioned the matter and requested that it be posted today. At the hearing today, learned counsel for the respondent has placed before me a list of dates and events. By relying thereon, she submits that the systems were functional at the time of commencement of trading. She also points out that the broker was under an obligation to square off the positions on the same

date in case the respondent / client did not maintain the requisite margin. By referring to paragraph 8(viii)(d) of the award she points out that this aspect was noticed by the arbitral tribunal while arriving at a conclusion. By relying upon an order passed by the Securities Appellate Tribunal (SAT) in Appeal No.196 of 2020 between the petitioner herein and the National Stock Exchange of India Limited she contends that the petitioner is a chronic violator of applicable stock exchange regulations. Accordingly, the above contentions are also taken into account.

9. The question that arises for consideration is whether the Award calls for interference on account of disregarding vital documents. The petitioner has placed on record the client registration form, which contains the following clause:

> *CONSENT FOR ADDITIONAL RIGHTS & OBLIGATIONS / TARIFF SHEET*
>
> *I acknowledge and declare that I have received physical/electronic, read and understood, acknowledge and agreed to the contents of-*
>
> *1. The rights and obligations document [Part-A (page 1-4)]*
>
> *2. The risk disclosure document [Part-A (page5-9]*

3. The policies and procedures [Part-A (page9-11)]

4. RMS Policy [Part-A (page12-13)]

5. The additional rights and obligations document [Part-A (page 14-18)]

6. Terms And Conditions for availing Transaction Using Secured Testing (TRUST) Service offered by CDS [Part-B (page1)]

7. Rights and Obligations of beneficial Owner and Depository Participant as Prescribed by SEBI and Depositories [Part-B (page2-3)]

10. The petitioner also placed on record the risk management/assessment policy/system. The said document contains the following note:

*"*Note:*

Intraday square off timings can change based on the discretion of our risk management department. A Call & Trade charge of ?20+GST Charges will be applicable for all positions squared off by our RMS desk, including auto square off.

If any intraday position or an MIS trade is not squared off on the same day due to any link or system *failure or any risks associated with Internet/wireless based trading which may occur at the end of the Client, ALICEBLUE or the respective Exchange, it shall be treated as a Cash and Carry ("CNC") or carried forward to the next trading day. In case of such a situation arising, the onus of squaring off the position will be on the Client. Our RMS desk shall square off any such position, without the requirement of a margin call, if the necessary cash/required margin is not available in the Client's account."*

11. On examining the arbitration application of the petitioner, it is evident that the petitioner has drawn reference to the risk disclosure document and, in fact, reproduced the relevant clause with regard to the uncertainty involved in IBT. The petitioner also referred expressly to the risk management/assessment policy/system and, in particular, to the note in respect of squaring off of intraday products and open positions relating thereto. In spite of these documents being placed before the arbitral tribunal, reference to these documents is conspicuous by its absence on perusal of the Award.

12. In paragraph [viii] of the Award, the arbitral tribunal recorded its findings. In clause (a) of paragraph (VIII), the arbitral tribunal recorded that the petitioner herein faced technical glitches in the system on the night of 20.02.2022. In paragraphs (d) and (g), the arbitral tribunal held as under:

> *"(d) The GRC Member rightly, after looking into all these facts put forward to the Applicant and Respondent, concluded that the Trading Member could not square off the open position before close of the trading hours as per their RMS system and as per their own submissions in writing. He further correctly added that even if the client did not square off the positions, the trading Member ought to have done so for this participation MIS trade in the absence of required margin. Accordingly the GRC Member, taking into consideration of all the above facts directed the Trading Member to pay an amount of Rs.18,35,000/- to Shri. Jeeva Ratnam Vangari, Client.*
>
> *(g) In view of the position mentioned in the above paragraphs and in the circumstances of the case, I am inclined to agree with the decision of the GRC Member and order payment of Rs.18,35,000/- by M/s.Alice Blue Financial Services Limited, Trading Member, Applicant, to Shri. Jeeva*

Ratnam Vangari, Client, Respondent."

13. From the above extracts, it appears that the arbitral tribunal has not applied its mind independently and has instead adopted the conclusions of the GRC.

14. The contentions of learned counsel for the respondent that orders adverse to the petitioner were passed by the SAT in unrelated proceedings is not germane to the determination of this challenge. The contention that the broker was under an obligation to square off open intraday positions on the same day is correct, but the petitioner relies on the relaxation for technical glitches as per documents binding on the parties.

15. An arbitral award is liable to be interfered with if the arbitral tribunal disregards contractual stipulations or vital evidence. On account of disregarding the relevant clauses of the risk disclosure document and the risk management/assessment policy/system, in spite of the same being placed before the arbitral tribunal and expressly referred to in pleadings, the

Award is liable to be set aside.

16. Accordingly, Arb.O.P.No.288 of 2021 is allowed by setting aside the award dated 16.01.2021. In the facts and circumstances, there will be no order as to costs.

23.11.2022

Index : Yes / No
Internet : Yes / No
rna

SENTHILKUMAR RAMAMOORTHY,J

rna

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