



OSA.No.154 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 03.07.2023	Delivered on 17.07.2023
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CORAM

THE HONOURABLE MR.JUSTICE **R.SUBRAMANIAN**
and
THE HONOURABLE MRS.JUSTICE **R.KALAIMATHI**

Original Side Appeal No.154 of 2010

C.Kumaraswamy

... Appellant

Versus

1. Aditya Birla Money Ltd.,
Ali Towers, 55 (Old No.22)
Greens Road, Chennai 600 006.
Rep. by its Executive Director,
Mr.P.B.Subramaniyan

Amended as per order dated 05.12.2016
made in CMP 17952/16

2. Mr.S.Subramanian, B.A.B.L.,
(Civil Judge, Sr.Divn-Retd)
Presiding Arbitrator,
National Stock Exchange of India Ltd.,
7th Floor, Arihant NITCO Park,
90, Dr.Radhakrishnan Salai,
Mylapore, Chennai 600 004.



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3. Mr.D.Bhaskar, B.A.B.L.,
(Civil Judge, Sr.Divn-Retd)
Arbitrator,
National Stock Exchange of India Ltd.,
7th Floor, Arihant NITCO Park,
90, Dr.Radhakrishnan Salai,
Mylapore, Chennai 600 004.

4. Mr.C.Rangamani, B.Sc.B.G.L.,
(G.M.United India Insurance-Retd)
Arbitrator,
National Stock Exchange of India Ltd.,
7th Floor, Arihant NITCO Park,
90, Dr.Radhakrishnan Salai,
Mylapore, Chennai 600 004.

.... Respondents

PRAYER: Original Side Appeal filed under Order XXXVI Rule 1 of the Original Side Rules read with Clause 15 of the Letters Patent, to set aside the judgment and decree dated 30.09.2009 made in O.P.No.844 of 2005.

For Appellant : Mr.G.Ashokapathy
for M/s. Pass Associates

For Respondents : Mr.P.V.Balasubramaniam, Senior Counsel
for Mr.BFS Legal, for R1

RR2 to 4 - Arbitrators



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JUDGMENT

(Judgment of the Court was delivered by R.SUBRAMANIAN, J.)

The instant Appeal under Section 37 of the Arbitration and Conciliation Act 1996, is filed at the behest of the claimant/applicant, who had sought for an Arbitration of the dispute relating to the sale of his shares by the first respondent herein, purportedly pursuant to the 'stop loss orders' issued by him.

2. The facts that led to the filing of the Appeal are as follows:

2.1. The first respondent is a member of the National Stock Exchange of India and the appellant is a Constituent Trading Member of the first respondent. The appellant was mainly engaged in trading Futures and Options. It is admitted that the appellant is one of the valuable trading members of the first respondent and he has been transacting in crores of rupees on a daily basis.

2.2. While things stood thus on the fateful day i.e. on 05.01.2005,



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the terminals of the first respondent were deactivated, allegedly, for its failure to maintain a trading balance with the National Stock Exchange. As soon as the anomaly was rectified and the terminals were reactivated, the first respondent had closed several open positions that were held by the appellant which led to a heavy financial loss to the appellant as the market saw a huge downward trend on the said date.

2.3. Contending that the action of the first respondent in closing the positions without honouring the stop loss orders placed by him is in violation of the contract and hence the first respondent is liable to make good the loss, the appellant sought for Arbitration as per Regulation 5.9.(A) of the Regulations of the National Stock Exchange. The statement of claim annexed to the application seeking a reference *inter alia* alleges that the appellant has been using the respondent's portals and his turnover runs to several crores of rupees. It is claimed that the appellant had placed stop loss orders (a stop loss order is generally placed away from the current price of the stock/contract and such order gets activated if and when the stock/contract reaches or trades through



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the stock price). When the price reaches the predetermined price or trade through such price the stop loss orders are implemented for all open positions.

2.4. On 05.01.2005 the entire terminals of the respondent crashed or lost their connectivity at about 11.40 a.m. The stop loss orders were not triggered at that time. According to the appellant, he had immediately instructed the Chief of the appellant at Tiruppur, that he has placed stop loss orders for all open positions in the market at the opening itself and if there is any problem in the net work, the appellant would be responsible for the losses. It is also claimed that there was a margin amount around Rs.25,00,000/- in the client account code of the appellant at the time when the terminals got deactivated. In the afternoon on 05.01.2005, it is claimed that the appellant was informed by the Chief of the first respondent at Tiruppur that all his stop loss orders have been cancelled by the National Stock Exchange and the first respondent is taking steps to sell the positions in the market and close the positions. This was unacceptable to the appellant since the market had crashed by



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more than 100 points at that time. Despite his objections, the first respondent had gone ahead with closing the positions thereby causing a huge loss to the tune of about Rs.30,00,000/-.

3. This claim was resisted by the first respondent contending that the deactivation was only for 9 minutes between 11.41 a.m. and 11.50 a.m. on 05.01.2005. It is claimed that the appellant had not placed stop loss orders after the terminals got reactivated and in view of the short fall or falling prices, the first respondent had no other go but to close positions to avoid further loss.

4. A rejoinder was filed to the counter filed by the first respondent reiterating the averments made and also refuting the charge that the appellant was a margin defaulter on 05.01.2005 and the margin short fall in his account was to the tune of Rs.7,36,559.31, even assuming that the appellant was a margin defaulter that has nothing to do with the failure on the part of the first respondent to honour the stop loss orders.



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5. The Arbitration Tribunal consisting of three members went into the issue and found that the deactivation was due to the failure on the part of the first respondent to maintain the margin, consequently all the orders that were entered by the first respondent were cancelled by the National Stock Exchange. The period during which the system was deactivated was also in dispute. The Arbitrators, however, found that though the deactivation was lifted at around 11.47a.m., the staff of the Tiruppur Branch of the first respondent did not receive any message or they did not take steps for reactivation. Therefore, the Arbitrators found that the terminal at Tiruppur was deactivated for nearly an hour.

6. Addressing the non-honouring of the stop loss orders by the respondent, the Arbitration Tribunal found that though the appellant had made stop loss orders even at the close of business on 04.01.2005, the first respondent had not chosen to honour the stop loss orders and the stop loss orders were cancelled because of the fact that the system was deactivated. Unfortunately around the time when the system was deactivated, the market saw a sharp fall. The Arbitrators rejected the



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claim of the respondent that there was a margin short fall on the part of the appellant which contributed to the margin short fall on the part of the first respondent which led to the deactivation.

7. The Arbitral Tribunal also found that because of the deactivation the appellant was prevented from selling at the crucial time to escape loss. Therefore, the Arbitral Tribunal came to the conclusion that the first respondent was responsible for the loss. On the quantum of the loss, the Arbitral Tribunal found that the statement of accounts filed by the applicant detailing the loss at Rs.30,97,884.05 was acceptable and after rejecting his claim for refund of the sum of Rs.5,00,000/- paid on 18.01.2005 and after deducting the triggered price difference of Rs.52,781/-, the Arbitral Tribunal found that the appellant would be entitled to a sum of Rs.30,97,884.05 as the loss. Accordingly, an award came to be passed by the Arbitral Tribunal.

8. This triggered an application under Section 34 of the Arbitration and Conciliation Act 1996, before this Court in OP No.844 of 2005 at the



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instance of the first respondent seeking to set aside the award. In the said application it was mainly contended that the Arbitral Tribunal had overlooked Clause 10 of the Member Constituent Agreement which provides for maintenance of margins and also empowers the member from preventing a constituent from trading.

9. The appellant filed a counter contending that Clause 10 would not have any application and it is the duty of the first respondent to honour the stop loss orders, particularly when the appellant is trading in futures and options. He again reiterated that the stop loss orders were placed at the close of business hours on 04.01.2005 itself. It is also the contention of the first respondent, before the Section 34 Court that, the Tribunal has awarded more than what was claimed which is unjust and improper. The limited jurisdiction of the Court when in applications under Section 34 of the Arbitration and Conciliation Act was also taken as a ground for rejecting the application.

10. The Hon'ble Single Judge (Hon'ble Mr.Justice N.Paul



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Vasanthakumar, as he then was) had concluded that the first respondent had in fact required all its customers to re-enter the stop loss orders after the system was reactivated on 05.01.2005. The Section 34 Court also found that the non-compliance with the margin requirements by the appellant had also contributed to the consequent failure on the part of the first respondent to maintain margins. The Section 34 Court, however, found that the Arbitrators had not considered implication arising out of Clause 10 of the Member Constituent Agreement entered into between the appellant and the first respondent. It also concluded that the failure on the part of the Arbitrators to give importance to Clause 10 is contrary to the agreements signed by the parties.

11. The Section 34 Court also found that the stop loss orders issued by the appellant were only seven in number and in the absence of any further stop loss orders after reactivation, the Arbitral Tribunal was not justified in granting the entire loss claimed by the appellant. On the above findings, the Section 34 Court set aside the award and remitted the matter to the Arbitral Tribunal for reconsideration. Aggrieved the



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appellant has come up with this Appeal under Section 37 of the Arbitration and Conciliation Act, 1996.

12. We have heard Mr.G.Ashokpathy, learned counsel appearing for M/s.Pass Associates for the appellant and Mr.P.V.Balasubramaniam, learned Senior Counsel appearing for M/s.BFS Legal for the first respondent. Respondents 2 to 4 being the Arbitrators are held unnecessary parties to the Appeal.

13. Mr.G.Ashokpathy, learned counsel appearing for the appellant would contend that the Section 34 Court has travelled beyond its jurisdiction to set aside the award. Contending that the grounds for setting aside the award under Section 34 of the Arbitration and Conciliation Act are very very limited and it does not allow the Court to go into the merits of the rival claim or to re-appreciate the evidence. The learned counsel relying upon the judgment of the Hon'ble Supreme Court in *Associated Builders v. Delhi Development Authority*, reported in *(2015)3 SCC 49*, would contend that none of the grounds available to



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a Court to set aside an award under Section 34 have been made out in the case on hand. He would also submit that the Hon'ble Supreme Court has categorically held that the Court exercising jurisdiction under Section 34 does not have the power of remand, there cannot be a remand of an Arbitration proceedings, after setting aside the award under Section 34 of the Arbitration and Conciliation Act, 1996, unless the provisions of Section 34(4) are complied with.

14. In *Associated Builders v. Delhi Development Authority*, the Hon'ble Supreme Court had cautioned a Court exercising jurisdiction under Section 34 of the Arbitration and Conciliation Act, 1996 is not an Appellate Court. It has also been pointed that it is neither a Court of Review, the window that has been provided under Section 34 for the Court to set aside an award is a very small window and unless the requirements of Section 34 are completely satisfied an award cannot be set aside. Section 34 of the Arbitration and Conciliation Act, 1996, which provides for recourse against arbitral awards/setting aside awards, reads as follows:



34 Application for setting aside arbitral award. —

(1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3).

(2) An arbitral award may be set aside by the Court only if—

(a) the party making the application establishes on the basis of the record of the arbitral tribunal that—

(i) a party was under some incapacity, or

(ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or

(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration:

Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which



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contains decisions on matters not submitted to arbitration may be set aside; or

(v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or

(b) the Court finds that—

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or

(ii) the arbitral award is in conflict with the public policy of India.

Explanation 1. — For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India if, —

(i) the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81; or

(ii) it is in contravention with the fundamental policy of Indian law; or

(iii) it is in conflict with the most basic notions of morality or justice.

Explanation 2. — For the avoidance of doubt, the test as to



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whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.

(2-A) An arbitral award arising out of arbitrations other than international commercial arbitrations, may also be set aside by the Court, if the Court finds that the award is vitiated by patent illegality appearing on the face of the award:

Provided that an award shall not be set aside merely on the ground of an erroneous application of the law or by re-appreciation of evidence.

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal:

Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.

(4) On receipt of an application under sub-section (1), the Court may, where it is appropriate and it is so requested by a party, adjourn the proceedings for a period



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of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of arbitral tribunal will eliminate the grounds for setting aside the arbitral award.

5. An application under this section shall be filed by a party only after issuing a prior notice to the other party and such application shall be accompanied by an affidavit by the applicant endorsing compliance with the said requirement.

6. An application under this Section shall be disposed of expeditiously, and in any event, within a period of one year from the date on which the notice referred to in sub-section (5) is served upon other party.”

15. On a reading of the above provision, the following could be broadly stated to be the grounds for setting aside an award:

- (i) A party was under some incapacity;
- (ii) The arbitration agreement itself being rendered invalid;
- (iii) Non-compliance with principles of natural justice;
- (iv) The award travels beyond the scope of the Arbitration agreement;



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- (v) The composition of the Arbitral Tribunal is not in tune with the agreement between the parties;
- (vi) The dispute not being arbitrable; and
- (vii) The Arbitral Award is in conflict with the public policy of India.

16. After the amendment that was introduced by Act 3 of 2016, another ground viz. Patent Illegality appearing on the face of the award was introduced. Apart from the above seven grounds that are provided under Section 34 of the Arbitration and Conciliation Act, no other ground or reason could be invoked by a court exercising jurisdiction under Section 34 to set aside an award. The Hon'ble Supreme Court in *Associate Builders v. Delhi Development Authority*, rendered prior to the amendment had set out the grounds on which an award can be assailed and has pointed out that none of the grounds contained in Section 34 (2)(a) of the Arbitration and Conciliation Act, deal with the merits of the decision rendered by an Arbitral award. It also pointed out that it is only when the award can be said to be in conflict with the public policy of India, the merits of the arbitral award can be looked into under certain specified circumstances.



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17. The natural justice principles were also have to be read into Section 34 of the Arbitration and Conciliation Act, while the Court decides on the validity or otherwise of the award. The award can be set aside, if it is perverse. The test for perversity has laid down by the Hon'ble Supreme Court is to see whether a finding of fact has been arrived at ignoring or excluding relevant material or by taking into consideration irrelevant material or if the finding so outrageously defies logic as to suffer from the vice of irrationality incurring the blame of being perverse, then the finding is rendered infirm in law. It is seen from the judgment of the Hon'ble Supreme Court in ***Excise and Taxation officer cum Assessing Authority v. Gopi Nath & Sons***, reported in ***1992 Supp (2) SCC 312***, the Hon'ble Supreme Court had pointed out that a working test of perversity is as stated above. In ***Kuldeep Singh v. Commissioner of Police***, reported in ***(1999) 2 SCC 10***, the Hon'ble Supreme Court has laid down a test for perversity as follows:

“10. A broad distinction has, therefore, to be



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maintained between the decisions which are perverse and those which are not. If a decision is arrived at on no evidence or evidence which is thoroughly unreliable and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, howsoever compensation it may be, the conclusions would not be treated as perverse and the findings would not be interfered with.””

18. In *SSangyong Engineering and Construction Company Limited v. National Highways Authority of India*, reported in (2019) 15 SCC 131, the Hon’ble Supreme Court has dealt with the meaning of the word “Public Policy of India”. While discussing the permissibility of interference on specific sub grounds of “Public Policy of India”, the Hon’ble Supreme Court examined the permissibility of interference under the following grounds:



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- (i) The Arbitrator not adopting a Judicial Approach;
- (ii) Breach of principles of natural justice;
- (iii) Contravention of statute not linked to public policy or public interest as being a patent illegality under Section 34 (2)(A) and the most basic notions of justice.

19. We must at once point out that the ground of perversity enacted under Section 34(2)(A) may not be strictly available to us or to the Court exercising power under Section 34 in the case on hand since the decision was rendered prior to the amendment being made. While dealing with the above the Hon'ble Supreme Court had summarized the law and concluded that the expression "Public Policy of India" would mean fundamental policy of Indian Law as explained in paragraph 18 and 27 of *Associate Builders v. Delhi Development Authority*, referred to supra. We have to therefore necessarily examine the case on hand on the principles set out by the Hon'ble Supreme Court in *Associate Builders v.*



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Delhi Development Authority and SSangyong Engineering and Construction Company Limited v. National Highways Authority of India.

20. We may also usefully refer to the judgment of the Division Bench of this Court in ***Transtunnelstroy – Afcons (JV) Comprising of Transtunnelstroy Ltd., rep by S.Sivamani v. Chennai Metro Rail Ltd***, reported in (2023 2 Mad LJ 305), wherein the Division Bench had held that there is no power of remand in a Court exercising jurisdiction under Section 34 of the Arbitration and Conciliation Act, unless the requirements of Sub Section 4 of Section 34 are complied with. Reference can also be made to judgment of Hon'ble Mr.Justice M.Sundar, in ***Bharat Heavy Electricals Ltd v. M/s.P & R Infraprojects Ltd.***, made in Arbitration OP (Com. Div.) No.292 of 2022, dated 13.07.2022 wherein the learned Judge after referring to the judgments of the Hon'ble Supreme Court in ***Associate Builders v. Delhi Development Authority*** as well as ***SSangyong Engineering and Construction Company Limited v. National Highways Authority of India***, held as



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follows:

“The principle qua a legal drill under Section 34, set out in a nutshell is, it is neither an appeal nor a revision. It is not even a full-fledged judicial review. It is a mere challenge to an award within the pigeon holes adumbrated under Section 34. If a protagonist of Section 34 is able to demonstrate to the Court that his claim fits into, nay fits snugly into one or more of the pigeon holes, the protagonist will be entitled to have the arbitral award dislodged. If that not be so, the Court will not venture into disturbing the arbitral award by judicial intervention. This in effect is a fine and delicate balance between minimum judicial intervention principle ingrained in Section 5 read with sanctity of finality of arbitral award ingrained in Section 35 on one side and default provision i.e., Section 34 predicated on judicial review which is an essential ingredient of Rule of Law on the other.”

21. In the light of the above observations of the Hon’ble Supreme Court as well as this Court, we will have to examine as to whether the learned Single Judge was right in setting aside the award on the sole ground that the Arbitrators had overlooked the provisions of a particular



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Clause in the agreement. In deciding as to whether the award is to be set aside or not, we shall not go into the merits of the award, unless we find that any one of the grounds set out in Section 34 of the Arbitration and Conciliation Act, are satisfied and the case fits into any one of the 7 pigeon holes that were available prior to introduction of the ground of Patent Illegality by Act 3 of 2016.

22. If we are to look into the order made in the OP setting aside the award, we must confess that we are unable to find any one of the grounds set out in Section 34 of the Arbitration and Conciliation Act, having been invoked by the Hon'ble Judge. The sole ground on which the award has been set aside is that the Arbitrators have not considered the implications of Clause 10 of the Agreement in their award. Clause 10 of the Agreement deals with payments, margins and deliveries and it reads as follows:

"10. Payments, Margins and Deliveries:

The Constituent shall deposit with the member such sums as may be prescribed by the member from time to time as margin in addition



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to the deposits in the form of monies, securities/contracts or other property which may be required to open and/or maintain his/her account. The constituent shall from time to time deposit with the member such additional margin as may be required by the member and/or as may be required under SEBI Guidelines/Notifications/Circulars and the Bye Laws, Rules and Regulations, Notifications, Circulars of the Exchanges, in the form of monies or tradable securities/contracts which are acceptable to the member. The constituent shall also provide 100% comfort on mark to market losses at any given point of time including intra-day adjustments.

The member is entitled at its discretion to prevent the constituent from trading on any of the Segments of the Exchanges unless the constituent deposits the margin and/or the additional margin and/or 100% comfort on mark to market loss.

The member is entitled to, without prior notice and its absolute discretion, adjust any dues, including but not limited to any loss or



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damages caused to the member, from the constituent against the margin and/or any other balance standing to the credit of the constituent in the books of accounts of the member, and/or additional margin, but not limited to any. The constituent hereby irrevocably authorises the member to sell all or any of the securities/contracts of the constituent as are available with the member (whether as margin, additional margin or otherwise) and adjust the net sale proceeds against any of the dues, (including but not limited to any loss or damages caused to the member), of the constituent. The member has the absolute discretion whether or not to sell/close-out the securities/contracts and the time of the sale. The member is not liable to the constituent for any loss or damage caused to the constituent by such adjustment/closing-out/sale.

The constituent shall ensure at all times that sufficient funds are available in his/her account. Even if sufficient funds are not available and an order(s) is/are processed, then the constituent shall immediately transfer the



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requisite funds into the member's bank account so as to enable the member to meet the pay-in obligations of the constituent. If such payment is not received by the settlement date or any intimated date, whichever is earlier, then the member shall have the right to square-off such positions of the constituent even without prior notification to the constituent. The constituent is also liable to compensate the member for any resulting loss thereof.

The constituent shall ensure at all times that sufficient quantity of securities are available his/her depository account before placing an order of sale. Even if an order of sale is executed without the constituent having the requisite number of shares, then the constituent shall endeavour to arrange for the delivery of such shares by the settlement date or any intimated date, whichever is earlier. If the securities are not received on or before the settlement date/any intimated date or if the securities so received are in a non-deliverable state or due to any other reason whatsoever, the securities will be auctioned or closed out as



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per the rules of the Exchanges and the constituent shall be responsible for any resulting loss thereof.

The member is further entitled to, without prior notice and its absolute discretion, adjust any amount standing to the credit of the constituent in the books of accounts of the member and/or the amounts that are paid by the constituent against any of the dues including but not limited to any loss or damage caused to the member of the constituent arising out of the transactions carried out by the member on behalf of the constituent in any of the segments on all exchanges of which the member is registered.

The constituent shall by the end of the next working day from date of the respective transaction (a) pay the member the moneys due in case of purchase of securities or (b) deliver to the member the securities in case of sale of securities or (c) pay the member the net amount due in case of set off of sale and purchase transactions.

If the constituent fails to deliver to the



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member any securities that have been sold by or for the constituent when required by the member, then the member shall be entitled (but not bound to), in its own discretion and at the risk and cost of the constituent, borrow or otherwise obtain the securities necessary to enable the member to make delivery.

The constituent is fully responsible for effecting payments and/or deliveries of securities against his/her pay-in obligations and the member shall not be responsible for problems arising out of late pay-in of funds/securities or non-pay-in of funds/securities.

The constituent understands that the nature of the trading account is akin to that of a running account and as such, the debit and credit position in the said account will be fluctuating on a day-to-day basis. Whenever amounts get accrued to the aforementioned trading account either by way of pay-out of funds from the Exchanges or by way of square-up credits (received by it either from Exchange auction process or through Internal auction



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process), or by way of dividends or any other amounts that get accrued to account of the constituent through any other mode, the constituent authorises the member to adjust the same against any debit that is due and payable by the constituent.

Likewise, whenever, the constituent gets/effects delivery of securities directly from/to the Exchanges or if any security belonging to the constituent, gets accrued in the account of the member through any other mode, the constituent hereby authorises the member to adjust the same against his/her Pay-in Obligations (if any) and/or retain the same towards margin against his/her future transactions.

Furthermore, the constituent hereby requests the member to make payments (as against the accrued amounts in the aforementioned trading account) or deliver securities to him/her only on receiving specific request made by the constituent to that effect.



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The constituent shall make all payments to the member, only through account payee cheques/demand drafts drawn in favour of the member. The constituent accepts that payments by cash are solely and entirely at the risk of the constituent. Cash payments made by the constituent are not binding on the member even if receipts are issued by any employee/staff/authorised persons of the member. Cash payments will be binding on the member only when such payments are given credit in the statement of accounts issued by the member to the constituent."

23. The Arbitrators have rendered a specific finding that the first respondent had acted in contravention of the instructions of the constituent viz. the appellant. They have as of fact held that the first respondent had not executed the stop loss orders which it was bound to. The closing of positions without execution of stop loss orders has resulted in a monetary loss to the appellant and therefore, the first respondent is liable for the said loss. The Hon'ble Single Judge had



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observed that the Arbitrators had overlooked Clause 10 of the Agreement, once the Arbitrators have taken note of Clause 10 and had pronounced upon it, it was not for the Court sitting under Section 34 of the Arbitration and Conciliation Act, to set aside the opinion or award of the Arbitrators on the ground that a different interpretation was possible.

24. The other ground for setting aside the award is that there are only seven stop loss orders and therefore the award of the entire amount as claimed is not justified. This again is in breach of the jurisdiction or powers conferred on the Court under Section 34 of the Arbitration and Conciliation Act. As we had already pointed out the grounds that are available under Section 34 of the Arbitration and Conciliation Act, are very very limited and the Court cannot vary or set aside the award on the ground a different interpretation is possible. We are therefore satisfied that both the grounds invoked by the Arbitrator for setting aside the award are against the provisions of Section 34 of the Arbitration and Conciliation Act, and as such the order of the Hon'ble Judge needs to be set aside and it is accordingly set aside.



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25. The Appeal will stand **allowed**, the order of the Hon'ble Judge setting aside the award and remitting the matter to the same Tribunal will stand set aside. However, in the circumstances we make no order as to costs.

(R.SUBRAMANIAN, J.) (R.KALAIMATHI, J.)
17.07.2023

jv

Index : Yes
Internet : Yes
Neutral Citation : Yes
Speaking Order

To

The Section Officer,
Original Side,
High Court of Madras



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R.SUBRAMANIAN, J.

and

R.KALAIMATHI, J.

jv

Pre-Delivery Judgment in

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