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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision: 06.07.2023

+ **FAO (COMM) 184/2022 & CM APPL. 52318/2022**

SMC GLOBAL SECURITIES LIMITED ..... Appellant  
Through: Mr. Shreyas Jain, Adv.

versus

PANKAJ SINGH @ LOVE KUMAR & ANR. .... Respondents  
Through: None.

**CORAM:****HON'BLE MR. JUSTICE VIBHU BAKHRU****HON'BLE MR. JUSTICE AMIT MAHAJAN****VIBHU BAKHRU, J.**

1. The appellant (SMC Global Securities Ltd.) has filed the present appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (hereafter '**the A&C Act**') impugning an order dated 05.09.2022 (hereafter '**the impugned order**'), passed by the learned Commercial Court in ARBTN No.5350 of 2017 captioned ***SMC Global Securities Ltd. v. Pankaj Singh (earlier known as Love Kumar) and Anr.*** By way of the impugned order, the learned Commercial Court had dismissed the appellant's application under Section 34 of the A&C Act for setting aside the arbitral award dated 15.06.2017 (hereafter '**the impugned award**') rendered by the Appellate Arbitral Tribunal constituted under the National Stock Exchange (NSE) Bye Laws, Rules and Regulations (hereafter '**the Appellate Arbitral Tribunal**'). In terms of the impugned award, the Appellate Arbitral Tribunal, had



upheld an arbitral award dated 16.03.2017, made by the learned Sole Arbitrator (hereafter '**the Arbitral Tribunal**'), allowing respondent no. 1's claim to the extent of ₹1,09,706/-.

2. The appellant is registered as a company under the provisions of the Companies Act, 1956, having its registered office at 11/6B Shanti Chambers, Pusa Road, New Delhi- 110005. The appellant is a stock broker and a trading member of the National Stock Exchange (NSE) and the Bombay Stock Exchange (BSE).

3. Respondent no.1 (Mr. Love Kumar, now known as Mr. Pankaj Singh) is an investor and had opened an account with the appellant on 24.12.2015 in cash, Futures and Options (F&O), and currency segment of the NSE and the BSE, in order to avail the appellant's services as a broker. He was provided with the unique client code, OFG0094 along with the details of his trading account.

4. The dispute between the parties relates to two transactions. First, is a transaction in the shares of Glenmark Pharmaceuticals (relating to Contract No. A16Q00809025 dated 12.08.2016). This transaction had resulted in a loss of ₹11,306.31/- (Rupees eleven thousand three hundred six and thirty-one paise only). According to respondent no.1, he had not authorised purchase or sale of the shares in question; therefore, could not be mulcted with the loss arising from this transaction. The second transaction relates to the sale of two lots of shares (3000 x 2) in State Bank of India Ltd. (SBI) in the future segment expiring on 25.08.2016 (SBI FUTSTK 25-Aug-16). Respondent no.1



had purchased the said two lots and claims that the same were unauthorisedly sold by the appellant on the same date. The value of the said shares had increased on the same date and therefore, the appellant claims that it was entitled to be compensated on account of the profit that it would have earned. According to the respondent no.1, the appellant was not instructed to square up the said position.

5. Respondent no.1 raised his grievances against the said transactions on 16.08.2016 and again on 21.08.2016. And, on 03.10.2016 lodged a complaint with the Securities and Exchange Board of India (SEBI) regarding the same.

6. Thereafter, the NSE referred the disputed transaction to the Investors Grievance Redressal Panel (IGRP) for conciliation which was scheduled on 25.10.2016. At the said meeting, the parties had tried to resolve the said dispute amicably. However, the Conciliation failed and the said proceedings were closed.

7. Thereafter, on 18.01.2017, respondent no.1 invoked the arbitration clause under the Rules and Bye Laws of the NSE. The NSE referred the disputes to an Arbitral Tribunal comprising of a Sole Arbitrator.

8. Before the Arbitral Tribunal, respondent no.1 raised two claims: Claim no.1 for a sum of ₹11,306.31/- on account of loss on account of sale and purchase transactions in the shares of Glenmark Pharmaceuticals. Claim no.2 for a sum of ₹1,96,200/- arising out of the unauthorized sale of 6000 shares of SBI in the future segment (SBI



FUTSTK 25-Aug-16). The respondent no.1 had purchased two lots (6000 shares of SBI FUTSTK) on 12.08.2016. The settlement date for the said series was on 25.08.2016. However, the appellant had squared up the said position about 15 minutes after the said two lots were purchased. The respondent no.1 had computed the loss on the basis of the closing price as on 25.08.2016 – the settlement date.

9. The Arbitral Tribunal accepted respondent no.1's claim for the loss relating to the transactions in the shares of Glenmark Pharmaceuticals, quantified at ₹11,306.31/-. Insofar as the second claim is concerned, the Arbitral Tribunal accepted that the appellant had squared off the transactions in SBI FUTSTK 25-Aug-16 without instructions but did not accept respondent no.1's quantification of the loss. The Arbitral Tribunal had computed loss on the basis of the closing price of the said shares on 12.08.2016 and not on the value of the shares as on 25.08.2016. The obvious assumption being (although not expressly stated) that the parties could have re-entered the said contract if the sale was unauthorised. The award in respect of Claim no.2 was quantified at ₹98,400/-.

10. In view of the above, the Arbitral Tribunal delivered the arbitral award dated 16.03.2017, awarding a sum of ₹1,09,706/- (Rupees one lac nine thousand seven hundred six only) as the actual loss suffered by respondent no.1.

11. Aggrieved by the arbitral award dated 16.03.2017, the appellant preferred an appeal before the Appellate Arbitral Tribunal comprising



of three arbitrators with Justice S.N. Aggarwal (Retired) acting as the Presiding Arbitrator.

12. The Appellate Arbitral Tribunal delivered the impugned award, whereby the majority upheld the arbitral award dated 16.03.2017. One of the arbitrators entered a dissenting opinion. Whilst he concurred with the majority in regard to the first claim relating to the unauthorised transaction in the shares of Glenmark Pharmaceuticals. He did not accept the award of compensation relating to 6000 shares of SBI (SBI FUTSTK 25-Aug-16) in the future segment.

13. The appellant challenged the impugned award passed by the Appellate Arbitral Tribunal by filing an application under Section 34 of the A&C Act before the learned Commercial Court. The appellant's challenge to the impugned award was premised on three grounds. First, it was contrary to Bye Laws 16.7.6 of the relevant Bye Laws of the NSE. The appellant claimed that the said Bye Laws proscribed a claim of notional loss and that the loss awarded by the Arbitral Tribunal was computed on a notional basis. Second, the appellant claimed that the Appellate Arbitral Tribunal had relied on the Conciliation Proceedings before the IGRP, which was violative of Sections 75 and 81 of the A&C Act. Third, the appellant claimed that the Arbitral Tribunal as well as the Appellate Arbitral Tribunal had erred in not appreciating that respondent no.1 had permitted the appellant to execute the transaction at their discretion and that the same was clearly reflected in the recordings of the conversation with respondent no.1. The appellant claimed that the recording clearly reflected that respondent no.1 stated,



*“Jo Aapko Theek Lage Uss Hisab Se Laga Lo”*. According to the appellant, this gave it full discretion to square up the outstanding position in 6000 SBI FUTSTK 25-Aug-16.

14. The learned Commercial Court accepted that it was inapposite for the Appellate Arbitral Tribunal to refer to the proceedings before the IGRP, however, found that the same was insufficient to interfere with the impugned award. The learned Commercial Court noted that the Arbitral Tribunal had not referred proceedings before the IGRP and had arrived at an independent conclusion. The Appellate Arbitral Tribunal had upheld the said finding. Thus, the finding that the subject transactions were unauthorized, was not based solely on the proceedings before IGRP. The learned Commercial Court also noted that insofar as the compensation relating to the transaction in SBI FUTSTK 25-Aug-16 is concerned, the Appellate Arbitral Tribunal had examined the same and had returned a finding in the favour of respondent no.1, based on the record as well as the transcripts of the audio recording produced by the parties.

15. The learned Commercial Court also found that the Appellate Arbitral Tribunal had considered the appellant's claim that the loss awarded was a notional loss but had rejected the same. The Appellate Arbitral Tribunal had concluded that the loss awarded was not a notional loss but the actual loss suffered by respondent no.1. The learned Commercial Court found no fault with the said reasoning and accordingly, rejected the appellant's contention. The learned Commercial Court held that the view of the Appellate Arbitral Tribunal



was a plausible one and therefore, did not warrant any interference in these proceedings.

16. The learned counsel appearing for the appellant has assailed the impugned award and the impugned order, essentially, on two fronts. First, he submitted that the Appellate Arbitral Tribunal had grossly erred in not considering that the claims made by respondent no.1 were for notional loss and damages. He referred to Bye Law 16.7.6 of the Model Bye Laws of Stock Exchange (hereafter '**the Model Bye Laws**'), which were adopted by the NSE and submitted that the said Bye Law proscribed any claim for a notional loss. He earnestly contended that the loss claimed by respondent no.1 was a notional loss and not actual damage suffered by respondent no.1. Second, he submitted that the interpretation of the Appellate Arbitral Tribunal of the recorded conversation, was erroneous.

17. At the outset, it is important to note that the learned counsel for the appellant readily conceded that there was no controversy with respect to respondent no.1's first claim, regarding the loss relating to the sale and purchase of shares of Glenmark Pharmaceuticals. He stated that the loss claimed is a relatively small amount and therefore, the appellant had, at the outset, agreed to bear the same. He submitted that there was no necessity for respondent no.1 to thereafter refer the claim for arbitration.

18. The Arbitral Tribunal had accepted that the transactions in Glenmark Pharmaceutical's shares were unauthorized. Respondent



no.1 had suffered a loss of ₹11,306.31/- and therefore, was entitled to the same. There are no grounds for this Court to interfere with the said award. The Appellate Arbitral Tribunal had also accepted the same.

19. Insofar as the loss relating to the trading in SBI's shares is concerned, the Appellate Arbitral Tribunal had examined the transcript of the audio recording produced by the parties and had found that respondent no.1 was initially reluctant to enter into the purchase of SBI's shares on 12.08.2016. However, he was persuaded to purchase two lots of 3000 shares each of SBI FUTSTK 25-Aug-16 (SBI's shares in the future segment with the Settlement date of 25.08.2016), with the instruction to put a stop loss at ₹1.50, below the purchase price. This was to mitigate the loss beyond the said amount in the event that the price of the shares fell. The Appellate Arbitral Tribunal noted that respondent no.1 had yielded the discretion regarding fixing the amount of stop loss. But this was in the context where it was suggested that the stop loss be placed at a price of ₹2, below the purchase price. The Appellate Arbitral Tribunal found that the stop loss was initially placed at ₹226.15 in the system at 11:46:22 hrs., but the squaring up of the said transaction was not triggered by the said stop loss as the value of SBI's shares had moved upwards. Subsequently, at 11:54:37 hrs., the appellant had cancelled the stop loss and had later placed the sale orders at a price of ₹228.20, ₹229.20 and ₹228.65/-. The stock of SBI's shares was sold at ₹227.80. The Appellate Arbitral Tribunal accepted the finding that the said transaction was not authorised by respondent no.1.



20. The findings arrived at, by the Appellate Arbitral Tribunal relate to a question of fact. There is no material on record to establish that the said findings are *ex facie* perverse or that no reasonable person could arrive at such findings. On the contrary, the findings are based on appreciation of material on record and it is impermissible for the Court to re-evaluate and re-appreciate such material and supplant its view in place of that of the Arbitral Tribunal.

21. The contention that the claim awarded is a notional loss is also unmerited. The loss in respect of Glenmark Pharmaceutical's shares is an actual loss, which the appellant had debited to the account of respondent no. 1. Insofar as SBI's shares are concerned, there is no dispute that respondent no.1 had entered into the transaction for the purchase of 6000 shares of SBI in the future segment (SBI FUTSTK 25-Aug-16). The said transaction related to the series to be terminated on 25.08.2016 and therefore, if the said transaction was not squared up, it would compulsorily expire on 25.08.2016 at a price prevailing on the said date. Respondent no.1 had claimed the difference in the price at which SBI's shares were purchased and the settlement price on 25.08.2016. This loss is not a notional loss but an actual loss that was suffered by the appellant by pre-mature squaring up of the outstanding position. The Arbitral Tribunal had reduced the quantum of loss by computing the loss on the basis of the closing price of SBI's shares in the future segment on 12.08.2016. The loss so accepted by the Arbitral Tribunal is, thus, worked out on the basis of the actual loss suffered at the end of the trading hours on 12.08.2016. undeniably, as at the end of



the trading hours, respondent no.1 had suffered the said loss on account of an unauthorized squaring up of the transaction. Respondent no.1 had not challenged this decision and therefore, this Court is not required to examine whether the Arbitral Tribunal had rightly computed the loss on the basis of the closing price on 12.08.2016 instead of the closing price on the date of the expiry of the derivative (SBI FUTSTK 25-Aug-16). However, it is clear that the loss computed was not a notional loss or an opportunity loss, but the actual loss suffered by respondent no.1.

22. The contention that Bye Law 16.7.6 of the Model Bye Laws proscribed respondent no.1 for claiming any such loss is also unmerited. Chapter 16 of the Model Bye Laws relates to the creation of Investors' Protection Fund. In terms of Bye Law 16.1 of the Model Bye Laws, the stock exchange is required to establish and maintain an Investors' Protection Fund to protect the interest of the clients of the trading members of the exchange, who may have been declared as defaulters. Bye Law 16.1 of the Model Bye Laws is set out below:

**"16.1 Establishment**

The Exchange shall establish and maintain an Investors' Protection Fund to protect the interests of the clients of the trading members of the Exchange, who may have been declared defaulters or who may have been expelled, under the provisions of the Rules, Bye-laws and Regulations of the Exchange."

23. Bye Law 16.2 of the Model Bye Laws relates to compensation that may be payable from the Investors' Protection Fund as established under Bye Law 16.1 of the Model Bye Laws. Bye Law 16.7 of the Model Bye Laws relates to utilization of the said fund and Bye Law



16.7.6 of the Model Bye Laws refers to the eligible claim, which may be settled by utilization of the Investors' Protection Fund. Bye Law 16.7 and 16.7.6 of the Model Bye Laws are set out below:

**“16.7 Utilisation of the Fund**

The Trustees of the Fund shall be guided by the recommendations of the Committee for Settlement of Claims Against Defaulters, who may scrutinize and vet each of the claims placed before them for consideration after due screening by the officials of the Exchange and also by an Independent Chartered Accountant, if need be, for satisfying that each claim meets the requirements, as may be stipulated by the Committee for Settlement of Claims against Defaulters from time to time. The amount of compensation that may be disbursed out of the Investors' Protection Fund to a client shall be limited to the balance amount of the admitted claim of the client as may be remaining after adjustment of the amount paid out of distribution of the assets vesting in the Committee for Settlement of Claims Against Defaulters on account of the concerned defaulter or expelled trading member. All claims received shall be processed and paid out of Fund as provided herein:

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**16.7.6 Actual Loss, Damages, Interest, Notional Loss Excluded**

A claim will be eligible for payment to the extent of the actual loss suffered by an investor and the actual loss would include any difference receivable by the claimant arising out of the transactions. No claim shall include any claim for damages or interest or notional loss.

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24. It is clear from the above that Bye Law 16.7.6 of the Model Bye Laws is inapplicable to the claims made by respondent no.1. The same relates to claims payable by the utilization of the Investor's Protection Fund owing to a trader failing to meet its obligations to settle the trades.



25. As noted above, the Investors' Protection Fund was established for meeting any claims against the trading member who had defaulted in meeting its financial commitments. The appellant is not a defaulter, who has failed to pay his obligations of settlement for transactions entered into through the stock exchange.

26. The contention that the Appellate Arbitral Tribunal had not appreciated the recording of the conversation between the representative of the appellant and respondent no.1 is also unpersuasive. As stated above, the Arbitral Tribunal is the final adjudicator of the question of law. It is trite law that the Arbitral Tribunal's evaluation of the evidence and material cannot be interfered with unless the same is found to be wholly perverse or is not a possible view.

27. In the present case, there is no material on record to establish the same. In view of the above, the present appeal is unmerited and accordingly, dismissed. The pending application is also disposed of.

**VIBHU BAKHRU, J**

**AMIT MAHAJAN, J**

**JULY 06, 2023**  
**RK**