

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION APPEAL NO. 12 OF 2025

Erach Khavar

....*Appellant*

(*Orig.Respondent/Petitioner*)

: *Versus* :

Nirmal Bang Securities Pvt. Ltd.

....*Respondent/*

(*Original Petitioner*)

Mr. Bimal Rajasekhar with Mr. Sunand Subramaniam, for the Appellant.

Mr. Naushad Engineer, Senior Advocate with Mr. Sharad Bansal & Mr. Jayant Gaikwad i/b. Ajay Khandhar & Co. for the Respondent.

CORAM : CHIEF JUSTICE, &

SANDEEP V. MARNE, J.

DATED : 25 AUGUST 2025.

JUDGMENT (*Per : Sandeep V. Marne, J.*)

1) This is an Appeal filed under Section 37 of the Arbitration and Conciliation Act, 1996 (**the Act**) challenging the judgment and order dated 30 April 2024 passed by the learned

Single Judge of this Court allowing Arbitration Petition No. 742 of 2017 filed by the Respondent and dismissing Arbitration Petition No. 228 of 2018 filed by the Appellant. The Learned Single Judge has set aside Majority Award dated 8 August 2017 and has upheld the dissenting Award dated 14 August 2017.

2) Briefly stated facts of the case are that Respondent is a registered broker with the Bombay Stock Exchange (**BSE**) and National Stock Exchange (**NSE**) carrying on business of trading in shares and securities. Appellant opened a Depository Account with the Respondent. This is how Demat Account and Trading Account of the Appellant was opened with the Respondent. Appellant had transferred 1500 shares of Hero Moto Corporation Limited, 5,000 shares of Petronet LNG Limited and 7000 shares of ITC Limited with the Respondent towards security. During 30 June 2015 to 27 September 2015, transactions of purchase and sale of shares in the Account of the Appellant took place on the basis of instructions allegedly given by the Appellant through mobile phone and other means. Appellant suffered losses in the said transactions. Respondent sent Ledger Account to the Appellant which was not objected to by the Appellant. Respondent paid back the balance credit amount of Rs.37,829.69/- standing in the Ledger Account paid back to the Appellant on 27 January 2016.

3) On 29 June 2016, Appellant objected to the transactions carried out by the Respondent and filed complaint with the Investors Grievance Redressal Panel (**IGRP**) of NSE and claimed the value of shares from the Respondent. On 9 January 2017, the IGRP passed order and granted claim of Rs.46,60,000/- to the Appellant. Respondent challenged the order of IGRP by filing arbitration case with NSC. The Arbitral Tribunal passed Award dated 10 April 2017 and while dismissing Respondent's challenge, reduced the claim of the Appellant to Rs.35,77,412/- with interest @ 12% p.a. from the date of the Award. Both the sides challenged the Award dated 10 April 2017 before the Appellate Panel of Arbitrators. The Presiding Arbitrator delivered dissenting award dated 14 August 2017 allowing the Appeal preferred by the Appellant and set aside the Award of the Arbitral Tribunal dated 10 April 2017, as well as the order of the IGRP dated 9 January 2017. The majority members of the Arbitral Tribunal however delivered separate Award dated 8 August 2017 dismissing the Appeal preferred by the Respondent and upholding the order dated 10 April 2017 but increased the claim amount from Rs.35,77,412/- to Rs.46,60,000/-.

4) Aggrieved by the majority Award dated 14 August 2017, the Respondent filed Arbitration Petition No.742/2017 under Section 34 of the Act before the learned Single Judge. Appellant

was also advised to challenge in the form of Arbitration Petition No.228/2018 to the extent of non-grant of balance amount of Rs.46,60,000/- to him. By impugned judgment and order dated 30 April 2024, the learned Single Judge has allowed Arbitration Petition No.742/2017 filed by the Respondent and has set aside the majority Award and has confirmed the dissenting Award. Arbitration Petition No. 228/2018 filed by the Appellant has been dismissed. The Appellant is aggrieved by the judgment and order dated 30 April 2024 passed by the learned Single Judge and has accordingly filed the present Appeal under the provisions of Section 37 of the Act.

5) Mr. Rajasekhar, the learned counsel appearing for the Appellant would submit that the learned Single Judge has grossly erred in travelling beyond the scope of Section 34 of the Act while setting aside the majority Award. That the Learned Single Judge has entered into the realm of re-appreciation of evidence under Section 34 of the Act. That the Arbitral Tribunal had considered the aspect of post-trade confirmations but had not found it persuasive in view of the NSE Regulations requiring pre-trade confirmations. That the Appellate Tribunal had upheld the order of the Arbitral Tribunal. That the Appellate Tribunal was required to undertake a fresh enquiry or record fresh reasons for upholding the order of the Arbitral Tribunal. In support, he would

rely upon judgment of the Apex Court in Girijanandini Devi & Ors. Versus. Bijendra Narain Choudhary¹. That the order of the learned Single Judge suffers from the vice of non-application of mind. That SEBI Circular of 26 September 2017 was issued after passing of Award of the Arbitral Tribunal dated 10 April 2017 and Award of Appellate Tribunal of 14 August 2017 and therefore there is no question of the Tribunal or the Appellate Tribunal losing the sight of the said Circular.

6) That even otherwise the SEBI Circular has no relevance in view of specific NSC instructions for securing pre-trade confirmations. That judgment of Calcutta High Court in Nirmal Bang Securities Pvt. Ltd. Versus. Tilak Bachar² has no application to the present case as the same is delivered in 2019 after the Arbitral Award and Respondent never relied on Clause-13 of the Contract to contend that NSE Regulation-3.4.1 was not binding. That in any case, contract cannot supersede the regulations and the bye-laws. He would rely upon order of this Court in Amit Bhardwaj Versus. M/s. Marwadi Shares & Finance Ltd.³ in support of his contention that binding nature of NSEL Regulations. That the said finding of the learned Single Judge in Amit Bharadwaj (supra) has been confirmed by the Division Bench.

1 1966 SCC ONLINE SC 236

2 2019 SCC ONLINE CAL 628

3 ARB.PETITION NO.563-2009 DECIDED ON 25 MARCH 2011

In support he would also rely on judgment in *Bonanza Commodities Brokers Pvt. Ltd. Versus. Roshanara Bhinder*⁴

7) Mr. Rajasekhar would further submit that mere awareness on the part of the Appellant about transactions was irrelevant and what is mandatory under the NSE regulations was pre-trade authorisations. That the learned Single Judge erred in taking into consideration the argument of private profit sharing arrangement between the Appellant and one Mr. Farukh Meshman, which was never raised in the arbitration. That the learned Single Judge has re-appreciated the evidence by holding that the appellate Tribunal ought not to have relied upon statement of the sub-broker of the Respondent. He would submit that since the trades themselves were not authorised, there could not be any sale of margin of shares.

8) Mr. Rajasekhar would further submit that the two technical members fully aware of nature of transactions have ruled in favour of the Appellant. He would rely upon judgment of the Apex Court in *P.R. Shah, Shares and Stock Broker (P) Ltd. Versus. B.H.H. Securities (P.) Ltd.*⁵ in support of the contention that arbitral tribunal can use its expert or technical knowledge or general

4 2015 SCC ONLINE BOM 1411

5 (2012) 1 SCC 594

knowledge about particular trade in deciding the matter. He would rely upon judgment in OPG Power Generation Private Limited. Versus. ENEXIO Power Cooling Solutions, India Private Limited⁶ in support of the contention that even if there is any lacuna in the award, Court can look into the cited documents instead of setting aside the Award in exercise of power under Section 34 of the Act. Mr. Rajasekhar would accordingly pray for allowing the Appeal.

9) Mr. Naushad Engineer, the learned Senior Advocate appearing for the Respondent would oppose the Appeal submitting that the learned Single Judge has rightly set aside the majority award which was passed in ignorance of specific trade confirmations issued by the Appellant. That the Respondent proved before the Arbitral Tribunal that Appellant was always aware about all the transactions in the Account, that he confirmed the said transactions and even signed the Ledger Account while accepting the balance amount without raising any demur. That pre-trade confirmations were not possible in the present case as Respondent had entered into an illicit/unlawful arrangement with Mr. Farukh Meshman who used to issue instructions for purchase and sale of shares and the Appellant was to share the profits. That the Majority Award had ignored the vital evidence and was therefore perverse. That it had overlooked

6 2025 2 SCC 417

the fact that all trades in the Appellant's Account was authorised. That the Majority Award was otherwise contrary to the position of law laid down in various judgments holding that pre-trade authorisations in F&O segment was not mandatory at the relevant time when the transactions took place. That the Division Bench judgment of Calcutta High Court in *Nirmal Bang Securities Pvt. Ltd.* (supra) confirms this position, SLP against which judgment has been dismissed. That in *Keynote Capitals Ltd. Versus. Eco Recycling Ltd.*⁷ it is held that when the constituent was aware of the transactions and did not object about the same, the transaction could not be said to be unauthorised. He would also rely upon Division Bench judgment of this Court in *Maheshbhai Hirralal Champneira Versus. Kotak Securities.*⁸ That the Majority Award was otherwise was contrary to the terms of the contract executed between the parties. That the Majority Award had erroneously relied upon statement of sub-broker for rendering a finding against a broker. That the impugned judgment rightly holds that the finding of Majority Award on ledger balance at the time of sale of shares is patently illegal. That the scope of the present Appeal under Section 37 of the Act is extremely limited and is confined to examining as to whether the exercise of power by the learned Single Judge is within the scope of Section 34 of the Act. In support, he would rely upon judgments in *MMTC Ltd. Versus.*

⁷ 2018 SCC ONLINE BOM. 1269

⁸ 2016 SCC ONLINE BOM 11100.

Vedanta Ltd.⁹, S.V. Samudram Versus. State of Karnataka¹⁰, UHL Power Company Ltd Versus. State of Himachal Pradesh¹¹ and M.C.G.M. Versus. R.V. Andersons¹², Mr. Engineer would pray for dismissal of the Appeal.

10) Rival contentions of the parties now fall for our consideration.

11) The Appellant filed a claim before IGRP of NSE claiming the value of shares sold by the Respondent for recovering the losses incurred in the Demat Account of the Appellant. It appears that Respondent had suffered loss of about Rs.60,00,000/- in F&O transactions carried out in the Appellant's Account. Appellant claims that the Respondent carried out the said transactions leading to losses without any authorisation from the Appellant and that therefore the Appellant is not liable to bear the said losses. In the light of this position the short issue which was involved in the arbitral proceedings was whether the transactions in question were carried out with Appellant's authorisation or not.

⁹ 2019 4 SCC 163

¹⁰ 2024 3 SCC 623

¹¹ 2022 4 SCC 116

¹² ARBITRATION APPEAL (L)-4339-2024

12) The IGRP passed order dated 9 January 2017 finding that the value of the sold shares of the Appellant was approximately Rs.93,20,000/- and held both the parties responsible for the losses. IGRP accordingly directed Respondent to pay 50% of the amount of sold shares to the Appellant. This is how direction was issued for payment of Rs.46,60,000/- being 50% of the value of the shares of the Appellant. The Arbitral Tribunal, in proceedings filed by Respondent reduced the said amount to Rs.35,77,412/-. However, the Arbitral Tribunal did not accept the contention of the Respondent that the trade transactions were authorised by the Appellant. It relied upon statement of Mr. Manoj Gupta, unregistered sub-broker, who was sharing commission with the Respondent. The Arbitral Tribunal held that the F&O transactions were entered into a large scale without the consent of the Appellant which was in violation of NSE Regulations requiring non-entering of any transactions without prior consent or authorisation from the investor.

13) In Appeal preferred by the Respondent, the Presiding Member agreed with the Respondent that the trade transactions were effected with authorisations from the Appellant. The majority members however held that Appellant never authorised the broker to do the F&O transactions in his Account. However, the Majority Award is cryptic one which does not take into

consideration any evidence on record and records a bald finding of non-authorisation by the Appellant to the Respondent without recording any reasons in support of the same. Mr. Rajasekhara has attempted to salvage this situation by relying upon judgment of the apex court in *Girijanandini Devi* (supra). The Majority Award, in appeal preferred by the Respondent proceeded to grant relief in favour of the Appellant by restoring original awarded amount by IGRP of Rs.46,60,000/-.

14) The learned Single Judge has set aside the majority award essentially on following grounds :

- (i)that the majority award overlooks vital evidence establishing that there was post transactions confirmations in respect of transactions occurring between 1 July 2015 to 24 September 2015.
- (ii)Appellant had confirmed the Ledger Statement by accepting the balance amount of Rs.37,829.69/- without any demur.
- (iii)First objection raised by the Appellant to the transaction was belated.
- (iv)SEBI Circular dated 26 September 2017 making mandatory pre-transactions confirmations prospectively was overlooked by majority award.

- (v) Judgments in *Nirmal Bang Securities Pvt. Ltd.* (supra) and *Keynote Capitals Ltd.* (supra) were ignored in the Majority Award.
- (vi) Private profit sharing arrangement between appellant and Farukh Meshman was in breach of investment advice clause.
- (vii) Erroneous reliance in the majority Award in the statement of Mr. Manoj Gupta, sub-broker of the Respondent.

15) After having gone through the findings recorded by the learned Single Judge while allowing the Appeal preferred by the Respondent, we are of the view that no case is made out for interference in exercise of jurisdiction under Section 37 of the Act. As observed above, the short controversy between the parties is about authorisation by the Appellant for carrying out the trades in question. There is no dispute to the position that the Appellant confirmed all the trades after they were transacted. He thus not only had full knowledge of each transaction but consented for the same. The case does not involve transactions being effected in one or two days. The transactions have occurred for about three long months during 1 July 2015 to 24 September 2015. It is unbelievable that a person who notices and confirms several

effected transactions for about three months would be oblivious of profits or losses resulting out of such transactions. If there was any absence of authorisation by the Appellant, he would have protested against the effected transaction immediately after the transactions begun on 1 July 2015. However, Appellant admittedly did not protest against even a single transaction for three long months. Such conduct would clearly go against the Appellant and has rightly been taken into consideration by the learned Single Judge.

16) To make the case of the Appellant worse, he has confirmed the final Ledger Account by signing the same on 5 October 2015 and accepted the balance of Rs.37,829.69/- on 27 January 2017 without raising any demur. He raised objections to the transactions for the first time after 10 long months which again is a unnatural conduct which cannot be ignored and has rightly been taken into consideration by the learned Single Judge as a factor against the Appellant.

17) Faced with the difficulty where the Appellant admittedly confirmed all transactions after they were effected, he cited the pretext of absence of pre-transactions authorisation for the purpose of wriggling out of the losses caused due to the

transactions. Appellant has relied upon National Stock Exchange (Futures and Options Segment) Trading Regulations, particularly Regulation No.3.4.1 providing that the trading member shall ensure that appropriate confirmed order instructions are obtained from the constituents before placement of an order on the NEAT System. The Regulation further provides that whenever order instructions are received through telephone, members shall mandatorily use telephone recording system to record the instructions. Taking benefit of Regulation No.3.4.1, the Appellant contends that transactions in question could not have been effected in absence of pre-trade authorisation. However, in *Nirmal Bang Securities Ltd.* Division Bench of Calcutta High Court has held that pre-trade confirmation was mandatory only pursuant to the SEBI Circular dated 26 September 2017. The SLP against the said judgment is dismissed by the Supreme Court on 17 November 2020. Additionally, in *Keynotes Capital Ltd.* (supra) this Court has held that if constituent was aware of transactions and did not object to the same, the transactions cannot be treated as unauthorised. This Court emphasized the need to raise the objection within reasonable time. Further, Division Bench of this Court in *Maheshbhai Hiralal Champneira* (supra) has held that objection to the transactions must be raised within couple of days.

18) Appellant has attempted to distinguish the judgment in *Nirmal Bang Securities Pvt. Ltd.* by contending that the same is delivered after the Arbitral Award and Appellate Award. However, the judgment merely states the law which existed even at the time of making of the Award. The law thus appears to be fairly well settled that if transaction is not objected to within reasonable time, the Constituent cannot later wriggle out of the transaction. In the present case, far from objecting to the transactions, the Appellant actually confirmed the same from time to time and signed the final Ledger Account without any demur. While we do not propose to delve deeper into the allegation of alleged illegal arrangement made by the Appellant with Mr. Farukh Meshman for sharing of profits of trades, it does appear believable that Mr. Farukh Meshman was giving instructions for the transactions in question and hence Appellant was not raising any objection for the same even after acquiring knowledge of such transactions. The appellant had apparently accepted the losses which is a reason why he signed the final Ledger account and accepted the balance amount without raising any objection. He appears to have latter grown wiser, possibly on account of an advice and sought to take benefit of NSC Regulations requiring pre-trade authorisations.

19) In our view, violation of NSE Regulations requiring pre-trade authorisations can at the highest be a ground for penalising of a stock-broker. The same however cannot be a reason for wriggling out of consequences of a trade, particularly when the trade transaction is confirmed by the constituent. Absence of pre-trade authorisation cannot be permitted to be used as a handle by a person speculating in shares for the purpose of wriggling out of losses resulting out of trade transactions which are confirmed by him. There is a difference between concept of absence of pre-trade authorisation and blatantly unauthorised trade. The present case does not involve the vice of blatantly unauthorised trades. Reliance by the Appellant on order of this Court in *Amit Bharadwaj* and judgment in *Bonanza Commodities Brokers Pvt. Ltd.* is therefore inapposite.

20) Though the learned Single Judge may not be entirely right in criticising the Majority Award by holding that it lost sight of SEBI Circular dated 26 September 2017 (*on account of award being delivered before issuance of SEBI Circular*), the fact remains that SEBI made pre-transactions authorisations for equity transactions compulsory from 1 January 2018. Till issuance of SEBI circular, such pre-trade authorisation were mandatory only for commodity derivative markets. The learned Single Judge though could not have recorded a finding of the majority Award ignoring the SEBI

Circular and is otherwise not wrong in holding that pre-transactions authorisations for equity market was not mandatory under SEBI guidelines upto 1 January 2018.

21) We therefore find that the majority Arbitral Award had clearly erred in ignoring the vital material on record and had delivered a cryptic Award which has rightly been set aside by the learned Single Judge. The case does not involve a lacuna or assigning of inadequate or insufficient reasons by the Arbitral Tribunal and therefore reliance by Appellant on judgment in *OPG Power Generation P. Ltd.* is inapposite. However, even if the principles in *OPG Power Generation P. Ltd.* are applied and documents ignored by the Arbitral and Appellate Tribunal are considered, the same makes the case of the Appellant even worse. Though it is sought to be contended on behalf of the Respondent that the Minority Award was by a Judicial Member as against Majority Award by technical members, we do not wish to delve deeper into this aspect as even the Majority Award appears to us as perverse. Therefore, it is not necessary to discuss the ratio of the judgment in *P.R. Shah* (supra) dealing with the issue of use of expertise and technical knowledge by technical Arbitrators.

22) Considering the overall conspectus of the case, we do not find any valid reason to interfere in the order passed by the

learned Single Judge. The scope of Appellate Court under Section 37 is co-terminus with the power of the Court under Section 34 of the Act. We find that the learned Single Judge has not travelled beyond the scope of power under Section 34 of the Act. We are therefore not inclined to interfere in the order passed by the learned Single Judge.

23) The Appeal accordingly fails and is dismissed without any order as to costs.

(SANDEEP V. MARNE, J.)

(CHIEF JUSTICE)

NEETA
SHAILESH
SAWANT

Digitally
signed by
NEETA
SHAILESH
SAWANT
Date:
2025.08.26
17:38:09
+0530