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Arb.O.P(Com.Div.) No.15 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 19.12.2024  
Pronounced on : 03.01.2025

CORAM

THE HONOURABLE MR.JUSTICE P.B.BALAJI

**Arb.O.P(Com.Div.) No.15 of 2022**  
**& A.No.128 of 2022**

M/s.Alice Blue Financial Services Private Limited,  
No.153/2, 3<sup>rd</sup> Floor, MRB Arcade,  
Bengaluru Main Road,  
Dwaraka Nagar,  
Yelahanka,  
Bengaluru – 560 063.

... Petitioner

VS.

Sumithra Devi Veerappan

... Respondent

**PRAYER:** Arbitration Original Petition filed under Section 34(1)(2)(2A)(3) of the Arbitration and Conciliation Act, 1996, to set aside the award dated 08.01.2021 in Arbitration Matter No.MCX/ARB/5138A/20 in entirety and allow the arbitration application of the petitioner Company as prayed for and to direct the respondent to pay cost.

For Petitioner : Mr.P.Arumuga Rajan

For Respondent : Mr.C.K.M.Appaji



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## **ORDER**

The above Arbitration Original Petition has been filed under Section 34 of the Arbitration and Conciliation Act, 1996, seeking to set aside the award dated 08.01.2021 in Arbitration Matter No.MCX/ARB/5138A/20.

2.I have heard Mr.P.Arumuga Rajan, learned counsel appearing for the petitioner and Mr.C.K.M.Appaji, learned counsel appearing for the respondent.

3.Mr.P.Arumuga Rajan, learned counsel for the petitioner would submit that the dispute between the parties arises out of on-line trading transactions. He would invite my attention to the various agreed terms and conditions between the petitioner and the respondent, especially the conditions which according to the learned counsel for the petitioner would squarely cover the dispute before the Arbitral Tribunal. He would further submit that the Arbitral Tribunal has grossly disregarded the terms and



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conditions agreed upon between the parties in writing and therefore there is a clear violation of mandate of Section 28(3) of the Arbitration and Conciliation Act, 1996.

4.The learned counsel for the petitioner would also take me through the various correspondence between the parties to fortify his contentions. He would also invite my attention to the judgment of the Division Bench of this Court in similar circumstances in *Shri.Jeeva Ratnam Vangari Vs. M/s.Alice Blue Financial Services Private Limited* dated 13.08.2024 in *O.S.A.(CAD).No.36 of 2023*, where the Hon'ble Division Bench referring to Section 28(3) of the Arbitration and Conciliation Act, 1996 and also applying the ratio laid down by the Hon'ble Supreme Court in *Associate Builders Vs. Delhi Development Authority* reported in 2015 (3) SCC 49 and in *Ssangyong Engineering & Constructions Company Limited Vs. National Highways Authority of India* reported in (2019) 15 SCC 131, held that giving a go by to the terms of the contract is clearly impermissible in law and the award rendered contrary to the mandate of Section 28(3) of the Arbitration and Conciliation Act would be patently illegal. He would



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therefore pray for the petition being allowed.

5.Per contra, Mr.C.K.M.Appaji, learned counsel appearing for the respondent would submit that the petitioner, without the knowledge or authorization of the respondent, had went ahead with the on-line trading and upon being put on notice, the respondent has lodged a complaint on 24.02.2020, in respect of the transactions that took place on 20.02.2020. He would further submit that the petitioner had traded to the tune of Rs.40,00,000/- on behalf of the respondent as against the existing margin of Rs.9,00,000/- alone available in an account. He would further submit that the petitioner also did not intimate the respondent about the system issue i.e., the alleged reason which is said to have caused the loss to the respondent.

6.Referring to the award itself, the learned counsel for the respondent would submit that the Arbitral Tribunal has rightly found that the petitioner had admittedly done a trade for Rs.40,00,000/- as against the existing margin of Rs.9,00,000/- in the account and therefore, the trade was



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unauthorized, besides also not reflecting in the respondent's account thereby resulting in a loss to the respondent. He would therefore pray that the award be sustained.

7.I have carefully considered the submissions advanced by the learned counsel on either side.

8.It would be relevant to refer to some of the clauses in the contract between the parties and the same are extracted hereunder for easy reference:

***“viii. System/Network Congestion***

*a.Trading on the Exchange is in electronic mode, based on satellite/leased line communications, combination of technologies and compute systems to place or route orders. Thus, there exists a possibility of communication failure or system problems or slow or delayed response from system or trading halt, or any such other problem/glitch whereby not being able to establish access to the trading system/network, which may be beyond the control of and may result in delay problems or not processing buy or sell orders either in part or in full. You are cautioned to note that although these problems may be temporary in nature, but when you have outstanding open positions or unexecuted orders, these represent a risk because of your obligations to settle all executed transactions.*

***Margins***



*15.The client shall pay applicable initial margins, withholding margins, special margins or such other margins as are considered necessary by the member of the Exchange(s) or as may be directed by FMC from time to time as applicable to the segment(s) in which the client trades. The member is permitted in its sole and absolute discretion to collect additional margins (even though not required by the Exchange(s) or FMC) and the client shall be obliged to pay such margins within the stipulated time.*

**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.”*

9.I am also able to see that the respondent has acknowledged and declared that he has understood the agreement and its contents and signed the contract with the petitioner. Therefore, the parties are bound by the



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agreed terms and conditions and there can be no second opinion about it.

10.It is the case of the petitioner that on 20.02.2020, there was a technical glitch in the system, because of which, the squaring off was not done on the same day and it was carried forward on the next day which has resulted in the alleged loss of Rs.8,00,000/- to the respondent. Even the allegation of the respondent before the Arbitral Tribunal was that the petitioner did not close out as auto square off on the same day and the same was carry forwarded to the next day, without the respondent's authorization. However, such an allegation runs conflict to the terms and conditions agreed upon between the petitioner and the respondent under the heading 'intra day square off timings'. There is a specific note covering such instances, which has already been extracted herein above. In the event of any link or system failure or any other risk associated with the Internet/wireless based trading, then the same shall be treated as cash and carry and carry forward to the next trading day. It is further understood between the parties that in the event of such a situation arising, the onus of



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squaring off the position would be only on the respondent and not on the petitioner. Therefore, having clearly understood the terms and conditions of the contract fixing the onus on the respondent, the basis of the claim against the petitioner itself can be seriously doubted in the first place.

11.Unfortunately, the Arbitral Tribunal has not even referred to the contract, especially the terms and conditions agreed to between the parties. On the other hand, the Arbitral Tribunal has proceeded to render a finding that the petitioner ought to have taken necessary precautions to keep the system free from hurdles. Such findings were totally unwarranted and uncalled for, especially when it was ignoring the terms and conditions agreed to between the parties. Also, it is not a one of case and several other traders like the respondent were affected on the very same day, namely 20.02.2020 and in such circumstances, the Arbitral Tribunal ought to have fallen back on the terms and conditions agreed to between the parties, instead of proceeding to decide the claim of the respondent on surmises and conjectures.



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12.In fact, though the respondent claimed that he was not informed and he has never received any information whatsoever from the petitioner, the petitioner, to dispute the said claims, has also filed the KYC Form, Member Client Agreement and also E-mails and SMS blogs before the Arbitral Tribunal. However, the Arbitral Tribunal has not even looked into the said documents filed on behalf of the petitioner, leave alone marking the same as exhibits, especially when they were material evidence to decide the dispute on hand.

13.Even in the decision of the Hon'ble Division Bench of this Court in *Shri.Jeeva Ratnam Vangari's* case, an identical situation arose, where the Commercial Division of this Court entertained the Section 34 petition and set aside the award passed. The said order was challenged under Section 37 of the Arbitration and Conciliation Act before the Division Bench of this Court. The Hon'ble Division Bench/Commercial Appeal Division, referring to the terms and conditions, especially the Risk Management Policy governing the parties, namely squaring off on the following trading day, held that the covenant being part of the primary contract between the



parties, the Arbitral Tribunal ought to have taken account of the same, in line with Section 28(3) of the Arbitration and Conciliation Act, 1996. The Division Bench also found that the Arbitral Tribunal had not referred to the said terms and conditions and the Division Bench held the award to be patently illegal and confirmed the order of the Commercial Division of this Court, setting aside the award.

14.In fact, even in the said case before the Hon'ble Division Bench, the documents placed before the Arbitral Tribunal were given a go by by the Arbitral Tribunal. However, the Commercial Division, while disposing of the Section 34 petition, held that despite the documents being placed before the Arbitral Tribunal, reference to documents was conspicuous by its absence on perusal of the award. The facts of the case before the Division Bench are almost identical to the facts of the present case. Here also the Arbitral Tribunal has given a total go by to the terms and conditions of the contract, especially the Risk Management Policy, forming part of the Client Registration Form. The respondent ought to have taken steps to square off at her end and without doing so, cannot shift the blame on the petitioner. The



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award, unfortunately, has been passed without advertng to the express terms and conditions agreed to between the parties. Thus, there is clear violation of mandate of Section 28(3) of the Arbitration and Conciliation Act.

15.Further, I am fortified by the decision of the Division Bench in *Shri.Jeeva Ratnam Vangari's* case, which is also a case decided on almost identical facts. Therefore, I am constrained to set aside the award on the ground that it is patently illegal for violating mandate of Section 28(3) of the Arbitration and Conciliation Act, 1996, besides also ignoring the material evidence placed before the Arbitral Tribunal which would have had a serious impact/bearing on the final award.

16.For all the above reasons, the award dated 08.01.2021 is liable to be set aside.

17.In fine, this Arbitration Original Petition is allowed and the award passed by the Arbitral Tribunal dated 08.01.2021 in Arbitration Matter No.MCX/ARB/5138A/20 is hereby set aside. There shall be no order as to costs. Connected application is closed.

**03.01.2025**



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Index : Yes / No

Internet : Yes / No

**P.B.BALAJI, J.,**

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