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O.P.No.995 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 17.09.2025

PRONOUNCED ON : 19.09.2025

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

O.P.No.995 of 2017

M/s.Motilal Oswal Securities Limited,
Represented by its Vice President,
Mr.Ramakrishnan,
Motilal Oswal Towers,
Junction of Gokhale and Sayani Road,
Opposite Parel ST Depot, Prabhadevi,
Mumbai-400 025.

Petitioner

Vs.

Thangavel Krishnamurthy

Respondent

Prayer: Original Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996, to set aside the award dated 30.08.2017 received by the petitioner on 08.09.2017 and consequently, the Original Award dated 28.04.2017 passed by the Arbitrators in (A.M)No.F&O/C-0001/2017 and Arbitration Reference No.F & O/C-0001/2017.

For Petitioner : Mr.P.V.Balasubramaniam,
Senior Counsel
for M/s.BFS Legal



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For Respondent : Mr.P.H.Aravind Pandian
Senior Counsel for
Mr.C.H.Vinay Datha

ORDER

This Original Petition has been filed under Section 34 of the Arbitration and Conciliation Act, 1996 [hereinafter referred to as 'the Act'] challenging the award dated 30.08.2017 and also the original award dated 28.04.2017.

2. The petitioner is a registered stock broker member of National Stock Exchange of India Limited [NSE] and Bombay Stock Exchange of India [BSE] for both cash and derivatives segment and is a SEBI registered Depository Participant and they are also SEBI registered Portfolio Manager. The petitioner is a broker and Depository Participant providing broking and depository services to clients through its various branches/offices spread all over India. The respondent became a client of the petitioner on 28.07.2015. The respondent had opted for internet trading and for receipt of contract notes, statements of holding, ledger statements etc., through email. Initially, the respondent had opted for trading in cash segment only on NSE and BSE. However, he later opted for trading in Futures and Options [F and O] also. The respondent



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commenced trading in F and O on 13.11.2015.

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3. The respondent filed a claim with the Arbitration Forum of NSE on 23.12.2016 against the petitioner for a loss of Rs.94,61,780/- suffered on account of unauthorised closing out of his open positions held in derivative segment and Rs.7,34,613/- which was illegally recovered towards interest and penalty. Even though the respondent suffered an actual loss of Rs.1,26,62,247/-, he had lodged a claim for Rs.94,61,780/- being the loss calculated by taking into account the actual prices at which the open positions were closed out by the petitioner and the closing prices of the respective scripts in stock market on 09.11.2016, in accordance with NSE Regulations. The grievance of the respondent was that the petitioner unilaterally closed out his open positions in F and O Segment on 09.11.2016 between 09.16 a.m. and 09.26 a.m. without giving any notice for the alleged margin shortfall and mark to market losses, though there was an excess credit of Rs.71,168.54/- in his account after meeting the margin shortfall and MTM losses. This steep fall in stock market happened on 09.11.2016 leading to demonetisation of currency notes announced by the Central Government. The respondent had given six cheques for the total value of Rs.1 Crore at the branch of the petitioner on 09.11.2016 to cover the mark to market losses and inspite of the same, the



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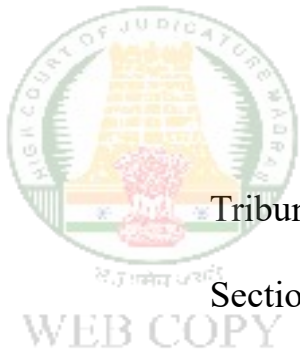
respondent sustained loss.

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4. The respondent initiated original arbitration proceedings claiming a sum of Rs.1,01,96,393/- comprising of Rs.94,61,780/- for the loss incurred due to unauthorised selling of share and the balance amount of Rs.7,34,613/- on interest and penalty.

5. An award was passed on 28.04.2017 in favour of the respondent and the petitioner was directed to pay a sum of Rs.94,61,780/- within a period of three months and also a sum of Rs.7,34,630/-. If this payment is not made to the respondent within a period of three months, the petitioner was directed to pay interest at the rate of 12% per annum.

6. The bye-laws of NSE provided for a two-tier arbitration process. Under Clause 19 under Chapter XI which provides for arbitration, a party aggrieved by an arbitral award can file an appeal to the Appellate Arbitral Tribunal against the arbitral award within one month from the date of receipt of the arbitral award. Accordingly, the petitioner filed the appeal questioning the award passed by the first-tier Arbitral Tribunal. The Arbitration Appellate Tribunal through an award dated 30.08.2017, confirmed/upheld the award dated 28.04.2017 passed by the Arbitral



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Tribunal. Aggrieved by the same, the present petition has been filed under Section 34 of the Act.

7. The primordial contention that was raised by the learned Senior Counsel appearing on behalf of the petitioner is that the award passed by the Arbitration Appellate Tribunal suffers from perversity since no reasons have been assigned for the various grounds that were raised by the petitioner. The learned Senior Counsel submitted that even though Clause 19 uses the word “appeal”, it is a misnomer and what is expected of the second-tier Arbitration Tribunal is that they have to independently apply their mind and conduct *de novo* proceedings and pass the award. Whereas, the Arbitration Appellate Tribunal has merely confirmed the earlier award which goes against the mandate under Clause 19(d) of the bye-laws.

8. The learned Senior Counsel appearing for the petitioner submitted that the arbitral award must contain reasoning which is intelligible and adequate under Section 31(3) of the Act. In the absence of the same, the award suffers from perversity and the same can be interfered by this Court under Section 34 of the Act. The learned Senior Counsel relied upon the judgment of the Hon’ble Apex Court in the case



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of ***Dyna Technologies Private Limited vs. Crompton Greaves Limited***

reported in (2019) 20 SCC 1.

9. The learned Senior Counsel also relied upon the judgment of this Court in O.P.No.605 of 2016 in R.Rajmohan vs. M/s.Coimbatore Capital Limited dated 20.01.2021, wherein, this Court, after testing the award, by applying the principles in ***Dyna Technologies*** case referred supra, came to a conclusion that the Appellate Tribunal had proceeded on the basis of surmises and conjectures without any material before it and therefore, the award was interfered.

10. Per contra, the learned Senior Counsel appearing on behalf of the respondent submitted that the proceedings before the Appellate Tribunal is not in the nature of *de novo* proceedings and it is only in the nature of an appeal against the original award passed by the first-tier Arbitral Tribunal. Hence, when the Appellate Tribunal considers the appeal, it must also follow the procedure as contemplated in bye-laws 1 to 18 and that by itself does not give the second-tier Tribunal the character of the Original Authority. In any case, the reasoning given by the Appellate Tribunal is sufficient to uphold the award, wherein, the



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Appellate Tribunal thought it fit to confirm the original award passed by the first-tier Arbitral Tribunal.

11. This Court has carefully considered the submissions made on either side and the materials available on record.

12. The short issue that arises for consideration in the present case is as to whether the award passed by the Arbitration Appellate Tribunal suffers from perversity and it requires the interference of this Court under Section 34 of the Act?

13. The bye-laws of NSE provide for a two-tier arbitration process. The legality of a two-tier arbitration process came up for challenge before the Apex Court in the case of *Centrotrade Minerals and Metal INC. vs. Hindustan Copper Limited* reported in (2017) 2 SCC 228 and the Apex Court held that it does not suffer from any violation of the fundamental or public policy of India. The Apex Court held that where the parties have accepted a two-tier arbitration system, it cannot be objected later as if it violates the fundamental or public policy of India.



14. The respondent approached the first-tier Arbitral Tribunal and made a claim and the Arbitral Tribunal passed an award directing the petitioner to pay a sum of Rs.94,61,780/- to the respondent within three months and a further sum of Rs.7,34,630/-. If this amount is not paid within three months, the petitioner was further directed to pay interest at the rate of 12% per annum.

15. The petitioner aggrieved by the award passed by the Original Tribunal filed an appeal before the Arbitration Appellate Tribunal under Clause 19. The petitioner raised the following grounds of appeal:

“(1) The claim of the respondent for Rs.94,61,780/- is notional in nature as it is nothing but difference between the prices at two different time intervals and being notional, it is outside the purview of arbitration instituted by NSE.

(2) The loss of Rs.94,61,780/- is calculated by taking the difference between the prices at which open positions were actually squared off and the closing prices on 9th November, 2016. The respondent at no point of time during the hearings before arbitral Tribunal, either in writing or orally, contended that he intended to close the open positions on 9th November, 2016. In such a situation, the appellant pleaded that the loss should have been calculated by taking the difference in prices



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at which the open positions were squared off and the prices on th 24 November, 2016, ie the expiry date of the contract, presuming that the respondent would have continued to hold the open positions till the expiry date and this would have reduced the claim of the respondent by Rs.57,91,505.

(3) The respondent had partially recreated open th positions on 10 November, 2016 in the some of the scripts squared off on the morning of th 9 November, 2016 and with the same expiry date and the amount spent on recreating partial positions ought to have been reduced from the claim amount of the respondent.

(4) Regarding the time of handing over of cheques for Rs.1 Crore by the respondent's representative on th 9 November, 2016, CCTV Footage placed before the arbitral Tribunal clearly showed the time of visit as 9:47 a.m though he did not sign the Visitors Log Book.

(5) In the past, cheques issued by the respondent bounced on two occasions and this was not considered by the arbitral tribunal.

(6) The arbitral tribunal has stated in the Award that 'demand' was not raised by the appellant on the respondent to remit the margin shortfall and MTM losses. Sending financial statements, such as, ledger account, margin statement etc., to the email ID of the respondent as per respondent's mandate,



itself would tantamount to 'demand' for the payment of margin shortfall and MTM losses.

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(7) The respondent willfully omitted to use the facility of RTGS/NEFT for faster transfer of funds to the appellant's bank account to meet his obligation of payment towards margin shortfall and MTM losses.”

16. The Arbitration Appellate Tribunal passed the following award:

“The initial hearing was held in the office of NSE, Chennai, at 11 am on 10th August, 2017. While the respondent was present himself, the appellant was represented by Mr.Brijesh Bhatt, Vice President and Mr.V.Ramakrishnan, Vice President.

During the hearing, the respondent reiterated that he had suffered an actual and real loss of Rs.1,26,62,247/- due to the unauthorised squaring off his open positions in derivative segment by the appellant on the morning of 9th November, 2016, though he restricted the claim to Rs.94,61,780/- as per NSE Regulations. He also highlighted the fact that on the morning of 9th November, 2016, there was no margin shortfall and his account had in fact a credit balance of Rs.71,168.54 after setting off the required margin from the deposit available in his account. In fact, the



appellant in their submission dated 2nd March, 2017 before the arbitral tribunal vide para 4(ix)(b) had agreed with the respondent by showing a credit balance of Rs.71,168.54 in the account of the respondent after setting off span margin and MTM losses from the 'margin available'. The respondent made it clear that he has been regularly paying only the span margin which is required to be recovered mandatorily as per SEBI directives from the constituent. As regards exposure margin, though the same was included in the statement of margin shortfall sent periodically by the appellant, the respondent was paying span margin only and the same was accepted by the appellant also as exposure margin was left to the mutual agreement of the trading member and the constituent. The appellant's representative agreed with the respondent's contention without any contradiction. Also the appellant in their submission dated 2nd March, 2017 vide para 5(ii) had admitted that the respondent's account did not reflect any SPAN Margin shortage till 8th November, 2017 (except 7th November, 2017) and hence there was no necessity to square off the open positions held by the respondent.

As regards receipt of six cheques for a value of Rs.1 Crore from the respondent on 9th November, 2016, photocopy of the relevant extract of the Visitors Log Book produced by



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the applicant before the arbitral tribunal was illegible and not readable. The appellant During the hearing, it was pointed out by the appellant's representatives that an email was sent to the respondent at 9:12 a.m on 9th November, 2016, calling for replenishment of funds and squaring off was done in 10 minutes thereafter.

Regarding recreation of partial positions on 10th November, 2016, in the same scripts which were squared off, the respondent maintained that it was a separate transaction and cannot be linked with the squaring off the open positions by the appellant on 9th November, 2016.

Conclusion:

Taking into account the written submissions as well as oral submissions of the parties and on perusal of the records we, the Appellate Arbitral Tribunal is of the unanimous view that there was no necessity for the Appellant to square off the open positions held by the Respondent and uphold the Award dated 28th April, 2017 passed by the arbitral Tribunal and dismiss the claim of the appellant as devoid of merits.

17. On a careful reading of the above observation/reasoning given by the Appellate Tribunal, it is seen that in the first portion, the Appellate



Tribunal has discussed the stand taken by the petitioner and the corresponding stand taken by the respondent. The reasoning is available in terms of recording the stand of the petitioner's representative and in the last portion, the Tribunal states that the written submissions and oral submissions were taken into account and the records were perused and the Arbitration Appellate Tribunal finds no necessity to square off the open positions held by the respondent and accordingly, upheld the award dated 28.04.2017.

18. At this juncture, this Court has to take into consideration the judgment of the Apex Court in ***Dyna Technologies*** case referred supra and the relevant portions are extracted hereunder:-

“34. The mandate under Section 31(3) of the Arbitration Act is to have reasoning which is intelligible and adequate and, which can in appropriate cases be even implied by the Courts from a fair reading of the award and documents referred to thereunder, if the need be. The aforesaid provision does not require an elaborate judgment to be passed by the arbitrators having regard to the speedy resolution of dispute.

35. When we consider the requirement of a reasoned order, three characteristics of a reasoned order can be



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fathomed. They are: proper, intelligible and adequate. If the reasonings in the order are improper, they reveal a flaw in the decision-making process. If the challenge to an award is based on impropriety or perversity in the reasoning, then it can be challenged strictly on the grounds provided under Section 34 of the Arbitration Act. If the challenge to an award is based on the ground that the same is unintelligible, the same would be equivalent of providing no reasons at all. Coming to the last aspect concerning the challenge on adequacy of reasons, the Court while exercising jurisdiction under Section 34 has to adjudicate the validity of such an award based on the degree of particularity of reasoning required having regard to the nature of issues falling for consideration. The degree of particularity cannot be stated in a precise manner as the same would depend on the complexity of the issue. Even if the Court comes to a conclusion that there were gaps in the reasoning for the conclusions reached by the Tribunal, the Court needs to have regard to the documents submitted by the parties and the contentions raised before the Tribunal so that awards with inadequate reasons are not set aside in casual and cavalier manner. On the other hand, ordinarily unintelligible awards are to be set aside, subject to party autonomy to do away with the reasoned award. Therefore, the Courts are required to be careful while distinguishing between inadequacy of reasons in an award and unintelligible awards.”



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19. Section 31(3) of the Act talks about basis on which an arbitral award shall be made. In the above judgment, the Apex Court has explained three facets which are (a) proper, (b) intelligible and (c) adequate. The Hon'ble Apex Court held that an award should not suffer from impropriety or it must not be unintelligible or suffer from inadequacy. Insofar as the first ground namely, impropriety, is concerned, it was held that it should be such that it falls within the four corners of Section 34 of the Act. With regard to the ground of unintelligible, the Hon'ble Apex Court held that it is as good as giving no reasons. Insofar as the last ground of inadequacy is concerned, it was made clear that it depends on the particularities required in relation to each case. The Court, while exercising its jurisdiction under Section 34 of the Act, has to adjudicate the validity of such an award based on the degree of particularities of reasoning which are required on the facts and circumstances of each case.

20. The Apex Court cautioned that even if the Court comes to a conclusion that there were gaps in the reasoning for the conclusions



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reached by the Tribunal, the Court needs to have regard to the documents submitted by the parties and the contentions raised before the Tribunal so that the awards with inadequate reasons are not set aside in a casual and cavalier manner. Thus, the Courts must be careful while distinguishing between inadequacy of reasons in an award and unintelligible awards.

21. In the case in hand, the Arbitration Appellate Tribunal has considered the grounds that have been raised in the appeal and has received the response from the representative of the petitioner. This Court holds that the Arbitration Appellate Tribunal is not conducting any *de novo* proceedings and it is only a continuation of the original proceedings that took place before the first-tier Arbitral Tribunal. Therefore, while dealing with the grounds raised by the petitioner, the Arbitration Appellate Tribunal has not only considered the response given by the representative of the petitioner, but it also had the advantage of the award that was passed by the first-tier Arbitral Tribunal and the materials that were relied upon by the first-tier Arbitral Tribunal. Even though individual reasoning has not been given for each ground taken by the petitioner, the crux of the grounds raised by the petitioner has been certainly considered by the Arbitration Appellate Tribunal. The upshot is that the award passed by the Appellate Tribunal does not suffer from



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complete lack of reasons resulting in the award becoming unintelligible.

As was cautioned by the Hon'ble Apex Court, even if the award suffers from inadequate reasoning, the Court has to have regard to the documents submitted by the parties and the contentions raised before the Tribunal and the award should not be set aside in a casual and cavalier manner. The Court must bear in mind the distinction between inadequacy of reasons in an award and unintelligible awards. The award becomes unintelligible only if it does not provide any reasons at all. The award under challenge has certainly provided reasons based on the response given by the representative of the petitioner. That apart, this Court has already held that the Appellate Tribunal is not holding *de novo* proceedings. Therefore, the Appellate Tribunal also had the advantage of going through the original award passed by the first-tier Arbitral Tribunal and the materials relied upon.

22. In the light of the above discussions, this Court finds that the award does not suffer from any illegality or perversity and it does not fit into any one of the eight pigeon holes under Section 34 of the Act.

23. In the result, this Original Petition stands dismissed. There shall



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be no order as to costs.

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Index:Yes

Speaking order

NCC:Yes



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