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

% *Date of Decision : 13.01.2026*

\+ **FAO (COMM) 236/2023 & CM APPL. 58716/2023(Stay)**

RE CONNECT ENERGY TRADING .....Appellant
Through: Mr Z A Siddiqui, Mr Akash Kumar and Ms Amisha Upadhyay, Advocates.

versus

M/S DCM SHRIRAM INDUSTRIES LTD .....Respondent
Through: Mr Bipul Kumar Mishra and Ms Ankita Dwivedi, Advocates.

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO
HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

MANMEET PRITAM SINGH ARORA, J. (*ORAL*)

1. This appeal under Section 37(1)(c) of the Arbitration and Conciliation Act, 1996 ['the Act'] lays a challenge to the judgment dated 31.05.2023 ['impugned judgment'] passed by the learned District Judge, Saket Courts, New Delhi in OMP(Comm) No.1/2020 titled **RE Connect Energy Trading v DCM Shriram Industries Limited**.

2. The petition bearing OMP(Comm) No.1/2020 was filed by the Appellant under Section 34 of the Act to challenge the Arbitral Award dated 14.10.2019 rendered by the Arbitral Tribunal[1] in respect of the agreement(s), both dated 18.12.2013 entered into between the parties herein. The

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[1] Comprising of a sole Arbitrator

Appellant herein was the petitioner, and the Respondent herein was the respondent in the proceedings under Section 34 of the Act of 1996.

3. The arbitrator by its Arbitral Award dated 14.10.2019 [hereinafter 'award', for short] has granted compensation of Rs. 56 lakhs in favour of the Respondent, with a direction to the Appellant to pay the said amount within one [1] month from the period of award, failing which the Appellant shall be liable to pay simple interest of 9% per annum on the compensation amount.

The Appellant herein was the respondent, and the Respondent herein was the claimant in the arbitration proceedings.

4. The learned District Judge vide impugned judgment dated 31.05.2023 has opined that the Arbitral Award dated 14.10.2019 is in consonance with the law, well-reasoned and has therefore, held that the ground of Section 34(2)(b)(ii) of the Act of 1996 pressed into arguments by the Appellant is not made out and dismissed the petition filed under Section 34 of the Act of 1996.

5. For ease of reference, the parties are being referred to as per their rank and status in the present appeal proceedings.

6. Mr. Z A Siddiqui, learned counsel for the Appellant submits at the outset, that the Appellant is not contesting the finding of the Arbitral Tribunal at paragraph no. '60' of the award holding the Appellant acted in a negligent manner in submitting the bids on behalf of the Respondent/claimant on 25.04.2018 at the Exchange by selling all the 28,526 certificates at Rs. 1001/- contrary to the instructions to not sell them at less than Rs. 1500/-, which constitutes violation of the terms and conditions of the agreement dated 18.12.2013.

6.1. He states that in this appeal the Appellant is however raising a limited challenge to the quantum of the compensation awarded by the Arbitral Tribunal in favour of the Respondent/claimant.

6.2. He states that the Arbitral Tribunal has calculated the loss to the Respondent at Rs. 199/- per Renewable Energy Certificates [hereinafter 'RECs', for short], whereas it is the contention of the Appellant that in law the Arbitral Tribunal could have calculated the loss at maximum price of Rs.9/- per REC. In this regard, he relies upon the judgment of the Supreme Court in **Trojan Co. Ltd. v. RMN Nagappa Chettiar**[2] for contending that the basis of computation has to be in terms of the said judgment. He states that the Arbitral Tribunal ought to have considered highest price of the REC when it was sold next on the stock exchange and that price as per the Appellant was Rs. 1010/-.

6.3. He also relies upon the Clause 6.4 of the Trading Agreement executed between the Appellant and the Respondent to contend that the maximum compensation, which the Appellant can be held liable to pay is Rs. 4/- per REC. He states that the Appellant was entitled to receive Rs. 4/- as fees per REC and therefore this is the maximum that could have been awarded as compensation.

6.4. He states that therefore, the compensation that should have been awarded by the Arbitral Tribunal ought to have been between the range of Rs. 4/- to 9/- per REC. He states that awarding compensation at Rs. 199/- per REC is contrary to the clause 6.4 of the Trading Agreement dated 18.12.2013 and the judgment of the Supreme Court in **Trojan Co. Ltd.(supra).**

6.5. No other ground has been pressed by the Appellant.

[2] AIR 1953 SC 235

Factual Matrix

7. The brief facts relevant for deciding the dispute, culled out from the award, are as under: -

7.1. The arbitration pertains to the dispute between Respondent/DCM Shriram Industries Ltd. and Appellant/RE Connect Energy Trading regarding sale of RECs made by the Appellant on behalf of the Respondent at Indian Energy Exchange ['IEX'] platform on 25.04.2018 in terms of two agreements, both dated 18.12.2013 executed between the Appellant and the Respondent.

7.2. The Respondent i.e., M/s DCM Shriram Industries Ltd [hereinafter referred to as 'DCM Industry'] is a company engaged, inter alia, in generating renewable energy and for the same it is entitled for issue of RECs by the National Load Dispatch Centre ['NLDC'] under the provisions of Central Electricity Regulatory Commission (Terms and Conditions for Recognition and Issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010, [hereinafter referred to as 'REC Regulations,2010']. The said RECs can be sold on any of the two Power Exchanges operating in India.

7.3. The Appellant/RE Connect Energy Trading [hereinafter referred to as 'RE Connect'] is a company engaged, inter alia, in the business of trading of REC and is registered as a member with IEX.

7.4. The parties herein entered into an agreement dated 18.12.2013 with respect of trading of REC, [hereinafter referred to as 'Trading Agreement']. According to this agreement, the Appellant have to trade RECs on behalf of the Respondent/claimant based on their instructions. The Appellant also undertook to provide trading support services like settlement support, reconciliation support and other services to ensure smooth trading and settlement, as may be required from time to time.

7.5. Another agreement dated 18.12.2013 [hereinafter referred to as 'IEX Platform Agreement'] was also executed between the parties for trading of RECs on the platform of IEX, as the Appellant was registered member of IEX.

7.6. RECs are traded on IEX platform on a prefixed day every month. For the month of April 2018, the trading day for sale/purchase of RECs was 25.04.2018, being the last Wednesday of the said month.

7.7. On 23.04.2018 at 11:33 AM, the Appellant sent an email to the Respondent/claimant informing the floor price of Rs. 1000/- for both solar and non-solar RECs and also asking the Respondent/claimant to inform about the bid data by Tuesday, 24.04.2018, 11:00 AM to prevent any errors or omissions in bid processing.

7.8. The Respondent/claimant sent their bid for sale of RECs by email dated 24.04.2018 at 01:16 PM to the Appellant thereby instructing them to sell project wise RECs, **'5'** from one project and **'1275'** from another project at a price of Rs. 1000/- per REC. Thus, the instructions were for sale of **1280** RECs at **Rs. 1000/-** per REC.

7.9. The Respondent/claimant sent its revised bid for sale of RECs at 12:12 PM on 25.04.2018, instructing the Appellant to sell **'5'** RECs from one project and **'28,521'** RECs from another project at a price of Rs. 1500/- per REC. Thus, the revised instructions were for sale of **of 28,526** RECs at **Rs. 1500/-** per REC.

7.10. The trading window for buying/selling RECs on IEX platform remains open from 1:00 PM to 3:00 PM on the trading day during which period the members are required to submit their bids for selling/buying REC and the Business Rules of IEX permit modification or cancellation of the order on the instructions of client even after the bid has been entered in the system by the member/Appellant during the bidding session. Thus, the modified instructions issued by the Respondent could be implemented by the Appellant on 25.04.2018.

7.11. On 25.04.2018, the Respondent/claimant received an email at 4:32PM from the Appellant that due to lot of confusion with respect to solar trade, they were not able to change price of RECs from Rs. 1000 to Rs. 1500/-. Another mail was received by the Respondent/claimant from the Appellant at on 25.04.2018 at 11:33 PM informing the results of the REC trading, wherein it was indicated that the market clearing price for non-solar REC on 25.04.2018 at IEX was Rs. 1001/- per REC and that the entire RECs of **'28,526'** [28521+5] had been sold at **Rs. 1001/-** per REC.

The sale of **28,526** RECs shows that the Appellant had duly received the email dated 25.04.2018 issued by the Respondent modifying its instructions as the Respondent had by its earlier email only instructed for sale of **1280** RECs. Ex-facie, the Appellant had failed to act upon the instruction to offer the REC at sale of Rs. 1500/- per REC, as against the earlier instruction of Rs. 1000/- per REC. The Appellant in its email dated 25.04.2018 sent at 04:32 PM acknowledged its error.

7.12. On 30.04.2018 at 13:07 hrs., the Appellant sent an email to the Respondent/claimant that they were *unable* to change the trade bid from Rs.1000/- to Rs.1500/- on the trade day i.e. 25.04.2018 and bid was placed on the basis of bid received on 24.04.2018, at Rs.1000/-.

However, this was exfacie incorrect as the Respondent had offered a trade of 28,526 RECs and this instruction was issued by the Respondent only on 25.04.2018.

7.13. On 30.04.2018, the Respondent/claimant sent a legal notice to the Appellant seeking compensation for losses incurred on account of quoting incorrect price for REC in the bidding process held on 25.04.2018 causing financial loss to them to the tune of Rs 1,42,34,474/-. The Respondent claimed the loss of Rs. 499/- per REC for 28,526 RECs.

7.14. In the aforesaid facts, a dispute arose between the parties regarding the price at which the RECs owned by the Respondent/claimant were sold by the Appellant in IEX on 25.04.2018.

7.15. Conciliation proceedings were held between the parties, but the dispute could not be resolved. Pursuant to failure of Conciliation proceedings, the Respondent/claimant in terms of letter dated 06.04.2019 requested IEX to initiate Arbitration proceedings. The agreement dated 18.12.2013 had a provision of resolution of dispute by arbitration under the Act. On mutual consent of the parties, IEX approached Mr. Rakesh Nath, former Chairperson, Central Electricity Authority and former Technical Member, Appellate Tribunal for Electricity, to seek his consent to be the sole Arbitrator by email dated 13.05.2019. Mr. Rakesh Nath conveyed his acceptance on 13.05.2019.

Findings and Analysis

8. This Court has heard the learned counsel for the parties and perused the findings recorded in the impugned judgment as well as in the Arbitral Award, material placed on record and considered the rival contentions of the parties.

9. The Supreme Court in its recent pronouncement **Jan De Nul**

Dredging India (P) Ltd. v. Tuticorin Port Trust[3], has reiterated that the powers of the Appellate Court under Section 37 of the Act of 1996 are even more restricted than the powers conferred by Section 34 of the Act of 1996, opined as under: -

> *"36. The gist of the aforesaid decisions is that the jurisdiction of the court under Section 37 of the Act is akin to the jurisdiction of the court under Section 34 of the Act, and, therefore, the scope of interference by the court in appeal under Section 37 cannot go beyond the grounds on which challenge can be made to the award under Section 34 of the Act. Moreover, the courts exercising powers under Sections 34 and 37, do not act as a normal court, and therefore, ought not to interfere with the arbitral award on a mere possibility of an alternative view.*
> *37. In other words, the scope of interference of the court with the arbitral matters is virtually prohibited, if not absolutely barred. The powers of the Appellate Court are even more restricted than the powers conferred by Section 34 of the Act. The appellate power under Section 37 of the Act is exercisable only to find out if the court exercising power under Section 34 of the Act, has acted within its limits as prescribed thereunder or has exceeded or failed to exercise the power so conferred. The Appellate Court exercising powers under Section 37 of the Act has no authority of law to consider the matter in dispute before the Arbitral Tribunal on merits so as to hold as to whether the award of the Arbitral Tribunal is right or wrong. The Appellate Court in exercise of such power cannot sit as an ordinary court of appeal and reappraise the evidence to record a contrary finding. The award of the Arbitral Tribunal cannot be touched by the court unless it is contrary to the substantive provision of law or any provision of the Act or the terms of the agreement."*
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> [Emphasis Supplied]

10. Keeping in view the aforesaid scope of limited jurisdiction of the Appellate Court, this Court will not proceed to decide the issue in hand.

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[3] 2026 SCC OnLine SC 33

Proceedings before the Arbitral Tribunal

11. To adjudicate the disputes, which arose between the parties, the Arbitral Tribunal on the basis of the pleadings, framed the following issues:

"

a. *Whether the Appellant has violated the terms and conditions of the agreements between the parties hy selling all the 28526 RECs at the rate of Rs. 1001/- per REC against the directions of the Respondent/claimant?*

b. *Whether the Appellant by defying the instructions of the Respondent/claimant caused financial loss to the Respondent/claimant?*

c. *Whether the Appellant is obligated to compensate the Respondent/claimant for causing pecuniary loss?*

d. *If the answer to the question c) above is positive, what is the compensation payable by the Appellant to the Respondent/claimant?*

e. *Whether the Respondent/claimant is also entitled to get interest on the aforesaid amount at 12% per annum from the date of default committed by the Appellant i.e., 25.04.2018 till the realization of amount?"*

12. To decide the said issues, the Arbitral Tribunal also framed preliminary questions arising in the facts of the case, which are reproduced herein as under: -

"I. What is the relationship of the Respondent with respect to the Claimant?

II. What is the time limit by which the Claimant was required to convey its sell bid to the Respondent for trading session on 25.04.2018 as per the agreement between the parties, the Regulations of the Central Commission and the Rules and Bye-laws of IEX?

III. Whether the Respondent was bound to consider the revised bid communicated by the Claimant on 25.04.2018?"

12.1. The Arbitral Tribunal has summarized its answers to the aforesaid preliminary questions in a tabular manner, which is reproduced hereinbelow:

Question	*My observation*
What is the relationship of the Respondent with respect to the Claimant?	*The relationship between the Claimant and the Respondent was that of Client and Agent.*
What is the time limit by which the Claimant was required to submit its bid to the Respondent for trading session on 25.04.2018 as per Regulations of the Central Commission or the Rules or Bye-laws of IEX?	*The Agreements between the parties, the Regulations of the Central Commission, Bye-laws and Business Rules of IEX do not provide for any time limit by which the claimant was required to submit its bid to the Member. The Business Rules of IEX provide that the bidding session shall be from 13:00 to 15:00 hrs. on the specified trading day and the Member can modify or cancel its bid within the bidding session, before closing of the bidding session.*
Whether the Respondent was bound to consider the revised bid communicated by the Claimant on 25.04.2018?	*In view of no provision of time limit for submission of bid by the Claimant in the agreements between the parties, specific provision in the Business Rules of IEX for revision of bid even during trading hours and admission of the Respondent of accepting the practice of entertaining the revised bids on case to case basis and their action of partly implementing the revised bid of the Claimant, the argument of the Respondent that they were not bound to consider the revised bid does not hold water.*

12.2. During the arguments, the Appellant has not disputed before us the finding of the Arbitral Tribunal that the relationship between the parties is that of principal/client and agent and the said has become final.

Issue (a)

13. In view of the aforesaid findings returned on the preliminary issues, thereafter, on issue (a), the Arbitral Tribunal returned the following finding:

> *"60 In view of above, I hold that the Respondent has acted in a* ***negligent manner*** *in submitting the bids on behalf of the Claimant and violated the terms and conditions of the Trading Agreement between the parties by selling all the 28526 RECs @ Rs1001/-."*
>
> [Emphasis supplied]

13.1. During the arguments before us, the Appellant has not challenged the said finding of the Arbitral Tribunal, whereby the Arbitral Tribunal held that the Appellant has acted in a negligent manner in submitting the bids on behalf of the Respondent/claimant and thus, the same has attained finality.

Issues (b), (c), and (d)

14. Issues (b), (c), and (d) were decided by the Arbitral Tribunal with common deliberation and the Tribunal determined that the Respondent/claimant has indeed suffered real pecuniary loss due to the negligence of the Appellant. The Arbitral Tribunal held that the Appellant is liable to compensate the Respondent/claimant for the said pecuniary loss. It referred to Sections 73, 211 and 212 of the Contract Act, 1872 ['Act of 1872'] and the terms of the Trading Agreement executed between the parties to conclude that the Appellant is liable to compensate the Respondent/claimant for this pecuniary loss. The Arbitral Tribunal determined that minimum loss incurred by the Respondent/claimant is

Rs.199/- per REC. Accordingly, the Arbitral Tribunal held that the Respondent/claimant is entitled to the compensated at Rs. 199/- per REC on the basis of the following deliberations: -

"73 Let me first examine if any loss has been caused to the Claimant by the Respondent by not following the instructions of the Claimant. To assess this, let me examine the date of trading conducted by the Respondent on behalf of the Claimant from May, 2018 onwards.

74 The detailed data for sale of RECs by the Respondent on behalf of the Claimant on IEX from May,2018 onwards as furnished by the Respondent is attached as Exhibit-I.

75 The position of clearing price per REC at the two Exchanges namely, IEX and PXIL and the RECs sold by the Respondent on behalf of the Claimant from May, 2018 to March,2019 has been summarized as under:

Month	*Power Exchange*	*REC Cleared **	*Clearing Price ***		*Month*	*Power Exchange*	*REC Cleared **	*Clearing Price ***
May, 18	*IEX*	*0*	*1010*		*Nov. 18*	*IEX*	*5000*	*1260*
	PXIL	*0*	*1000*			*PXIL*	*5000*	*1252*
June, 18	*IEX*	*0*	*1150*		*Dec. 18*	*IEX*	*5000*	*1320*
	PXIL	*0*	*1050*			*PXIL*	*2500*	*1255*
July, 18	*IEX*	*5000*	*1200*		*Jan. 19*	*IEX*	*3265*	*1500*
	PXIL	*0*	*1050*			*PXIL*	*3265*	*1501*
Aug, 18	*IEX*	*0*	*1200*		*Feb., 19*	*IEX*	*0*	*1395*
	PXIL	*0*	*1300*			*PXIL*	*0*	*1555*
Sept, 18	*IEX*	*0*	*1100*		*March, 19*	*IEX*	*0*	*1500*
	PXIL	*0*	*1101*			*PXIL*	*0*	*1395*
Oct, 18	*IEX*	*5000*	*1251*					
	PXIL	*2500*	*1201*					

76 It is seen that the clearing price of REC on IEX increased from June, 2018. It is seen that in June,2018, the Respondent bid a price of Rs 1500/- per REC on the instructions of the Claimant but the same could not be sold as the clearing price on IEX was only Rs 1150/per REC. From July, 2018 to January, 2019, the Claimant has been offering to sell some RECs at price between Rs

1200 to 1250 and some RECs at price varying from Rs 1300 to Rs 1500 in slabs. It is also seen that the Claimant has not bid anytime below Rs 1200/per REC. From July,2018 to March,2019, the price per REC has remained between Rs 1200/- to' Rs 1500/- except in September/2018 when the price went down to Rs 1100/-. However, the Claimant did not sell any REC in September as it had bid at Rs 1200/- and above. Similar rising trend has also been seen at PXIL.

77 If the Respondent had revised the price to Rs 1500/- per REC along with the quantity as per the revised instruction of the Claimant in the bidding that took place on 25.04.2018, the 28526 RECs of the Claimant would not have been sold on 25.04.2018. It is clear from the above data that if the Claimant had sold these 28526 RECs between July,2018 to March,2019, they would have received a higher price. The minimum price they would have received per REC would have been Rs 1200/- per REC and maximum price Rs 1555/per REC.

78 In view of above, <u>it is clear that the Respondent by not strictly complying with the revised instructions of the Claimant has caused financial loss to the Claimant. The loss is not hypothetical and imaginary as evident from the trend of the REC price in the power exchanges between July,2018 to March,2019. It is also seen that the Respondent had sold 36530 RECs on behalf of the Claimant between July'2018 toJanuary,2019 at price ranging from Rs1200/to Rs 1501/-. The price that the Claimant received per REC for 28526 RECs in bidding held on 25.04.2018 was Rs 1001/- only. Therefore, the financial loss incurred by the Claimant due to noncompliance of instructions of the Claimant by the Respondent is real and is not imaginary or hypothetical and has been caused directly due to the wrongful act of the Respondent</u>.

...

88 …… In my view, the above judgments do not support the case of the Respondent. The loss due to breach of agreement was foreseen by the parties as they had included a clause in the Trading Agreement regarding liability of the Respondent and Claim by the Client/Claimant. According to Clause 8 of the Business Rules of IEX, the Members shall be required to obtain insurance cover at their own cost, so as to protect themselves from risks and hazards *relating to their business operations at the Exchange. Thus, the Respondent should have known the risks and hazards of the business of trading and the liability due to breach of agreement. The loss caused to the Claimant due to negligence of the Respondent is a direct loss as the price of the RECs went up from July,2018 onwards. If the Respondent had quoted the price of Rs 1500/- in the bid held on 25.04.2018, these RECs had remained unsold and could have been sold by the Claimant from July, 2018 onwards at a higher price. In fact, the Respondent sold 36,530 RECs on behalf of the Claimant at rate varying from Rs 1200 to Rs 1500 per REC during the period from July,2018 to January, 2019. At no time, the Claimant quoted a rate less than Rs 1200 per REC. It is seen that the Claimant was quoting for rates from Rs 1200 to 1500 per REC in slabs. I therefore, hold that the Respondent is obligated to compensate for causing pecuniary loss to the claimant due to their negligence in wrongly submitting the price bid on behalf of the Claimant.*

…

92 I find that the Claimant had been quoting the rates varying from Rs 1200 to Rs 1500 per REC in slabs from June,2018 to January,2019 and the clearing price received by the Claimant was in the range of Rs 1200 to Rs 1501 per REC. <u>The weighted average price received by the Claimant was Rs 1296 per REC during the period July,2018 to January, 2019.</u>

93 <u>In my view, the compensation payable to the Claimant should be calculated on the difference in price which the Claimant could have received for 28526 RECs if they were sold during the period from July, 2018 onwards and the price of Rs 1001 per REC received in the bidding on 25.04.2018.</u>

94 At selling price of Rs 1296/- per REC, i.e., the weighted average price received by the Claimant for sale of RECs through the Respondent from July,2018 to January, 2019, the compensation for 28526 RECs would work out to be Rs 84.1 lacs. However, deduction is required to be made for the interest on the amount that the Claimant received due to sale of the RECs on 25.04.2018 @ Rs 1001/- per REC as the Claimant would not have received the amount in April,2018 and would have received the sale proceeds between July,2018 to January, 2019. However, it is not *possible to calculate the amount of interest as interest calculation would require assumption of sale of the RECs in different months. At a price of Rs 1200/- per REC, the minimum price received by the Claimant during July,2018 to January, 2019 the compensation would work out to be Rs 56.7 lacs.* ***This is the minimum loss that the Claimant has incurred. I also find that this is the minimum price at which the Claimant has bid for its REC after April,2018.*** *In order to avoid any controversy of calculating the interest on the basis of some assumptions, it will be fair if the compensation is decided on the basis of difference between the sale price of Rs 1200 per REC received by the Claimant during July,2018 and Rs 1001/- per REC.*

95 In view of above, I decide a compensation of Rs 56 lacs in favour of the Claimant which is required to be paid by the Respondent within one month of the date of this award."

[Emphasis Supplied]

15. The Appellant has during arguments not disputed the finding of the Arbitral Tribunal that the Respondent/claimant indeed suffered real pecuniary loss due to the negligence of the Appellant on 25.04.2018 in selling 28,526 RECs at the rate of Rs. 1001/- in contravention of the instructions of the Respondent/claimant. The Appellant has also not disputed during arguments, the finding with respect to the liability of the Appellant to compensate the Respondent/claimant for the pecuniary loss as per Sections 211 and 212 of the Act of 1872. The Appellant has also not disputed the factual findings of the Arbitral Tribunal, which form the basis of ascertaining the actual minimum loss at Rs. 199/- per REC at paragraph nos. '92' to '94' of the award. The issue of breach of duty, actual loss and liability have therefore attained finality.

Further, as noted above, the Appellant during arguments has not disputed the finding of the Arbitral Tribunal that the relationship between the parties is of principal/client and agent, which creates a fiduciary relationship between the parties. [Re. **Chandrakantaben v. Vadilal Bapalal Modi**[4]]

16. The only submission raised by the Appellant during the arguments is that notwithstanding the aforesaid findings of negligence, actual loss, etc., the compensation could not have been awarded by the Arbitral Tribunal at more than Rs. 9/- per REC. The Appellant contends that on 25.04.2018, the REC was sold at Rs. 1001/- and on the next trading date in May, 2018 the REC was sold at Rs. 1010/-. The Appellant states that it is this price of Rs.1010/-, which could have been taken into consideration by the Arbitral Tribunal for awarding Rs. 9/-. For this purpose, he relies upon by the judgment of the Supreme Court in **Trojan Co. Ltd. v. RMN Nagappa Chettiar** (supra).

Thus, the Appellant has during arguments only challenged the quantum of compensation awarded at Rs. 199/- per REC in this Appeal on the basis of the average price arrived after taking into consideration the sale price, which the RECs fetched between May 2018 to March 2019.

17. This Court finds that the facts in the said case were completely different from the case in hand. The principle adopted in the **Trojan Co. Ltd.** (supra) was appropriate for calculation of losses suffered by the plaintiff therein. In **Trojan Co. Ltd.** (supra), the Court held that defendant/broker mislead the plaintiff/client to purchase shares of a specific company on 05.04.1937 at Rs. 77/- per share though the defendant/broker was aware that the price of the said stock was likely to decline sharply the next day. The plaintiff purchased the stock at Rs. 77/- per share and immediately the price fell sharply compelling the plaintiff to sell on 20th and

22nd April, 1937 the stock at reduced price in the range of Rs. 42 - Rs. 47 per share, leading to losses. The Supreme Court after examining the evidence held that the true market price of the shares on 05.04.1937, when the plaintiff purchased the 3,000 shares was Rs. 46/- per share. The Court held that the plaintiff was entitled to the difference between Rs. 77/- and Rs. 46/- i.e., Rs. 31/- per share from the defendant/broker. This was the measure of computation of damages settled by the Supreme Court in the facts of the said case. This fact situation in the judgment of **Trojan Co. Ltd.** (supra) is inapplicable to the facts of this case. In this very judgment the Court at paragraph no. '22' clarified that no general principle can be laid down for measuring the damages to be awarded in favour of the injured party and every case has to be decided on its own circumstances.

18. This Court finds that the method adopted by the Arbitral Tribunal for calculating the actual loss in this case has been well documented in paragraph nos. '74' to '78' and '92' to '95' of the award, as extracted hereinabove. The price of Rs. 1200/- per REC adopted by the Arbitral Tribunal by arriving at a weighted average for determining the loss and computing the compensation in favour of Respondent is reasonable and correct.

19. The Respondent/claimant had issued instructions to the Appellant to offer '28,526' RECs at Rs. 1500/- each. The Appellant in contravention of the unambiguous instruction by the Respondent/claimant sold '28,526' RECs at Rs. 1001/- each, thereby selling the RECs at a price, which was Rs.499/- less than the price instructed by the Respondent. The Respondent therefore raised a claim of loss of Rs.499/- per REC in the arbitration

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[4] (1989) 2 SCC 630 [at paragraph no. 19]

proceedings. The data placed on record before the Arbitral Tribunal showed that indeed RECs were sold at Rs. 1500/- in January 2019 and at Rs. 1555/- in February 2019 on the exchange. The data also showed that the Respondent/claimant has not sold the RECs in the next one year at a price lesser than Rs. 1200/- per REC. The said sales and the behaviour of the Respondent/claimant in the opinion of the Arbitral Tribunal substantiated the claim of the Respondent for damages.

However, the Arbitral Tribunal adopted a reasonable and scientific mechanism of determining the weighted average price at which the RECs were sold by the Respondent between May 2018 to March 2019 for determining the loss; further accounting for the interest component on the price of Rs. 1001/- already received by the Respondent on 25.04.2018 in favour of the Appellant; and thereafter arriving at figure of Rs. 199/- per REC as the amount for which the Appellant was held liable to compensate the Respondent/claimant. The principle/measure adopted by the Arbitral Tribunal for calculating the damages is fair and has balanced the equities.

This Court therefore finds no merit in the submission of the Appellant that the Arbitral Tribunal ought to have adopted the clearing price of Rs.1010/-, which was the price prevailing in May 2018, when the next transaction was executed on exchange. This is for the reason, the Respondent/claimant was under no legal obligation to sell the RECs in May, 2018 and could have held on to the same until it got the desired price.

20. The alternate contention of the Appellant is that its liability for losses suffered by the Respondent/claimant should be limited to Clause 6.4 of the Trading Agreement, which reads as under: -

"6.4 Limitation of Liability

<u>Save as otherwise determined by any court of law, arbitration or other legal provisions</u>, RET's total liability to Client due to any reason shall not exceed the amount received in fees for services provided.

Client shall bring any claim relating to the Services or otherwise under this Agreement within 12 months of completion of Services.

[Emphasis supplied]

21. It is contended that the Appellant is entitled to a fee of Rs. 4/- per REC and therefore the maximum compensation, which the Arbitral Tribunal could have awarded in favour of the Respondent was Rs. 4/- per REC and not Rs. 199/- per REC.

22. With respect to reliance placed by the Appellant on Clause 6.4 of the Trading Agreement to limit its liability, the Arbitral Tribunal duly considered the same at paragraph nos. '83' and '84' and rejected the said arguments, which reads as under: -

"83 Clause 6.6 of the Agreement provides for applicable law and dispute resolution. It provides for arbitration in accordance with the procedures in the agreement and Rules of Indian Council of Arbitration ('Rules') or such rules and procedure as the parties may agree.

84 Thus, the parties were aware about the consequences of any breach of the agreement. <u>The Clause 6.4 stipulates limitation of liability of the Respondent to its Client to fees for services but there is a saving clause for liability as determined by any court of law, arbitration or other legal provisions. Therefore, a higher compensation can be granted in the Arbitration</u>."

[Emphasis Supplied]

23. The Arbitral Tribunal at paragraph no. '38' of the award has also recorded a categorical finding of fact that the Appellant duly received the communication dated 25.04.2018 issued by the Respondent/claimant revising its instructions to sell at Rs. 1500/- per REC and in fact the

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Appellant acted upon the said instruction, as it offered '28,526' RECs for sale based on the said instructions; albeit at Rs. 1001/- per REC, thereby acting contrary to the written instructions of the Respondent/claimant leading to an undisputed breach of its obligations under the Trading Agreement and the Bye-Laws of IEX, causing real loss to the Respondent. The Arbitral Tribunal held that the conduct of the Appellant in selling '28,526' RECs at Rs.1001/- per REC on 25.04.2018 was negligent.

24. In these facts, where the negligence of the Appellant stands established beyond doubt, the Appellant's attempt to limit its liability to Rs.4/- per REC by relying upon Clause 6.4 of the Trading Agreement has been rightly rejected by the Arbitral Tribunal by not only interpreting the Clause 6.4 correctly but also by making reference to Sections 211 and 212 of the Act of 1872.

The conduct of the Appellant was not of a mere breach but negligence of its fiduciary obligation towards the Respondent/claimant, who had relied upon it and entrusted it with its RECs to trade the same on the Exchange at the price specified in writing. The relationship between the Appellant and the Respondent has been rightly held by the Arbitral Tribunal to be that of principal and agent in view of Clause 2.1.14 of the Bye-Laws of IEX, and the action of the Appellant in acting contrary to the written instructions of the principal has been rightly held by the Arbitrator to make it liable for damages as per Sections 211 and 212 of the Act of 1872.

25. The phrase 'save as otherwise determined by any court of law, arbitration or other legal provisions' appearing in Clause 6.4 of Trading Agreement recognises the power of the Arbitral Tribunal and the Court to determine the liability of the Appellant towards its client in accordance with

Sections 211 and 212 of the Act of 1872 so as to compensate the Respondent/claimant for the actual loss suffered by it.

26. If the submission of the Appellant is accepted and its liability is capped at Rs. 4/- per REC, it would be putting a premium on its negligence and breach of fiduciary obligation as well as it would be contrary to Sections 211 and 212 of the Act of 1872, which make the agent liable for compensating the actual loss. The facts of the case pertain to breach of fiduciary duty of the Appellant herein towards the Respondent while trading for the RECs on the Exchange and losses suffered by the Respondent/claimant due to the breach of such duty by the Appellant shall make it liable for the losses suffered by the Respondent.

27. It appears that the Appellant is seeking to invoke the principles of Section 74 of the Act of 1872, though the same is not even pleaded in its grounds of appeal. In this regard, we may observe that Sections 73 and 74 which fall in Chapter VI of the Act of 1872 deals with consequences of breach of contract and stipulate payment of damages to the injured party. However, Sections 211 and 212 fall in Chapter X of the Act of 1872 and provide a separate and independent mechanism for holding an Agent liable for losses suffered by the Principal consequent to its breach of duty. The facts of this case are governed by Sections 211 and 212 of the Act of 1872 and therefore, the losses have been correctly computed on actual basis without any limitation imposed in Clause 6.4 of the Trading Agreement.

28. The interpretation given by the Arbitral Tribunal to Clause 6.4 of the Trading Agreement is reasonable as well as in consonance with law and would not merit any interference by this Court in its judicial review under Section 34 or 37 of the Act of 1996.

29. The award also notes that as per Clause 8 of the Bye-Laws of IEX, the Appellant is required to obtain insurance to protect itself against the risks and hazards relating to business operation at the exchange. It therefore appears that the Appellant is obliged to take professional insurance; though there is no disclosure by the Appellant in this regard on record and it is unclear if the Appellant will be recovering this awarded amount from its insurer.

30. In these facts, this Court finds no ground to interfere with the impugned judgment dated 31.05.2023 passed by the learned District Judge, Commercial Courts, Saket Courts, New Delhi in OMP(COMM) No. 1/2020 and the Arbitral Award dated 14.10.2019 passed by the Arbitral Tribunal.

31. In view of above, the appeal and pending applications, if any stands dismissed. No Costs.

MANMEET PRITAM SINGH ARORA, J

V. KAMESWAR RAO, J

JANUARY 13, 2026/*kp/MG*