

महाराष्ट्र MAHARASHTRA



2021 मधील नोंदवही

अनुक्रमांक 41863

जोडपत्र - २

BE 321503

दिनांक 12 AUG 2021

दस्तावा प्रकार -

हस्त नोंदणी करणार आहे का ? होय/नाही

मिलकतीचे थोडक्यात वर्णन - Indian Commodity Exchange Limited

मुद्रांक विकत घेणाऱ्याचे नांव - Reliable Tech Park, B-wing,

हस्त असल्यास त्याचे नांव, 4th Floor, 403, Chhapur Road,

पत्ता व सही - Airoli (E) Navi Mumbai-400 708,

Maharashtra India.

CIN NO: U07120MH2007PLC182140

दुसऱ्या पक्षाकराचे नांव -

मुद्रांक शुल्क रक्कम - 100/500

मुद्रांक विक्रेत्याची सही-(नितिन व. मांजरेकर) Pretman

मुद्रांक विक्रीचे ठिकाण/पत्ता - गंगा झेरॉक्स/टायपिंग सेंटर

दुकान नं. ३४, भवानी मार्केट, कलेक्टर ऑफीस जवळ,

ठाणे (प.) - ४०० ६०९.

परवाना मुद्रांक क्रमांक - ९२०९०९०

ज्या कारणासाठी ज्यांनी मुद्रांक खरेदी केला त्यांनी त्याच कारणासाठी

मुद्रांक खरेदी केल्यापासून ६ महिन्यात वापरणे बंधनकारक आहे.

IN THE MATTER OF ARBITRATION UNDER THE RULES,
REGULATIONS AND BYE-LAWS OF THE INDIAN COMMODITY
EXCHANGE LIMITED (ICEX) AT NAVI MUMBAI.

Before The Appellate Panel of Arbitrators Comprising of

Mr. S.D. Dharmadhikari
Mr. Kamalchand Paratwar
Mr. Pawan KR Agarwal

Presiding Arbitrator
Co-Arbitrator
Co-Arbitrator

APPEAL ARBITRATION NO: ICEX/01/2020

In the Matter of Appellate Arbitration:

BETWEEN

KARVY COMTRADE LIMITED

Karvy Millennium, Plot No-31,
Nanakramguda, Financial District,
Gachibowli,
Hyderabad-500032 Telangana.

..... Appellant
(Constituent)
(Original Claimant)

AND

MR. RASHMEET CHABRA

353R, Khatiwala Tank,
Near Post Office, Indore
Madhya Pradesh - - 452 001.

..... Respondent
Trading Member)
(Original Respondent)

In Attendance:

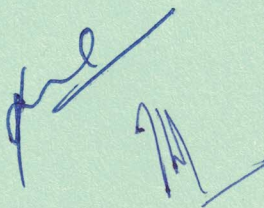
1. Mr. Ranjit Samantaray : Chief Regulatory Officer (In Person)
2. Mr. Narayana Rai : Head – Investor Grievance (In Person)
3. Mr. Praveen Acharya : Chief Manager (In Person)
4. Ms. Harshala Lad : Assistant – Manager (In Person)

For Appellant: M/s. Karvy Comtrade Limited

1. Mr. Malay Hazra (Online)
2. Mr. Suman Smriti (Online)
3. Mr. Dinesh Gupta (Online)

For Respondent:

1. Mr. B. M Maheshwari, Advocate (Online)
2. Mr. Rashmeet Chhabra (Online)



A W A R D

1. Aggrieved by the Majority Award dated 13th March 2020 passed by the Arbitral Tribunal the Appellant-Original Claimant has filed the present Appeal. By the Impugned majority award, the Arbitral Tribunal rejected the claim of the Appellant seeking to recover the outstanding amount of Rs. 59,46,136.80 with interest. However, the third and Presiding Arbitrator by his dissent Award upheld the claim of the Appellant and directed the Respondent to pay Rs. 59,46,136.80 together with interest @ 12% p.a. from 04/09/2019 till the date of the award and further interest @ 18% from the date of the award till realization.

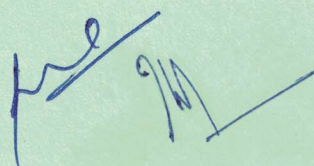
2. The Claim of the Appellant is as under:

Sr. No.	Description	Claim amount
1	Outstanding amount due from the Respondent as on 04/09/2019	Rs. 59,46,136.80
2	Interest @ 24% from 05/09/2019 to 25/10/2019	Rs. 1,95,489.43
	Total	Rs. 61,41,626.23

3. The first hearing was scheduled on 8th April 2021, but the matter was adjourned to 22nd April 2021. Due to severe outbreak of second wave of COVID-19 it was decided to adjourn the hearing scheduled on 22nd April, 2021, to 14th May, 2021, and thereafter to 10th June, 2021 and finally the hearing was rescheduled to 17th June, 2021. Arguments of both the parties were heard and the hearing was concluded on 6th July, 2021.

4. Grounds of Appeal of the Appellant are as under:

- (i) The findings in the Impugned Award rendered by the two arbitrators are vague, sweeping, bald, baseless, and contrary to the facts on the record and contrary to the evidence on record. The findings are based on mere surmises, hypothesis and conjectures and are therefore untenable.
- (ii) The Appellant refers to point number 1 and 2 of arbitration award passed by two of the Arbitrators and submit that the Appellant has had provided the financials/Ledger balances, MTM margin and Daily margin requirements along with statement of case filed during the arbitration, which clearly justifies the Respondent's open positions and margin shortfall requirements from time to time. The Appellant encloses voice records of the communication between the client and the Karvy officials for the period 09/08/2019 to 13/08/2019 which clearly show that the Respondent has created short positions and further was interacting with the officials about his margin obligations and the squaring off of the position was to his knowledge, if not approved by him. It would show that the respondent was in discussion about his open positions and assuring to close out some of the positions and for rest the Respondent has provided the cheques for the purpose of clearing the debit obligations.



- (iii) The Appellant submits that the presiding arbitrator who has rendered the dissenting Award has rightly observed that "I note that during the course of the hearing, the issue of squaring off the position arose on account of non-compliance of daily margins and settlement margin. It is not in dispute that as per the ledger, there was a credit of Rs. 22,82,172.93 paise, after a debit of Rs. 1,194.63 paise being the exchange short margin for 09.08.2019 in the account of the respondent as on 08.08.2019. I further note that there was a credit of Rs. 1,04,36,040.16 paise on 09.08.2019 thus taking the credit to Rs. 1,27,18,213.09 paise on 09.08.2019 morning. It is on record that there was a sharp rise in the steel future contracts on 09.08.2019 which resulted into a debit of Rs. 1,26,58,134.51 paise towards settlement margin coupled with another debit of Rs. 33,72,121.88 paise towards daily margin. Thus, there was a debit of Rs. 33,10,848.67 paise at the end of 09.08.2019". Further, the Arbitrator has stated that "it is on record that the sharp rise in the steel future contracts continued and resulted into a cumulative debit of Rs. 1,29,38,111.44 paise consisting of Rs. 79,75,174.80 paise towards daily margin coupled with a debit of Rs. 1,43,03,031 towards settlement margin on 12.08.2019".
- (iv) The Appellant refers to point number 3 and 4 of arbitration award passed by the Arbitrators and submit that it is fact that Respondent has got MTM debit of Rs. 79,75,174.80 in single day on 12/08/2019 and for which respondent has given cheque of Rs. 30,00,000/- and Rs. 17,00,000/- on 12/08/2019 towards margin obligation and respondent never disputed this fact. It is very clear that respondent has to clear the margin obligation on 12/08/2019. Leaving this aside, both the learned arbitrators discussed the matter more on the two cheques given by the respondent where one cheque was dishonoured by the respondent with insufficient funds and another was having different reason for which an FIR was filed against the respondent in Juni police station, Indore. The learned Arbitrators failed to get proper response from the respondent for not fulfilling the exchange margin obligation in the client account on 09/08/2020, 12/08/2020 and 13/08/2020. Penalty on the shortfall of margin was charged as per the Exchange and SEBI guidelines. The Appellant submits that the Learned arbitrators have failed to appreciate the fact that the Respondent had given two cheques to the Appellant which shows that he admitted the liability. The Appellant submits the voice logger and the transcripts of the communication between the client and Karvy officials which clearly establishes that the positions were created by the Respondent himself knowing the risk associated in it.
- (v) The Appellant refers to point number 5 and 6 of arbitration award and submits it is on the record that Steel Ingot has raised sharply and there was MTM and daily margin obligation on 09/08/2019, 12/08/2019 which must be cleared by the Respondent. The Respondent was aware of the facts and never tried to close his open positions nor cleared the margin obligation. The dissenting learned arbitrator has well explained fact about this in his point number 5 of his dissent award.
- (vi) The Appellant submits that the presiding arbitrator has rightly made observations stating that "I cannot overlook the position that the respondent was in debit even towards daily margin and continuing his outstanding



position would have otherwise been in violation of the Rules, Bye laws and Regulations of the Exchange. It is inconsequential to the issue on hand whether the cheques for Rs. 30,00,000 and Rs. 17,00,000 were deposited late, (there is a dispute on the whereabouts of the cheque for Rs. 30,00,000) whether these were deposited at Hyderabad and not in Indore, whether the complaints were filled later, since the value of the cheques was Rs. 47,00,000 whereas the debit in the account was Rs. 1,29,38,111.44 paise on 12.08.2019 and therefore the same is of no assistance to the respondent. The same does not persuade me since the defence of the respondent is silent on the means and efforts to fulfil balance amount of his liability”.

- (vii) The Appellant also submits that the presiding arbitrator has rightly made observations stating that “I further note that the ledger account of the respondent reflects a credit of Rs. 17,00,000 and Rs. 30,00,000 on 12.08.2019 being the entries for the cheques. The ledger account further shows a reversal of entry of Rs. 30,00,000 on 13.08.2019 and on 16.08.2019 for Rs. 17,00,000 being the cheques returned unpaid. The fact of issue of two cheques by the respondent leaves no doubt in my mind that the same were towards pay in obligations towards daily margin and settlement margin. Neither party has disputed the same.”
- (viii) The Appellant further submits that the presiding arbitrator has rightly made observations stating that “ I rely on page 76 of the KYC which has been duly signed and accepted by the respondent stating that it is “obligatory on client to track margin/ positions” states that the “the claimant shall be entitled to liquidate/close out all or any of the client’s positions for non-payment of margins or other liabilities/obligations....No notice may be given to the client on such liquidation/close outs.....”. Based on the same, the claimant proceeded to square up the positions of the respondent due to margin shortfall, both on account of daily margin and settlement margin. I have no hesitation to conclude that the terms of the KYC entitled the claimant to liquidate/close out all or any of the respondent’s positions for non-payment of margins or other liabilities/obligations.”
- (ix) The Appellant refers to point number 7,8 and 9 of arbitration award and submits that the two arbitrators wrongly observed that “Claimant/applicant (Trading member) squared up the respondent’s position on 12.08.2019 and 13.08.2019 without even waiting for the clearance of the said cheques.” The arbitrators overlooked the fact that the cheque was dishonoured for an amount of Rs. 17,00,000 and yet mentioned that TM should have waited for the clearance of cheque without realising that in the financial markets no one knows what happens in the next minute of trading and already huge loss was taken place in the respondent account and respondent was not fulfilling the margin obligation and MTM margins from 09/08/2019. The dissenting learned arbitrator has rightly explained in his award point number 8, 9 and 10. The arbitrator has rightly clarified based on the proper facts and considering the KYC, Exchange and SEBI guidelines to be followed when the daily margins and MTM margin are not fulfilled by the respondent.
- (x) The Appellant furthermore submits that the presiding arbitrator has rightly made observations that “I am not impressed by the argument of the

respondent that the claimant ought to have waited to square of the position until the end of the trade day. I am of the considered opinion that the claimant was under no obligation as per the Rules, Regulations and Byelaws to hold on the position of the respondent since respondent has failed to maintain the margin requirements in his account. Therefore, I am inclined to believe that it cannot be said that the claimant had with bad and mala fide intention, squared of the position in the respondent's account. The act of closing out cannot be faulted with and seems appropriate. Under the attendant circumstances, no flaw can be found with the act of the claimant".

(xi) The Appellant again submits that the presiding arbitrator has rightly made his observations that "I am not in agreement with the contentions of the respondent that he had provided cheques for Rs. 30,00,000 and Rs. 17,00,000 but the claimant had not deposited the cheques pursuant to squaring up the respondent's positions with a malafide intent. I do not find any merits in the contention of the respondent that in the complaint under section 200, the date of offence is 20.09.2019 whereas the shortfall was in 12.08.2019 and the complainant had deposited the cheques provided against margin requirements belatedly after squaring up positions in the respondent's account. Regardless of the same, I am inclined to concur that the issue of the said cheques could not have been for any purpose other than the debit in the respondent's account and the fact of issue of cheques tantamount to admission of liability by the respondent. This line of argument of the respondent does not impress me."

(xii) The Appellant submits that the presiding arbitrator has rightly made observations stating that "I observe that it is matter of fact and record that the respondent had provided 2 cheques of Rs. 30,00,000 and Rs. 17,00,000 but had failed to honour the cheques provided by him and therefore. I find no merits in the submission of the respondent that the claimant ought to have waited and kept the position alive. The same is devoid of any merits. An inference may be drawn that issue of the said two cheques constitutes a clear act of acquiescence of the liability and the respondent is now estopped from denying the same".

(xiii) The Appellant submits that the presiding arbitrator has rightly made observations that "I place reliance on the judgment dated 26.04.2016 of the Hon'ble High Court, Bombay in the matter between *Bonanza Commodities vs Roshanara Bhinder* wherein it was held "trading member to collect from his constituents' margins specified from time to time, against open positions. It is submitted that for the purpose of such collection the Bye-laws permit the trading member to close out an open position of a client when the call for further margin or other dues is not complied with by the client".

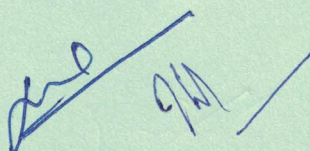
(xiv) The Appellant submits that the presiding arbitrator has rightly made observations stating that "In view of the aforesaid judgment and based on material facts and evidence placed before us. I am of the opinion that the claimant was authorized to square off position of the respondent as the respondent failed to maintain the margin requirements in accordance with the Rules, Regulations and Byelaws of the Exchange. Further, the Respondent's counter claim is based on a notional profit and holds no merit

and is baseless and therefore I have no hesitation to conclude that the respondent is not entitled to the counter claim. In any event, I do not have the jurisdiction to adjudicate any notional profit or loss".

In view of the above, the Appellant prays for the following reliefs.

- (i) That this Hon'ble Appellate Arbitral Tribunal be pleased to quash and/or set aside the Impugned Award dated 13/03/2020 passed by the two Arbitrators being Exhibit "I" to the Appeal;
 - (ii) That this Hon'ble Appellate Arbitral Tribunal be pleased to grant an amount of Rs. 2,50,000 to the Appellant and the costs.
5. Reply of the Respondent to the Appeal Memo: The Respondent's reply/defence to the Appellant's grounds of appeal is as follows:
- (i) The Respondent contended that to meet the MTM margin and daily margin shortfall cheques were given on demand. The real dispute pertains to illegal and unilateral squaring off. The Appellant did not wait at least on the same day till closing of the Banking hours for clearance of cheques. In fact, the Respondent was in discussion about his open position and assuring to close out some of the positions and for the rest, the Respondent provided cheques for the purpose of clearing the debit obligations.
 - (ii) As regards focussing on issues, Respondent submits that the Tribunal by majority has decided the claim and issues/disputes raised by the Appellant in its claim petition and after considering submissions in pleadings, facts stated, and arguments advanced on either side and by giving cogent reasonings.
 - (iii) The Respondent submits that regarding the allegation of ignoring the facts of Margin obligation by the Arbitral Tribunal (Majority), suffice to say that what one pleads or raises the issue, only that is required to be decided and the same is done in the present matter as per the requirement of law and no fault can be found in the same as is fallaciously alleged and misrepresented by the Appellant.
 - (iv) The Respondents states that the question was of non-encashment of cheques by the Appellant before squaring off i.e., timing. The Respondent had never denied their obligation or issuance of cheques.
 - (v) The Respondent denied that the Impugned Award is liable to be set aside on the grounds set out in the Reply/Written submissions filed by the Appellant in the proceedings. It is submitted that no ground is made out by the Appellant to set aside the Award, as such the award may be upheld by this Appellate Tribunal.

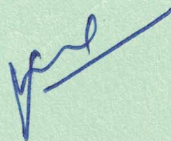
In view of the facts and premises, the Respondent prays that the Appellate Tribunal may be pleased to dismiss the Appeal and uphold the Award and to pass such further order/s and grant such other reliefs including cost as may be deemed fit and proper in the nature and circumstances of the case.



6. We have considered the submissions advanced at considerable length on behalf of the rival parties. We have carefully perused the material on the record including impugned award, the pleadings as also grounds of appeal and reply to the same. Thereupon, we find that the impugned majority award is unsustainable and is liable to be set aside for the following reasons.

REASONS

7. At the outset, it needs to be examined whether the appeal is preferred within the prescribed period of limitation even if the Respondent does not seem to specifically raise said question. The appeal memo states that the award dated 13.03.2020 was received on 16.08.2020 and yet the appeal dated 27.11.2020 is strangely claimed to have been filed within prescribed period of limitation of one month from the date of receipt of the award. Fortunately for the Appellant, the Apex court's orders, passed from time to time, in Suo moto W.P.3 of 20 (Civil) extending period of limitation, due to pandemic situation, helps it. Though the Appellant did not refer to the same, the Apex Court orders by their very nature automatically apply to this appeal. The Appellant thus gets benefit of the extension which is why the appeal is held to be within limitation.
8. The facts which are preliminary or are admitted/ borne out from the record may now be stated for better understanding and proper appreciation of the controversy between the parties. The Respondent-Client had opened on 28.08.2018 trading account (No. 808809) with the Appellant-Claimant-Agent by submitting 'on-line' application for trading on the Indian Commodity Exchange Limited (ICEX) platform. The parties had complied all the prescribed and necessary formalities including submission by the Respondent of e-KYC Form, Risk Disclosure document, Right and obligations of the member, Electronic Contact Notes (ECN) declarations, mobile declaration governing rights and obligations of the Member and Client. The Respondent started trading from 5.10.2018 in Steel Future Contracts without any dispute until 09.08.2019. The Respondent had taken short position in the Steel Ingots comprising of September short (sell) 340 lots and October short (sell) 100 lots. The market in the commodity rose on 09.08.2019 on which date the Respondent's account recorded shortfall of MTM margin of Rs. 33,72,121.88/-.
9. 12th August 2019, though bank holiday-was trading day. On that day, the Respondent issued two cheques of Rs. 30 Lakhs & Rs. 17 Lakhs to the Appellant for meeting MTM margin money shortfall. To enable the Respondent to do trading as desired by him, the Appellant gave credit to the cheque amounts subject to their clearance. The cheque of Rs. 30 Lakhs, however, could not be deposited in the bank and admittedly went back to the Respondent in the morning of 13.08.2021. There is controversy about its return journey to the Respondent-, the Claimant saying that the Respondent's henchmen snatched it when its representative had, as per the Respondent's request, gone to the latter's place for getting it substituted, while the Respondent's version is that the Claimant returned it with ulterior motive realising that its collusion in disclosure of the Respondent's position would not work in as much as its game plan would be frustrated if the cheque is retained. Be that as it may, in either



case, the fact remains that funds covered by said cheque for meeting MTM margin were not available to the Claimant. The other cheque of Rs. 17 Lakhs was presented but returned dishonoured for want of funds. The Respondent has contended that the same should have been presented immediately in the branch at Indore rather than belatedly presenting in Hyderabad branch. This contention may not be decisive since after funds of cheque of Rs. 30 Lakhs were not available, for whatever reasons, MTM margin money requirement was not met on 13.08.2019 itself. Moreover, in view of above stated episode of cheque of Rs. 30 Lakhs, availability of the funds of said cheque of Rs. 17 Lakhs was anyway doubtful. In this regard, averment in para 4 of the Counter Claim regarding use of the cheques 'to be used after getting the funds transferred from business concern from business concern from where CC generally on accounts takes money' is important. The same shows that funds were not available in the account from which the cheques were issued and therefore Respondent's contention that cheque of Rs. 17 Lakhs should have been immediately deposited from Indore branch is only academic. In any case, it was not mandatory to present the cheque for realisation through Indore branch, that issue raised by the Respondent pales into insignificance.

10. The facts are that the Claimant liquidated all the positions standing in the Respondent's account as on 12.08.2019 & 13.08.2019. The Claimant's contention is that the position was liquidated on the Respondent's failure to arrange the funds for meeting margin shortfall and the liquidation was done with prior intimation & by timely sending ECN, SMS to the Respondent. Pursuant to the liquidation, the outstanding in the Respondent's account was for the claimed amount which includes penalty-for shortfall of margin-levied by the Claimant as per guidelines of the Exchange/SEBI. The Respondent's case is that the Claimant did not maintain confidentiality and leaked/disclosed his position and conspired in managing the rates which is why market for the steel ingot future contract went unusually high only during the relevant period. The defence is that this is manifest from the fact that there was immediate reversal on the very next day i.e., 14.08.2019 on which date if the liquidation would have been done, the Respondent would have booked profit more than Rs. 22 Lakhs for which amount counter claim was made. It has stated that in respect of the Claimant's malpractice, complaint is lodged with SEBI which is pending investigation. The Respondent, while denying that the liquidation was with prior intimation to him, says that the Claimant unilaterally did it. In this regard, it is stated that on 12 & 13th Aug 2019 he was on private tour to Chennai, within the Claimant's knowledge, where he was unable to fully understand situation explained by the Claimant over the phone. In fact, the Claimant influenced, coerced, and pressurised to agree to its say. In this there is implicit admission of the telephonic communication between the parties on 9, 12 & 13 August 2019 voice recorded by the Claimant and submitted, along with the transcript accompanied by necessary certificates, by mutual consent before this Tribunal.
11. The crucial question in this matter is whether the Claimant liquidated the position as on 12 & 13 August 2019 in the Respondent's account under intimation to the latter or the Claimant was justified in liquidating the position

for non-payment of monies to meet MTM margin shortfall. If on analysis, affirmative answer to any of these questions can be recorded, squaring off by the Claimant would stand justified. To appreciate the controversy, let us refer to the Respondent's account maintained in the account books of the Claimant. The same shows that there was debit balance of Rs. 33,10,848.67 on 09.08.2019 which position is also admitted by the Respondent. The statement of account further shows debit balance, on 12.08.2019 of Rs. 82,38,111.44-even after giving credit, subject to realisation, to the cheques of Rs. 30 Lakh & Rs. 17 Lakhs. An amount of Rs. 31,57,503.58/- was the debit balance on 13.08.2019 after reversal of credit entry in respect of cheque of Rs.30 Lakhs. The debit balance on 14.08.2019 was Rs. 35,32,518.24 which went up on 16.08.2019 after reversal of entry in respect of (returned dishonoured) cheque of Rs. 17 Lakhs. Thus, there was debit balance on 9, 12 & 13 August 19. In sub-para XV of para-No.1 of the Reply to the Claim the Respondent admits that the Claimant had asked the margin to keep the position alive. Therefore, the cheques were given for keeping the position alive.

12. Having regard to the above position in the Respondent's account and on consideration of the material on record including the impugned award as also submissions advanced on behalf of the rival parties, we cannot find any fault in the Appellant's closure/squaring off the position in the Respondent's account. The transcript of the recording in Hindi (with English translation) of 9th, 12th & 13th August 2019 is admitted on behalf of the Respondent and therefore the same with voice recording (also filed earlier) was produced before us by consent. The reading of the transcript leaves no manner of doubt in our mind that the Respondent was actively involved in the trading on the 3 days and was quite aware that the market of Steel Ingots went up from 09.08.2019. Since holding short position in the steel ingots for the month of September & October, the Respondent probably had to buy the requisite quantity of the commodity from the market. As such, he was giving instructions of buying on continuous basis to the Claimant's representative. The Respondent's instructions in the long conversations with the Claimant's representative are so clear and so frequent that their entire reproduction here is neither possible nor necessary but by way of sample we reproduce English translation of certain extracts which also are not in continuity but are intermittent.

"12.8.19@17:29:28: Client (Chabraj): Take 2 lots at 590

Client: Keep taking in the range of 500-600

Karvy Dealer (Saurabh Vyas): We can take 10 or 11 but we are increasing the price for counterpart. We will do one thing; we will take 10. Arrey, someone has entered, shall I take 9

Client: Hmm. Take it. Took?

Karvy Dealer (Saurabh Vyas): Yes sir, Took 9

12.8.19@17:40:40: Client: Take 120 & 130

12.8.19@17:54:52: Client: Buy one lot of 100.then will deposit money tomorrow.

Karvy Dealer: Can I take at 810,800

Client: Take at 810,820

12.8.19 @ 17:59:58: Client: Take 200, Will see whatever happens.

12.8.19 @ 18:35:32 Karvy dealer: Bought 65 now; Client: Buy more

13.8.19 @ 09:13:50 Client: Keep buying at 400,440

13.8.19 @ 09:21:02 Karvy: 4 lots pending @ 440, balance @ 10; Client: Keep taking

13.8.19 @ 09:34:16: Client: Buy 100-150 more

13.8.19 @ 10:23:08: Client: So, total is 200; Karvy: Yes, 200 bought

Client: How much is pending now; Karvy: Now pending is (808808) 178 & 62 means total pending is 240; Client: Keep buying Vipul;

Karvy: Should we leave 200; Client: No, No Buy all & buy another 100

13.8.19 @ 10:23:08: Client: Ok, Buy 110 more from the 2 sources

Client: Means, buy total 325 lots

13.8.19 @ 11:59:40: Karvy: Arrange payment of 30 at the earliest.

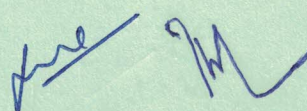
13.8.19 @ 09:41:26: Client: How much bought? Karvy: Bought 107

Karvy: We have reduced 30 Lakh margin and at present MTM is 69 Lakhs then need to deposit 50 Lakhs immediately

Client: Remove it. Will see for 5-10 minutes. 40 minutes have passed. Will take 100 lots & 100 more in 1-2 hours. Karvy: Vipul, remove the order and see the position. Still 13 lots are pending. Please inform me how are you making payment

13.8.19 @ 09:59:44: We got 149 in September and in October we got 18. We are getting quantity in October as circuit is open. Shall I keep buying? Client: Ok sir, keep buying."

13. The reading of the above sample extract of the transcript of the voice recording belies the Respondent's contentions that he could not properly hear &/or understand the telephonic talk with the Claimant's representative or that the Claimant's representatives influenced, coerced, or pressurised him to agree to his say. The same indeed shows that the Respondent was normally communicating and giving instructions. There is no iota of evidence to remotely suggest lack of free will even if we were to overlook that omnibus (without any specifications) contentions of coercion, influence or pressure are of no avail in law. The ECN logs coupled with ECNs & SMS logs which were timely sent/delivered further fortify that the Respondent was being informed from time to time which means that the squaring off the position was under intimation to the Respondent, if not under his instruction. In view of the above positive evidence, finding that trading was done as per the Respondent's time to time instructions and the liquidation /closing was under intimation to him can be safely returned.



14. That apart, it would also be seen that the Claimant would have been justified in liquidating/closing the position even in the absence of consent of Respondent's knowledge. It is already pointed out that as on 9, 12 & 13.08.2019 there was shortfall of MTM margins. There does not seem to be any dispute that as per SEBI guidelines and Exchange Rules, MTM margin requirements are to be met in the next morning. Even if provisional credit to the 2 cheque amounts is considered, there was shortfall in the Respondent's account on 12 & and continued on 13.08.2019 as stated above. In other words, the Respondent's account did not have requisite balance to cover MTM margin shortfalls as on 12th & 13th August 19.
15. In this regard, we may refer to the General conditions on digitally signed KYC-relevant extract of which is reproduced below.

"1..... KCTL shall be entitled to liquidate/close out all or any of the client's positions for non-payment of margins or other amounts or outstanding debits etc. and adjust the proceedings of liquidation/close out, against the clients liabilities/obligations, if any. Any and all losses and financial charges on account of such liquidation/closing out shall be charted to and borne by the client. No notice may be given to the client on such liquidation/close out since the market conditions existing at that point of time might not allow the KCTL to give such notice. The Client shall also remain in touch with KCTL to keep a regular check on his account and margin requirements and other obligations, for maintaining sufficient margin with KCTL to undertake any transactions in his broking and offline transactions."

16. In view of the above, the Respondent was obliged to track margin/positions and provide the MTM margin money shortfall which he did not do even after being asked to do so as is evident from the transcript and other record. As per SEBI guidelines, MTM settlement of all positions of clients/members shall be done on daily basis and margins on client positions must be compulsorily collected from the client and reported to the Exchange by the members. The defence that had the Claimant waited till 14.08.2019, not only the dues would have been cleared but the Respondent could have earned profit of over Rs. 22 Lakhs is mentioned for rejection. In the first place, such course is impermissible under SEBI guidelines. Moreover, there was no obligation on the Member to keep the position open till the favourable (to the client) reaches which may not happen in a given case. That apart, neither the Respondent requested so nor anyone could know that the rates would start falling from 14.08.2019. The position could have been even worst if the market rates of the commodity were to further go up which was also possible. That is why neither hypothetical defence does hold good, nor the Claimant's action can be assessed retrospectively. Thus, the Claimant could not have been faulted even if it were to close/square off the position without informing the Respondent who in indeed was in the loop all throughout.
17. We now deal with the Respondent's contention that the Appellant instead of maintaining confidentiality had disclosed his position which is why the market suddenly went up. In the notice dated 22.08.2019 through Adv. Kamlesh

Mandloi, it is stated that he had orally complained to the Exchange on 6th and 7th August 19. There is no record forthcoming in that regard. Now, if the Respondent were to really have such grievance, in all probability he would not have given on 12.08.2019 2 cheques for covering MTM margin money shortfall and to meet future shortfall, if any. The justification put forth in the defence statement that he was to raise the issue after issuing the cheques does not appear probable more so from his participation in the trading even on 13.08.2019. In respect of his grievance, the Respondent claims to have lodged complaint with SEBI, but its fate is unknown. The Respondent did not tender any evidence that the same is under investigation. SEBI, being Regulator of the commodity market, has exclusive jurisdiction to entertain and investigate the nature of the complaint and it has not as yet endorsed the Respondent's grievance. The arbitral tribunal surely has no subject-wise jurisdiction to investigate said nature of the Respondent's grievance. Mere raising of the grievance, let alone without showing that the same is under SEBI's consideration, does not any way enable the Respondent to get away from the liability on that ground. The defence in question is therefore liable to be rejected and does not have any impact on our above conclusion.

18. That takes us to the reasoning in the impugned award. The Majority Arbitrators of the learned Trial Arbitral Tribunal (MA of Id. TAT) have treated the issuance of the 2 cheques as due compliance of the MTM margin money requirement forgetting that the same eventually proved to be empty formality and further that even after considering said amounts the account was having debit balance. They have overlooked that the debit position in the account worsened after the cheque of Rs. 30 Lakhs did not remain with the Claimant in the morning of 13.8.2019 which means proceeds thereof could not come to the Claimant. As to whether the cheque was snatched by the Respondent's person as alleged by the Claimant or the Claimant returned it as averred by the Respondent is wholly irrelevant; for the fact remains that in any case the monies were not available to the Claimant to the knowledge of the Respondent whose duty was to ensure availability of the funds for covering MTM margin money. MA of Id. TAT ought to have appreciated that issuance of cheques by itself does not amount to compliance of MTM margin money shortfall more so because even according to the Respondent, the cheques were to be funded from some other account since there was no balance in that account. Unless cheque monies reach the Appellant, the Respondent's obligation does not end. The MA of Id. TAT have attached undue importance to the nature and discrepancies in the Police complaint filed on behalf of the Claimant and purported retraction by the person filing it forgetting that said aspects are irrelevant for the purpose of arbitral proceeding. They were also wrong in attaching importance to the cheque of Rs. 17 Lakhs being deposited belatedly and in Hyderabad branch instead of from Indore branch. We do not understand how any fault can be found in the same. What should have been seen is whether shortfall in the MTM margin money was made available or not. Further, the Id. MA of Id. TAT did not have benefit of detailed transcript of voice recording since the same was produced before us by mutual consent and show beyond any shade of doubt that the trading was as per the Respondent's instructions and the Claimant was also asking for

depositing monies for covering MTM margin shortfall. We are surprised by their observation that voice recording does not show any alarming or panic situation since the observation runs counter to the voice recording and its transcription. The Id. Arbitrator who rendered minority award has, in our view, correctly appreciated the facts and rightly applied the law.

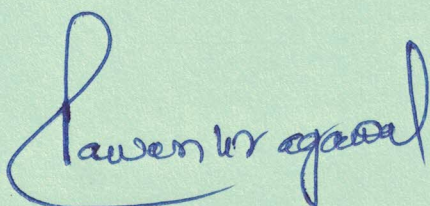
19. For the aforesaid reasons, the appeal will have to be allowed. Consequently, the claim is liable to be allowed but not for the claimed amount and the interest also cannot be awarded at the claimed rate. The statement of account has last 3 debit entries of provisional penalties for dishonour of cheques & thereby failure to meet MTM margin requirement. Neither there is any justification flowing from the agreement nor in the law for levying these penalties. The Appellant has also not shown that the Exchange levied the penalties as argued on its behalf during the final arguments. Therefore, excluding the amounts of said 3 debit entries, the claim is allowed for Rs. 51,68,552/-, being debit balance on 20.08.2019. The Appellant has demanded interest at very high rate. No agreement is brought to our notice about the agreed rate of interest, if any. Considering the rates of interest prevailing during last 2 years, we are inclined to award the same @ 9% p.a.
20. Before parting, we may mention that the counter-claim was rejected by the trial tribunal and the Respondent did not assail said finding before us. The parties did not advance any other point before us. The upshot of the aforesaid discussion is the following order.

ORDER

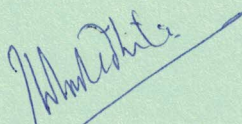
- (A) The Appeal is allowed with costs.
- (B) The impugned majority award is quashed and set-aside. While partly upholding dissenting award, The Respondent is hereby directed to pay to the Claimant-Appellant Rs. 51,68,552/- (Rs. Fifty-One Lakhs Sixty-Eight Thousand Five Hundred and Fifty-Two) with interest @ 9% from 04.09.2019 till payment/recovery.

The Award is in 3 originals- one for the Exchange, and the two parties.

Place: Mumbai, Dated this 13th August 2021



Pawan KR Agarwal
Co-Arbitrator



S.D. Dharmadhikari
Presiding Arbitrator

Kamalchand Jaikumar Paratwar

Digitally signed
by Kamalchand
Jaikumar
Paratwar
Date: 2021.08.13
13:50:05 +05'30'

Kamalchand Paratwar
Co-Arbitrator