



महाराष्ट्र MAHARASHTRA

© 2024 ©

CU 663692

नु.क्र. Susit दि. 11 NOV 2024 मु.शु.सं.सं. Scot

दस्ताचा प्रकार Arbitral Award

दस्त नोंदणी करणार आहेत का? होय/नाही

मिलकतीचे वर्णन

मुद्रांक विकत घेणाऱ्याचे नांव stock Holding Corporation of India Ltd.

पत्ता

दुसऱ्या पक्षकाराचे नांव

हस्त लेखी व्यक्तीचे नांव व पत्ता

SE

मुद्रांक विकत घेणाऱ्याची सही

stock Holding Corporation of India Ltd.

Garuka Capital Market Services

Shikhar Chawadi Pmt

ms S.J. Bomble

सौ. सुनिता जे. बोंबले

पत्ताना क्र. २२०११३०

७२१, गुन्ना पेट, पुणे-४०



या कारणासाठी ज्यांनी मुद्रांक खरेदी केले त्यांनी त्याच कारणासाठी मुद्रांक खरेदी केलेल्यासुन ६ महिन्यात वापरणे बंधनकारक आहे.

A VIGNANADHA GARMMA



Before the Hon'ble Sole Arbitrator **Mr. VISHWANADHA SARMA**
Arbitration Matter No.. NSE-SB-2024-08-722765

ARBITRAL AWARD

IN THE MATTER OF AN ARBITRATION

BEFORE THE SOLE ARBITRATOR, MR. A VISHWANADHA SARMA

BETWEEN

STOCK HOLDING CORPORATION OF INDIA LIMITED (COMPLAINANT)

AND

GOENKA CAPITAL MARKET SERVICES (RESPONDENT)

Erdac Solutions Pvt. Ltd. is an independent institution facilitating and administering electronic Alternative Dispute Resolution via its online platform, CADRE, also referred to as Online Dispute Resolution ("**ODR**") Institution, having its registered office at 39/1, 2nd Floor, Shanmugha Arcade, NGEF Lane, Binnamangala First Stage (Indiranagar 1st stage), Bangalore – 560 038.

Erdac Solutions Pvt. Ltd. has been empanelled by NSE Limited ("**Exchange**") in accordance with the SEBI Master Circular No. SEBI/HO/OIAE/OIAE_IAD1/P/CIR/2023/195 dated August 11, 2023, ("**SEBI Circular**") as may be amended/modified from time to time, for undertaking time-bound online Conciliation and online Arbitration.

The above-mentioned matter was referred to Erdac Solutions Pvt. Ltd. via SMARTODR.IN ("**ODR Portal**"), a common Portal established by the Market Infrastructure Institutions ("**MII**") in accordance with the SEBI Circular, for harnessing online Conciliation and online Arbitration for resolution of disputes arising in the Indian Securities Market. Further, the parties have accepted the terms and conditions of ODR Portal.

The undersigned has been appointed as an Arbitrator by Erdac Solutions Pvt. Ltd. On November 04 , 2024 in the present matter.

1.0 PROCEEDINGS:

1.0 The following meetings for Arbitral hearings were held by me.

Date	Venue	Remarks
------	-------	---------

3.12.24	Online	Both parties attended the hearing
10.12.24	Online	Both parties attended the hearing
27.12.24	Online	Both parties attended the hearing

During the arbitration proceedings full and equal opportunities were given to both the Parties to represent their respective case.

2.0 COMPLAINANT'S CLAIM:

2.1 The complainant is a professional Clearing Member of NCL Clearing Ltd (NCL) and provides services to the trading members of the NSE while the Respondent is a trading member of the NSE.

2.2 The respondent is required to provide collateral to the complainant for the purpose of trading. The respondent was not maintaining minimum collateral requirement and in certain cases margin requirement in the respondent's account was insufficient.

2.3 On account of short margin /short delivery, NCL had levied penalty on Claimant (for various client trading members) on various dates during the period April 23 to Feb 24 aggregating to an amount of Rs 13,94,190 /-. However, bifurcation of the same for each trading member was not available until January 2024. It was only in the month of Jan 24, that NSE shared the bifurcation details of the total penalty amount.

2.4 As per the bifurcation details so provided by NCL out of the total penalty amount of Rs. 13,94,190/, an amount of Rs. 10,68,820/- pertains to the Respondent. The Claimant was holding an amount of Rs. 2,07,291 pertaining to Respondent with them. The Claimant adjusted the said funds balance available with them and also made some minor GST adjustment of Rs. 994. The net penalty amount recoverable from the Respondent was Rs. 8,60,534/-

2.5 This penalty amount was already debited to and recovered by NCL from the Claimant and Claimant had to recover the same from the Respondent. Claimant had written many letters to the Respondent and also provided them whatever details they had with them and have been following up for recovery of the same.

2.6 Relief claimed by Claimant –

- A) Recovery of amount of Rs 8,60,534 /- towards pending penalty amount
- B) interest @ 15% p.a. from January 19, 2024 till the date of realisation
- C) Payment of cost of arbitration

A VISWANADHA GARNIA Page 2 of 6

3.0 RESPONDENT'S DEFENCE STATEMENT:

3.0 The business relation of clearing and settling the trades of the Respondent by the Complainant and the Respondent started since January 17, 2020, in Capital Market segment of NSE which continued for about 4 years. The agreement between the Respondent and the Complainant was terminated on December 29, 2023.

3.1 The Respondent's main question was why NCL took 8 months to impose the penalty of short margin/allocation reporting for the trades done in the month of April 2023 and onwards and communicated to the Respondent only in January 24.

3.2 The Complainant wrote letters dt. October 26, 2023 and November 28, 2023 to the Respondent but had nowhere mentioned about the penalty being imposed by NCL since April 2023. The Complainant also issued NOC on December 22, 2023 to the Respondent with their clearance to shift the service of clearing and settlement of trades to some other clearing member. The Complainant failed to intimate the Respondent about the imposition of penalty on account of reporting of short margin/short allocation with respect to the trades done by the Respondent even at this stage.

3.3 That because of the delay by the Complainant in intimating to the Respondent details of penalty levied by NSE, Respondent did not get the opportunity to submit their clarification to NSE in a timely manner and waive the penalty amount. (as permitted by NCL Regulations). The penalty amount imposed on the Respondent could have been saved/waived off had the Complainant timely informed about the penalty amount to the Respondent with respect to shortfall in margin and shortfall in allocation.

3.4 Had the Complainant informed the Respondent about the imposition of the penalty amount along with the tax amount on time the Respondent not only could have saved the penalty but also could have claimed for the Input Tax Credit (ITC) of the levied GST amount every month since April 2023. Thus, the imposed GST amount of Rs 1,31,267.97 is a straight forward loss to the Respondent because of the delay in intimation by the Complainant.

3.5 That the penalty amount of Rs 8,60,534.50 claimed by the Claimant does not match with the penalty report submitted by NSE vide email dated February 13, 2024 as per which the amount is Rs 8,23,219.94

3.6 As regards Respondent's funds / collateral security available the actual amount was Rs 4,99,547/- - as per the Collateral Summary Statement dated December 29, 2023 and email dated January 2, 2024 issued by the Complainant and not amount for Rs. 2,07,291/- as being stated by the Claimant.

A VISWANADHA SARMA

3.7 Relief claimed by the Respondent

- A) Dismiss the claim of the Claimant Rs 8,60,534 and the interest thereon
- B) Refund of Rs. 4,99,547 being the collateral security held by the Claimant along with interest @ 18% p.a.
- C) Payment of costs and incidental expenses of the Respondent

4.0 Findings and Conclusions:

4.1 The Claimant claim was for the payment of penalty amount by the Respondent as the same is levied by NCL and has justified the delay in communicating the same to the Respondent on the grounds that NCL did not share the breakup of the total penalty amount during the period April 23 to Dec 23 and that they shared same only in Jan 24. As a process this reason given is not acceptable as the Claimant should share all the information on timely basis so that the trading members are not put to a disadvantage because of sharing of delayed information. While a reasonable time lapse can be accepted in the scheme of things, once this reason is accepted as an excuse, then even long delays of one year / two years or more also get into same category and there's no outer limit for the delay period. It is the Claimant's statement that they did not receive the breakup from NSE in time, but there's nothing on record for me to verify and comment on the same. However, it is an issue that needs to be taken up by Claimant with NCL and resolved. It is expected that service providers like the Claimant appreciate the adverse consequences to the trading members and dovetail their performance processes to avoid such lapses. And the Claimant cannot wash off their responsibility in case of such delays resulting in adverse results to clients. It is not fair to expect the trading member /client to suffer the consequences of such delayed information. This is considered to be a sort of deficiency in service by the professional agencies.

4.2 Complainant has stated the funds balance available as Rs. 2,07,791/- but has not substantiated this amount with any statements or documentary proof. On the other hand the Respondent has submitted the statements of the Claimant showing the funds available as Rs. 4,99,547/- . The claimant has not made any effort to prove that the ledger statement of their own company is wrong. A statement that the amount of Rs 5,00,000 is on account of a technical glitch has not been further substantiated with any other proof. The technical glitch purportedly showing wrong excess amount should have come to light much earlier even before the filing of case before arbitration and Respondent should have been given full documentary ledger entries showing the correct balance. I am convinced that the claim by Respondent of his funds lying with the Complainant (as reflected in Complainant's own ledger statements) of Rs. 4,99,547 /- is proved beyond doubt.

4.3 The Respondent has based all his arguments on the only point of delayed communication. It is not his case that he has questioned the Penalty calculated and levied by NCL as wrongly having been done. It is very clear that the penalty has been computed and levied by NCL and not by the Complainant

A VISWANADHA SAREMA Page 4 of 6

and NCL has based the same on the data available not only that pertaining to the Respondent but of all other trading members. The cause of action for levying penalty is shortfall in margin / shortfall in maintaining the required collateral amounts etc and these causes are squarely in the domain and responsibility of the trading member who has to comply with all the trading regulations of NCL and avoid situations which will result into levy of penalty. It's the trading member's job to continuously monitor all these parameters of his trade transactions and in this aspect the trading member cannot take an excuse that some other third party like Clearing agent or NCL did not draw his attention to the same. Timely feedback and information sharing certainly helps the process of compliances and taking corrective action but certainly not a pre-condition for complying with the regulations. In view of the same, the Respondent's stand that he will not accept the penalty levied by NCL cannot be accepted. He is bound to pay to NSE /Complainant the actual amount of penalty levied rising out of his own trades – unless he objects to the basis or computation of levy of penalty by NCL in the first instance.

4.4 Any delay in communication the penalty amount cannot become a justifiable reason for negating or nullifying the penalty levy itself in the first instance - as the same is based on various elements like margin requirement, collateral security available etc. and the time of intimating the penalty is certainly not a determining factor.

4.5 It was still open to the Respondent to have taken up the matter with NCL giving all the factual details as claimed by him in the defence statement and seek waiver / reduction. As regards the GST Input credit also, the Respondent can write to the tax authorities for appropriate relief based on these facts.

4.6 As regards the difference in the amounts claimed by the Complainant of Rs. 8,60,534 vis-à-vis amount of Rs, 8,23,219/- claimed by the Respondent as figures given by NSE, it is not appropriate to take reference to some email from NCL for once when all the communications are given by Claimant and the entire subject matter of this arbitration claim is the communications from Claimant. Moreover Claimant has produced a detailed statement of penalties levied by NCL with all full particulars. So I see no justification in this objection raised by the Respondent.

4.7 To summarise on the main issue of delayed communication of penalty by Claimant to Respondent, it is equally true for both the parties to continuously monitor their trades and ensure timely information is made available. In this regard, both Claimant and Respondent have failed and need to take blame jointly for what has happened. Allowing the claim of Claimant for penalty in full or alternately disallowing the entire claim which amounts to discharge of Respondent from any liability only for the reason of delay -,both are not equitable and fair and result into travesty of justice. Hence the gross penalty amount of Rs 10,68,820 be shared equally by both the parties with both parties accepting their shortcomings.

A VISWANADHA GADMA Page 5 of 6

5. Award

5.1 The Claim of the Claimant of Rs. 10,68,820 /- is allowed only to the extent of 50% which shall be recoverable from the Respondent.

5.2 Claimant may adjust the collateral amount of Rs. 4,99,547 /- belonging to the Respondent. So the net mount payable by the Respondent will be Rs 34,863/-

5.3 The settlement of the above transactions may be completed in next 30 days from the date of receipt of his award.

5.4 Both the parties shall bear their respective costs.

A VISWANADHA SARMA

08.01.2025
Maharashtra

A. Viswanadha Sarma
Sole Arbitrator