500

In the matter of Arbitration under the Rules, Bye-laws and Regulations of the National Stock Exchange of India Limited.

A.M. No.: NSEWRO/00412/19-20/ARB

Between

Stock Holding Corporation India Limited **...Applicant**
301, Center Point, **(Clearing Member)**
Dr. Babasaheb Ambedka
Parel, Mumbai - 400012.

And

Reflection Investments **...Respondent (1)**
15/1, (35), Beach Home Avenue **(Trading Member)**
1st Cross Street Besant Nagar
Chennai, Tamil Nadu – 600090

Vijay Sambrani **...Respondent (2)**
Partner of M/s. Reflection Investments
F-302, The Atrium, 22
Kalakshetra Road, Thiruvanmiyur
Chennai - 600 041

Chandrika Sambrani **...Respondent (3)**
Partner of M/s. Reflection Investments
F-302, The Atrium, 22,
Kalakshetra Road, Thiruvanmiyur
Chennai - 600 041

BEFORE THE BENCH OF ARBITRATORS:

Mr. Anil Narendra Shah
Mr. Rajesh L Shah
Mr. Gaurang B Shah

BACKGROUND:

The reference in this dispute being reference NSEWRO/00412/19-20/ARB was entrusted to us by the National Stock Exchange of India Limited (hereinafter referred to as "***NSE***") to consider and adjudicate the dispute and difference between the Applicant and the Respondent mentioned hereinabove and to deliver the arbitration award.

anil RJ

STATUS OF THE PARTIES:

From the arbitration application filed by the Applicant we note that the Applicant, Stock Holding Corporation India Limited is a Clearing Member at the NSE Clearing Ltd (hereinafter referred to as "***NCL***") (earlier known as National Securities Clearing Corporation Limited (NSCCL)/National Stock Exchange of India Limited (hereinafter referred to as "***NSE***") and extends it services as a Professional Clearing Member (hereinafter referred to as "***CM***") to the Trading Members (hereinafter referred to as "***TM***") of the NSE. The Respondent, Relection Investments is a partnership firm and is TM of NSE and that Shri Vijay Sambrani and Smt. Chandrika Sambrani are the partners of the TM.

BINDING NATURE OF THE RULES, ETC OF NSE:

The Applicant is bound by the provisions of the Rules, Byelaws and Regulations of NCL and NSE and the Respondent is bound by the provisions of the Rules, Byelaws and Regulations of NSE.

PROCEEDINGS:

The proceedings in the present arbitration application were initiated by filing of an arbitration application by the Applicant on 12.04.2019 with the Arbitration Department of NSE claiming an amount of Rs. 12,05,74,912.75 (Rupees Twelve Crore Five Lac Seventy Four Thousand Nine Hundred Twelve and Paise Seventy Five only) towards the outstanding dues, as on 15.03.2019 plus interest and costs from the Respondent.

STATEMENT OF CASE OF THE APPLICANT:

1. That the Applicant and the Respondent have executed the Clearing Member – Trading Member Agreement dated 08.03.2014 and pursuant thereto the Respondent has been allotted Client Code No. 1000464 Exchange Client Code No. 07790. That the Respondent has started availing the services of the Applicant from March, 2014.

2. That the Respondent being the TM is required to provide the required collateral to the Applicant in the form of Cash, Bonds, Units of Mutual Funds, Bank Guarantees, Securities, etc. for the purpose of trading in the Future and Options segment.

3. That the trades in the Future and Options segment are marked to market. In case of profit, the marked to market profit is paid to the TM and whereas in case of loss, the

TM is required to pay the marked to market loss, on a T + 1 basis i.e. by the end of the subsequent day to the trade day.

4. That the Applicant has sent to the Respondent, on a daily basis, the billing statements. That the Respondent has not taken any steps to pay the dues as per the terms and conditions of the agreement.

5. That the Applicant has personally met the partners of the Respondent at its office between 31.01.2019 and 02.02.2019 as the amount of dues had accumulated to the extent of about Rs. 14,76,44,238.59 as on 29.01.2019.

6. That as the amount of dues accumulated to the extent of Rs. 16,96,59,890.65 as on 05.02.2019, the Applicant has vide letter dated 06.02.2019 requested the Respondents to pay the dues.

7. That the Respondent has vide letters dated 01.02.2019 and 07.02.2019 assured the Applicant about the resolution of the matter and also provided the following cheques:

Cheque No.	**Date**	**Amount**	**Drawn on**
144926	01.02.2019	5,00,000/-	Axis Bank Ltd.
144927	01.02.2019	10,00,000/-	Axis Bank Ltd.
144928	01.02.2019	15,00,000/-	Axis Bank Ltd.
144929	01.02.2019	10,00,000/-	Axis Bank Ltd.

8. That in the meanwhile, the amount of dues form the Respondent further accumulated to the extent of Rs. 19,16,59,800.19 as on 07.02.2019.

9. That under the said circumstances, the Applicant has been compelled to take steps for the invocation of Bank Guarantees on 07.02.2019 as per the following details :-

BG No.	**Bank**	**Amount**
BOM/571/BG-8/2016-17	Bank of Maharashtra	Rs. 17,50,000/-

BOM/571/BG-17/2013-14	Bank of Maharashtra	Rs. 50,00,000/-
BOM/571/BG-3/2018-19	Bank of Maharashtra	Rs. 1,00,00,000/-
BOM/571/BG-9/2017-18	Bank of Maharashtra	Rs. 1,00,00,000/-
BOM/571/BG-7/2014-15	Bank of Maharashtra	Rs. 1,32,50,000/-
INBG06015000014	DCB Bank Limited	Rs. 1,00,00,000/-
0009BG00006319	ICICI Bank Limited	Rs. 2,50,00,000/-
0009BG00005419	ICICI Bank Limited	Rs. 20,00,000/-
0009BG00006019	ICICI Bank Limited	Rs. 2,00,00,000/-
0009BG00006119	ICICI Bank Limited	Rs. 4,00,00,000/-
0009BG00006519	ICICI Bank Limited	Rs. 1,12,50,000/-
170380IBGF00026	IDBI Bank Limited	Rs. 35,00,000/-
170380IBGF00024	IDBI Bank Limited	Rs. 30,00,000/-
160380IBGF00689	IDBI Bank Limited	Rs. 40,00,000/-
140380IBGF00424	IDBI Bank	Rs. 50,00,000/-

	Limited	
140380IBGF00422	IDBI Bank Limited	Rs. 1,00,00,000/-
140380IBGF00421	IDBI Bank Limited	Rs. 1,50,00,000/-
140380IBGF00100	IDBI Bank Limited	Rs. 3,00,00,000/-
170380IBGF00023	IDBI Bank Limited	Rs. 30,00,000/-
Total		Rs. 22,17,50,000/-

10. That in the meantime the Respondent had filed writ petition no. 4468 of 2019 before the Hon'ble High Court at Chennai against the Applicant and the concerned banks challenging the demand notice dated 06.02.2019 and also interalia praying for stay on any action by the Applicant. That by order dated 15.02.2019 the Hon'ble High Court has disposed the writ petition without giving any relief to the Respondent.

11. That the Applicant has received the amounts under the Bank Guarantees from the respective banks between 13.02.2019 and 14.02.2019.

12. That in view of the continuous default by the Respondent , the Applicant has been left with no choice but to liquidate the securities of the Respondent.

13. That the Applicant has taken steps to liquidate the securities of the Respondent and an amount of Rs. 2,15,76,387.40 has been realised by the Applicant upon such liquidation.

14. That an amount of Rs. 48,26,532.51 that was deposited by the Respondent with the Applicant as cash collateral has also been adjusted against the outstanding dues.

15. That the cheques issued by the Respondent have been dishonoured by the bank on 12.02.2019 for the reason "Funds Insufficient". That in this regard the Applicant

amit RJ

has initiated the necessary proceedings under the applicable provisions of law.

16. That the Applicant has also taken steps to square-off the F&O position of the Respondent i.e. a quantity of 58,050 NIFTY Call Option with a strike price of Rs. 5,000/- expiry 27.06.2019. Upon closing out the positions and realising the aforesaid payments, the net dues payable by the Respondent amounted to Rs. 8,59,03,830.90 as on 15.03.2019 and an amount of Rs. 3,46,71,081.85 towards the interest i.e. a total amount of Rs. 12,05,74,912.75.

17. That the Applicant has vide letter dated 15.03.2019 demanded the amount of Rs. 12,05,74,912.75 from the Respondent.

18. That thereafter, the Respondent has vide letter dated 18.03.2019 sought clarification on the amount payable and the same has been provided by the Applicant on 26.03.2019.

19. That the Respondent has failed to pay the aforesaid amount of Rs. 12,05,74,912.75 till date. And that the Respondent is liable to pay the aforesaid amount.

20. The Applicant has therefore prayed for the following reliefs:

(i) The Respondents be directed to pay an amount of Rs. 12,05,74,912.75 (Rupees Twelve Crore Five Lac Seventy Four Thousand Nine Hundred Twelve and Paise Seventy Five only) towards the outstanding dues, as on 15.03.2019;

(ii) The Respondent may be directed to pay interest @ 15% p.a. on the aforesaid amount effective from March 16, 2019 till date of realization.

(iii) The Respondent be directed to pay the costs of arbitration.

(iv) Any other direction(s) as may be deemed proper.

DEFENSE AND COUNTER CLAIM STATEMENT OF THE RESPONDENT:

Preliminary objections:

The Respondent has pleaded that the claim by the Applicant is not maintainable either in law or on facts and does not disclose a cause of action against the Respondent and accordingly the same may be dismissed with exemplary costs.

That the Respondent has placed on record its defence, mainly contending on the following points:

1. The Applicant's apprehension about the integrity of the Arbitrators
2. Place of arbitration
3. Defense and counter claim.

1. On integrity of the Arbitral Tribunal:

That the Applicant has in its email of 16.05.2019 to NSE has claimed that Mr. Vijay Sambrani, Managing Partner of the Respondent was an Arbitrator on the NSE panel and hence there is a likelihood of the himunduly influencing the course and the verdict of the Arbitration Panel by stating that *"However, the Applicant will be gravely disadvantaged and the sanctity of the arbitration mechanism threatened if the place of arbitration is Chennai, for the reasons provided hereinbelow.*

Mr. Vijay Sambrani, the Managing Partner of the Respondent, was the chairman of the Association of NSE Members of India ("ANMI") Southern Region, and has also held various posts such as Vice-President, Joint Secretary, Secretary, etc. In addition to this, Mr. Vijay Sambrani was selected by NSE and SEBI to be a part of the NSE Arbitration Panel. He was appointed as the arbitrator for 2 consecutive terms. Therefore, we believe that Mr. Vijay Sambrani might have personal relationships with many members of the Chennai Arbitration Panel and, based upon the positions he has held, we believe that he might have considerable influence over them."

That the Respondent believes that all arbitrators are people of the highest Integrity and have never and will never do anything in breach of faith, since the Applicant seems not so sure about the integrity of the Arbitrators it would be necessary to settle the issue at the outset and convince the Applicant that the Arbitrators' integrity is above board.

2. On jurisdiction:

That the venue of the Arbitration needs to be nearest to the place of the constituent, i.e, the Respondent. That the

Respondent though a TM is a *constituent of the Applicant for the following reasons:*

The term Client/ Constituent has been defined at Clause 1.7 in the National Securities Clearing Corporation Limited (Futures & Options) Regulations as follows,:

"A client/ Constituent means a person, on whose instructions and on whose account the Clearing Member clears and settles deals. For this purpose, the term "Client" shall include all registered constituents of trading members of Specified Exchange.

Explanation 1: The terms 'Constituent' and 'Client' are used interchangeably in the Byelaws, Rules & Regulations and shall have the same meaning assigned herein.

Explanation 2: For the purpose of chapter IX (Rights and Liabilities of Clearing Memebers and Constituents), X (Arbitration)& XI (Default) of the Byelaws, the term 'Constituent' in relation to trades shall also include a trading member where such trades done on the Specified Exchange are cleared and settled on his behalf by a Clearing Member"

That the Respondent has the clearing services of the Applicant in the F&O segment and that the Applicant has collected charges for the clearing services from the Respondent and also collected monthly collateral charges.

That since the Applicant offers the clearing services to several other TM also and all such TM are constituents of the Applicant. Thus Therefore, it becomes necessary for the Arbitrators to rule on the venue.

Since this ruling could also be used by the Applicant as a ground of Appeal to the higher Authority for quashing any award should it be detrimental to the Applicant's interests, it is paramount that there should be no scope for maneuvering on this point.

3. <u>On merits:</u>

1. That the claim of Applicant is not maintainable either in law or in facts and does not disclose a cause of action against the Respondent.

2. That the Applicant is guilty of *suppressioveri* and *suggestiofalsi* (suppressing the truth and making a statement of falsehood) and has come with unclean hands.

3. That the Respondent has been doing business with the Applicant since March 2014 but as of 01.03.2016 the Respondent has no shortfall of margin.

4. That when there was a shortfall of margin from 11.03.2016 the terminal was disabled, but the positions were kept alive and the disablement continued for nearly three years till the end.

5. That inspite of Respondent always having surplus deposit with the Applicant, the Respondent had to pay all the necessary monthly charges even though they were not allowed to trade.

6. That no action was comtemplated by the Applicant despite the full knowledge that the terminal was disabled.

7. That inspite of requesting the Applicant repeatedly to allow them to hedge their position, the Applicant did not heed to the request anytime but allowed only to shift the positions once in six months/a year. Infact, the Respondent was forced to only witness the margin growing without being able to hedge.

8. That the Respondent bought in collateral during the month of December 2018 and January 2019 worth Rs. 9.825 crores from ICICI Bank and funds worth Rs. 2.0 lakh and securities worth Rs. 6.50 lakh.

9. That the Respondent had already fulfilled their commitment for January 2019 and they would be bringing in fresh Bank Guarantee for Rs. 10 crores through ICICI Bank and also shift their positions to Orbis Securities as planned by 01.04.2019.

10. That the Respondent was forced to hand over cheques worth Rs. 15 lakhs and Rs. 25 lakhs even though they had pleaded that they did not have the necessary funds at that point of time but would be in a position to arrange in the normal course of business by 15.02.2019 and 25.03.2019, respectively.

11. That on 06.02.2019 the Respondent received a letter from the Applicant demanding payment of Rs. 17 crores within 24 hours and on the next day itself, on 07.02.2019 the Applicant issued notices to the Banks (ICICI Bank, IDBI Bank, Bank of Maharashtra and DCB Bank) invoking all the Bank guarantees worth Rs. 22.175 crores.

anil

12. That the Respondent states that Mr. Vijay Sambrani, Managing Partner of the Respondent had a personal meeting with Mr. N G S Ramesh, MD of the Applicant on the morning of 08.02.2019 requesting for some time to be given to solve the issue but inspite of the same The Respondent was asked to present a bank guarnatee for Rs. 10.00 crore by close of working hours of 08.02.2019.

13. That thereafter, Mr. N G S Ramesh, MD met the bankers.

14. That the Respondent was left with no other option, but to file a writ petition in the HC of Madras for seeking relief.

15. That the even during such period, the securities of the Respondent's clients which had been kept as margin were liquidated and the "cheques of comfort" of Rs. 15 lakhs and Rs. 25 lakhs, which had been obtained by the Applicant through methods of undue influence had been presented on 08.02.2019 knowing fully well that there were no sufficient funds available and much against the oral agreement of presenting it only on 15.02.2019 and 25.03.2019.

16. That the Respondent has been in default to all the Banks and further the Respondent is at the risk of losing their membership on the NSE. That the loss to the reputation of the Respondent and its partners is incalculable.

Points urged by the Respondent:

1. That the actions were initiated in February 2019, nearly 3 years after the terminal was effectively disabled;

2. That no reasonable time given to move out to Orbis Securities.

3. That cheques were presented when there was an agreement to the contrary.

4. That fees charged on a regular basis despite the fact that the Respondent's account being effectively deactivated.

5. That interest component suddenly cropped up in the demand notice on 15.03.2019.

6. That the Respondent was not allowed to substitute Rs. 4.35 crores kept as cash margin against Fixed Deposit receipt while the rules explicitly allow it to be done.

anil RJ

7. That The Applicant was silent between March, 2016 and 31.01.2019 and and has now filed the arbitartion application. That the actions and inactions of the Applicant till 31.01.2019 show a clear implied waiver of any actions that they could have taken in a timely manner and ultimately lost the right to take the coercive actions they illegally took in February, 2019.

8. That the actions of the Applicant between March, 2016 and 31.01.2019 show a clear acquiescence. That the contributory negligence, willful default (and ultimate waiver through its actions) in exercising any rights needs to be addressed.

I. PARA WISE STATEMENT OF DEFENCE OF THE RESPONDENT TO THE CLAIM OF THE APPLICANT:

1. That the contents of paragraph 6 are wholly denied and entirely false and misleading in the context of the present matter. With reference to... *"The trades in the Future and Options segment are marked to market. In case of profit, the marked to market profit is paid to the Trading Member and whereas in case of loss, the trading member is required to pay the marked to market loss, on a T + 1 basis i.e. by the end of the subsequent day."* That this is wholly irrelevant as the Respondent's had open positions in Options and not of Futures. That in case of there is no debiting and crediting of Marked to Market, as has been suggested. Only the margin utilisation either decreases or increases based on the market movement.

2. That the contents of paragraph 7 are entirely baseless and strongly denied as they are not in line with facts. With reference to... *"With respect to the transactions and the dues of Reflection, StockHolding has, on a daily basis, sent Billing Statements to Reflection. However, Reflection has not taken any steps to pay the dues as per the terms and conditions of the said agreement."*

    a. That this allegation is baseless as the Respondent has paid all the necessary monthly service charges even though there was no allowance to trade after the margin shortfall.

    b. That the Respondent always maintained surplus cash as a part of collateral with the Applicant. That charges were directly debited from this available cash.

c. That the Respondent has has constantly increased the collateral with the Applicant as under:

RI has provided the following amount of collateral over the years.

As on	**Total Collateral of RI with SHCIL in Rs. Crores**
31.03.2014	8.29
11.03.2016	18.22
31.03.2017	19.37
31.03.2018	20.11
24.12.2018	22.50
06.02.2019	24.36

3. That the contents of paragraph 8 are false and wholly denied. SHCIL is guilty of *suppressio veri* and *suggestio falsi* and have come before the Hon'ble arbitral tribunal with unclean hands.

   a. That during the period between the 11th of March, 2016 and the 24th of December, 2018, no action was contemplated by the Applicant despite the full knowledge that the position was alive with the terminal disabled and hence no trades executed on a regular basis.
   b. That in December,2018, the Respondent had arranged to increase collateral by Rs. 4.25 Crore in the form of Bank Guarantees worth Rs. 8.50 Crore.
   c. That the Respondent had also made arrangements to shift the clearing member from the Applicant to Orbis Securities Ltd. by April 1st 2019.

4. That with respect to the contents of paragraph 10 the Respondent was forced to hand over cheques of Rs. 15. lakh and Rs. 25.0lakh even though the Respondent had pleaded that they did not have the necessary funds at that point of time but would be in a position to arrange the sum in the normal course of business by 15th February 2019 and 25th March 2019, respectively. That the Applicant exercised undue influence over the Respondent to procure the cheques dated February 1, 2019 despite the above. That the Respondent was given assurances that these cheques were

only for "comfort" and these would not be deposited earlier than the dates which was discussed, in the agreed upon schedule.

5. That the contents of paragraph 11 are false and that the dues of Rs. 19.16 Crore on 07.02.2019 is an erroneous figure and should have been Rs. 17.01 crore as explained therein.

6. That the contents of paragraph 12 are factually incorrect and wholly denied since there was no actual increase in the margin deficit between February 6th and 7th as indicated by the Applicant.

7. That with reference to the contents of paragraph 13 the Respondent states that the Hon'ble High Court heard the whole petition, but did not rule either way on the merits of the matter and directed the Respondent to exhaust the available remedy of Arbitration before approaching the Court. That despite being fully aware that the matter was sub judice, the Applicant started squaring off the Respondent's options position from 11.02.2019 onward, as opposed to holding on till the Court order on 05.02.2019.

   With reference to... *"d) StockHolding has also taken steps to square-off the F&O position of Reflection i.e. a quantity of 58050 NIFTY Call Option with a strike price of Rs. 5000/- expiring 27, 2019. Upon closing out the positions and realising aforesaid payments, the net dues payable by Reflection amounted to Rs. 8,59,03,830.90 as on March 15, 2019 and an amount of Rs. 3,46,71,081.85 towards the interest i.e. a total amount of Rs. 12,05,74,912.75 (Rupees Twelve Crore Five Lac Seventy Four Thousand Nine Hundred Twelve and Paise Seventy Five only)."* That the interest component amounting to Rs. 3.46 Crore claimed is apparently accumulating from 2014 and that the interest has never appeared on of the daily or the monthly bills. That even from 11.03.2019 when the margin deficit started none of the bills reflected any interest obligation.

8. That the Applicant does not have any legally justifiable or tenable claim to the amounts mentioned therein.

The Respondent has therefore prayed for the following reliefs:

   a. Declare that the arbitral tribunal is un-biased and uninfluenced by extraneous factors

anil

b. Declare the venue of the arbitration as Chennai, per the rules and byelaws governing the present dispute;

c. Dismiss the entire claim of the Applicant;

d. Direct the Applicant to pay the cost of arbitration;

e. Direct the Applicantto pay exemplary costs;

f. Direct the Applicant, to pay the following :

1. Rs.24.80 Crore as damages towards loss of collateral to due tothecoercive action of the Applicant causing grave monetary loss to RI

2. Rs. 0.90 Crore for loss of business over the last three years due to disablement of terminal and

3. Rs. 2.70 Crore as damages for the loss of reputation to RI and its partners caused by the arbitrary and unlawful acts of the Applicant.

And pass any other order as it deems fit in the interest of equity, justice and good conscience.

APPLICANT'S REJOINDER TO THE RESPONDENT'S DEFENSE / SUBMISSION

The Applicant in its rejoinder has stated as follows:

1. That at the outset, in its reply (Reply) the Applicant denies each and every allegation, averment and contention raised in the Respondent's Defence Statement and Counter Claim(Respondent's Statement) . That unless specifically admitted herein, all allegations and statements contained in the Respondent's Statement are denied as if specifically set out and traversed.

2. **PARAGRAPH WISE REPLY**

i. ***Integrity of the arbitration panel***

1. That as Mr. Vijay Sambrani, the Managing Partner of the Respondent, was the chairman of the Association of NSE Members of India ("ANMI") Southern Region, and had also held various posts such as Vice-President, Joint Secretary, Secretary and was selected by NSE and SEBI to be a part of the NSE Arbitration Panel, the Applicant asserted that shifting the place of arbitration to Chennai might affect

amit

the impartiality of the arbitration proceedings. That it became necessary to settle the issue of integrity/impartiality of the arbitrators. That NSE has, vide its email dated 28.05.2019 clarified that the arbitration panel consists of eminent persons whose independence and impartiality is beyond doubt and in view of thereof it is not necessary to discuss the issue any further.

ii. ***Place of arbitration***

2. That the Applicant denies the assertions of the Respondent and states that the place of arbitration should, both legally and equitably be Mumbai.

3. That the Respondent has gravely erred in interpreting the plain meaning of the Rules, Regulations and Bye-laws of NSE and National Securities Clearing Corporation Limited ("NSCCL"). The dispute between the Applicant and the Respondent arose in relation to the trades of the Respondent admitted for clearing on the F&O Segment of NSE. Byelaw 1 of Chapter X of the NSCCL (Futures & Options Segment) Byelaws provides that disputes in such cases shall be submitted to arbitration in accordance with the Rules, Byelaws and Regulations of the NSE.

4. That the NSE Byelaws provide for the seat of arbitration to be "*at the regional centre nearest to the address provided by the Constituent in the KYC form...*". The NSE Byelaws on arbitration had been drafted primarily for disputes between a trading member and its clients. That the above-mentioned clause was inserted to prevent the trading member from filing for arbitration at a centre far from an investor/client and severely inconvenience such investor/client. Further, this provision allows a client to file for arbitration against an errant trading member at a place nearest to him/her. That therefore, this provision ensures fairness and is drafted in such a manner to protect the investors.

5. That a trading member cannot be equated with a simple retail investor. Keeping this in perspective, Byelaw 18 of Chapter X (Arbitration) of NSCCL (Futures and Options Segment) Byelaws, which provides for arbitration of disputes primarily between trading members and clearing members, provides that all parties shall be "*deemed to have submitted to the exclusive jurisdiction of the courts in Mumbai or any other court as may be specified by the relevant authority*". Therefore, it can easily be interpreted that the seat of arbitration in case of disputes concerning the clearing of trades in the F&O segment of NSE between

clearing members and trading members should be Mumbai. That this is corroborated by Byelaw 1 of Chapter VII (Dealings by Clearing Members) of NSCCL (Futures and Options Segment) Byelaws, which states that all deals admitted by NSCCL in its F&O Segment for clearing and settlement shall be deemed to have been entered into in the city of Mumbai.

6. That the Applicant had filed arbitration as the Respondent had failed to fulfill its obligations concerning margin payments for the trades executed on NSE. That the dispute is not regarding any peripheral issues, but runs to the very core of the functions of a clearing member and trading member i.e. trading and settlement of the trades done on the exchange platform at Mumbai.

7. That vide email dated 28.05.2019, NSE observed as follows:

> *While we note the definition of the term the client includes "trading member", however, we would not be in a position to extend the procedures which have been made applicable to the investors w.r.t. claims lodged by the investors. As the Trading Member cannot be equated with the investors and the same would not be keeping to the spirit of the SEBI directives.*
>
> *The Byelaw 17 of the NSE Regulations has been inserted in accordance with the SEBI directions in Circular No. CIR/MRD/ICC/20/2013 dated July 05, 2013 and CIR/MRD/DSA/24/2010 dated August 11, 2010. The applicability of the said circulars may be noted under para 1 which is reproduced below:*
>
> *"1. In consultation with the stock exchanges, it has been decided to streamline the arbitration mechanism available at stock exchanges for arbitration of disputes (claims, complaints, differences, etc.) arising between a client and a member (Stock Broker, Trading Member and Clearing Member) across various market segments."*
>
> *As may be seen, the client as intended under the SEBI Circular does not include Trading Member. Hence, the said byelaw is not applicable to the Trading Member.*

8. That NSE has further clarified that the parties to the arbitration are free to raise the issue of venue of arbitration before the arbitrator, if they choose to.

9. That the Respondent had erred in stating that "*NSE, on the other hand has asked the Arbitrators to settle the*

Issue." It is submitted that NSE has settled the issue, and has given the parties an option to raise this issue again in front of the arbitration panel.

10. That in terms of Clause 12 of the Trading Member-Clearing Member Agreement ("TM-CM Agreement") dated 08.03.2014 executed between the Applicant and the Respondent, any disputes between the Applicant and Respondent have to be settled by way of arbitration. Clause 13 of the TM-CM Agreement provides that the courts in Mumbai shall have exclusive jurisdiction.

11. Thus the seat of arbitration should not be changed from Mumbai to Chennai.

iii. ***Statement of counterclaim***

12. That the counter-claim of the Respondent should not be entertained as the Respondent has not paid any arbitration fees and has not followed the due procedure as specified under the NSE Regulations, Rules and Byelaws.

13. That the Applicant denies that it has suppressed facts as alleged. That the Respondent is making baseless and unsubstantiated allegations on the integrity of the Applicant. That the Respondent should be subjected to strict proof of its allegations.

14. That on 11.03.2016 the trading terminal of the Respondent had been disabled by the Applicant upon the utilisation crossing 100% is as per the extant laws. In the circular no. 1499/2012 dated 17.12.2012 issued by NSE it is provided that a trading member should be compulsorily placed in risk reduction mode when 90% of the member's capital is utilised towards margins. That in view of this mandatory requirement the terminal of the Respondent had been automatically disabled.

15. That the Respondent had the option to pay the margin shortfall to reduce the utilisation to below 85%, and then request the Applicant to enable the terminal. The Respondent has not paid the complete amount of the shortfall. That the Respondent was aware of the automatic disablement of the terminal upon the utilisation crossing a certain percentage and the re-enablement of it when the utilisation reduces below 85%. However, the Respondent has not deposited the requisite margin for re-enabling its terminal for more than 3 years.

16. That the applicable service charges (including the applicable service tax, cess, etc.) are levied and debited to the account of the Respondent as per the terms and

anil

conditions of the TM-CM Agreement and the Respondent has not separately and specifically paid the service charges. That a mere levy / debit of service charges does not confer any right in favour of the Respondent or creates any waiver in favour of the Respondent to pay the margin shortfall.

17. That the contention that the Applicant had not contemplated any action even though the terminal of the Respondent was disabled it is is submitted that the Applicant was obligated to disable the terminal upon the margin utilisation crossing a certain threshold.

    Subsequent to that, it is the responsibility of the Respondent to take necessary action for re-enablement of the trading terminal by paying the margin shortfall. That the Respondent has not completely cleared the margin shortfall at any point of time. That the Respondent always had the option to pay the margin shortfall in order to undertake any transactions including hedging.

18. That it is evident that Respondent had never cleared the margin shortfall entirely at any point of time nor were the additional collaterals provided by the Respondent sufficient enough to clear the margin shortfall as demonsrated below. That in light of this the bare assertion that the Respondent has steadily increased the collateral over the years holds no value.

Date	**Respondent's Collateral with Applicant**	**Margin Shortfall (approx.)**
March 31, 2014	8.29 crore	Nil as utilization is 98.8%
March 31, 2015	8.29 crore	Nil as utilization is 96%
March 11, 2016	18.22 crore	Rs. 33.5 lac as utilization is 101.9%
March 31, 2016	19.37 crore	Rs. 1.19 crore as utilization is 106.6%
June 30, 2016	17.62 crore	Rs. 2.61 crore as utilization is

		115.5%
September 30, 2016	18.51 crore	Rs. 2.71 crore as utilization is 115.1%
December 31, 2016	18.80 crore	Rs. 88 lac as utilization is 104.8%
March 31, 2017	19.37crore	Rs. 4.17 crore as utilization is 122.3%
June 30, 2017	20.15 crore	Rs. 5.10 crore as utilization is 126.3%
September 30, 2017	20.20 crore	Rs. 5.12 crore as utilization is 126.1%
December 31, 2017	20.47 crore	Rs. 8.68 crore as utilization is 143.9%
March 31, 2018	20.11 crore	Rs. 7.55 crore as utilization is 138.9%
June 30, 2018	19.80 crore	Rs. 10.18 crore as utilization is 153.6%
September 30, 2018	18.42 crore	Rs. 14.13 crore as utilization is 180.4%
December 31, 2018	22.57 crore	Rs. 12.97 crore as utilization is 160.6%
January 31,	24.00 crore	Rs. 16.02 crore as utilization

2019		is 173.5%
February 5, 2019	24.36 crore	Rs. 16.96 crore as utilization is 175.9%
February 6, 2019	24.00 crore	Rs. 17.54 crore as utilization is 180.7%
February 7, 2019	22.29 crore	Rs. 19.16 crore as utilization is 195.7%
February 8, 2019	22.29 crore	Rs. 18.49 crore as utilization is 192.2%

19. That considering the obligation of the Applicant to maintain its collateral with the clearing corporation vis-à-vis the margin shortfall as detailed in the table above the proposal / demand of the Respondent is not justifiable and tenable.

20. That the cheques were provided by the Respondent to instill confidence in the Applicant that the margin shortfall shall be duly paid and to contribute towards the increasing margin shortfall. That as per the provisions of the TM-CM Agreement and the bank guarantees the Applicant has the right to square off the positions and invoke the bank guarantees upon non-payment of dues towards margins. That in the interest of fairness, the Respondent had been allowed sufficient time of almost 3 years to clear the margin shortfall completely. That on failure by the Respondent the Applicant had rightfully exercised its rights.

21. That the points put forth by the Respondent are neither averments nor contentions, but are in the nature of interrogatories and the same are not required to be responded to.

22. That the situation could have been averted if the Respondent had been allowed to hedge their position every month is without any basis as once the trading terminal is disabled on account of margin shortfall, a clearing

member can enable it only upon the trading member clearing the margin shortfall.

23. That the Respondent faced losses on account of its own actions and at this stage cannot arbitrarily claim compensation from the Applicant without any basis. The Respondent had failed to pay its margin shortfall, which resulted in the Applicant sustaining considerable losses. Therefore, the claim of the Respondent deserves to be dismissed.

iv. ***Statement of Defence***

24. That as rightly stated by the Respondent the option contracts are not marked to market and only the margin utilisation changes based on the market movement. However, it is unequivocally denied that the averments in Paragraph 6 of the Statement of Case are misleading. That in terms of the TM-CM Agreement the Respondent is obligated to provide and always maintain sufficient margin. In cases where the margin utilisation increases over a certain threshold the Respondent is required to provide additional margin. That the Respondent had grossly failed to fulfil this vital obligation.

25. That the Respondent has attempted to divert the attention of this Hon'ble Arbitration Panel to the sole issue of service charges in order to cover the fact of non-payment of margin requirements for more than 3 years.

26. That contrary to the Respondent's contention, 'dues' includes margin requirements and is not limited to service charges alone.

27. That it is emphatically denied that there was any malice in the invocation of the bank guarantees as alleged by the Respondent. As per the unconditional bank guarantees received by the Applicant, the Applicant has a complete right to invoke the bank guarantees if it is of the unilateral opinion that the Respondent has failed to fulfill its obligations or liabilities.

    As hereinabove stated the margin utilisation was above 100% for more than 3 years, during which the Respondent has failed to repay the complete dues. That the trading terminal is automatically disabled upon the trading member exceeding the margin utilisation threshold. Upon payment of the margin shortfall the trading terminal can be enabled. It should be noted that the Respondent is aware of the above mentioned and has in the past enabled the trading terminal by paying the margin shortfall. Despite being aware of this, the Respondent failed to pay

anil

the requisite margin shortfall, which continued for more than 3 years, and is now attempting to falsely allege that the Applicant has never requested the Respondent to clear the margin shortfall.

28. That the the Respondent has not denied receipt of the billing statements, the extent of margin shortfall is clearly mentioned. It is evident that a bill/invoice is a demand notice based on which payments are required to be made. In light of this, it is surprising that the Respondent claims that no *'letter, notice or anything'* has been received from the Applicant regarding the margin shortfall.

29. That the Respondent has vide email dated 10.09.2018, acknowledged the margin shortfall and insufficient collateral brought in. That apart from regularly sending billing statements the Applicant had also telephonically requested the Respondent to pay the margin shortfall. That the Applicant has requested the Respondent to pay the margin shortfall from time to time and the Respondent has replied to the same. That the said correspondence does not override the terms & conditions of the TM-CM Agreement. The rights of the Applicant under the TM-CM Agreement to invoke the bank guarantees and close the positions upon non-payment of margin shortfall had not been waived off.

    Hence, the Respondent has erroneously stated that the Applicant consented to a new time-table and an overriding agreement was formed.

30. That In order to prove their bona fide intentions and reduce the margin shortfall, the Respondent voluntarily provided the cheques and it is denied that the Applicant exercised undue influence to procure them.

31. That in view of the continuous default by the Respondent, the Applicant was forced to liquidate the securities of the Respondent. Therefore, the total securities in the billing statement reduced from Rs. 1,71,27,909.08 on 06.02. 2019 to Rs. 14,575.41 on 07.02.2019. However the credit upon the sale of securities was not shown in the billing statement dated 07.02.2019 as the Applicant had received the amount of Rs. 2,15,76,387.40 upon the sale of securities only on 11.02.2019. This is supported by the fact that in the billing statements sent to the Respondent on 11.02.2019 and 15.02.2019 the details of the sale of securities have been captured. As wrongly alleged by the Respondent, the Applicant has not falsely increased the margin shortfall, but instead has duly followed the accounting policies in preparing the billing statements.

anil

32. That the Applicant's assertion that the dues were accumulating on a daily basis was factually incorrect. That the Respondent has merely relied on reduction in deficit on one day (i.e. from 06.02.2019 to 07.02.2019) to allege that the Applicant's averments are factually incorrect. By focussing on this one day, the Respondent is attempting to divert the attention of this Hon'ble Arbitration Panel from the enormous deficit in the Respondent's account.

    That the margin shortfall which began with approximately Rs. 33.5 lacs on 11.03.2016 *(wrongly stated as 16.03.2019)* ballooned up to Rs. 17.54 crore as on 06.02.2019 in less than 3 years. Instead the Respondent had taken advantage of the Applicant's trust and has failed to fulfill its obligations.

33. That the Applicant had initiated steps to invoke the bank guarantees from 07.02.2019, started the process of liquidation of securities of the Respondent on 08.02.2019 and taken steps to square off the futures positions of the Respondent from 11.02.2019 onwards. It is only subsequent to the invocation of the bank guarantees on 13.02.2019 that the Applicant was informed via email about a writ petition filed in the matter. Thereby the Applicant initiated the steps to square off / liquidate the securities / invoke the bank guarantees prior to receiving any information regarding the filing of the writ petition. Further, **in Dr. Sajad Majid v. Dr. Syed Zahoor Ahmed , the Jammu and Kashmir High Court** held that mere filing of an appeal does not grant an automatic stay, until a stay application is moved and granted by the court. That the Hon'ble High Court did not grant any stay in favour of the Respondent and disposed of the writ petition without giving any relief to the Respondent. In light of the above, it is patently erroneous for the Respondent to allege that the Applicant should have waited till the order of the Hon'ble High Court before taking any action.

34. That the cheques were given to the Applicant voluntarily by the Respondent to show its bona fide and supplement its cash collateral. The allegation of undue influence is only an afterthought raised with an intention to mislead the Hon'ble Arbitration Panel. That the cheques were not post-dated cheques and were not deposited prior to any arbitrary deadline alleged by the Respondent. Further, contrary to the contention of the Respondent, the Applicant is under no obligation to inform it before depositing the cheques. It is submitted that the cheques were given as collateral and since the Applicant lost faith

in the Respondent's promises to bring in the necessary collateral, the Applicant rightfully deposited the cheques with banks.

35. That in the interests of fairness and justice, the Respondent was provided with more than sufficient time of almost 3 years to clear the margin shortfall. The Respondent had not taken any tangible steps to pay the margin shortfall and had rather tried to take shelter under one pretext or the other without any actual payment. On the other hand, the Applicant was constrained to maintain its collateral with NSCCL. On account of the default, the loss to the Applicant due to the open positions of the Respondent aggregated to approximately Rs. 34.73 crore, as on 06.02.2019. Thus the Applicant was constrained to close out the open positions, liquidate the securities given as collaterals and invoke the bank guarantees, as per the terms and conditions of the TM-CM Agreement. In the entire process, the Applicant had incurred a loss of Rs.8,59,03,830.90 as on 15.03.2019, plus an interest of Rs.3,46,71,081.85. Contrary to the contention of the Respondent, if the positions of the Respondent had not been closed out the Applicant would have made a loss of about Rs. 39.90 crores as on 27.06.2019 as against Rs. 34.73 crore as on 06.02.2019. Therefore, it was necessary and appropriate for the Applicant to close out the positions and curtail its own loss.

36. That Clause 5(21) of the TM-CM Agreement clearly provides for charging of interest on the outstanding amount due from the Respondent.

37. That Clause 11 of the TM-CM Agreement clearly provides that any delay in enforcing the provisions of the TM-CM Agreement shall not prejudice or restrict the rights of either party. Therefore, it is surprising that the Respondent now claims that interest cannot be charged by the Applicant at this stage.

38. That vide email dated 26.03.2019 the Applicant provided the details of the calculation of interest to the Respondent and the Respondent had not raised any queries on that. Therefore, terming the interest as arbitrary at this stage is an afterthought and without any basis in fact or law.

39. That the Respondent had executed the trades under the category of "Constituent". It may be noted that on 27.12.2018 Mr. Vijay Sambrani, through the Respondent had taken the position i.e. a quantity of 58,050 NIFTY Call Option with a strike price of Rs. 5000/- expiry 27.06.2019 at a premium of about Rs. 31.76 crore. As per the NSE

anil FLJ

(F&O) Regulations, the trading member is required to distinguish constituent's contracts from its own contracts. These should be maintained on a 'Pro' & 'Cli' basis where 'Pro' stands for Proprietory (indicating trades carried out on the trading member's own account) and 'Cli' stands for trades carried out for constituents, in order to determine the amount of brokerage and margins to be recovered from the constituents. The records for constituent's contracts are required to, *inter-alia*, provide for the following:-

a. Contracts held in custody by the trading member as security deposit/margin, etc. Proper authorisation from constituent for the same shall be obtained by trading member;

b. Fully paid for constituent's securities registered in the name of trading member, if any, towards margin requirements, etc.

c. Trading members should maintain records in respect of charges collected from constituents.

d. Record of the Long and Short position of the trading member as well as that of each of his constituents.

e. Margin book for constituents and for trading members' own account trades containing the particulars relating to the amount of margins deposited by each constituent and the amount of margin released to each constituent.

40. That as the transaction is categorized under the category "Constituent", the Respondent is required to furnish the collateral / margin reporting to NSE. However, the the Respondent is silent on the same.

41. In light of the facts and law and as stated in the Statement of Case, the Respondent is not entitled to any relief as prayed for in the Respondent's Statement. It is prayed that this Hon'ble Arbitration Panel may be pleased to pass an award as per the reliefs claimed in the Statement of Case.

HEARING:

The hearing in the reference was held on 22.07.2019. The Applicant was represented by its Authorized Representative, Adv. Mr. Anil Choudhary, Adv. Mr. M. Raghuvansi, Mr. Shashikant Nayak- Company Secretary, Mr. Prabhat Dubey- Division Manager and Mr. Ravi Chandranath – Division Manager. The Respondent was represented by its Authorized

Representatives, Mr. Vijay Sambrani- Managing Partner and Chandrika Sambrani- Partner .

REASONING AND CONCLUSION:

On venue of the arbitration:

1. After going through the relevant pleadings and proceedings and oral as well as written submissions of the parties, we deem it necessary to deal with the primary issue whether this Arbitral Tribunal has jurisdiction to entertain the present arbitration application at Mumbai.
2. The Arbitral Tribunal deems it appropriate to primarily address the issue of the apprehension raised by the Applicant regarding integrity of the Arbitral Tribunal. The Arbitral Tribunal has taken strong exception to the misgivings of the Applicant and had, during the proceedings, called upon the Applicant whether it wishes to withdraw the allegation of bias of the Arbitral Tribunal. Surprisingly, the Applicant before us states that it does not wish to withdraw the said allegations but predictably so, does not desire to press the same. The Arbitral Tribunal places on record its displeasure on the conduct of the Applicant. The Arbitral Tribunal is distressed and perturbed that the Applicant has thought it fit to agitate and challenge the sanctity of the arbitration mechanism at Chennai on flimsy and uncorroborated fears and apprehensions.
3. The Arbitral Tribunal has thus concluded that the Applicant has apprehension about the integrity of this Arbitral Tribunal. The Arbitral Tribunal notes that although the Applicant has lack of trust in the sanctity of the Arbitral Tribunal, yet it is before us for adjudicating its claim. Be that it may, the Arbitral Tribunal has decided to proceed in the matter since the Arbitral Tribunal has no conflict of interest, is not biased or influenced and is otherwise competent to adjudicate the matter.
4. For the sake of clarity and continuity, the Applicant is interchagebly referred to as the CM, the Respondent as TM, the NSE Clearing Corpotion Ltd as NCL (earlier NSCCL) and the National Stock Exchange of India as NSE. The Rules, Bye Laws and Regulations of NCL and NSE may be referred as the respective Bye laws and/or Regulations.
5. It is on record that after filing the arbitration application there was a series of communication between the Applicant, the Respondent and the NSE arbitration department on the issue of venue for the arbitration. After going through the relevant corresspondence, pleadings and proceedings and oral as well as written submissions of the parties, we deem it necessary to deal with the primary issue whether this

Arbitral Tribunal has jurisdiction to entertain the present arbitration application.

6. We note that both the parties as well as the NSE arbitration department have quoted Bye Laws and Regulations of NCL and NSE. It shall be appropriate to address these issues before determining jurisdiction on the venue on the present proceedings.
7. We note that the Respondent has relied on Bye law 7 of Chapter I of NCL Byelaws which has defined the term constituent. The same reads as under:

Byelaw 7 of Chapter I of NCL (F&O) Byelaws provides as follows:

(7) CONSTITUENT:

A Client /Constituent means a person, on whose instructions and on whose account the Clearing Member clears and settles deals. For this purpose the term "Client" shall include all registered constituents of trading members of Specified Exchange.

Explanation 1: The terms `Constituent' and `Client' are used interchangeably in these Byelaws, Rules & Regulations and shall have the same meaning assigned herein.

Explanation 2: For the purpose of Chapters IX, X & XI, the term 'Constituent' in relation to trades shall also include a trading member where such trades done on the Specified Exchange are cleared and settled on his behalf by a Clearing Member.

The Respondent has tried to draw a comparison and similarity between the terms `constituent' and 'client'.

8. The Respondent has also quoted Bye law 1 of Chapter X of NCL Byelaws, that deals with arbitration and is reproduced for ready reference:

Byelaw 1 of Chapter X of NCL (F&O) Byelaws provides as follows:

a. *All claims, disputes, differences, arising between Clearing Members and Constituents or between Clearing Members inter se arising out of or related to deals admitted for clearing and settlement by the Clearing Corporation in respect of F&O Segment or with reference to anything done in respect thereto or in pursuance of such deals shall be referred to and decided by arbitration as provided in the Rules, Byelaws and Regulations of the National Stock Exchange of India Limited if the deal originated from it or in pursuance thereof.*

amit

9. The Respondent has further relied on Bye Law 17 of Chapter XI of the NSE Bye Laws which provides for jurisdiction, which is reproduced as under:

Byelaw 17 of Chapter XI of NSE Byelaws provides as follows:

JURISDICTION

(17) The arbitration and appellate arbitration shall be conducted at the regional centre nearest to the address provided by Constituent in the KYC form or as per the change in address communicated thereafter by the Constituent to the trading member. The application under Section 34 of the Act, if any, against the decision of the Appellate Arbitral Award passed by the Appellate Arbitrator shall be filed in the competent court nearest to the address provided by Constituent in the KYC form or as per the change in address communicated thereafter by the Constituent to the trading member.

10. An additional submission by the Respondent came to be advanced that, the seat of arbitration should be Chennai as the terminals as well as the office of the Respondent is in Chennai and further that the bank guarantees were issued from banks in Chennai.

11. To counter the Applicant's arguments, the Respondent has placed reliance on Bye Law 5 of Chapter XI of the NSE Bye laws that deal with independence of arbitrators which we deem not necessary to address here as the said issue has been adequately dealt with and is settled as observed above.

12. Countering the same, the Applicant has placed reliance on Bye law 18 of Chapter X of NCL Byelaws on jurisdiction.

13. We quote the same:

Byelaw 18 of Chapter X of NCL (F&O) Byelaws provides as follows:

JURISDICTION

(18) All parties to a reference to arbitration under these Byelaws and Regulations and the persons, if any, claiming under them, shall be deemed to have submitted to the exclusive jurisdiction of the courts in Mumbai or any other court as may be specified by the relevant authority for the purpose of giving effect to the provisions of the Act.

14. The Applicant has also placed reliance on Bye law 1 of Chapter VII of NCL Byelaws also on jurisdiction which is reads as under:

Byelaw 1 of Chapter VII of NCL (F&O) Byelaws provides as follows:

1. JURISDICTION

a. All deals admitted by the Clearing Corporation in its F&O Segment for clearing and settlement shall be deemed to have been entered into in the city of Mumbai unless provided otherwise expressly by the relevant authority.

b. The relevant authority may, from time to time, specify deals as subject to a particular jurisdiction, having regard to the type or nature of the deal, the exchange on which the deal was struck and other relevant factors.

15. The Applicant has further invited our attention to the following Regulation of NSE Regulations:

Regulation 5.2 of Chapter V of NSE Regulations provides as follows:

5.2 SEAT OF ARBITRATION

i. The Relevant Authority may provide for different seats of arbitration for different regions of the country either generally or specifically and in such an event the seat of arbitration shall be the place so provided by the Relevant Authority. Save as otherwise specified by the Relevant Authority, the seat of arbitration for different regions shall be as follows:

Seats of Arbitration-Regional Arbitration Centres (RACs)	*States covered by the RAC*
DELHI	*Delhi, Haryana, Uttar Pradesh, Uttaranchal, Himachal Pradesh, Punjab, Jammu & Kashmir, Chandigarh, Rajasthan.*
KOLKATA	*West Bengal, Bihar, Jharkhand, Orissa,*

	Assam, Arunachal Pradesh, Mizoram, Manipur, Sikkim, Meghalaya, Nagaland, Tripura, Chhattisgarh.
CHENNAI	*Andhra Pradesh, Karnataka, Kerala, Tamilnadu, Andaman & Nicobar, Lakshadweep, Pondicherry.*
MUMBAI	*Maharashtra, Gujarat, Goa, Daman, Diu, Dadra & Nagar Haveli, Madhya Pradesh.*

(b) The premises/location where arbitration shall take place shall be such place as may be identified by the Exchange from time to time and intimated to the arbitrator and the parties to the dispute accordingly.

16. The Applicant has further emphasized that the Respondent can, thus, never be termed as a constituent for the purpose of arbitraion proceedings at NSE.

17. We note that although NSE has left the issue on jurisdiction on the venue for the Arbitral Tribunal to decide, we observe from the corresspondence dated 28.05.2019 between the Applicant, Respondent and NSE that it is the opinion of NSE that Bye Law 17 of Chapter XI of the NSE Bye Laws on jurisdiction should be read in conjunction with and not in derogation of SEBI Circulars dated 11.08.2011 and 05.07.2013. NSE has further clarified that as a TM cannot be equated with investors since the same are deemed contrary to SEBI directives and the spirit of the circulars. For the sake of easy reference the relevant portion thereof is reproduced hereinbelow:

"Circular dated 11.08.2010
Securities and Exchange Board of India
Subject: Arbitration Mechanism in Stock Exchanges

1. In consultation with the stock exchanges, it has been decided to streamline the arbitration mechanism available at stock exchanges for arbitration of disputes (claims, complaints, differences, etc.) arising between a client and a member (Stock Broker,

Trading Member and Clearing Member) across various market segments. "

"Circular dated 05.07.2013
Securities and Exchange Board of India
Subject: Arbitration Mechanism in Stock Exchanges

Reference may be made to circular no. CIR/MRD/DSA/24/2010 dated August 11, 2010. Para 8 of the said circular no. CIR/MRD/DSA/24/2010 dated August 11, 2010 is being modified. The para 8 of aforementioned circular dated August 11, 2010 shall now read as under:

18. *"8. Place of Arbitration*

8.1 The Stock Exchanges (SEs) having nationwide terminals, shall provide arbitration facility (i.e arbitration as well as appellate arbitration) atleast at all centres specified by SEBI from time to time. However, the SEs having nationwide terminals may provide arbitration facility at additional centres, if SEs so desire. The arbitration and appellate arbitration shall be conducted at the centre nearest to the address provided by Client in the KYC form.

8.2 Other stock exchanges shall provide the arbitration facility, including appellate arbitration, at the place where it is located.

8.3 The application under section 34 of the Arbitration and Conciliation Act, 1996, if any, against the decision of the appellate panel shall be filed in the competent Court nearest to the address provided by Client in the KYC form."

19. NSE has further claified in its aforesaid communication that though the term "client" includes a 'TM", NSE would not be in a position to extend the procedures which are otherwise applicable to claims of investors.

20. The Respondent has sternly contested that as per Byelaw 17 of Chapter XI of NSE Byelaws, arbitration shall be conducted at the regional centre nearest to the address provided by the Constituent in the KYC form. We note that neither parties have claimed or contested any change in address of the Respondent.
Thus, it is the case of the Respondent that the venue for the present arbitration should be Chennai and not Mumbai since the Respondent is deemed to be a constituent of the Applicant.

anil

21. It is aslo the case of the Respondent that Byelaw 1 of Chapter X of NCL (F&O) Byelaws squarely applies to the present facts and submits that the Bye law provides that all claims, disputes, differences, arising between CM and Constituents or between CM inter se arising out of or related to deals admitted for clearing and settlement by the NCL in respect of F&O segment or with reference to anything done in respect thereto or in pursuance of such deals shall be referred to and decided by arbitration as provided in the Rules, Byelaws and Regulations of NSE if the deal originated from it or in pursuance thereof.

22. We are mindful of the fact that Byelaw 1 of Chapter X of NCL (F&O) Byelaw refers to claims, disputes, differences, arising between CM and constituents or between CM inter se and it seems that, there is no reference in the said Byelaw to claims, disputes, differences, arising between CM and TM. However, on a plain reading of Explanation 2 to Byelaw 8 of Chapter I being definition of 'Constituent', it apparent that 'Constituent' includes the Trading Member for the purpose of Chapter X.

23. We further note that the intention of the said Byelaw is clearly specified and not prescribed and thus, there is no room for ambiguity in respect of interpretation thereof.

24. If it is the Respondent's case that it is not bound by NSE Regulations, by extension it would imply that the Respondent is not bound by the NCL Regulations as well and such a submission of Respondent would be self-contradictory. Therefore, having pondered over the matter, the Arbitral Tribunal concludes that NCL Byelaws provides arbitration mechanism at NSE as per the NSE Regulations and all relevant provisions of the Byelaws and Regulations of NSE shall squarely apply to the present arbitration application.

25. Thus, it is imperative to conclude that the powers and functions of arbitration under Bye Law 1 of Chapter X of the Bye Laws of NCL rests with NSE since all claims, disputes, differences shall be referred to and decided by arbitration as provided in the Rules, Byelaws and Regulations of NSE if the deal originated from it or in pursuance thereof. Effectively, all claims, disputes and differences are invariably required be referred to and decided by the arbitration mechanism as per the Rules, Byelaws and Regulations of NSE. It further provides that all claims, disputes, differences, arising between CM and constituents or between CM inter se arising out of or

related to deals admitted for clearing and settlement by NCL in respect of F&O Segment or with reference to anything done in respect thereto or in pursuance thereof then such deals shall be deemed to have originated from NSE *mutatis mutandis*. Effectively, the Arbitral Tribunal is of the opinion that all the references to NCL Byelaws are subject to the interpretation provided in NSE Byelaws and hence the NSE Byelaws shall prevail in so far as interpretation, procedures and jurisdiction in disputes between TM and CM.

26. We are equally mindful of the fact that the Respondent has claimed that it is a Constituent of the Applicant in the present proceedings and to further its case, the Respondent has quoted Byelaw 7 of Chapter I of NCL (F&O) Byelaws, more specifically Explanation 2 thereof which provides that for the purpose of Chapters IX, X & XI, the term Constituent in relation to trades shall also include a TM where such trades done on the specified Exchange are cleared and settled on its behalf by a CM.

27. We rely on the email dated 28.05.2019 of NSE adressed to the Respondent quoting SEBI Circulars dated 11.08.2010 and 05.07.2013 clarifying that Byelaw 17 of Chapter XI of the NSE Byelaws has been inserted in accordance with the aforementioned circulars. It is observed that SEBI had in consultation with all Exchanges decided to streamline the arbitration mechanism arising between a client and a member across various market segments. We note that SEBI Circular dated 11.08.2010 has aptly referred to a member as a stock broker, trading member and a clearing member. In view of the SEBI circulars, the intention of SEBI is clearly reflected that TM is to be treated as a "member" of SEBI and cannot be treated as a "client". Further the Arbitral Tribunal considers it fit to mention that as per the SEBI circular dated 05.07.2013, the arbitration is to be conducted at the centre nearest to the address provided by the client in the KYC form. In the present arbitration, it is not in dispute that the Respondent is TM and by no stretch of imagination can the Respondent be termed as a client of the Exchange.

Thus, the contentions of the Respondent therefore do not impress us. In view of the SEBI circulars and interpretation thereof, the Arbitral Tribunal is of the opinion that the Respondent's claim of it being a constituent of the Applicant is completely misplaced in law and cannot be accepted and is thus rejected. Having construed so, the Arbitral Tribunal has no hesitation to

conclude that although a reference to a Constituent is extended to a TM in Explanation 2 to Byelaw 7 of Chapter I of NCL Byelaws, a TM (Respondent herein) cannot be equated with the Constituent.

28. We further note that Byelaw 17 of Chapter XI of NSE Byelaws mandates jurisdiction and states that arbitration shall be conducted at the regional centre nearest to the address provided by Constituent in the KYC form.

29. Further, it also clarifies that the application under Section 34 of the Arbitration and Conciliation Act, 1996 shall be filed in the competent court nearest to the address provided by Constituent in the KYC form. It is not in dispute that the Respondent is a TM of the Exchange and thereby has deemed not to have submitted any KYC with the Exchange. On the contrary, the Applicant and the Respondent have entered into an agreement dated 08.03.2014, being the CM-TM agreement. The said agreement has adequately dealt with the rights and obligations of the parties. Under the circumstances, the Byelaws and the clauses of the CM-TM agreement shall take precedence and thus, the Arbitral Tribunal rejects the Respondent's contention in respect of jurisdiction and concludes that the respondent is not a Constituent, as provided.

30. We have noted that the Applicant has relied on Byelaw 18 of Chapter X of NCL (F&O) Byelaws in respect of jurisdiction for the arbitration proceedings. The said Byelaw is unambiguous in so far as any reference made under the Byelaws shall be deemed to have submitted to the exclusive jurisdiction of the courts of Mumbai or any other court as may be specified by the relevant authority for the purpose of giving effect to the provisions of the Arbitration and Conciliation Act, 1996. We are inclined to take into the account the interepretation of Byelaw 1(1) of Chapter VII of NCL (F&O) Byelaws which clarifies that all deals admitted by NCL in its F&O Segment for clearing and settlement shall be deemed to have been entered into in the city of Mumbai unless provided otherwise expressly by the relevant authority. Further, the Applicant has relied upon Byelaw 1(2) of Chapter VII of NCL (F&O) Byelaws which procides that the relevant authority may, from time to time, specify deals as subject to a particular jurisdiction, having regard to the type or nature of the deal, the exchange on which the deal was struck and other relevant factors. It is not the case of the

Respondent that the relevant authority has specified a jurisdiction other than Mumbai.

31. Under the circumstances, the Arbitral Tribunal is of the view that jurisdiction for the present application shall be with the courts in Mumbai.

32. Having interpreted and concluded that this Arbitral Tribunal has jurisdiction to adjudicate the claim, the Arbitral Tribunal proceeds to the merits of the case.

33. It is on record that the Applicant had on 29.01.2019 issued to the Respondent bill being "Terminal Limit, summary statement together with Mark-to-Market summary statement" demanding a total margin of Rs. 14,76,44,238.59. Similarly, on 05.02.2019, the Respondent had demanded Rs. 16,52,14,481.14. The Applicant has placed on record letters dated 06.02.2019 issued to the Respondents inviting attention to clauses 2(5), 2(8), 5(4) and 5(9) of the CM-TM agreement. It is also on record that the Respondent had on 01.02.2019 assured the Applicant that the matter would be resolved, placed on record details of collaterals offered by the Respondent, a strategy to bring down margin below 100%, use of available current assets, generate additional cash, arrange for additional bank guarantees and seeking help from friends and wellwishers. It is not in dispute that the said correspondence had sought time till March end to bring the account in order. Further, the Respondent has vide communication dated 07.02.2019, in reply to the Applicant's letter dated 06.02.2019, offered clarifications and suggested shifting of positions to another CM and in addition, issued 4 post-dated cheques in all totaling Rs. 40,00,000/- to the Respondent. The Arbitral Tribunal is of the view that the Respondent has never disputed the contents of the of the notice dated 29.01.2019 and 05.02.2019 and the letters dated 06.02.2019 which can thus reasonably be concluded as acceptance of liability.

34. Further, the Arbitral Tribunal's finding is fortified by the fact that the Respondent has issued post-dated cheques in all amounting to Rs. 40,00,000/-. We are not impressed by the defense of the Respondent that the Respondent was "forced" to hand over cheques worth Rs. 15 lakhs and Rs. 25 lakhs.
Further, the said denial is contrary to the contents of the Respondent's letter dated 07.06.2019. We are of the considered view that unless there is a liability, there is no reason for the Respondent to have issued post dated

anil RJ

cheques to the Applicant and therefore, the issuance of such post dated cheques by the Respondent purports to acceptance and admission of liability and in turn to the running account debit balance in their account.

35. We are of the opinion that the Respondent has failed to prove otherwise through their arguments and submissions set out in the Statement of Defense as well as at the time of the hearing. Thus, we do not accept the contentions of the Respondent. We further deem the acts of the Applicant in invoking the Bank Guarantees of Rs. 22,17,50,000/- placed with the Applicant by the Respondent and liquidating the securities of Rs. 2,51,76,387.40 and adjusting Rs. 48,26,532.51 of cash collaterals to be justified in view of the accumulated outstanding in the account of the Respondent. As a collorary to the above, squaring of 58,050 NIFTY Call Option with Strike price of Rs. 5,000/-, 27.06.2019 expiry is also within the rights of the Applicant since the Respondent would require to be treated as a constituent in default.

36. We are not in agreement with the Respondent's claim on limitation challenging that the action was taken nearly after 3 years since the terminals were effectively disabled earlier. We are of the view that the application is well within the period of limitation prescribed under The Limitation Act, 1963 and therefore, the reason put forth by the Responent does not appeal to us.

37. Since, the application is within limitation, the right of the Applicant cannot be vitiated as the law does not create any waiver in favour of the Respondent to file arbitration within limitation for whatever reason.

38. We proceed to deal with the point of interest on the outstandings. We do not accept the contention of the Respondent the Applicant cannot charge any interest since clause 5(21) of the TM-CM agreement provides for charging of interest @15% p.a. on the outstanding amount due from the Respondent. Further, Clause 11 of the TM-CM Agreement also provides that any delay in enforcing the provisions of the TM-CM Agreement shall not prejudice or restrict the rights of either party. Therefore, we do not find any merit in the contentions of the Respondent and hence, conclude that Applicant has the right to charge interest on outstanding dues of the Respondent.

39. We are of the opinion that the Respondent's contention in respect of disabling of terminals is completely irrelevant and inconsequential to the crux of the application and therefore does not call for any comments from us. In view thereof, we proceed to dismiss the contention of the Respondent on the pont of disablement of the terminals by the Applicant.

AWARD

1. The claim of the Applicant is allowed and the Respondent is directed to pay for Rs. 8,59,03,830.90 (Rupees Eight Crore Fifty Nine Lakh Three Thousand Eight Hundred Thirty and Ninety paise only) together with interest @9% p.a. from 15.03.2019 till the date of award and further interest @15% p.a. from the date of award till realisation.

2. No order as to costs.

Dated this 10th day of October, 2019

Place: Mumbai

Mr. Gaurang B. Shah
(Co-Arbitrator)

Mr. Rajesh L. Shah
(Co-Arbitrator)

Mr. Anil Shah
(Presiding Arbitrator)